

TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY
TRIBUNALS



VOLUME VI

"THE FLICK CASE"

*Germany (Territory under Allied occupation, 1945-
U.S. Zone) Military Tribunals*

TRIALS

OF

WAR CRIMINALS

BEFORE THE

NUERNBERG MILITARY TRIBUNALS

UNDER

CONTROL COUNCIL LAW No. 10

NUERNBERG

OCTOBER 1946-APRIL 1949



VOLUME VI

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PREFACE

In April 1949, judgment was rendered in the last of the series of 12 Nuernberg war crimes trials which had begun in October 1946 and were held pursuant to Allied Control Council Law No. 10. Far from being of concern solely to lawyers, these trials are of especial interest to soldiers, historians, students of international affairs, and others. The defendants in these proceedings, charged with war crimes and other offenses against international penal law, were prominent figures in Hitler's Germany and included such outstanding diplomats and politicians as the State Secretary of the Foreign Office, von Weizsaecker, and cabinet ministers von Krosigk and Lammers; military leaders such as Field Marshals von Leeb, List, and von Kuechler; SS leaders such as Ohlendorf, Pohl, and Hildebrandt; industrialists such as Flick, Alfried Krupp, and the directors of I. G. Farben; and leading professional men such as the famous physician Gerhard Rose, and the jurist and Acting Minister of Justice, Schlegelberger.

In view of the weight of the accusations and the far-flung activities of the defendants, and the extraordinary amount of official contemporaneous German documents introduced in evidence, the records of these trials constitute a major source of historical material covering many events of the fateful years 1933 (and even earlier) to 1945, in Germany and elsewhere in Europe.

The Nuernberg trials under Law No. 10 were carried out under the direct authority of the Allied Control Council, as manifested in that law, which authorized the establishment of the Tribunals. The judicial machinery for the trials, including the Military Tribunals and the Office, Chief of Counsel for War Crimes, was prescribed by Military Government Ordinance No. 7 and was part of the occupation administration for the American zone, the Office of Military Government (OMGUS). Law No. 10, Ordinance No. 7, and other basic jurisdictional or administrative documents are printed in full hereinafter.

The proceedings in these trials were conducted throughout in the German and English languages, and were recorded in full by stenographic notes, and by electrical sound recording of all oral proceedings. The 12 cases required over 1,200 days of court proceedings and the transcript of these proceedings exceeds 330,000 pages, exclusive of hundreds of document books, briefs, etc. Publication of all of this material, accordingly, was quite unfeasible. This series, however, contains the indictments, judgments, and other important portions of the record of the 12 cases, and it is believed that these materials give a fair picture of the

trials, and as full and illuminating a picture as is possible within the space available. Copies of the entire record of the trials are available in the Library of Congress, the National Archives, and elsewhere.

In some cases, due to time limitations, errors of one sort or another have crept into the translations which were available to the Tribunal. In other cases the same document appears in different trials, or even at different parts of the same trial, with variations in translation. For the most part these inconsistencies have been allowed to remain and only such errors as might cause misunderstanding have been corrected.

Volumes VI, VII, VIII, and IX of this series are dedicated to the three "industrialist" cases, commonly referred to as the Flick, Farben, and Krupp cases because the defendants were charged principally for their conduct as officials of one of these three German firms. The materials selected from the records of these three trials have been apportioned to the volumes in this series as follows: Flick, volume VI; Farben, volumes VII and VIII; Krupp, volume IX.

Each of the three industrial cases contained charges relating to slave labor and to the plunder and expropriation of property in occupied countries. Under these charges findings of guilty were made by the Tribunals as to one or more defendants in each of the three cases. The Farben and Krupp cases, but not the Flick case, involved charges of crimes against the peace by criminal participation in the planning and waging of aggressive wars. These charges were dismissed as to all defendants. The Flick and Farben cases, but not the Krupp case, contained charges relating to membership in and support of the SS, an organization of the Nazi Party declared to be criminal by the International Military Tribunal. Under these charges findings of guilty were made by the Tribunal in the Flick case, whereas in the Farben case these charges were dismissed as to all defendants charged. The Flick case was the only one of these three industrialist cases which charged crimes against humanity by conduct involving the "Aryanization" of Jewish property begun before the invasion of Austria in March 1938. This charge was dismissed on the ground that the Tribunal did not have jurisdiction.

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MILITARY TRIBUNALS**

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2	Erhard Milch	Milch Case	II
3	Josef Altstoetter, et al.	Justice Case	III
4	Oswald Pohl, et al.	Pohl Case	V
5	Friedrich Flick, et al.	Flick Case	VI
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7	Wilhelm List, et al.	Hostage Case	XI
8	Ulrich Greifelt, et al.	RuSHA Case	IV and V
9	Otto Ohlendorf, et al.	Einsatzgruppen Case	IV
10	Alfried Krupp, et al.	Krupp Case	IX
11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV
12	Wilhelm von Leeb, et al. Procedure	High Command Case	X and XI XV

ARRANGEMENT BY SUBJECT UNITS FOR PUBLICATION*

<i>Case No.</i>	<i>United States of America against</i>	<i>Popular Name</i>	<i>Volume No.</i>
<i>MEDICAL</i>			
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5	Friedrich Flick, et al.	Flick Case	VI
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11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV

* Although the subject material in many of the cases overlaps, it was believed that this arrangement of the cases by volumes would be most helpful to the reader and the most feasible for publication purposes.

DECLARATION ON GERMAN ATROCITIES

[Moscow Declaration]

Released November 1, 1943

THE UNITED KINGDOM, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in the many countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all the peoples or territories in their grip have suffered from the worst form of government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites, and on French and Italian territory.

Accordingly, the aforesaid three allied Powers, speaking in the interests of the thirty-two [thirty-three] United Nations, hereby solemnly declare and give full warning of their declaration as follows:

At the time of the granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for, or have taken a consenting part in the above atrocities, massacres, and executions, will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free governments which will be created therein. Lists will be compiled in all possible detail from all these countries having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxemburg, France and Italy.

Thus, the Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian, or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done.

The above declaration is without prejudice to the case of the major criminals, whose offences have no particular geographical localisation and who will be punished by the joint decision of the Governments of the Allies.

[Signed]

Roosevelt
Churchill
Stalin

EXECUTIVE ORDER 9547

PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST THE LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL AGENTS AND ACCESSORIES

By virtue of the authority vested in me as President and as Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, it is ordered as follows:

1. Associate Justice Robert H. Jackson is hereby designated to act as the Representative of the United States and as its Chief of Counsel in preparing and prosecuting charges of atrocities and war crimes against such of the leaders of the European Axis powers and their principal agents and accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal. He shall serve without additional compensation but shall receive such allowance for expenses as may be authorized by the President.

2. The Representative named herein is authorized to select and recommend to the President or to the head of any executive department, independent establishment, or other federal agency necessary personnel to assist in the performance of his duties hereunder. The head of each executive department, independent establishment, and other federal agency is hereby authorized to assist the Representative named herein in the performance of his duties hereunder and to employ such personnel and make such expenditures, within the limits of appropriations now or hereafter available for the purpose, as the Representative named herein may deem necessary to accomplish the purposes of this order, and may make available, assign, or detail for duty with the Representative named herein such members of the armed forces and other personnel as may be requested for such purposes.

3. The Representative named herein is authorized to cooperate with, and receive the assistance of, any foreign Government to the extent deemed necessary by him to accomplish the purposes of this order.

HARRY S. TRUMAN

THE WHITE HOUSE,
May 2, 1945.

(F. R. Doc. 45-7256; Filed, May 3, 1945; 10:57 a. m.)

LONDON AGREEMENT OF 8 AUGUST 1945

AGREEMENT by the Government of the UNITED STATES OF AMERICA, the Provisional Government of the FRENCH REPUBLIC, the Government of the UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND and the Government of the UNION OF SOVIET SOCIALIST REPUBLICS for the Prosecution and Punishment of the MAJOR WAR CRIMINALS of the EUROPEAN AXIS WHEREAS the United Nations have from time to time made declarations of their intention that War Criminals shall be brought to justice;

AND WHEREAS the Moscow Declaration of the 30th October 1943 on German atrocities in Occupied Europe stated that those German Officers and men and members of the Nazi Party who have been responsible for or have taken a consenting part in atrocities and crimes will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the free Governments that will be created therein;

AND WHEREAS this Declaration was stated to be without prejudice to the case of major criminals whose offenses have no particular geographical location and who will be punished by the joint decision of the Governments of the Allies;

NOW THEREFORE the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics (hereinafter called "the Signatories") acting in the interests of all the United Nations and by their representatives duly authorized thereto have concluded this Agreement.

Article 1. There shall be established after consultation with the Control Council for Germany an International Military Tribunal for the trial of war criminals whose offenses have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities.

Article 2. The constitution, jurisdiction and functions of the International Military Tribunal shall be those set out in the Charter annexed to this Agreement, which Charter shall form an integral part of this Agreement.

Article 3. Each of the Signatories shall take the necessary steps to make available for the investigation of the charges and trial the major war criminals detained by them who are to be tried by the International Military Tribunal. The Signatories shall also use their best endeavors to make available for investigation of the charges against and the trial before the International Military Tribunal such of the major war criminals as are not in the territories of any of the Signatories.

Article 4. Nothing in this Agreement shall prejudice the provisions established by the Moscow Declaration concerning the return of war criminals to the countries where they committed their crimes.

Article 5. Any Government of the United Nations may adhere to this Agreement by notice given through the diplomatic channel to the Government of the United Kingdom, who shall inform the other signatory and adhering Governments of each such adherence.

Article 6. Nothing in this Agreement shall prejudice the jurisdiction or the powers of any national or occupation court established or to be established in any allied territory or in Germany for the trial of war criminals.

Article 7. This agreement shall come into force on the day of signature and shall remain in force for the period of one year and shall continue thereafter, subject to the right of any Signatory to give, through the diplomatic channel, one month's notice of intention to terminate it. Such termination shall not prejudice any proceedings already taken or any findings already made in pursuance of this Agreement.

IN WITNESS WHEREOF the Undersigned have signed the present Agreement.

DONE in quadruplicate in London this 8th day of August 1945 each in English, French and Russian, and each text to have equal authenticity.

For the Government of the United States of America

ROBERT H. JACKSON

For the Provisional Government of the French Republic

ROBERT FALCO

For the Government of the United Kingdom of Great
Britain and Northern Ireland

JOWITT, C.

For the Government of the Union of Soviet Socialist
Republics

I. NIKITCHENKO
A. TRAININ

CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

I. CONSTITUTION OF THE INTERNATIONAL MILITARY TRIBUNAL

Article 1. In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Article 2. The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

Article 3. Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its member of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

Article 4.

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during that trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5. In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. JURISDICTION AND GENERAL PRINCIPLES

Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) **CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) **WAR CRIMES:** namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment

or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

- (c) **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.*

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9. At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10. In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11. Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12. The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Article 13. The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

*See protocol p. XVII for correction of this paragraph.

III. COMMITTEE FOR THE INVESTIGATION AND PROSECUTION OF MAJOR WAR CRIMINALS

Article 14. Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

- (a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,
- (b) to settle the final designation of major war criminals to be tried by the Tribunal,
- (c) to approve the Indictment and the documents to be submitted therewith,
- (d) to lodge the Indictment and the accompanying documents with the Tribunal,
- (e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Article 15. The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

- (a) investigation, collection, and production before or at the Trial of all necessary evidence,
- (b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,
- (c) the preliminary examination of all necessary witnesses and of the Defendants,
- (d) to act as prosecutor at the Trial,
- (e) to appoint representatives to carry out such duties as may be assigned to them,
- (f) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by any Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16. In order to ensure fair trial for the Defendants, the following procedure shall be followed:

- (a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at a reasonable time before the Trial.
- (b) During any preliminary examination or trial of a Defendant he shall have the right to give any explanation relevant to the charges made against him.
- (c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

- (d) A defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.
- (e) A defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Article 17. The Tribunal shall have the power

- (a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them,
- (b) to interrogate any Defendant,
- (c) to require the production of documents and other evidentiary material,
- (d) to administer oaths to witnesses,
- (e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18. The Tribunal shall

- (a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges,
- (b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,
- (c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value.

Article 20. The Tribunal may require to be informed of the nature of any evidence before it is offered so that it may rule upon the relevance thereof.

Article 21. The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and the records and findings of military or other Tribunals of any of the United Nations.

Article 22. The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23. One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him.

The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Article 24. The proceedings at the Trial shall take the following course:

- (a) The Indictment shall be read in court.
- (b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty".
- (c) The Prosecution shall make an opening statement.

- (d) The Tribunal shall ask the Prosecution and the Defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.
- (e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.
- (f) The Tribunal may put any question to any witness and to any Defendant, at any time.
- (g) The Prosecution and the Defense shall interrogate and may cross-examine any witnesses and any Defendant who gives testimony.
- (h) The Defense shall address the court.
- (i) The Prosecution shall address the court.
- (j) Each Defendant may make a statement to the Tribunal.
- (k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25. All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal considers desirable in the interests of justice and public opinion.

VI. JUDGMENT AND SENTENCE

Article 26. The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27. The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28. In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29. In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Article 30. The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council for Germany.

PROTOCOL

Whereas an Agreement and Charter regarding the Prosecution of War Criminals was signed in London on the 8th August 1945, in the English, French, and Russian languages,

And whereas a discrepancy has been found to exist between the originals of Article 6, paragraph (c), of the Charter in the Russian language, on the

one hand, and the originals in the English and French languages, on the other, to wit, the semi-colon in Article 6, paragraph (c), of the Charter between the words "war" and "or", as carried in the English and French texts, is a comma in the Russian text,

And whereas it is desired to rectify this discrepancy:

Now, THEREFORE, the undersigned, signatories of the said Agreement on behalf of their respective Governments, duly authorized thereto, have agreed that Article 6, paragraph (c), of the Charter in the Russian text is correct, and that the meaning and intention of the Agreement and Charter require that the said semi-colon in the English text should be changed to a comma, and that the French text should be amended to read as follows:

(c) LES CRIMES CONTRE L'HUMANITE: c'est à dire l'assassinat, l'extermination, la réduction en esclavage, la déportation, et tout autre acte inhumain commis contre toutes populations civiles, avant ou pendant la guerre, ou bien les persécutions pour des motifs politiques, raciaux, ou religieux, lorsque ces actes ou persécutions, qu'ils aient constitué ou non une violation du droit interne du pays où ils ont été perpétrés, ont été commis à la suite de tout crime rentrant dans la compétence du Tribunal, ou en liaison avec ce crime.

IN WITNESS WHEREOF the Undersigned have signed the present Protocol. DONE in quadruplicate in Berlin this 6th day of October, 1945, each in English, French, and Russian, and each text to have equal authenticity.

For the Government of the United States of America
ROBERT H. JACKSON

For the Provisional Government of the French Republic
FRANCOIS DE MENTHON

For the Government of the United Kingdom of Great
Britain and Northern Ireland
HARTLEY SHAWCROSS

For the Government of the Union of Soviet Socialist
Republics

R. RUDENKO

CONTROL COUNCIL LAW NO. 10

PUNISHMENT OF PERSONS GUILTY OF WAR CRIMES, CRIMES AGAINST PEACE AND AGAINST HUMANITY

In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:

Article I

The Moscow Declaration of 30 October 1943 "Concerning Responsibility of Hitlerites for Committed Atrocities" and the London Agreement of 8 August 1945 "Concerning Prosecution and Punishment of Major War Criminals of the European Axis" are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II

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

(a) *Crimes against Peace.* Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

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

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

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

2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in 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 or (f) with reference to paragraph 1 (a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.

3. Any person found guilty of any of the Crimes above mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.

(b) Imprisonment for life or a term of years, with or without hard labour.

(c) Fine, and imprisonment with or without hard labour, in lieu thereof.

(d) Forfeiture of property.

(e) Restitution of property wrongfully acquired.

(f) Deprivation of some or all civil rights.

Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

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

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

5. In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of

the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.

Article III

1. Each occupying authority, within its Zone of occupation,

(a) shall have the right to cause persons within such Zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested and shall take under control the property, real and personal, owned or controlled by the said persons, pending decisions as to its eventual disposition.

(b) shall report to the Legal Directorate the names of all suspected criminals, the reasons for and the places of their detention, if they are detained, and the names and location of witnesses.

(c) shall take appropriate measures to see that witnesses and evidence will be available when required.

(d) shall have the right to cause all persons so arrested and charged, and not delivered to another authority as herein provided, or released, to be brought to trial before an appropriate tribunal. Such tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons, be a German Court, if authorized by the occupying authorities.

2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August 1945.

3. Persons wanted for trial by an International Military Tribunal will not be tried without the consent of the Committee of Chief Prosecutors. Each Zone Commander will deliver such persons who are within his Zone to that committee upon request and will make witnesses and evidence available to it.

4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section 1 (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned.

5. The execution of death sentences may be deferred by not to exceed one month after the sentence has become final when the Zone Commander concerned has reason to believe that the testimony of those under sentence would be of value in the investigation and trial of crimes within or without his Zone.

6. Each Zone Commander will cause such effect to be given to the judgments of courts of competent jurisdiction, with respect to the property taken under his control pursuant hereto, as he may deem proper in the interest of justice.

Article IV

1. When any person in a Zone in Germany is alleged to have committed a crime, as defined in Article II, in a country other than Germany or in another

Zone, the government of that nation or the Commander of the latter Zone, as the case may be, may request the Commander of the Zone in which the person is located for his arrest and delivery for trial to the country or Zone in which the crime was committed. Such request for delivery shall be granted by the Commander receiving it unless he believes such person is wanted for trial or as a witness by an International Military Tribunal, or in Germany, or in a nation other than the one making the request, or the Commander is not satisfied that delivery should be made, in any of which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority. A similar procedure shall apply to witnesses, material exhibits and other forms of evidence.

2. The Legal Directorate shall consider all requests referred to it, and shall determine the same in accordance with the following principles, its determination to be communicated to the Zone Commander.

(a) A person wanted for trial or as a witness by an International Military Tribunal shall not be delivered for trial or required to give evidence outside Germany, as the case may be, except upon approval of the Committee of Chief Prosecutors acting under the London Agreement of 8 August 1945.

(b) A person wanted for trial by several authorities (other than an International Military Tribunal) shall be disposed of in accordance with the following priorities:

(1) If wanted for trial in the Zone in which he is, he should not be delivered unless arrangements are made for his return after trial elsewhere;

(2) If wanted for trial in a Zone other than that in which he is, he should be delivered to that Zone in preference to delivery outside Germany unless arrangements are made for his return to that Zone after trial elsewhere;

(3) If wanted for trial outside Germany by two or more of the United Nations, of one of which he is a citizen, that one should have priority;

(4) If wanted for trial outside Germany by several countries, not all of which are United Nations, United Nations should have priority;

(5) If wanted for trial outside Germany by two or more of the United Nations, then, subject to Article IV 2 (b) (3) above, that which has the most serious charges against him, which are moreover supported by evidence, should have priority.

Article V

The delivery, under Article IV of this Law, of persons for trial shall be made on demands of the Governments or Zone Commanders in such a manner that the delivery of criminals to one jurisdiction will not become the means of defeating or unnecessarily delaying the carrying out of justice in another place. If within six months the delivered person has not been convicted by the Court of the zone or country to which he has been delivered, then such person shall be returned upon demand of the Commander of the Zone where the person was located prior to delivery.

Done at Berlin, 20 December 1945.

JOSEPH T. MCNARNEY

General

B. L. MONTGOMERY

Field Marshal

L. KOELTZ

General de Corps d'Armée
for P. KOENIG

General d'Armée

G. ZHUKOV

Marshal of the Soviet Union

EXECUTIVE ORDER 9679

AMENDMENT OF EXECUTIVE ORDER No. 9547 OF MAY 2, 1945, ENTITLED "PROVIDING FOR REPRESENTATION OF THE UNITED STATES IN PREPARING AND PROSECUTING CHARGES OF ATROCITIES AND WAR CRIMES AGAINST THE LEADERS OF THE EUROPEAN AXIS POWERS AND THEIR PRINCIPAL AGENTS AND ACCESSORIES"

By virtue of the authority vested in me as President and Commander in Chief of the Army and Navy, under the Constitution and statutes of the United States, it is ordered as follows:

1. In addition to the authority vested in the Representative of the United States and its Chief of Counsel by Paragraph 1 of Executive Order No. 9547 of May 2, 1945, to prepare and prosecute charges of atrocities and war crimes against such of the leaders of the European Axis powers and their accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal, such Representative and Chief of Counsel shall have the authority to proceed before the United States military or occupation tribunals, in proper cases, against other Axis adherents, including but not limited to cases against members of groups and organizations declared criminal by the said international military tribunal.

2. The present Representative and Chief of Counsel is authorized to designate a Deputy Chief of Counsel, to whom he may assign responsibility for organizing and planning the prosecution of charges of atrocities and war crimes, other than those now being prosecuted as Case No. 1 in the international military tribunal, and, as he may be directed by the Chief of Counsel, for conducting the prosecution of such charges of atrocities and war crimes.

3. Upon vacation of office by the present Representative and Chief of Counsel, the functions, duties, and powers of the Representative of the United States and its Chief of Counsel, as specified in the said Executive Order No. 9547 of May 2, 1945, as amended by this order, shall be vested in a Chief of Counsel for War Crimes to be appointed by the United States Military Governor for Germany or by his successor.

4. The said Executive Order No. 9547 of May 2, 1945, is amended accordingly.

HARRY S. TRUMAN

THE WHITE HOUSE,
January 16, 1946.

(F. R. Doc. 46-893; Filed, Jan. 17, 1946; 11:08 a.m.)

HEADQUARTERS

US FORCES, EUROPEAN THEATER

GENERAL ORDERS }
No. 301

24 OCTOBER 1946

Office of Chief of Counsel for War Crimes	I
Chief Prosecutor	II
Announcement of Assignments	III

I.....OFFICE OF CHIEF OF COUNSEL FOR WAR CRIMES. Effective this date, the Office of Chief of Counsel for War Crimes is transferred to the Office of Military Government for Germany (US). The Chief of Counsel for War Crimes will report directly to the Deputy Military Governor and will work in close liaison with the Legal Adviser of the Office of Military Government for Germany and with the Theater Judge Advocate.

II.....CHIEF PROSECUTOR. Effective this date, the Chief of Counsel for War Crimes will also serve as Chief Prosecutor under the Charter of the International Military Tribunal, established by the Agreement of 8 August 1945.

III.....ANNOUNCEMENT OF ASSIGNMENTS. Effective this date, Brigadier General Telford Taylor, USA, is announced as Chief of Counsel for War Crimes, in which capacity he will also serve as Chief Prosecutor for the United States under the Charter of the International Military Tribunal, established by the Agreement of 8 August 1945.

BY COMMAND OF GENERAL McNARNEY:

C. R. HUEBNER
Major General, GSC,
Chief of Staff

OFFICIAL:

GEORGE F. HERBERT
Colonel, AGD
Adjutant General

DISTRIBUTION: D

MILITARY GOVERNMENT—GERMANY

UNITED STATES ZONE

ORDINANCE NO. 7

ORGANIZATION AND POWERS OF CERTAIN MILITARY TRIBUNALS

Article I

The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, including conspiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offenses.

Article II

(a) Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 certain tribunals to be known as "Military Tribunals" shall be established hereunder.

(b) Each such tribunal shall consist of three or more members to be designated by the Military Governor. One alternate member may be designated to any tribunal if deemed advisable by the Military Governor. Except as provided in subsection (c) of this Article, all members and alternates shall be

lawyers who have been admitted to practice, for at least five years, in the highest courts of one of the United States or its territories or of the District of Columbia, or who have been admitted to practice in the United States Supreme Court.

(c) The Military Governor may in his discretion enter into an agreement with one or more other zone commanders of the member nations of the Allied Control Authority providing for the joint trial of any case or cases. In such cases the tribunals shall consist of three or more members as may be provided in the agreement. In such cases the tribunals may include properly qualified lawyers designated by the other member nations.

(d) The Military Governor shall designate one of the members of the tribunal to serve as the presiding judge.

(e) Neither the tribunals nor the members of the tribunals or the alternates may be challenged by the prosecution or by the defendants or their counsel.

(f) In case of illness of any member of a tribunal or his incapacity for some other reason, the alternate, if one has been designated, shall take his place as a member in the pending trial. Members may be replaced for reasons of health or for other good reasons, except that no replacement of a member may take place, during a trial, other than by the alternate. If no alternate has been designated, the trial shall be continued to conclusion by the remaining members.

(g) The presence of three members of the tribunal or of two members when authorized pursuant to subsection (f) *supra* shall be necessary to constitute a quorum. In the case of tribunals designated under (c) above the agreement shall determine the requirements for a quorum.

(h) Decisions and judgments, including convictions and sentences, shall be by majority vote of the members. If the votes of the members are equally divided, the presiding member shall declare a mistrial.

Article III

(a) Charges against persons to be tried in the tribunals established hereunder shall originate in the Office of the Chief of Counsel for War Crimes, appointed by the Military Governor pursuant to paragraph 3 of the Executive Order Numbered 9679 of the President of the United States dated 16 January 1946. The Chief of Counsel for War Crimes shall determine the persons to be tried by the tribunals and he or his designated representative shall file the indictments with the Secretary General of the tribunals (see Article XIV, *infra*) and shall conduct the prosecution.

(b) The Chief of Counsel for War Crimes, when in his judgment it is advisable, may invite one or more United Nations to designate representatives to participate in the prosecution of any case.

Article IV

In order to ensure fair trial for the defendants, the following procedure shall be followed:

(a) A defendant shall be furnished, at a reasonable time before his trial, a copy of the indictment and of all documents lodged with the indictment, translated into a language which he understands. The indictment shall state the charges plainly, concisely and with sufficient particulars to inform defendant of the offenses charged.

(b) The trial shall be conducted in, or translated into, a language which the defendant understands.

(c) A defendant shall have the right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of defendant's country, or any other person who may be specially authorized by the tribunal. The tribunal shall appoint qualified counsel to represent a defendant who is not represented by counsel of his own selection.

(d) Every defendant shall be entitled to be present at his trial except that a defendant may be proceeded against during temporary absences if in the opinion of the tribunal defendant's interests will not thereby be impaired, and except further as provided in Article VI (c). The tribunal may also proceed in the absence of any defendant who has applied for and has been granted permission to be absent.

(e) A defendant shall have the right through his counsel to present evidence at the trial in support of his defense, and to cross-examine any witness called by the prosecution.

(f) A defendant may apply in writing to the tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located and shall also state the facts to be proved by the witness or the document and the relevancy of such facts to the defense. If the tribunal grants the application, the defendant shall be given such aid in obtaining production of evidence as the tribunal may order.

Article V

The tribunals shall have the power

(a) to summon witnesses to the trial, to require their attendance and testimony and to put questions to them;

(b) to interrogate any defendant who takes the stand to testify in his own behalf, or who is called to testify regarding another defendant;

(c) to require the production of documents and other evidentiary material;

(d) to administer oaths;

(e) to appoint officers for the carrying out of any task designated by the tribunals including the taking of evidence on commission;

(f) to adopt rules of procedure not inconsistent with this Ordinance. Such rules shall be adopted, and from time to time as necessary, revised by the members of the tribunal or by the committee of presiding judges as provided in Article XIII.

Article VI

The tribunals shall

(a) confine the trial strictly to an expeditious hearing of the issues raised by the charges;

(b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever;

(c) deal summarily with any contumacy, imposing appropriate punishment, including the exclusion of any defendant or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article VII

The tribunals shall not be bound by technical rules of evidence. They shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure, and shall admit any evidence which they deem to have probative value. Without limiting the foregoing general rules, the following shall be

deemed admissible if they appear to the tribunal to contain information of probative value relating to the charges: affidavits, depositions, interrogations, and other statements, diaries, letters, the records, findings, statements and judgments of the military tribunals and the reviewing and confirming authorities of any of the United Nations, and copies of any document or other secondary evidence of the contents of any document, if the original is not readily available or cannot be produced without delay. The tribunal shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the tribunal the ends of justice require.

Article VIII

The tribunals may require that they be informed of the nature of any evidence before it is offered so that they may rule upon the relevance thereof.

Article IX

The tribunals shall not require proof of facts of common knowledge but shall take judicial notice thereof. They shall also take judicial notice of official governmental documents and reports of any of the United Nations, including the acts and documents of the committees set up in the various Allied countries for the investigation of war crimes, and the records and findings of military or other tribunals of any of the United Nations.

Article X

The determinations of the International Military Tribunal in the judgment in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary.

Article XI

The proceedings at the trial shall take the following course:

- (a) The tribunal shall inquire of each defendant whether he has received and had an opportunity to read the indictment against him and whether he pleads "guilty" or "not guilty."
- (b) The prosecution may make an opening statement.
- (c) The prosecution shall produce its evidence subject to the cross examination of its witnesses.
- (d) The defense may make an opening statement.
- (e) The defense shall produce its evidence subject to the cross examination of its witnesses.
- (f) Such rebutting evidence as may be held by the tribunal to be material may be produced by either the prosecution or the defense.
- (g) The defense shall address the court.
- (h) The prosecution shall address the court.
- (i) Each defendant may make a statement to the tribunal.
- (j) The tribunal shall deliver judgment and pronounce sentence.

Article XII

A Central Secretariat to assist the tribunals to be appointed hereunder shall be established as soon as practicable. The main office of the Secretariat shall be located in Nurnberg. The Secretariat shall consist of a Secretary General and such assistant secretaries, military officers, clerks, interpreters and other personnel as may be necessary.

Article XIII

The Secretary General shall be appointed by the Military Governor and shall organize and direct the work of the Secretariat. He shall be subject to the supervision of the members of the tribunals, except that when at least three tribunals shall be functioning, the presiding judges of the several tribunals may form the supervisory committee.

Article XIV

The Secretariat shall:

- (a) Be responsible for the administrative and supply needs of the Secretariat and of the several tribunals.
- (b) Receive all documents addressed to tribunals.
- (c) Prepare and recommend uniform rules of procedure, not inconsistent with the provisions of this Ordinance.
- (d) Secure such information for the tribunals as may be needed for the approval or appointment of defense counsel.
- (e) Serve as liaison between the prosecution and defense counsel.
- (f) Arrange for aid to be given defendants and the prosecution in obtaining production of witnesses or evidence as authorized by the tribunals.
- (g) Be responsible for the preparation of the records of the proceedings before the tribunals.
- (h) Provide the necessary clerical, reporting and interpretative services to the tribunals and its members, and perform such other duties as may be required by any of the tribunals.

Article XV

The judgments of the tribunals as to the guilt or the innocence of any defendant shall give the reasons on which they are based and shall be final and not subject to review. The sentences imposed may be subject to review as provided in Article XVII, *infra*.

Article XVI

The tribunal shall have the right to impose upon the defendant, upon conviction, such punishment as shall be determined by the tribunal to be just, which may consist of one or more of the penalties provided in Article II, Section 3 of Control Council Law No. 10.

Article XVII

(a) Except as provided in (b) *infra*, the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof.

(b) In cases tried before tribunals authorized by Article II (c), the sentence shall be reviewed jointly by the zone commanders of the nations involved, who may mitigate, reduce or otherwise alter the sentence by majority vote, but may not increase the severity thereof. If only two nations are represented, the sentence may be altered only by the consent of both zone commanders.

Article XVIII

No sentence of death shall be carried into execution unless and until confirmed in writing by the Military Governor. In accordance with Article III, Section 5 of Law No. 10, execution of the death sentence may be deferred by not to exceed one month after such confirmation if there is reason to believe that the testimony of the convicted person may be of value in the investigation and trial of other crimes.

Article XIX

Upon the pronouncement of a death sentence by a tribunal established thereunder and pending confirmation thereof, the condemned will be remanded to the prison or place where he was confined and there be segregated from the other inmates, or be transferred to a more appropriate place of confinement.

Article XX

Upon the confirmation of a sentence of death the Military Governor will issue the necessary orders for carrying out the execution.

Article XXI

Where sentence of confinement for a term of years has been imposed the condemned shall be confined in the manner directed by the tribunal imposing sentence. The place of confinement may be changed from time to time by the Military Governor.

Article XXII

Any property declared to be forfeited or the restitution of which is ordered by a tribunal shall be delivered to the Military Governor, for disposal in accordance with Control Council Law No. 10, Article II (3).

Article XXIII

Any of the duties and functions of the Military Governor provided for herein may be delegated to the Deputy Military Governor. Any of the duties and functions of the Zone Commander provided for herein may be exercised by and in the name of the Military Governor and may be delegated to the Deputy Military Governor.

This Ordinance becomes effective 18 October 1946.

BY ORDER OF MILITARY GOVERNMENT:

MILITARY GOVERNMENT—GERMANY
ORDINANCE NO. 11

AMENDING MILITARY GOVERNMENT ORDINANCE NO. 7 OF 18
OCTOBER 1946, ENTITLED "ORGANIZATION AND POWERS OF
CERTAIN MILITARY TRIBUNALS"

Article I

Article V of Ordinance No. 7 is amended by adding thereto a new subdivision to be designated "(g)", reading as follows:

"(g) The presiding judges, and, when established, the supervisory committee of presiding judges provided in Article XIII shall assign the cases brought by the Chief of Counsel for War Crimes to the various Military Tribunals for trial."

Article II

Ordinance No. 7 is amended by adding thereto a new article following Article V to be designated Article V-B, reading as follows:

"(a) A joint session of the Military Tribunals may be called by any of the presiding judges thereof or upon motion, addressed to each of the Tribunals, of the Chief of Counsel for War Crimes or of counsel for any defendant whose interests are affected, to hear argument upon and to review any interlocutory ruling by any of the Military Tribunals on a fundamental or important legal question either substantive or procedural, which ruling is in conflict with or is inconsistent with a prior ruling of another of the Military Tribunals.

"(b) A joint session of the Military Tribunals may be called in the same manner as provided in subsection (a) of this Article to hear argument upon and to review conflicting or inconsistent final rulings contained in the decisions or judgments of any of the Military Tribunals on a fundamental or important legal question, either substantive or procedural. Any motion with respect to such final ruling shall be filed within ten (10) days following the issuance of decision or judgment.

"(c) Decisions by joint sessions of the Military Tribunals, unless thereafter altered in another joint session, shall be binding upon all the Military Tribunals. In the case of the review of final rulings by joint sessions, the judgments reviewed may be confirmed or remanded for action consistent with the joint decision.

"(d) The presence of a majority of the members of each Military Tribunal then constituted is required to constitute a quorum.

"(e) The members of the Military Tribunals shall, before any joint session begins, agree among themselves upon the selection from their number of a member to preside over the joint session.

"(f) Decisions shall be by majority vote of the members. If the votes of the members are equally divided, the vote of the member presiding over the session shall be decisive."

Article III

Subdivisions (g) and (h) of Article XI of Ordinance No. 7 are deleted; subdivision (i) is relettered "(h)"; subdivision (j) is relettered "(i)"; and a new subdivision, to be designated "(g)", is added, reading as follows:

"(g) The prosecution and defense shall address the court in such order as the Tribunal may determine."

This Ordinance becomes effective 17 February 1947.

BY ORDER OF THE MILITARY GOVERNMENT:

OFFICIALS OF THE OFFICE OF THE SECRETARY GENERAL

Secretaries General

MR. CHARLES E. SANDS..... From 25 October 1946 to 17 November 1946.
MR. GEORGE M. READ..... From 18 November 1946 to 19 January 1947.
MR. CHARLES E. SANDS..... From 20 January 1947 to 18 April 1947.
COLONEL JOHN E. RAY..... From 19 April 1947 to 9 May 1948.
DR. HOWARD H. RUSSELL..... From 10 May 1948 to 2 October 1949.

Deputy and Executive Secretaries General

MR. CHARLES E. SANDS..... Deputy from 18 November 1946 to 19 January 1947.
JUDGE RICHARD D. DIXON..... Acting Deputy from 25 November 1946 to 5 March 1947.
MR. HENRY A. HENDRY..... Deputy from 6 March 1947 to 9 May 1947.
MR. HOMER B. MILLARD..... Executive Secretary General from 3 March 1947 to 5 October 1947.
LIEUTENANT COLONEL
HERBERT N. HOLSTEN..... Executive Secretary General from 6 October 1947 to 30 April 1949.

Assistant Secretaries General

[Since many trials were being held simultaneously, an Assistant Secretary General was designated by the Secretary General for each case. Assistant Secretaries General are listed with the members of each tribunal.]

Marshals of Military Tribunals

COLONEL CHARLES W. MAYS..... From 4 November 1946 to 5 September 1947.
COLONEL SAMUEL L. METCALFE..... From 7 September 1947 to 29 August 1948.
CAPTAIN KENYON S. JENCKES..... From 30 August 1948 to 30 April 1949.

Court Archives

MRS. BARBARA S. MANDELLAUB..... Chief from 21 February 1947 to 15 November 1949.

Defense Information Center

MR. LAMBERTUS WARTENA..... Defense Administrator from 3 March 1947 to 16 September 1947.
LIEUTENANT COLONEL
HERBERT N. HOLSTEN..... Defense Administrator from 17 September 1947 to 19 October 1947.
MAJOR ROBERT G. SCHAEFER..... Defense Administrator from 20 October 1947 to 30 April 1949.

"The Flick Case"
MILITARY TRIBUNAL IV

CASE 5

THE UNITED STATES OF AMERICA

—*against*—

FRIEDRICH FLICK, OTTO STEINBRINCK, ODILO BURKART, KONRAD
KALETSCH, BERNHARD WEISS, AND HERMANN TERBERGER,
Defendants.

INTRODUCTION

The trial of Friedrich Flick and five other officials of the Flick Concern was commonly referred to as the "Flick Case" and is officially designated *United States of America vs. Friedrich Flick, et al.* (Case 5). The Flick case was the first of the so-called industrialist cases tried in Nuernberg. The six defendants were leading officials in the Flick Concern or its subsidiary companies and were charged with the commission of war crimes and crimes against humanity, principally because of conduct undertaken as officials of the Flick Concern. The specific counts charged criminal conduct relating to slave labor, the spoliation of property in occupied France and the Soviet Union, the "Aryanization" of Jewish industrial and mining properties, beginning in the year 1936 (charged only as crimes against humanity), and membership in and support of the SS and the "Circle of Friends of Himmler." In its judgment the Tribunal found the defendant Flick guilty under the charges of slave labor, spoliation, and support of criminal activities of the SS by his financial contributions to the "Circle of Friends of Himmler;" the defendant Steinbrinck guilty of membership in the SS and support of the criminal activities of the SS by his participation in the "Circle of Friends of Himmler;" and the defendant Weiss guilty under the slave-labor charges. The Tribunal acquitted the three other defendants Burkart, Kaletsch, and Terberger on all the counts under which they were indicted.

The Flick case was tried at the Palace of Justice in Nuernberg before Military Tribunal IV. The Tribunal convened 136 times, and the trial lasted approximately 9 months, as shown by the following schedule:

Indictment filed	8 February 1947
Indictment served	8 February 1947
Amended indictment filed	18 March 1947
Amended indictment served	18 March 1947
Arraignment	19 April 1947
Prosecution opening statement	19 April 1947
Defense opening statements	2 July 1947
Prosecution closing statement	24 November 1947
Defense closing statements	25 to 29 November 1947

Prosecution rebuttal statement	29 November 1947
Judgment	22 December 1947
Sentence	22 December 1947
Affirmation of sentences by Military Governor of the United States Zone of Occupation.	30 June 1948
Order of the District Court of the United States for the District of Columbia denying the petition for writ of habeas corpus.	6 April 1948
Order of the United States Court of Appeals for the District of Columbia denying appeal from the order of the District Court.	11 May 1949
Order of the Supreme Court of the United States denying writ of Certiorari	14 November 1949

The English transcript of the court proceedings runs to 11,026 mimeographed pages. The prosecution introduced into evidence 869 written exhibits (some of which contained several documents), and the defense 613 written exhibits. The tribunal heard oral testimony of 31 witnesses called by the prosecution and of 20 witnesses, excluding the defendants, called by the defense. Each of the six defendants testified on his own behalf and each was subject to examination on behalf of other defendants. The exhibits offered by both the prosecution and defense contained documents, photographs, affidavits, interrogatories, letters, maps, charts, and written evidence. The prosecution introduced 59 affidavits; the defense introduced 445 affidavits. The prosecution called one defense affiant for cross-examination; the defense called 13 prosecution affiants for cross-examination. The case-in-chief of the prosecution took 36 court days and the case for the six defendants took 89 court days. The Tribunal was in recess between 13 June 1947 and 2 July 1947 to give the defense additional time to prepare its case.

The members of the Tribunal and prosecution and defense counsel are listed in the ensuing pages. Prosecution counsel were assisted in preparing the case by Walter Rapp (Chief of the Evidence Division), Norbert Barr, and Erich Kaufman, interrogators, and Henry Buxbaum, Clarissa Kohn, Josif Marcu, Walter Schonfeld, Louis Stubing, Fred Thieberger, and Ernest Tislowitz, research and documentary analysts.

Selection and arrangement of the Flick case material published herein was accomplished principally by Norbert G. Barr and Paul

H. Gantt, working under the general supervision of **Drexel A. Sprecher**, Deputy Chief Counsel and Director of Publications, Office of U.S. Chief of Counsel for War Crimes. **Morris Amchan**, **John P. Banach**, **Catherine W. Bedford**, **Henry Buxbaum**, **Gertrude Ferencz**, **Constance Gavares**, **Arnold Lissance**, **Johanna K. Reischer**, **Hans Sachs**, **Walter Schonfeld**, and **Erna E. Uiberall** assisted in selecting, compiling, editing, and indexing the numerous papers.

John H. E. Fried, Special Legal Consultant to the Tribunals, reviewed and approved the selection and arrangement of the material as the designated representative of the Nuernberg Tribunals.

Final compilation and editing of the manuscript for the printing was accomplished under the general supervision of **Colonel Edward H. Young**, JAGC, Chief of the War Crimes Division in the Office of The Judge Advocate General, Department of the Army, with **Amelia D. Rivers** as Editor in chief, **Ruth Phillips** as Editor, and **Karl Kalter** and **Theodore G. Hartry** as research analysts.

ORDER CONSTITUTING THE TRIBUNAL
HEADQUARTERS, EUROPEAN COMMAND

GENERAL ORDERS }
No. 21

12 APRIL 1947

PURSUANT TO MILITARY GOVERNMENT ORDINANCE
NO. 7

1. Effective as of April 1947, pursuant to Military Government Ordinance No. 7, 24 October 1946, entitled "Organization and Powers of Certain Military Tribunals", there is hereby constituted Military Tribunal IV.

2. The following are designated as members of Military Tribunal IV:

CHARLES B. SEARS	Presiding Judge
FRANK N. RICHMAN	Judge
WILLIAM C. CHRISTIANSON	Judge
RICHARD D. DIXON	Alternate Judge

3. The Tribunal shall convene at Nuernberg, Germany, to hear such cases as may be filed by the Chief of Counsel for War Crimes or by his duly designated representative.

BY COMMAND OF GENERAL CLAY:

C. R. HUEBNER
Lieutenant General, GSC
Chief of Staff

Seal: HEADQUARTERS
European Command
OFFICIAL

OFFICIAL

s/ G. H. GARDE

t/ G. H. GARDE

Lieutenant Colonel, AGD

Asst. Adjutant General

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War Department
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AG AO—I

MEMBERS OF MILITARY TRIBUNAL IV

JUDGE CHARLES B. SEARS, Presiding Judge
Formerly Associate Judge of the Court of Appeals of the State of
New York.

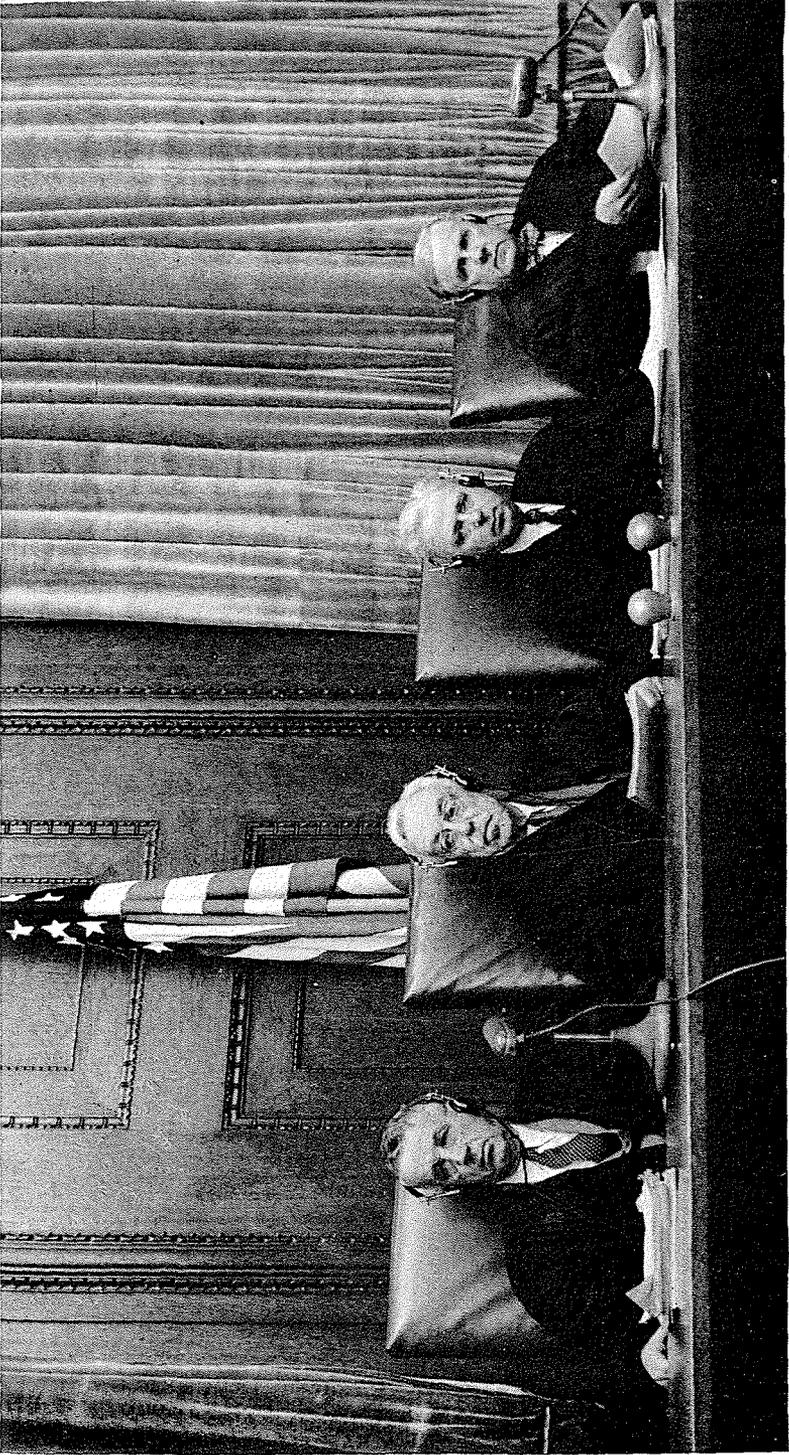
JUDGE WILLIAM C. CHRISTIANSON, Member
Formerly Associate Justice of the Supreme Court of the State of
Minnesota.

JUDGE FRANK N. RICHMAN, Member
Formerly Judge of the Supreme Court of the State of Indiana.

JUDGE RICHARD D. DIXON, Alternate Member
Formerly Judge of the Supreme Court of the State of North Carolina.

ASSISTANT SECRETARIES GENERAL

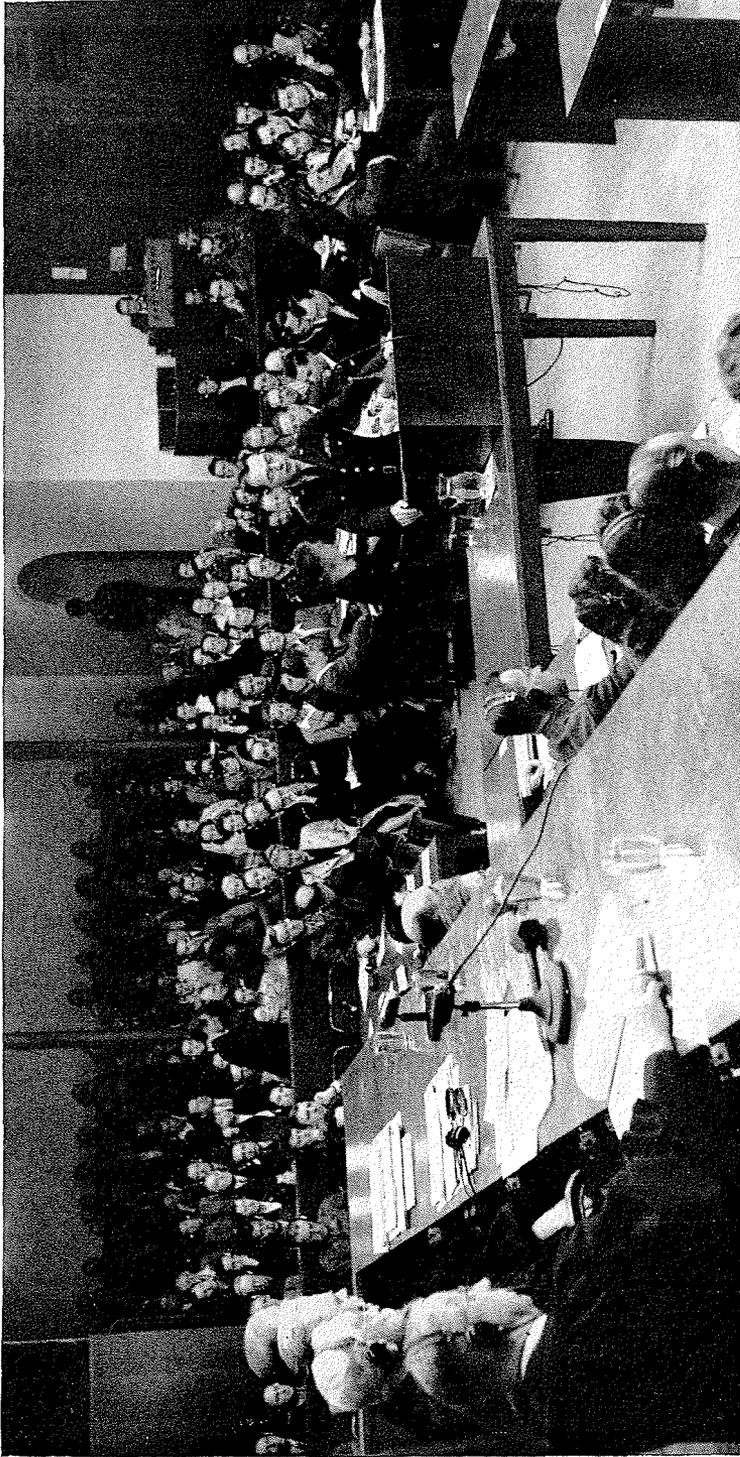
JUDGE RICHARD D. DIXON.....	15 March 1947
CARL I. DIETZ.....	From 19 April 1947 to 22 December 1947



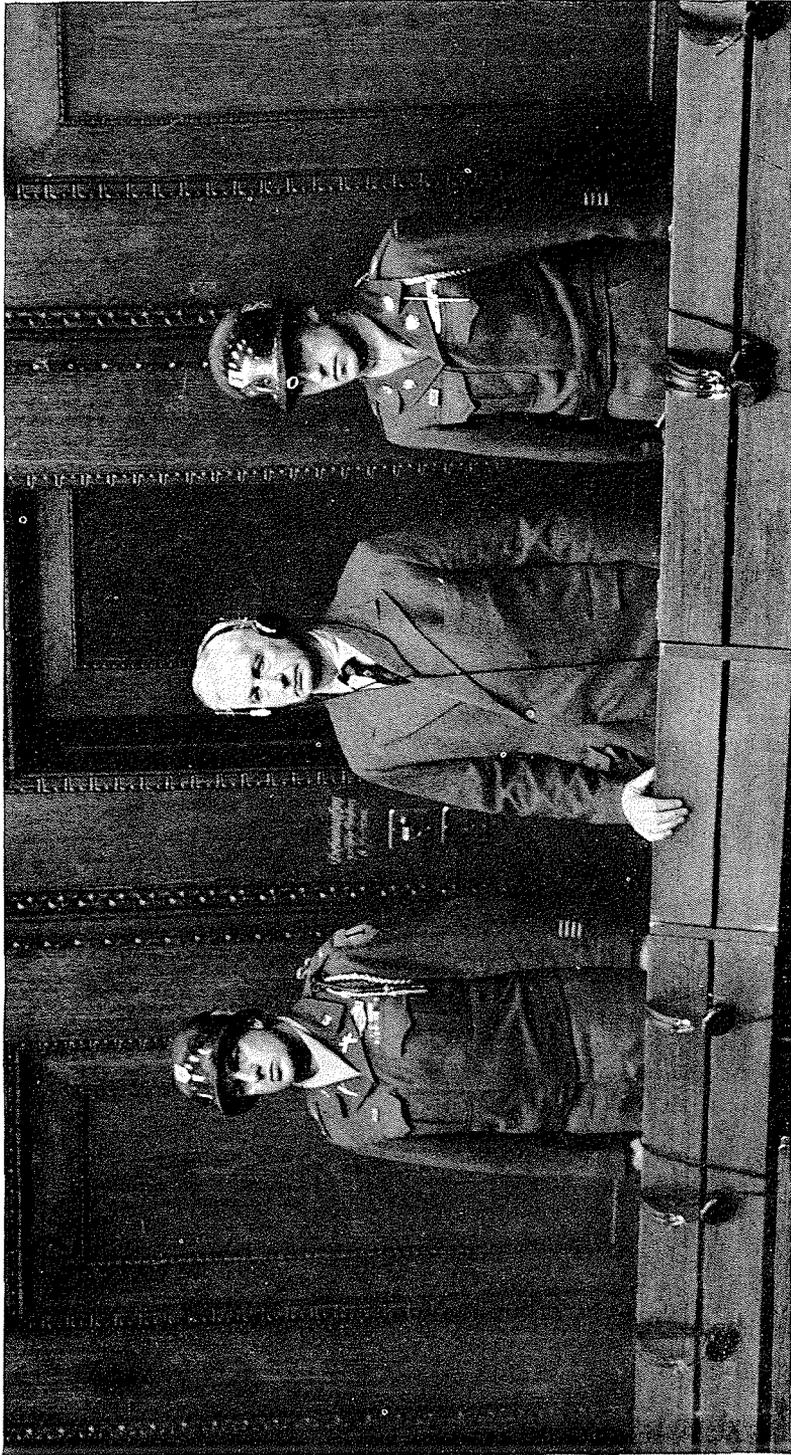
Francis N. Richman; Charles B. Sears, Presiding; William C. Christianson; Richard D. Dixon, Alternate.



Defendants in the dock at the arraignment. They are, left to right: Hermann Terberger, Bernhard Weiss, Konrad Kaletsch, Odilo Burkart, Otto Steinbrunck, and Friedrich Flick. Defense counsel are seated in the foreground, with an observer at the extreme left.



Brigadier General Telford Taylor, U. S. Chief of Counsel, stands at the speaker's podium delivering the opening statement of the prosecution. At left are the judges of the Tribunal. In the background, General Lucius D. Clay, Commanding General European Command, his wife, and members of his staff are observing the trial.



Defendant Friedrich Flick, flanked by two guards, receiving the sentence of the Tribunal.

PROSECUTION COUNSEL ¹

CHIEF OF COUNSEL:

BRIGADIER GENERAL TELFORD TAYLOR

DEPUTY CHIEF COUNSEL:

MR. THOMAS E. ERVIN

MR. RAWLINGS RAGLAND

CHIEF, FLICK TRIAL TEAM:

MR. CHARLES S. LYON

ASSOCIATE TRIAL COUNSEL:

MR. NORBERT G. BARR

MR. PAUL H. GANTT

MR. RALPH S. GOODMAN

MR. RICHARD H. LANSDALE

MR. EDWIN M. SEARS

MR. JOSEPH M. STONE

MR. BLAKE B. WOODSON

DEFENDANTS AND DEFENSE COUNSEL

<i>Defendants</i>	<i>Defense Counsel</i>	<i>Associate Defense Counsel</i>
FLICK, FRIEDRICH	DIX, DR. RUDOLF	STREESE, DR. FRITZ ²
STEINBRINCK, OTTO	FLAEGHSNER, DR. HANS	PAPEN, FRANZ VON, JR.
BURKART, ODILO	KRANZBUEHLER, DR. OTTO	POHLE, DR. WOLFGANG
KALETSCH, KONRAD	NATH, DR. HERBERT	GEISSELER, DR. GUENTHER
WEISS, BERNHARD	SIEMERS, DR. WALTER	NATH-SCHREIBER, DR. AGNES
TEBERGER, HERMANN	PELCKMANN, DR. HORST	WECKER, DR. FRITZ
		HENZE, DR. HELMUTH
		SCHMIDT-LEICHTNER, DR. ERICH

¹ Only those members of prosecution counsel who spoke before the Tribunal are listed. Other counsel active in the preparation of the case or in work on the final briefs included Charles Cotton, Walter J. Rockler, and Drexel A. Sprecher (Director, Economics Division).

² Dr. Streese died during the trial.

1. INDICTMENT¹

The United States of America, by the undersigned Telford Taylor, Chief of Counsel for War Crimes, duly appointed to represent said Government in the prosecution of war criminals, charges that the defendants herein committed war crimes and crimes against humanity, as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945. These crimes included murders, brutalities, cruelties, tortures, atrocities, deportation, enslavement, plunder of public and private property, persecutions, and other inhumane acts as set forth in counts one, two, three, and four of this indictment.

The persons accused as guilty of these crimes and accordingly named as defendants in this case are—

FRIEDRICH FLICK—The principal proprietor, dominating influence, and active head of a large group of industrial enterprises (the most important of which are described in appendix A hereof) including coal and iron mines and steel producing and fabricating plants, sometimes collectively referred to herein as the "Flick Concern";² member of the Aufsichtsrat (supervisory board) of numerous other large industrial and financial companies; Wehrwirtschaftsfuehrer (military economy leader); member of the Praesidium of Reichsvereinigung Kohle and of Reichsvereinigung Eisen (official bodies for regulation of the coal and iron and steel industries); member of the Kleine Kreis ("Small Circle"), a small group of leaders of the iron, coal, and steel industry which exercised great influence over the industry for many years before and during the war; member of the Verwaltungsrat (administrative board) of the Berg- und Huettenwerke Ost G.m.b.H. (BHO), a government-sponsored company for exploitation of the Russian mining and smelting industries; member of the Beirat (advisory council) of the Wirtschaftsgruppe Eisenschaffende Industrie (Economic Group of the Iron Producing Industry); member of the "Circle of Friends" of Himmler, which gave financial and other support to the Schutzstaffeln der Nationalsozialistischen Deutschen

¹ This indictment, dated 18 March 1947, was sometimes referred to as the "amended indictment" since the initial indictment in the Flick Case was dated 8 February 1947. The indictment of 18 March 1947 superseded and replaced the initial indictment. Amendments to the indictment of 18 March 1947 made pursuant to Tribunal orders upon motion of the prosecution during the course of the trial are indicated hereinafter by footnotes.

² The German word "Konzern" is sometimes used in place of "Concern" throughout this case.

Arbeiterpartei (commonly known as the SS); member of the Nationalsozialistische Deutsche Arbeiterpartei (Nazi Party, usually abbreviated "NSDAP").

OTTO STEINBRINCK—A leading official of numerous Flick enterprises and Flick's principal assistant in the operation of such enterprises from 1925 until the end of 1939; thereafter a leading official of Vereinigte Stahlwerke A.G. and affiliated companies; member of supervisory and executive boards of several other private and governmental organizations; Wehrwirtschaftsfuehrer, Generalbeauftragter fuer die Stahlindustrie (Plenipotentiary General for the Steel Industry) in the occupied territories of northern France, Holland, Belgium, and Luxembourg; member of the "Circle of Friends" of Himmler; member of the Praesidium of the Reichsvereinigung Kohle; Brigadefuehrer (Brigadier General) in the SS and recipient of several SS decorations.

ODILO BURKART—A leading official of numerous Flick enterprises and a close associate of Flick; an official of Reichsvereinigung Eisen and of the Wirtschaftsgruppe Eisenschaffende Industrie; Wehrwirtschaftsfuehrer.

KONRAD KALETSCH—A leading official of numerous Flick enterprises and a close associate of Flick; Wehrwirtschaftsfuehrer; principal official and owner of Siegener Maschinenbau A.G. (Siemag).

HERMANN TERBERGER—A leading official of numerous Flick enterprises including, particularly, the Eisenwerk Gesellschaft Maximilianshuetten G.m.b.H., and a close associate of Flick; member of the NSDAP; member of the Sturmabteilungen der NSDAP (commonly known as the SA).

COUNT ONE

1. Between September 1939 and May 1945 all the defendants committed war crimes and crimes against humanity, as defined by Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with: enslavement and deportation to slave labor on a gigantic scale of members of the civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by Germany; enslavement of concentration camp inmates, including German nationals; and the use of prisoners of war in war operations and work having a direct relation with war operations, including the manufacture and transportation of armaments and munitions. In the course of these activities hundreds of thousands of persons were enslaved, deported, ill-treated, terrorized, tortured, and murdered.

2. The acts, conduct, plans, and enterprises charged in paragraph 1 of this count were carried out as part of the slave-labor program of the Third Reich, in the course of which millions of persons, including women and children, were subjected to forced labor under cruel and inhumane conditions which resulted in widespread suffering and many deaths. At least 5,000,000 workers were deported to Germany. The conscription of labor was accomplished in many cases by drastic and violent methods. Workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing, or sanitary facilities. Other inhabitants of occupied countries were conscripted and compelled to work in their own countries to assist the German war economy. The resources and needs of the occupied countries were completely disregarded in the execution of the said plans and enterprises, as were the family honor and rights of the civilian populations involved. Prisoners of war were assigned to work directly related to war operations, including work in armament factories. The treatment of slave laborers and prisoners of war was based on the principle that they should be fed, sheltered, and treated in such a way as to exploit them to the greatest possible extent at the lowest expenditure.

3. During the period from approximately May 1942 to 1945, the defendant Flick was a member of the Praesidium (governing

board) of the Reichsvereinigung Eisen (commonly referred to as the RVE), an official organization for the regulation of the entire German iron and steel industry. The defendants Burkart and Terberger also held official positions and exercised important functions in the RVE and assisted and advised Flick with respect to RVE matters.¹ This organization, the Praesidium of which was largely composed of leading industrialists of the iron and steel industries, was given wide powers by the government and exercised pervasive influence and authority in these industries. The RVE had wide authority and exercised important functions with respect to the procurement, allocation, use, and treatment of slave labor and prisoners of war. The influence and control which this official organization had over a large sector of German industry, in which vast numbers of such laborers were forced to work, made it an important agency in the administration of the slave-labor program. Flick attended numerous meetings of the Praesidium of the RVE and otherwise participated in the formulation and execution of repressive and cruel policies designed to enslave, procure, and exploit such labor. Flick's influence and control over policies and actions of the RVE were further extended through officials of his companies who also held positions in the RVE and its subsidiary organizations and committees.

In addition, Flick participated in the slave-labor program within the iron and steel industry between September 1939 and April 1945, through his position in and influence on the Wirtschaftsgruppe Eisenschaffende Industrie (Economic Group of the Iron Producing Industry) and its subsidiary organizations and committees.²

¹ Upon motion of the prosecution, the Tribunal ordered on 9 July 1947 that this allegation "should be considered a charge of criminal liability on the part of the defendant Flick only, and is not to be considered as constituting an independent charge of criminal activities on the parts of the defendants Burkart and Terberger."

² In this section Burkart and Terberger also were charged with participation in the slave-labor program with respect to their positions in the Economic Group Iron Producing Industry. Upon motion of the prosecution, the Tribunal ordered that the indictment be amended so as to dismiss this charge against Burkart and Terberger (Tribunal Order 9 July 1947). Upon motion of the prosecution, the indictment was also amended at this point by a Tribunal order which struck the following two paragraphs from the indictment:

"Flick also participated in the slave-labor program by virtue of his position and activity on the Verwaltungsrat (administrative board) of Berg-und Huetttenwerke Ost G.m.b.H. (commonly referred to as the BHO), a government sponsored company established for the purpose of taking over and exploiting mines and iron and steel plants in the U.S.S.R. As part of its activities, this company participated in the program of forced recruitment, enslavement, and deportation of Soviet nationals and prisoners of war to work in Germany, the U.S.S.R. and elsewhere.

"Flick and Burkart also participated in the slave-labor program through their association with the Kleine Kreis ("Small Circle") of the leaders of the Nord-West Gruppe Eisenschaffende Industrie, a group which unofficially exercised substantial control over, and influence on, the iron and steel industry." (Tribunal Order 9 July 1947)

4. During the period from approximately March 1941 until April 1945, the defendants Flick and Steinbrinck were members of the Praesidium (governing board) of the Reichsvereinigung Kohle (commonly referred to as the RVK), an official organization for the regulation of the entire German coal industry. The defendants Burkart and Weiss were also active in RVK matters and assisted and advised Flick and the Flick Concern therein.* The functions and authority of the RVK and its Praesidium in the coal industry corresponded generally with those of the RVE and its Praesidium in the iron and steel industry, as set forth above. As members of the Praesidium, Flick and Steinbrinck attended meetings of the Praesidium and otherwise participated in the formulation and execution of repressive and cruel policies in the administration of the slave-labor program designed to enslave, procure, and exploit such labor. Flick's influence and control over policies and actions of the RVK were further extended through officials of his companies, who also held positions in the RVK and its subsidiary organizations and committees.

5. Between September 1939 and April 1945 the defendant Steinbrinck held the position of Beauftragter Kohle West (Plenipotentiary for Coal in the Occupied Western Territories) of France, Holland, Belgium, and Luxembourg, and the position of Generalbeauftragter fuer die Stahlindustrie (Plenipotentiary General for the Steel Industry) in northern France, Belgium, and Luxembourg. By virtue of these positions, and his activity therein, he exercised wide authority over the procurement, use, treatment, allocation, and transportation of thousands of slave laborers and prisoners of war.

6. Between September 1939 and May 1945, tens of thousands of slave laborers and prisoners of war were sought and utilized by the defendants in the industrial enterprises and establishments owned, controlled, or influenced by them. In the course of this use of forced labor in the enterprises referred to, the workers were exploited under inhumane conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health. Repressive measures were used to force these workers to enter, or remain in, involuntary servitude. Armed guards, watch dogs, and barbed wire enclosures were commonly utilized to keep workers from escaping, and the few who did escape were reported to, and dealt with by, the Gestapo. Penalties, including cruel beatings, were often inflicted by persons under the supervision and control of the defendants. Food, sanitary measures, and

* Upon motion of the prosecution, the Tribunal directed that this should not be considered a charge of criminal liability on the part of the defendants Burkart and Weiss. (Tribunal Order of 9 July 1947)

medical assistance were customarily inadequate, and as a result many of the workers suffered illness and died. Prisoners of war were used in war operations and work having a direct relation with war operations, including the manufacture and transportation of armaments and munitions.

The defendants Flick, Burkart, Kaletsch, and Weiss are charged with responsibility for the acts and conduct set forth in this paragraph so far as they relate to establishments of the Flick Concern, including those operated directly or indirectly by the companies set forth in appendix A hereof; the defendant Terberger is charged with responsibility for the acts and conduct set forth in this paragraph so far as they relate to the Eisenwerk Gesellschaft Maximilianshuette A.G. (G.m.b.H. after 1944), (abbreviated Maxhuette), and establishments under its control; Weiss is also charged with responsibility for the acts and conduct set forth in this paragraph so far as they relate to the Siemag Company.*

7. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly and constitute violations of international conventions, particularly of Articles 3-7, 14, 18, 23, 43, 46, and 52 of the Hague Regulations, 1907; and of Articles 2-4, 6, 9-15, 23, 25, 27-34, 46-48, 50, 51, 54, 56, 57, 60, 62, 63, 65-68, and 76 of the Prisoner-of-War Convention (Geneva, 1929), of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

* That part of this paragraph which charges the defendants with individual responsibility appears here as amended during the course of the trial by two separate Tribunal orders. The orders, made upon motions of the prosecution, are dated 9 July and 10 September 1947, respectively. Before amendment the text of the sentences in question read as follows:

"The defendants Flick, Burkart, Kaletsch, Weiss, and Terberger are charged with responsibility for the acts and conduct set forth in this paragraph so far as they relate to establishments of the Flick Concern, including those operated directly or indirectly by the companies set forth in appendix A hereof. Flick and Weiss are also charged with responsibility for the acts and conduct set forth in this paragraph so far as they relate to the Siemag Company. The defendant Steinbrinck is charged with responsibility for the acts and conduct set forth in this paragraph insofar as they relate to Vereinigte Stahlwerke A.G., and affiliated companies."

COUNT TWO

8. Between September 1939 and May 1945, all the defendants except Terberger committed war crimes and crimes against humanity, as defined by Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with, plunder of public and private property, spoliation, and other offenses against property in countries and territories which came under the belligerent occupation of Germany in the course of its aggressive wars. These acts bore no relation to the needs of the army of occupation and were out of all proportion to the resources of the occupied territories.

9. In pursuance of deliberate plans and policies, the territories occupied by Germany as a result of its aggressive acts and its aggressive wars were exploited for the German war effort in a most ruthless way beyond the needs of the army of occupation and without consideration of the local economy. These plans and policies were intended not only to strengthen Germany in waging its aggressive wars, but also to secure the permanent economic domination by Germany of the continent of Europe. Public and private property was systematically plundered and pillaged. Agricultural products, raw materials needed by Germans, factories, machine tools, transportation equipment, other finished products, and foreign securities and holdings of foreign exchange were requisitioned and sent to Germany. In addition, local industries were placed under German supervision, and the distribution of raw materials was rigidly controlled. This supervision of industries ranged from general control provided for by blanket enactments, to the permanent dispossession of rightful owners of specific industrial enterprises. The industries thought to be of value to the German war effort were compelled to continue and most of the rest were closed down altogether.

In Lorraine (France), which, in violation of international law, was annexed by Germany immediately after the German occupation, French private properties were seized by the occupation authorities under the guise of establishing temporary administration by state commissioners. This artificial creation of German state property was only a temporary measure, and the properties were "reprivatized" by being turned over to German industrial concerns.

Even before the attack on the U.S.S.R. plans had been made for the fullest and most ruthless exploitation of all Soviet economic resources. Concurrently with the invasion it was declared that the restraints of the Annex to Hague Convention IV of 18 October 1907 would not be observed by Germany. The entire Soviet industrial property was declared to be "property marshaled for national economy" (Wirtschafts-Sondervermoege), belonging to the German State. Representatives of the German civil and military occupation authorities were declared trustees of this property to which Germany purportedly took title. In addition thereto, special governmental or semi-governmental companies, Monopolgesellschaften or Ostgesellschaften, were created by the Plenipotentiary of the Four Year Plan, Hermann Goering, as trustees for the control of certain sectors of Soviet economy. One of these Ostgesellschaften, the Berg- und Huettenwerksgesellschaft Ost m. b. H., usually referred to as the BHO, was trustee with respect to the iron, steel, and mining industry of the occupied part of the U.S.S.R. and the main spoliation agency in its field of operations.

10. All the defendants except Terberger participated extensively in the formulation and execution of the foregoing plans and policies of spoliation by seeking and securing possession, in derogation of the rights of the owners, of valuable properties in the territories occupied by Germany, for themselves, for the Flick Concern, and for other enterprises owned, controlled, or influenced by them; by exploiting all these properties in occupied territories, individually or through enterprises owned, controlled, or influenced by them, for German war purposes to an extent unrelated to the needs of the army of occupation and out of all proportion to the resources of the occupied territories; by abuse, destruction, and removal of such property; by taking possession of machinery, equipment, raw materials, and other property known by them to have been taken, by themselves or by others, from occupied territories; and by their activities in various official positions. The following instances are cited as examples.

a. In France.—Effective 1 March 1941 the Friedrich Flick Kommanditgesellschaft (parent holding company in the Flick Concern) secured a "trusteeship" of the plants Rombach and Machern in occupied Lorraine (France), which were the property of a French company known as Société Lorraine des Aciéries de Rombas. The "trusteeship" was accepted as part of a governmental plan and program, sponsored by defendants and other German industrialists for ultimate transfer to them of legal title to these and other similar properties in France. The Flick Concern was to gain legal title to the plants Rombach and Machern pur-

suant to this general plan. These properties were operated by the Flick Concern through a company known as Rombacher Huettenwerke, G. m. b. H., from on or about 1 March 1941 until on or about 1 September 1944 in accordance with and in execution of said plan and program. The defendants Flick, Burkart, Kaletsch, and Weiss are charged with responsibility for the foregoing.

b. *In the Occupied East.*—Pursuant to the plans and programs of the Berg- und Huettenwerke Ost, G.m.b.H. (BHO), referred to above, the Flick Concern organized, together with the Reichswerke Hermann Goering, a company called Dnjepr Stahl [Dnepr Steel] G.m.b.H. for the purpose of exploiting mining and smelting properties in the U.S.S.R. located near the Dnepr River. The Flick Concern operated these properties from about January 1943 until the Germans evacuated this region. The defendants Flick, Burkart, Kaletsch, and Weiss are charged with responsibility therefor.

Pursuant to the plans and programs of the BHO, the Siegener Maschinenbau A.G. (Siemag) gained possession of the works Woroshilov [Voroshilov] at Dnjepropetrowsk [Dnepropetrovsk] in the U.S.S.R. and operated them from about January 1943 until the evacuation of the area in the fall of 1943. Siemag was owned principally by Weiss, who is charged with responsibility therefor.*

In accordance with the general plans and programs of the German occupation authorities, the Flick Concern gained possession of the Vairogs railroad car plants in occupied Riga (Rigaer Waggonfabrik "Vairogs") on or about July 1942. The properties were operated by the Flick Concern until the German retreat from Riga about September 1944. Flick, Burkart, Kaletsch, and Weiss are charged with responsibility therefor.

11. Between 1940 and 1945 the defendants Flick and Steinbrinck participated in plans and programs for spoliation of occupied territories through their positions and membership in, and influence on, various organizations of the iron, steel, and coal industries, including Reichsvereinigung Eisen, Reichsvereinigung Kohle, Wirtschaftsgruppe Eisenschaffende Industrie, and subsidiary organizations of each, and through membership in, and influence on, the Kleine Kreis ("Small Circle") of leaders of the Nord-West Gruppe Eisenschaffende Industrie.

Between 1940 and 1945 Steinbrinck participated in the plans and programs for spoliation of western occupied territories by virtue of his positions as Plenipotentiary General for the Steel Industry in northern France, Luxembourg, and Belgium, and Plenipotentiary for Coal in France, Holland, Belgium, and Luxembourg.

* This charge involving Siemag was amended by a Tribunal Order of 10 September 1947 upon motion of the prosecution. Prior to this order it read as follows: "Siemag was owned principally by Weiss and was controlled and influenced by Flick and Weiss, both of whom are charged with responsibility therefor."

Between 1941 and 1945 Flick participated in the plans and programs for spoliation of the U.S.S.R. by virtue of his position as a member of the Verwaltungsrat (administrative board) of the Berg- und Huettenwerke Ost, G.m.b.H. (BHO).

12. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly, and constitute violations of the laws and customs of war, of international treaties and conventions, including Articles 46-56, inclusive, of the Hague Regulations of 1907, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

COUNT THREE

13. Between January 1936 and April 1945 the defendants Flick, Steinbrinck, and Kaletsch committed crimes against humanity, as defined in Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving persecutions on racial, religious, and political grounds, including particularly the "Aryanization" of properties belonging in whole or in part to Jews.

14. Commencing with Hitler's seizure of power in 1933 and increasingly in later years, the government of the Third Reich systematically and ruthlessly persecuted millions of persons on political, racial, and religious grounds. As part of these programs of persecution, the German Government pursued a policy of expelling Jews from economic life. The German Government and Nazi Party embarked on a program involving threats, pressure, and coercion generally, formalized and otherwise, to force Jews to transfer all or part of their property to non-Jews, a process usually referred to as "Aryanization." The means of forcing Jewish owners to relinquish their properties included discriminatory laws, decrees, orders, and regulations, which made life in Germany difficult and unbearable for the owners; the discriminatory application of general laws, decrees, orders, and regulations; seizure of property under spurious charges; restrictions imposed by police action; and particularly the ever present threat of the Gestapo to arrest, try, and kill Jews without recourse to any reviewing board or court.

15. The defendants Flick, Steinbrinck, and Kaletsch and the Flick Concern participated in the planning and execution of numerous Aryanization projects. Activities in which they participated included procurement of sales which were voluntary in form but coercive in character, efforts to extend the general Aryanization laws, and several types of perversion of governmental authority. They used their close connections with high government officials to obtain special advantages; and some transactions, including those referred to hereinafter, were carried through in close cooperation with officials of the Army, [Armed Forces] High Command (OKW), and of the Office of the Four Year Plan, including Hermann Goering, who were interested in having the properties exploited as fully as possible in connection with the planning, preparation, initiation, and waging of Germany's aggressive acts

and wars. Examples of Aryanization projects in which Flick, Steinbrinck, and Kaletsch were involved during the years 1936 through 1945 included the following properties:

(a) Hochofenwerk Luebeck A. G. and its affiliated company, Rawack and Gruenfeld A. G.

(b) The extensive brown coal properties* and enterprises in central and southeastern Germany owned, directly, or indirectly, in substantial part by members of the Petschek family, many of whom were citizens of foreign nations, including Czechoslovakia. As a result of these Aryanization projects, Jewish owners were deprived of valuable properties, which were transferred, directly or indirectly, to the Flick Concern, the Hermann Goering Works, I. G. Farben, the Wintershall and Mannesmann Concerns, and other German enterprises.

16. The acts and conduct of the defendants set forth in this count were committed unlawfully, willfully, and knowingly and constitute violations of international conventions, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

* There was considerable variation during the trial in the terms used to describe the two main kinds of coal found in Germany—bituminous coal and lignite or brown coal. Although Germany has practically no true anthracite, frequently called "hard coal" in the United States, some translators used "hard coal" for bituminous coal and "soft coal" for lignite or brown coal. However, to avoid confusion, only the terms "soft coal" (Steinkohle) and "brown coal" or "lignite" (Braunkohle) have been used in this volume. Where the original language was English (as in the indictment, argument of the prosecution, or the judgment) the terms "soft coal" and "brown coal" have been inserted in brackets.

COUNT FOUR

17. Between 30 January 1933 and April 1945, the defendants Flick and Steinbrinck committed war crimes and crimes against humanity, as defined by Article II of Control Council Law No. 10, in that they were accessories to, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with: murders, brutalities, cruelties, tortures, atrocities and other inhumane acts committed by the Nazi Party and its organizations, including principally the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS). The criminal activities of the SS included: the guarding and administration of concentration camps and the brutal treatment of their inmates; subjecting prisoners of war and concentration camp inmates to a series of experiments, including freezing to death and killing by poisoned bullets; shooting unarmed prisoners of war; extensive participation in the Nazi slave-labor program; murder and ill-treatment of the civilian population in occupied countries, including massacres such as at Lidice; and persecution and extermination of enormous numbers of Jews and others deemed politically undesirable by the SS. The criminal programs of the SS were so widespread and conducted on such a gigantic scale that they were widely known throughout Germany.

18. The defendants Flick and Steinbrinck were members of a group variously known as "Friends of Himmler", "Freundeskreis" (Circle of Friends), and the "Keppler Circle", which, throughout the period of the Third Reich, worked closely with the SS, met frequently and regularly with its leaders, and furnished aid, advice, and support to the SS, financial and otherwise. This organization was composed of about thirty German business leaders, and a number of SS leaders, including Heinrich Himmler, head of the entire SS from 1929 to 1945; Karl Wolff, Himmler's Adjutant, Obergruppenfuehrer and holder of other high positions in the SS; Oswald Pohl, Chief of the SS Main Economic and Administrative Department; Otto Ohlendorf, a leading official of the SS Main State Security Department [Reich Security Main Office]; and Wolfram Sievers, Manager of the Ahnenerbe Society and Director of its Institute for Military Scientific Research. The business and industrial members of the Circle included leading officials of the largest enterprises in Germany in the fields of iron, steel, and munitions productions, banking, chemicals, and shipping. These enterprises included I. G. Farben, Vereinigte

Stahlwerke, Hermann Goering Works, Brabag, Junkers, the Wintershall Chemical Concern, North German Lloyd and Hamburg American Shipping Lines, Deutsche Bank, Dresdner Bank, Reichs-Kredit-Gesellschaft, the Stein Bank, and Commerz Bank.

The circle was formed early in 1932 at Hitler's suggestion by his economic adviser, Wilhelm Keppler. It participated in effecting Hitler's rise to power and made plans for the reorganization of German economy in accordance with Hitler's plans. Thereafter the circle met regularly, up to and including early 1945, with Himmler, Keppler, and other high government officials, and was a means of maintaining close cooperation between the largest business and industrial enterprises on the one hand, and the German Government, Nazi Party, and the SS on the other.

19. Each year from 1933 to 1945, the circle contributed about one million marks to Himmler to aid in financing the activities of the SS. During this period, the defendants Flick and Steinbrinck made and procured contributions by Flick and the Flick Concern to the SS through the circle, aggregating at least one hundred thousand marks annually for many years. Flick and the Flick Concern, by the action and procurement of Flick and Steinbrinck, also contributed substantial additional amounts to the SS over the years 1933 to 1945. Steinbrinck also procured substantial contributions by Vereinigte Stahlwerke A.G. and affiliated enterprises to the SS through the circle in the years 1940 through 1944.

20. The acts and conduct of the defendants set forth in this count were committed unlawfully, wilfully, and knowingly, and constitute violations of international conventions of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

COUNT FIVE

21. The defendant Steinbrinck is charged with membership, subsequent to 1 September 1939, in the Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the "SS"), declared to be criminal by the International Military Tribunal, and paragraph 1 (d) of Article II of Control Council Law No. 10.

Wherefore, this Indictment is filed with the Secretary General of the Military Tribunals and the charges herein made against the above-named defendants are hereby presented to the Military Tribunals.

[Signed] TELFORD TAYLOR
Brigadier General, USA
Chief of Counsel for War Crimes
Acting on Behalf of the United States
of America

Nuernberg 18 March 1947

APPENDIX A

The term "Flick Concern", as used in this indictment refers to the business enterprises controlled, influenced, and in substance largely owned, by Friedrich Flick. Many additions and changes took place during the years 1933 to 1945, both in the physical plants included in the concern and in the legal structure in which they were contained. Corporate reorganizations within the concern were almost constantly in progress. From 1940 to 1945 the general nature of the corporate structure was not fundamentally changed, although certain changes took place in intercorporate stockholdings and companies were added to operate plants in occupied territories.

The Flick Concern constituted the largest privately owned and controlled enterprise in Germany for the production of iron, steel products, and armaments. It was surpassed in productive capacity in the industry only by the state-owned Hermann Goering Works and by Vereinigte Stahlwerke A.G. (United Steel Works), in which the government held a substantial interest. The concern owned and operated soft [brown] coal, hard [soft] coal, and iron mines;* blast furnaces and smelting, coking, and chemical plants, including plants for production of synthetic fuel, rolling mills, and fabricating plants for manufacture of finished products, such as ammunition, armor plate, gun carriages, armored cars and trucks, and other Panzer materials; airplanes and airplane parts; and railroad cars, parts, and locomotives.

From at least 1937 until April 1945, the Flick Concern was largely owned, directly or indirectly, by a parent holding company known as Friedrich Flick Kommanditgesellschaft (FKG), a limited partnership of which Friedrich Flick was the only personally liable partner. At first, Flick was the sole owner of FKG. In form most of the ownership of FKG was subsequently transferred to Flick's sons, but it was in substance treated by Flick as his own property, and, as the only general partner, he was in complete control of FKG at all times from 1937 to 1945. The most important of the companies of the Flick Concern are listed below. Unless otherwise indicated, Flick interests owned a majority of the stock of each. Their designation as companies in the form of A.G. or G.m.b.H. (both of which designations describe limited liability companies) is not exclusive; several of the companies were changed from one form to the other.

The Flick Concern comprised, among other interests, the following:

<i>NAME AND LOCATION</i>	<i>NATURE OF COMPANY</i>
Anhaltische Kohlenwerke A.G. (AKW)	Brown coal mines in central Germany.
ATG (Allgemeine Transportanlage) Maschinenbau G.m.b.H., Leipzig	Aircraft.
Brandenburger Eisenwerke A.G., Brandenburg, near Berlin	Panzer materials. [Armored vehicles e.g., tanks, armored cars].
Chemische Werke Essener Steinkohle, A.G., Essen	Chemicals; owned by Essener Steinkohle.

* Concerning the usage of "soft coal" and "hard coal" in the trial, see footnote to paragraph 15 of the indictment, this section.

Eisenwerk-Gesellschaft Maximilianshuette A.G. (G.m.b.H. after 1944) (abbreviated "Maxhuette")	Iron mines and smelting plants.
Essener Steinkohlenbergwerke A.G., Essen	Soft coal mines in Ruhr.
Fella Werk A.G. (after 1944, G.m.b.H.), Feucht near Nuernberg	Agricultural machinery.
Friedrich Flick Kommanditgesellschaft (abbreviated FKG or FFKG), Berlin	Limited partnership which was parent holding company of the Concern; it also directly owned and operated extensive properties, including Brandenburg and Hennigsdorf steel plants.
Harpener Bergbau A.G., Dortmund	Soft coal mines in Ruhr. These properties, together with Essener Steinkohle, comprised second largest coal group in the Ruhr.
Hochofenwerk Luebeck A.G., Luebeck-Herrenwyk	Blast furnaces.
Linke-Hofmann Werke A.G., Breslau	Tractor and truck vehicles and railway cars.
Maschinenfabrik Donauwoerth G.m.b.H., Donauwoerth	Machine works.
Mitteldeutsche Stahlwerke A.G., (after 1943, G.m.b.H.), Riesa a. d. Elbe, (abbreviated "Mittelstahl")	Iron and steel plants; largest in Germany outside the Ruhr.
Saechsische Gusstahlwerke Doehlen A.G., Doehlen	Iron and steel products; owned 50 percent by State of Saxony but largely operated by the Flick Concern.
Spandauer Stahlindustrie G.m.b.H. Spandau	Steel products.
Waggon-und Maschinenfabrik A.G., Bautzen (frequently referred to under its former name of Busch-Bautzen)	Electric locomotives; railway cars, couplings.

II. ARRAIGNMENT¹

Official transcript of the American Military Tribunal in the matter of the United States of America against Friedrich Flick, et al., defendants, sitting at Nuernberg, Germany, on 19 April 1947, 0930, Justice Sears presiding.²

THE MARSHAL: The Honorable, the Judges of Military Tribunal IV.

Military Tribunal IV is now in session.

God save the United States of America and this honorable Tribunal.

There will be order in the courtroom.

PRESIDING JUDGE SEARS: Military Tribunal IV will come to order.

The Tribunal will now proceed with the arraignment of the defendants in Case 5 pending before this Tribunal.

Mr. Secretary General, will you call the roll of the defendants.

(The Secretary General then called the roll of the defendants: Friedrich Flick, Otto Steinbrinck, Odilo Burkart, Konrad Kaletsch, Bernhard Weiss, Hermann Terberger.)

THE SECRETARY GENERAL: May this Honorable Tribunal please, the defendants are all present and in the dock.

PRESIDING JUDGE SEARS: Mr. Secretary General, will you call the defendants one by one for arraignment.

THE SECRETARY GENERAL: Defendant Friedrich Flick.

PRESIDING JUDGE SEARS: Defendant Friedrich Flick, have you counsel?

DEFENDANT FLICK: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had an opportunity to read the indictment?

A. Yes.

Q. Have you read the indictment?

A. Yes.

Q. Defendant Friedrich Flick, how do you plead to this indictment, guilty or not guilty?

A. Not guilty.

¹ Tr. pp. 31-34, 19 April 1947.

² This caption, with the necessary changes in dates and time, appeared at the top of the first page of the transcript for each day of the proceedings. It will be omitted from all extracts of the transcript reproduced hereinafter.

Q. You may be seated.

THE SECRETARY GENERAL: Defendant Otto Steinbrinck.

PRESIDING JUDGE SEARS: Defendant Otto Steinbrinck, have you counsel?

DEFENDANT STEINBRINCK: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had the opportunity to read the indictment?

A. Yes.

Q. Have you read the indictment?

A. Yes, I have read it.

Q. Defendant Otto Steinbrinck, how do you plead to this indictment, guilty or not guilty?

A. I plead not guilty.

Q. You may be seated.

THE SECRETARY GENERAL: Defendant Odilo Burkart.

PRESIDING JUDGE SEARS: Defendant Odilo Burkart, have you counsel?

DEFENDANT BURKART: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had an opportunity to read the indictment?

A. I have read it.

Q. Defendant Odilo Burkart, how do you plead to this indictment, guilty or not guilty?

A. Not guilty.

Q. Be seated.

THE SECRETARY GENERAL: Defendant Konrad Kaletsch.

PRESIDING JUDGE SEARS: Defendant Konrad Kaletsch, have you counsel?

DEFENDANT KALETSCH: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had opportunity to read the indictment?

A. Yes.

Q. And have you read the indictment?

A. Yes.

Q. Defendant Konrad Kaletsch, how do you plead to this indictment, guilty or not guilty?

A. I am not guilty.

Q. Be seated.

THE SECRETARY GENERAL: Defendant Bernhard Weiss.

PRESIDING JUDGE SEARS: Defendant Bernhard Weiss, have you counsel?

DEFENDANT WEISS: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had an opportunity to read the indictment?

A. Yes.

Q. And have you read the indictment?

A. Yes.

Q. Defendant Bernhard Weiss, how do you plead to this indictment, guilty or not guilty?

A. Not guilty.

Q. Be seated.

THE SECRETARY GENERAL: Defendant Hermann Terberger.

PRESIDING JUDGE SEARS: Defendant Hermann Terberger, have you counsel?

DEFENDANT TERBERGER: Yes.

Q. Has the indictment in the German language been served upon you at least 30 days ago?

A. Yes.

Q. Have you had opportunity to read the indictment?

A. Yes.

Q. And have you read the indictment?

A. Yes.

Q. Defendant Hermann Terberger, how do you plead to this indictment, guilty or not guilty?

A. Not guilty.

Q. Be seated.

PRESIDING JUDGE SEARS: The pleas of the defendants will be entered by the Secretary General in the records of this Tribunal.

General Taylor, is the prosecution ready to proceed with this case?

BRIGADIER GENERAL TELFORD TAYLOR: The prosecution is ready.

[At this point General Taylor began the reading of the opening statement of the prosecution, reproduced in section III, immediately following.]

III. OPENING STATEMENTS

A. Opening Statement for the Prosecution *

PRESIDING JUDGE SEARS: The Tribunal is ready to hear the opening statement on behalf of the prosecution.

BRIGADIER GENERAL TELFORD TAYLOR: If it please the Tribunal. The responsibility of opening the first trial of industrialists for capital transgressions of the law of nations imposes on the prosecution, above all things, the obligation of clarity. The defendants owned and exploited enormous natural and man-made resources and became very wealthy, but these things are not declared as crimes by the law under which this Tribunal renders judgment. The law of nations does not say that it is criminal to be rich, or contemptible to be poor.

The law of nations arises out of the standards of common decency and humanity that all civilized nations accept. All civilized men, no matter what their rank or station, are subject to that law and are bound to observe those standards. These obligations are the very fabric of society; to deny [them] is to obliterate the quality and dignity of humanity itself.

At the threshold of this case, and because of its unusual character, it is vital that those principles be clearly understood. The defendants were powerful and wealthy men of industry, but that is not their crime. We do not seek here to reform the economic structure of the world or to raise the standard of living. We seek, rather, to confirm and revitalize the ordinary standards of human behavior embodied in the law of nations.

We charge that the defendants violated that law and shamelessly dishonored the image of mankind in the full sight of all men. We charge that they set at naught the freedom of other men, and denied their very right to exist, by joining in the enslavement of millions of unfortunate men and women all over Europe, who were uprooted from their homes and families and imprisoned in Germany to dig in mines and labor in factories under appalling and unspeakable circumstances which spread death, disease, and misery. We charge that they greedily plundered the resources of neighboring countries overrun by the Wehrmacht.

We accuse them, finally, of supporting, joining in, and profiting by the foulest and most murderous policies and programs of the Third Reich, in the course of which the Jewish people were driven from Germany and all but exterminated throughout Europe, and millions belonging to other groups and nations were imprisoned, tortured, and massacred.

* Transcript pages 84-149, 19 April 1947.

The crimes charged against these defendants are, in short, the same crimes that other more notorious agents and ministers of the Third Reich committed. Throughout the Nuernberg proceedings the United States has taken the position that, deep as is the responsibility of Germany as a whole for the crimes of the Third Reich, we do not seek to incriminate the entire population. But it is a gross misconception to picture the Third Reich as the tyranny of Hitler and his close Party henchmen alone. A dictatorship is successful, not because everybody opposes it, but because powerful groups support it. The Nazi dictatorship was no exception to this principle. In fact, it was not a dictatorship of the Nazis alone, and while at least one of the men in the dock is an ardent Nazi, this circumstance is coincident rather than significant. Hitler was, to be sure, the focus of ultimate authority, but Hitler derived his power from the support of other influential men and groups who agreed with his basic ideas and objectives.

The defendants in this case are leading representatives of one of the two principal concentrations of power in Germany. In the final analysis, Germany's capacity for conquest derived from its heavy industry and attendant scientific techniques, and from its millions of able-bodied men, obedient, amenable to discipline, and overly susceptible to panoply and fanfare. Krupp, Flick, Thyssen, and a few others swayed the industrial group; Beck, Fritsch, Rundstedt, and other martial exemplars ruled the military clique. On the shoulders of these groups Hitler rode to power, and from power to conquest.

If anyone questions this analysis, let him look at the fate of the various professions and occupations under Hitler. The press and radio Hitler tore up by the roots and absorbed into Goebbels' Ministry of Propaganda and Enlightenment. The learned professions were utterly dishonored; books were burned, scholarships were muzzled, and German science and culture were stultified and retarded by decades. For tactical reasons, Hitler's attack on religion was flanking rather than frontal, but every effort was made to discredit and stifle the church. Politics became a Nazi monopoly. The trade unions were stamped out. But, unless Jewish, the business man and the officer lived comfortably and flourished under Hitler. Some inconveniences arose, to be sure; industry was increasingly regimented, and venerable military traditions were shattered by the Hitler salute. But these were trifling annoyances compared to the scourges that the Third Reich laid on other men.

The Third Reich dictatorship was based on this unholy trinity of nazism, militarism, and economic imperialism. To industry Hitler held out the prospect of a "stable" government, freedom from

labor troubles, and a swift increase in production to support rearmament and the reestablishment of German economic hegemony in Europe and across the seas. To the military, he promised the reconstruction of the Wehrmacht and the resurgence of German armed might.

"Private enterprise cannot be maintained in the age of democracy," said Hitler to the industrialists, and they agreed. "We must not forget that all the benefits of culture must be introduced, more or less, with an iron fist," he went on, and they agreed to that, too. "The question of restoration of the Wehrmacht will not be decided at Geneva, but in Germany," he said in conclusion, and this was what the industrialists and the military leaders had been thinking for a long time.† (*D-203, Pros. Ex. 734.*)

† The foregoing quotations are from a speech by Hitler to a representative group of German industrial leaders on 20 February 1933.

"For whether Germany possesses an army of 100,000 men, or 200,000, or 300,000 is, in the last resort, completely beside the point, the essential thing is whether Germany possesses 8,000,000 reservists whom she can transfer into her army * * *."† (*NI-8544, Pros. Ex. 731*). When Hitler spoke like this the industrialists and the General Staff dreamed of the day the gray legions of the German Army would again be led to foreign conquest.

† From Hitler's speech at the Industry Club in Duesseldorf on 27 January 1932.

As Mr. Justice Jackson put it in opening the international trial, the Nazi Party came to power:

"* * * by an evil alliance between the most extreme Nazi revolutionists, the most unrestrained of the German reactionaries, and the most aggressive of the German militarists."*

The defendants and some of their fellow lords of industry drank deep of this witches' brew. Soon they were consorting with Himmler and his sinister coterie, and then they began to give him money which he spent on certain of his less fastidious hobbies. Later they took to lining their pockets at the expense of wealthy Jews in Germany and the occupied territories. After the victories of the Wehrmacht in France and Russia, they were on hand to seize and exploit the choicer industrial properties. They enslaved and deported the peoples of the occupied countries to keep the German war machine running, and treated them like animals. Tolerance of such crimes will destroy man's capacity for self-respect; their repetition would destroy mankind itself.

* Trial of the Major War Criminals, volume II, page 103, Nuremberg 1947.

FRIEDRICH FLICK AND THE GROWTH OF THE FLICK COMBINE (1915-32)

The principal defendant in this case, Friedrich Flick, is one of the handful of men who controlled German heavy industry. He is not a mere manager or executive; he amassed wealth and was the owner of most of the vast industrial domain which he controlled. He is in the direct line of succession to such older German iron lords as Krupp, Thyssen, and Stinnes. The Stinnes combine collapsed in 1925, and Thyssen fled from Germany at the outbreak of war in 1939. But the Krupp fortunes continued to flourish under Hitler, and Flick emerged as a comparable figure in the world of iron and steel. The only larger steel combines were the state-owned Reich Works Hermann Goering, which was an enormous but newly-born industrial creature spawned by the Nazi government, and the Vereinigte Stahlwerke (United Steel Works), which was formed after the collapse of Stinnes by merging the principal Stinnes properties with those of Thyssen and a number of smaller enterprises, and which was owned and controlled partly by the German Government itself, and partly by a number of private institutions or families. Aside from those two public or semi-public combines, "Flick" and "Krupp" were the two greatest iron and steel empires of the Third Reich.

The crimes charged against Flick and the other defendants were, for the most part, committed by them in the conduct of their business, and this business was steel making. To understand this case, it is necessary to know the general pattern and structure of German heavy industry, and something of how it was governed and operated. We do not want to inflict a tedious exposition of all these matters on the Tribunal, and we have, accordingly, embodied some of the necessary background in three short expository briefs,* which are already in the hands of the Court, and have been made available to defense counsel in both German and English. The brief marked "A" contains a short explanation of German corporate forms and expressions, together with a glossary of German words and phrases which will occur most frequently during the trial. The brief marked "B" is a description of the governmental and private agencies which exercised general control or supervision over German heavy industry. We have included in this brief some basic information about the German coal, iron, and steel industries. The brief marked "C"

* Not reproduced herein.

contains an exposition of the history and structure of the Flick combine itself—the Flick Konzern (or Concern), as the defendants called it. Included in this brief is a copy of the chart now displayed on the wall of the courtroom,* showing the various companies of the Flick Konzern, and their inter-relation by stock ownership. This chart, and the other chart in the brief marked "C" will not themselves be offered in evidence, but they are based on affidavits by several of the defendants and documents from the Flick files, which will be offered in due course. The chart is displayed at this time as a convenient guide for the Tribunal and defense counsel, to enable them more easily to follow the opening statement.

A. German Heavy Industry

For our present purposes a very brief sketch of the general nature of German heavy industry will suffice. By "heavy industry", we mean the mining of coal, which is Germany's greatest single natural resource, and from which over 90 percent of Germany's "energy" or industrial power is derived, and the manufacture of iron and steel and heavy steel products.

Coal mining and steel making have been closely related processes in Germany since before the turn of the century. The ore deposits of Lorraine and the Rhine lie close to the great coal fields of the Ruhr and the waterways of the Rhine and its tributaries. This regional concentration stimulated the growth of "vertical combines" in heavy industry. Over half of the coal mined in Germany is mined by the iron and steel companies. Krupp, Thyssen, and the other large steel combines, had extensive coal resources of their own. After the loss of the Lorraine iron ore fields to France most of the ore they used had to be imported, but the same steel companies exploited Germany's own ore deposits.

Thus, each of the great steel empires comprised the whole process, from the coal mine to the semi-finished steel product. They used their own coal in their own furnaces, and sold the surplus coal on the open market. They used their own, or imported, iron ore in their blast furnaces. They owned the converters that turned the pig iron into crude steel. They owned the mills that rolled the steel into the semi-finished products, such as steel plates, rails, and tubes. After the First World War this tendency toward vertical combination was intensified, and many of the big trusts acquired factories which manufactured steel machinery, ships, railway equipment, and other heavy steel products.

* This chart is reproduced later in the opening statements under "C. Structure and Organization of the Flick Konzern".

Heavy industry was the core and nucleus of Germany's might. Coal was not only the all-important source of heat and power; it was the basis for the synthetic production of gasoline and rubber, of which the Germans had no natural resources, but which they learned to make from coal. Steel was, of course, the basic commodity for construction, transportation, and armament. The small group of coal and steel kings had in their hands great power to mould German economic structure, and to influence German policies and the German way of life. We will see in this and other cases how they utilized that power.

B. Establishment of the Flick Combine (1915-26)

Friedrich Flick first emerged as a minor power in this world of iron and steel in 1915. He had been born in 1883 in the region, east of the Rhine and south of the Ruhr, known as the Siegerland, where some of the best of Germany's slender deposits of high-grade iron ore are found. His family and relatives were connected with the Siegerland ore mining industry, and Flick took employment in the iron trade in 1907, upon completion of his commercial training at the Commercial University of Cologne. In April 1915 he was appointed commercial director and member of the Vorstand* of a small steel works in the Siegerland, known as the Charlottenhuetten A. G. Although this company owned no coal pits, in other respects it was a good example, on a modest scale, of German steel combines. It owned ore mines, blast furnaces, converters, and rolling mills, and it manufactured railway equipment.

* No precise English equivalent. The Vorstand, in general, combines the functions in American corporations of the executive committee of the board of directors and the principal corporate officers. [When "Vorstand" was translated in the Nuernberg trials, the translation ordinarily was "Managing Board" or "Managing Board of Directors." Herein the term "Managing Board" has ordinarily been used when the term is translated.]

Flick's position in the Charlottenhuetten served as a springboard for his leap into the ranks of the mighty, which he achieved by virtue of his unusual talent for financial aggrandizement by means of mergers and stock purchases of other companies. He was no sooner ensconced in Charlottenhuetten, than, as he himself put it (*NI-3345, Pros. Ex. 26*):*

"How ambitious I was then! My first thought was to merge with Koeln-Muesen."

* Speech by Friedrich Flick on the 25th anniversary of his appointment to the Vorstand of Charlottenhuetten, 1 April 1940.

From 1915 to 1919, by merger with or purchase of other small steel companies and ore mines, Charlottenhuetten was about

doubled in size. But in 1919, Flick's efforts at expansion in the Siegerland encountered serious and, at that time, insuperable obstacles. Flick's efforts to obtain an independent coal supply for his concern led him into a clash with Thyssen and other iron lords, who were then far more powerful. Indeed, at the end of 1919, Thyssen seriously threatened Flick's independent status, and Charlottenhuetten narrowly escaped becoming a branch of the Thyssen Combine. Flick shook off this menace, but it became plain to him that further expansion in the Ruhr-Siegerland region would be slow and difficult, if not impossible, because his older rivals, like Thyssen and Kloeckner, were too well established.

The result was a rapid shift in the focus of Flick's interests all the way across Germany to Upper Silesia. At this point it may be useful to look at the map which has been included in our brief marked "C," which shows the location of the major coal and iron deposits in Germany, and of the companies which ultimately became part of the Flick Konzern.

It will be seen that, while there is a very heavy concentration of coal in the Ruhr area, there are nonetheless other deposits in and near Germany which are of great importance. German coal comprises two main types. What we call bituminous or "soft" coal is known to the Germans as "stone coal" (Steinkohle).¹ But the Germans also make extensive use of a type of lignite, found in large quantities only in Germany, which they call "brown coal" (Braunkohle).²

¹ Germany contains practically no true anthracite coal.

² In general, it requires approximately 9 tons of brown coal to provide the heat obtained from 2 tons of ordinary bituminous coal. Exploitation of brown coal in Germany is profitable because it lies close to the surface and can be inexpensively mined. For the most part, it is either burned in special furnaces near the mines, or it is compressed into bricks (briquettes) which have good heat value and can be economically transported.

By far the largest deposits of bituminous coal lie in the Ruhr, which also contain some brown. But most of Germany's brown coal is deposited in central Germany. Here it is found over a wide area south of Berlin, from Brunswick to Frankfurt/Oder, and south to the Czech border. Some bituminous coal also is found in this region. But, outside of the Ruhr, the principal deposits of bituminous coal lie in Upper Silesia and the Saar, both of which regions were in an unsettled political condition after the First World War. Most of the Upper Silesian fields became part of Poland as a result of the plebiscite, and the Saar remained under international control until after the coming of Hitler.

Very large deposits of iron ore lie near the German border in Luxembourg and in Lorraine, but these areas were lost to Ger-

many after the First World War, and the iron ore resources in the rest of Germany are not impressive. However, workable deposits of iron ore are found in and near the Siegerland, and there are smaller but useful iron mines in Bavaria, some 40 miles east of Nuernberg near Sulzbach, and in Upper Silesia. There are scattering deposits elsewhere, and there are very substantial resources of low-grade iron ore in the Saar and in the region around Brunswick. These low-grade deposits were not, however, much utilized until after the coming of Hitler, when rearmament and the desire for wartime self-sufficiency led to the creation of the Hermann Goering Works in order to exploit these low-grade ores.

Accordingly, while the Ruhr was the cornerstone of German heavy industry, there were large and important mines and steel plants and factories elsewhere, with notable concentrations near and south of Berlin and in the Saar and Silesia. And it was to Silesia that Flick turned first when he found himself blocked in the Ruhr, by investing heavily in 1920 and 1921 in iron ore mines and steel plants in and near Katowice in Upper Silesia.

After the plebiscite in Upper Silesia, most of Flick's interests there passed under Polish control, and he later disposed of them by exchanging them for stock interests in companies in the Ruhr and central Germany. In this manner, in 1923 Flick acquired a substantial interest in a large steel merger, then known as "Linke-Hofmann-Lauchhammer", which owned large steel works in central Germany (that being the Lauchhammer part) and plants in Breslau which manufactured trucks and tractors and railroad cars (Linke-Hofmann). In the spring of 1923, Flick transferred more of his Upper Silesian holdings to Stinnes and to other Ruhr steel kings, in exchange for stock interests in one of the big Ruhr steel combines (Rhein-Elbe-Union), which was later to become the nucleus of the great Vereinigte Stahlwerke.

By these maneuvers, Flick's interests were radically expanded, and he came increasingly into contact with the lords of German heavy industry. The Siegerland had become too small for him, and in 1923, he transferred his residence and the focus of his activities to Berlin.

But in 1923 the stabilization of the German mark brought about a serious crisis for all of German heavy industry, and from then until the end of 1925 Flick was fully occupied with the preservation of his existing interests. The next major development in the scope and structure of the Flick Concern came with the formation of the Vereinigte Stahlwerke (United Steel Works) in 1926.

C. Flick and the United Steel Works (1926-32)*

From 1926 to 1932, Flick's history is closely interwoven with that of the giant steel merger, the Vereinigte Stahlwerke (United Steel Works, commonly known as the Stahlverein), which was formed in 1926. The principal components of the new trust were a group comprising the remnants of the Stinnes combine (Rhein-Elbe-Union), the Thyssen interests, and a third combine known as the Phoenix group. Efforts were made to induce Krupp, Mannesmann, Kloeckner, and the few other independent steel kings to join the trust, but Krupp and these others stood aloof. Even so, the new company was sufficiently impressive, with vast coal resources, over one-third of Germany's total crude steel capacity, and a stock capitalization of 800,000,000 Reichsmarks.

Flick automatically acquired an indirect interest in the Stahlverein through his previously acquired (1923) interest in the Rhein-Elbe-Union. Furthermore, the financial condition of his companies in central Germany (Linke-Hofmann-Lauchhammer) was still precarious. At all events, Flick decided to join in the Stahlverein, and was able to enter on very favorable terms, although his contribution to the merger was small compared to that of Thyssen and others. Flick turned in to the merger his central German holdings,† and Charlottenhuetten transferred its Siegerland mines and plants to the trust and became a pure holding company, with a 5 percent stock interest in the Stahlverein.

† Simultaneously, the Linke-Hofmann-Lauchhammer merger was broken up. All Flick's central German steel plants (Lauchhammer and others) were combined into the Mitteldeutsche Stahlwerke. The Linke-Hofmann tractor, truck, and railway car factories at Breslau were split off, and were operated independently.

Flick immediately embarked on the ambitious project of capturing control of the Stahlverein itself, and he very nearly succeeded. The three largest blocks of Stahlverein stock were, of course, held by the three major groups which had joined in the creation of the trust—Thyssen, the Rhein-Elbe-Union (which was consolidated in 1926 under the name Gelsenkirchener Bergwerke A. G.) which had a 32 percent stock interest in the Stahlverein, and Phoenix, with a 26 percent interest. Gelsenkirchener and Phoenix together, therefore, held stock control of the Stahlverein.

Flick already had a stock interest in Gelsenkirchener, and he was able to extend this at once by causing Charlottenhuetten to exchange its Stahlverein shares for Gelsenkirchener shares. Charlottenhuetten also borrowed extensively and bought Gelsenkirchener shares with the borrowed funds. Flick thus acquired

* Vereinigte Stahlwerke A. G., Duesseldorf. This firm name ordinarily has not been translated herein.

a dominant voice in Gelsenkirchener, and then caused Gelsenkirchener itself to acquire stock control of Phoenix. Gelsenkirchener then controlled the Stahlverein, and by 1930 Flick had working control of Gelsenkirchener.

Had the great business depression of 1930 not interrupted this speculative sprint to power, Flick might have consolidated his position and replaced Thyssen as the dominant power in the Stahlverein. But he was over-extended by reason of his borrowings, and by the spring of 1932, the Stahlverein was rickety, Gelsenkirchener stock was selling on the market at 22 percent of its par value, and Flick's position was precarious. He decided to retrench and sell his Gelsenkirchener holdings. In the spring of 1932, the Reich government itself bought them; the Bruening government paid 90 percent of the par value for the Gelsenkirchener shares, which provided Flick with adequate funds to meet his obligations and reestablish himself as an independent steel magnate.

Indeed, even during his period of close association with the Stahlverein, Flick had acquired important outside interests. In 1929 he joined with Thyssen and Wolff in purchasing from Hermann Roechling a controlling interest in the Eisenwerk Gesellschaft Maximilianshuette (commonly known as the Maxhuette). This large company owned excellent iron ore mines and several steel plants near Sulzbach in Bavaria, and near Plauen in Saxony. Later Flick bought the Thyssen and Wolff shares, and he eventually acquired all the stock of Maxhuette, which, after Flick stepped out of the Stahlverein, was one of his two major steel companies.

The other was the Mitteldeutsche Stahlwerke, which owned steel converters and mills near Berlin and along the Elbe River near Dresden (these latter being the old Lauchhammer properties). In December, 1930, Flick reacquired a majority of the Mitteldeutsche shares from the Stahlverein, and he later secured the entire stock interest in Mitteldeutsche.

When Flick left the Stahlverein, he did not buy back his original ore mines and plants in the Siegerland. The center of gravity of the Flick Konzern thus shifted finally and definitively to central Germany. In 1932, as Hitler loomed, Flick was the undisputed steel king of central Germany. His Maxhuette and Mitteldeutsche plants produced nearly as much crude steel as Krupp. Both Flick and Krupp were overshadowed by the Stahlverein, which was controlled by the Reich government itself and a private group led by Thyssen, Voegler, and others. But no other independent concern rivaled Flick or Krupp.

But in one respect, Flick was still far behind Krupp. Flick's efforts to obtain his own coal resources had, so far, failed. Maxhuettenwerke used bituminous coal from the Ruhr—coal which Flick did not mine. Mittelstahl used brown coal from central Germany. Flick himself mined little or no brown coal. Mittelstahl also lacked blast furnaces, and had to buy the pig iron which it used in making steel. Flick felt a need for further expansion and additional independence.

Flick's personal financial position had been reestablished by the sale of the Gelsenkirchener shares to the Reich. But this venture was not without its risks. There had been angry outbursts in the Reichstag and in the press over the price which the Reich had paid for the shares. In short, as the Nazi push toward the seizure of power and dictatorship neared its climax, Flick was a man who needed political support.

THE FLICK KONZERN UNDER THE THIRD REICH (1932-45)

The world-wide business depression precipitated an ever-deepening crisis in German heavy industry from 1930 through 1932,* which coincided with the rise to national prominence of Hitler and the Nazi Party. Much has been written about the early relations between Hitler and the German industrialists; much remains to be learned. But it is clear from what has been written and from documents which will be offered, that Hitler's two principal sponsors and financial supporters in heavy industry were Fritz Thyssen, the dominant figure in the Stahlverein; and Emil Kirdorf, who had been head of the largest German coal syndicate and of the Gelsenkirchener Bergwerke.

*Germany's production of crude steel sank from 16,246,000 metric tons in 1929 to 5,770,000 in 1932.

Another early supporter of Hitler was the leading private banker of the Ruhr, Baron Kurt von Schroeder of Cologne.

A. The Flick Konzern and the Birth of the Third Reich

Many of the earliest contacts between the Flick Konzern and the Nazi leaders were handled by the second man in the dock. The defendant Steinbrinck, 5 years younger than Flick, was a regular officer in the German Navy from 1907 to 1919, and commanded a submarine during the First World War. After the war he was employed by the Association of Iron and Steel Industrialists. He met Flick, and in 1923 Flick gave him a position with Linke-Hofmann-Lauchhammer. In 1925 he entered Flick's private secretariat, and by 1930 he was Flick's principal associate in the

management of the Flick Konzern. He joined the Nazi Party on 1 May, 1933, and 4 weeks later he became a Standartenfuhrer (the equivalent of a colonel) in the SS.

By reason of their extensive interests in the Ruhr and the Stahlverein, both Flick and Steinbrinck were well acquainted with Thyssen and Schroeder. In addition, Steinbrinck became acquainted, in 1930 or shortly thereafter, with leading Nazis such as Walther Funk, Robert Ley, and Wilhelm Keppler,* who at that time was Hitler's closest advisor on economic matters.

Toward the end of 1931, Thyssen, Kirdorf, and others arranged a series of meetings between Hitler and the leading Ruhr industrialists, in order to give Hitler an opportunity to expound his views and win converts. Hitler, for his part, was just as anxious to gain for the Nazi Party the political and financial support of heavy industry. For political historians, there can be nothing of more compelling interest than those early meetings between the stiff, arrogant iron lords and the demoniac Fuehrer-to-be, and we will have occasion to look at them more closely later on. Far apart as they were in social background and cultural heritage, Hitler and the Ruhr leaders found solid common ground in mutual contempt for democracy and admiration of ruthless, authoritarian, power politics. At a meeting on 27 January 1932 in Duesseldorf, attended by Thyssen and Voegler of the Stahlverein and a large group of other Ruhr industrialists, Hitler delivered one of his shrewdest and most persuasive speeches, which, according to Thyssen: †

“* * * made a deep impression on the assembled industrialists, and in consequence of this a number of large contributions flowed from the resources of heavy industry * * *.”

† Fritz Thyssen, *I Paid Hitler*, (Farrar and Rinehart, Inc., New York, Toronto, 1941), page 101.

Whether or not Flick attended any of those early meetings, it is certain that he knew, both from Steinbrinck and from his own close association with Thyssen, Voegler, and others, the general nature of Hitler's bid for industrialist support. In February 1932 Flick had a long private meeting with Hitler. A few months later, in the spring of 1932, confronted with the storm of public criticism awakened by the sale of Gelsenkirchener shares to the Reich, Flick obtained Hitler's blessing on the transaction. This brought Flick and Steinbrinck into direct contact with Hermann Goering. The defendant Burkart described this episode in a letter written in 1940 from which I quote (*NI-5432, Pros. Ex. 28*):

* Defendant in "the Ministries case," *United States vs. Ernst von Weizsaecker, et al.*, volume XII-XIV, this series.

“With respect to the sale of the Stahlverein majority shares, Herr Flick has asked me to inform you *officially* as follows:

“The sale of the majority of shares in the Stahlverein has been personally examined and sanctioned at the time—in the year 1932—by the present Reich Marshal (Goering) in conferences at the Bellevuestrasse which lasted several days. The Reich Marshal has further personally reported the transaction relating to the majority shares of the Stahlverein to the Fuehrer with the result that the Fuehrer has also recognized this transaction as necessary and has explicitly approved it.”

Later in 1932, a basis was laid for permanent and systematic collaboration between Flick and the Nazi leaders. Hitler had asked his personal economic adviser, Keppler, to collect a small group of economic leaders “who will be at our disposal when we come into power.” Keppler and Schacht approached Flick, Voegler, and others. The result was the formation of what was then called the “Keppler Circle”, which began to hold meetings to discuss the program of the Nazi Party in the economic field. Steinbrinck was a member of the group from the outset, together with Baron von Schroeder, Keppler, Schacht (until 1934), and an assortment of other leading industrialists and financiers. Fore-shadowing later and more sinister events, Flick came into contact with Himmler at about this time, and contributions to the funds of the SS were made by Flick and others. The SS was a very small organization before the seizure of power and for several years thereafter, and these donations constituted a very important source of support.

Toward the end of 1932 Hitler started to lose ground. In the November election the Nazis dropped 34 seats in the Reichstag as a result of a decline of 2,000,000 in the Nazi vote. The Party was in a critical condition and badly in need of money; in December Josef Goebbels noted in his diary that (*NI-6522, Pros. Ex. 698*): “Financial troubles make all organized work impossible” and “the danger now exists of the whole Party going to pieces and all of our work having been in vain.” But, as a result of the intervention of Baron von Schroeder, Hitler and von Papen made a temporary alliance, and von Papen succeeded in persuading Hindenburg on 30 January 1933 to replace the Schleicher government by a coalition cabinet with Hitler as Chancellor and von Papen as Vice Chancellor.

Hitler’s new seat of power was shaky enough. He was immediately confronted with an impending Reichstag election which could make or break him, and the Nazi Party lacked funds for this crucial test. On 20 February 1933, Goering assembled a large and representative group of industrialists and bankers at

his Berlin home. Flick was present, as were Gustav Krupp von Bohlen und Halbach and other Ruhr magnates. Among other things, Hitler told them (*D-203, Pros. Ex. 734*):

“Private enterprise cannot be maintained in the age of democracy; it is conceivable only if the people have a sound idea of authority and personality. Everything positive, good, and valuable, which has been achieved in the world in the field of economics and culture, is solely attributable to personality. When, however, the defense of this existing order, its political administration, is left to the majority it will irretrievably go under * * *.

“I recognized * * * that one had to search for new ideas conducive to reconstruction. I found them in nationalism, in the value of personality, in the denial of reconciliation between nations, in the strength and power of individual personality.

* * * * *

“Now we stand before the last election. Regardless of the outcome, there will be no retreat, even if the coming election does not bring about a decision. One way or another, if the election does not decide, the decision must be brought about even by other means, * * *.

“For economy, I have the one wish that it go parallel with the internal structure to meet a calm future. The question of restoration of the Wehrmacht will not be decided at Geneva, but in Germany, when we have gained internal strength through internal peace * * *.

“There are only two possibilities, either to crowd back the opponent on constitutional grounds, and for this purpose once more this election, or a struggle will be conducted with other weapons, which may demand greater sacrifices.”

When Hitler had finished, Goering made a short statement, in the course of which, according to Krupp, he “led over very cleverly to the necessity that other circles not taking part in this political battle should at least make the financial sacrifices so necessary at this time.” Goering blandly reassured the assembly that (*D-203, Pros. Ex. 734*):

“The sacrifices asked for surely would be so much easier for industry to bear if it realized that the election of March 5th will surely be the last one for the next 10 years, probably even for the next hundred years.”

The leaders of German industry were, in these words, promised that, if Hitler prevailed in the election, democracy would give way to dictatorship. They responded generously to this moving appeal by furnishing at least three million Reichsmarks, of which 240,000

Reichsmarks were contributed by Flick's Mitteldutsche Stahlwerke. Seven days later the constitutional guaranties of freedom were suspended, and in the March elections Hitler won 44 percent of the total vote which, together with the Hugenberg vote, gave Hitler a majority in the Reichstag. Never has a political contribution had such far-reaching and devastating consequences.

After the Third Reich dictatorship was solidly established, Flick appears to have had little direct contact with Hitler himself. But his relations with Hermann Goering and Heinrich Himmler endured. Goering he dealt with chiefly to achieve the expansion of the Flick Konzern, and in connection with the reorganization of German industrial controls for rearmament and, later, for war. His close connections with Himmler developed out of the Keppler Circle.

Keppler's influence with Hitler declined as time went on, and after 1934, Himmler replaced him as the central figure in the circle. Indeed, the group was soon known as "the Circle of Himmler Friends." At about the time of this transition Flick himself began to participate in the meetings. The group started to make financial contributions to Himmler's private funds, aggregating about a million Reichsmarks per year. Flick's regular contribution was 100,000 Reichsmarks per year. We will return for a closer look at the Himmler Circle and its activities in our discussion of count four of the indictment.

B. Further Expansion of the Flick Konzern

Having cemented his credit and standing with the Hitler dictatorship, Flick turned again to the aggrandizement of his own enterprises. His immediate objectives were a better supply of bituminous coal to feed Maxhuetten, and of brown coal and pig iron for Mittelstahl.

The bituminous coal was taken care of first. In 1933 and 1934, Flick succeeded in acquiring a 40 percent stock interest in the Harpen Bergbau A.G., the third largest group of coal mines in the Ruhr, with a stock capital of 90,000,000 Reichsmarks. In 1935, Flick persuaded the directors of Harpen to convert 30,000,000 shares into nonvoting debentures, which reduced the voting stock capitalization to 60,000,000 Reichsmarks. Flick thereupon sold the nonvoting debentures which he received in this conversion, and bought voting stock in Harpen with the proceeds, thus acquiring majority control. In 1936, Flick acquired control (through Harpen) of another large bituminous coal concern in the Ruhr, the Essener Steinkohlenbergwerke. After these purchases, the Flick Konzern resources of bituminous coal aggregated

some fifteen million tons per year—far more than the needs of Maxhuetten—as compared with less than a million tons in 1932.

The Flick acquisitions of brown coal and blast furnaces to supply pig iron to Mittelstahl will be described in detail under count three of the indictment. Coal fields and blast furnaces alike were acquired by Flick from Jews, and were obtained by taking full advantage of the so-called “Aryanization” policies and laws of the Third Reich.

The blast furnaces of the Hochofenwerk-Luebeck were located on the Baltic Sea at Luebeck and Stettin. Iron ore from Sweden was brought by low cost sea transport to these ports, and the pig iron produced by the blast furnaces was shipped on to the plants of Mittelstahl near Berlin and Dresden. Hochofenwerk-Luebeck was “Aryanized” by Flick in 1938.

The acquisition of the blast furnaces opened wide Flick’s eyes to the interesting and profitable possibilities of “Aryanization.” Very extensive brown coal properties—estimated by Flick at 20 percent of the total tonnage of all kinds of coal mined in Germany—were owned by a large family of Jewish citizens of Czechoslovakia, known as the Petscheks. Part of these fields were controlled by a group headed by Julius Petschek; the larger portion was controlled by the Ignaz Petschek group.

In January 1938 Flick procured from Hermann Goering exclusive authority to negotiate with the Julius Petschek interests (*NI-900, Pros. Ex. 411*), and he commenced negotiations with certain American and English representatives of the group which resulted in a sale in May 1938, on terms very favorable to Flick. The Ignaz group proved much more intransigent, but their bargaining position, if any, was quite hopeless after Germany occupied the Sudetenland, where the Ignaz group maintained its principal offices. The acquisition was finally completed in December 1939, after an interesting but intricate interchange of properties with the Hermann Goering Works, which will be developed later.

Flick’s last large acquisitions within Germany were made in 1939. In addition to the Ignaz Petschek brown coal fields, in that year the Concern purchased a 50 percent interest (the other half being owned by the State of Saxony) in the Saechsische Gusstahlwerke Doehlen, a high-quality steel concern situated at Freital, near Dresden in Saxony. This addition increased Flick’s annual crude steel output to about 2,150,000 tons per year, equal to or slightly greater than the output of Krupp.

In a speech at a testimonial dinner in April 1940, Flick told his assembled associates and colleagues (*NI-3345, Pros. Ex. 26*):†

“Now it has gone far enough, and we shall call a halt. The era of expansion is finished.”

† Speech by Friedrich Flick on the 25th anniversary of his appointment to the Vorstand of Charlottenhuetten, 1 April 1940.

But with the triumphant march of the Wehrmacht and the extension of German hegemony over most of the continent of Europe, these conservative sentiments were soon forgotten. Within a few weeks after Flick so expressed himself, the collapse of France was so imminent, that the rich iron resources of Lorraine were as much of a magnet to Flick as to his fellow steel kings. Three days after the German Army entered Paris, Flick was already discussing the general schedule of allocations that were being made by the Reich, in accordance with prearranged agreements with the great German industrialists, in respect to the coal, iron, and steel properties to be seized in France. Shortly thereafter, valuable properties of the Société Lorraine des Acieries de Rombas were allocated to Flick, and were subsequently administered by a newly-established company, jointly owned by Maxhuetten and Harpener Bergbau. A year or more later, as the tide of war swept over Russia, Flick began to busy himself with acquiring so-called "trusteeships" of various industrial and mining enterprises in the areas occupied by the Wehrmacht. A plant in Riga which manufactured railway cars and equipment was allocated to him after strenuous negotiations on the part of his nephew, the defendant Weiss. In the industrial bend of the Dnepr River, Flick joined with the Hermann Goering Steel Works in the "trusteeship" of large mining and smelting properties. These industrial spoliations in France and the Soviet Union will be more fully discussed under count two of the indictment.

C. Structure and Organization of the Flick Konzern (1945)

Having traced its history, we may now examine the Flick Konzern in the form in which it existed at the end of the war, as shown in the chart displayed on the wall of the courtroom.* Flick's control of the Konzern was vested in a holding company called the Friedrich Flick Kommanditgesellschaft, shown at the top of the chart. In addition to being a holding company for the stocks of most of the companies comprising the Konzern, the Friedrich Flick Kommanditgesellschaft itself owned and operated large steel plants at Brandenburg and Henningsdorf near Berlin, which were formerly part of the Mitteldeutsche Stahlwerke.

The steel and bituminous coal companies are shown on the left half of the chart. Directly, or through intermediate holding com-

* The chart reproduced on page 49 was drawn up from a handwritten chart, Document NI-3676, which was later received in evidence as Prosecution Exhibit 34. The handwritten chart was certified as "a true picture of the 1945 position" by the defendant Weiss and by Theodor Kurre, accountant of the Flick Concern.

panies, the Flick Kommanditgesellschaft owned 100 percent of the stock of the Maxhuetten iron and steel complex, and 70 percent of the Harpen bituminous coal mines. Through a subsidiary company, Maxhuetten and Harpen controlled the Rombach mines and plants seized in Lorraine. Harpen also controlled the other large group of bituminous coal mines, the Essen company. Essen and an intermediate holding company controlled the "Aryanized" Hochofenwerk blast furnaces at Luebeck and Stettin.

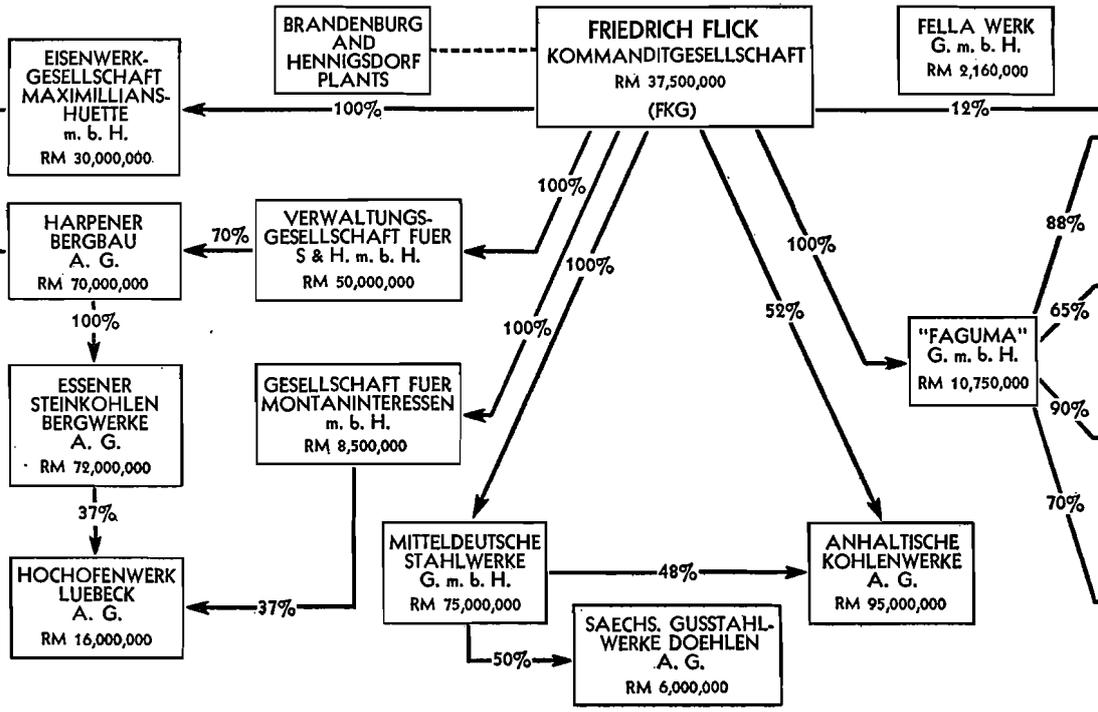
The Flick Konzern itself owned the entire stock interest in Mitteldeutsche Stahlwerke, the other major steel complex. Mitteldeutsche held the 50 percent interest in the high-quality steel plant in Saxony. The Flick Konzern also directly controlled the Anhaltische Kohlenwerke, comprising the Petschek brown coal mines of central Germany used by Mittelstahl.

At the right of the chart are the companies which made finished steel products. All but one of these were controlled by an intermediate holding company called "Faguma". The Allgemeine Transportanlage Maschinenbau (ATG) at Leipzig was acquired about 1933 and originally made conveyors and other machinery used in coal mining; by 1935 it had been converted into an airplane factory. The Linke-Hofmann Works, manufacturing tractors, trucks, and railway cars, had been delivered over to the Stahlverein by Flick in 1926, but a controlling stock interest was repurchased by Flick in 1934. In that same year Flick acquired, from the Stahlverein and various banking syndicates, control of the Waggon- und Maschinenfabrik Busch (commonly known as Busch-Bautzen), located at Bautzen near Dresden, which also manufactured electric locomotives, railway cars, and railway equipment. Another small factory, the Leipziger Werkzeug- und Geraetefabrik, was established by Flick about 1936. It was a small tool and machine concern which was operated as an adjunct to ATG. The Fella Works, shown in the little box by itself at the top of the chart, manufactured agricultural machinery. It is located at Feucht, a few miles from Nuernberg, and appears to have been controlled by Flick personally.

The organization of the Friedrich Flick Kommanditgesellschaft and the division of labor between Flick and his principal associates is shown in the second chart in the brief, marked "C", now displayed on the wall of the courtroom. [See page VI.] The lower part of this chart shows the organization prior to 1940, and the upper portion the organization from 1940 to 1945.

During the last decade of Steinbrinck's connection with the Flick Konzern, as is shown in the lower half of the chart, he was Flick's principal associate in its general management. He was a general plenipotentiary in the top holding company, the Flick

THE FLICK CONCERN
PRINCIPAL COMPANIES MAY 1945



Kommanditgesellschaft. He was on the Vorstand of both the principal steel concerns [Stahlblocks], Maxhuetten and Mittelstahl, but he also concerned himself with the coal companies and the factories for finished steel products. He was assisted by the defendant Kaletsch, who dealt with financial matters, and the defendant Burkart, a specialist in the iron and steel enterprises.

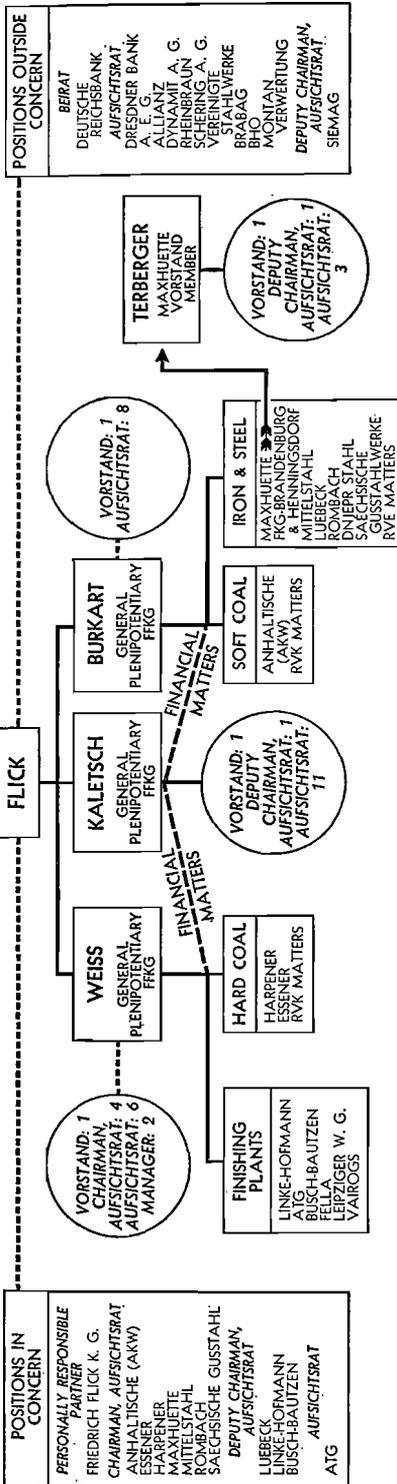
Toward the end of 1938, Steinbrinck became dissatisfied with the situation at the Flick Konzern, and at the end of 1939 he completely separated himself from Flick. Fritz Thyssen had fled from Germany upon the outbreak of war with Poland, and Steinbrinck was appointed trustee for the confiscated Thyssen properties. In this capacity, he became deputy chairman of the Aufsichtsrat of Vereinigte Stahlwerke, and from then until the end of the war his primary private interest was in the Stahlverein.

One of the principal reasons for Steinbrinck's separation from Flick may have been Flick's increasing preoccupation with founding a family dynasty. The defendant Kaletsch, who was Flick's cousin, was becoming increasingly important in the Konzern, and Flick's oldest son (Otto Ernst) had come of age and was starting to take an active part in the business. Early in 1939, Flick sought to bring into the Konzern his nephew, the defendant Bernhard Weiss, and when Steinbrinck actually left the Konzern, in December 1939, Weiss and Burkart took over the bulk of Steinbrinck's activities.

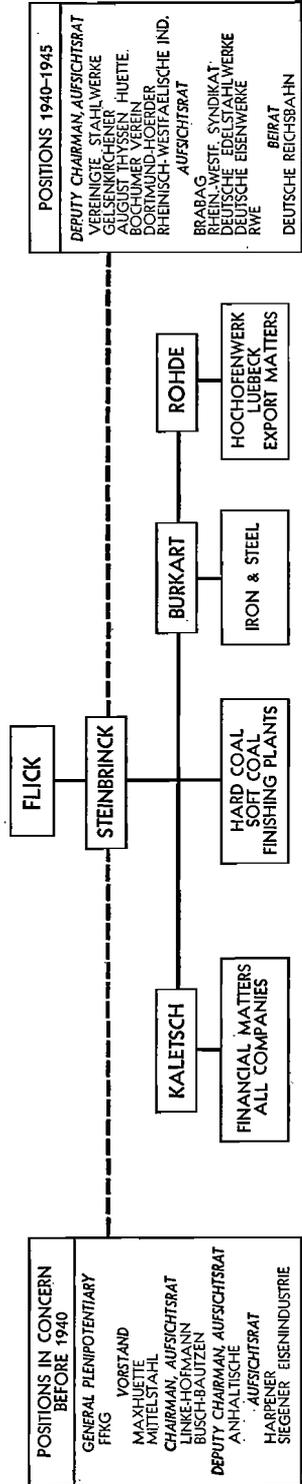
The resulting organization is shown in the top portion of the chart. Kaletsch, Burkart, and Weiss were all three given the status of general plenipotentiary of the Kommanditgesellschaft, with approximately equal status. Burkart, born in 1899, started his business career in the iron industry of Upper Silesia in 1922, and established a connection with Flick in 1925, when Flick took an interest in the Upper Silesian iron and steel merger. In 1936 Flick gave him an important position with Mitteldeutsche Stahlwerke, and he was taken in as plenipotentiary general in the Kommanditgesellschaft in the spring of 1940. Kaletsch, who is the same age as Burkart, came into Flick's inner circle in 1925, and was made a general plenipotentiary of the Kommanditgesellschaft upon its foundation in 1937.

The defendant Weiss was born in 1904 in the Siegerland. His father owned a substantial company (Siegener Maschinenbau, commonly known as Siemag) which manufactured machine tools and other metal products. Weiss succeeded to the leadership of the company and, after 1941, was the sole owner. Flick, Weiss' uncle, was vice chairman of the Aufsichtsrat. At the end of 1939,

SUPERVISORY CONTROL OF FLICK CONCERN 1940-1945



BEFORE 1940



Weiss joined the Flick Konzern and became a plenipotentiary general of the Kommanditgesellschaft.

The defendant Kaletsch occupied himself with the financial problems of the Flick enterprises and, in this field his authority cut across all companies in the Konzern. Burkart specialized in the supervision of the brown coal and iron and steel companies. Weiss concerned himself principally with the Ruhr bituminous coal companies and the finishing plants, such as Linke-Hofmann and ATG.

The defendant Terberger was not an officer of the Kommanditgesellschaft. He became, however, the leading member of the Vorstand at Maxhuetten, the principal Flick enterprise in the American Zone of Occupation. He had become connected with Flick in 1925 as an employee of the Linke-Hofmann-Lauchhammer merger, was thereafter employed at Mitteldeutsche, and was appointed to the Vorstand of Maxhuetten in 1937. Terberger joined the Nazi Party on the first of May 1933.

We said at the outset that the defendants committed the crimes with which they are charged in the course of business. The basic causes of all these crimes were the warlike and tyrannical purposes to which the Third Reich was dedicated from its inception, the aggressive acts committed by Germany in Austria and Czechoslovakia in 1938, and the invasions and aggressive wars launched by Germany beginning in 1939.

This causation is particularly clear in connection with the first count of the indictment, under which all six of the defendants are charged. The business of the defendants was steel making, and for this they needed principally coal, iron ore, and labor. The outbreak of war and the cutting off of peacetime imports to Germany did not affect their coal supply, since Germany's own resources were more than ample. The situation with respect to iron ore was more precarious, but imports from Sweden were not seriously disrupted, and with the absorption of Austria and Czechoslovakia, the conquest of France, and the overrunning of vast areas in the east, extensive foreign resources of iron ore became available to the German economy.

But, even before the war, labor shortages were envisaged, and with the induction of millions of workers into the Wehrmacht, manpower became a critical problem. The Third Reich attempted to solve the manpower problem by the use and misuse of slave labor on a scale unprecedented in human history. And this is the first of the crimes with which the defendants are charged in the indictment.

Mr. Ervin will continue reading, Your Honors.

COUNT ONE—SLAVE LABOR

MR. ERVIN: All of the defendants are charged in count one of the indictment with the commission of war crimes and crimes against humanity in connection with the planning and execution of the Nazi slave-labor program. This program, designed to enable the Nazi war machine to continue its aggressions, involved the criminal exploitation of every possible source of manpower. Millions of noncombatants from the countries overrun by the Wehrmacht were uprooted from their homes, packed like cattle into transports headed for Germany, and there compelled to work under appalling conditions in mines, foundries, steel mills, and armament plants under the direction of men like these defendants. Prisoners of war provided another source of supply. With the usual Nazi disregard of international obligations, they were put to work in the manufacture of armaments in direct violation of the laws of war. And as the manpower situation became even more critical, there was made available to the leaders of German industry that most unfortunate group of all the victims of Nazi tyranny, the concentration camp inmates. After all, these people could be worked to death rather than immediately cremated or exploded in a pressure chamber, and some benefit could be obtained from the few months of usable energy left in their wretched and miserable bodies.

That the slave-labor program was criminal, is beyond doubt. The International Military Tribunal has so found. The relevant provisions of Control Council Law No. 10 are clear—"deportation to slave labour" is enumerated as a war crime in Article II, paragraph 1 (b); "enslavement" and "deportation" are made crimes against humanity in Article II, paragraph 1 (c). Article 52 of the Hague Convention [annex] as to the use of labor in occupied territories, and the provisions of the Geneva Convention as to the employment of prisoners of war, had, long before the enactment of Law No. 10, established principles of international law which condemned such practices. Indeed, an attempt by Germany in World War I to deport labor forcibly from Belgium met such an outcry of world opinion that the plan was attacked even in the Reichstag, and subsequently abandoned.*

* James W. Garner, *International Law and the World War*, (1920), volume II, page 183.

But the evil in this program lay not so much in the fact that it violated the letter and spirit of international law, as in the utterly barbarous way in which it was carried out. The revolting details

were presented in full to the International Military Tribunal, and need only be touched on here. Fritz Sauckel, Hitler's labor plenipotentiary, estimated that 5,000,000 foreign workers were transported to the Reich, and that only 200,000 came voluntarily. The rest of them were corralled in man hunts in which houses were burned down, churches and theaters searched, children were shot, and families torn apart by the SS and other "recruiters". From then on the victims were subjected to all the tortures, indignities, and sufferings that the human mind can encompass. The basic philosophy of their treatment is illustrated by Sauckel's instructions of 20 April 1942, that "All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure," and by Himmler's notorious declaration in a speech made at Poznan on 4 October, 1943 (*1919-PS, Pros. Ex. 746*):

"Whether ten thousand Russian females fall down from exhaustion while digging an anti-tank ditch interests me only insofar as the anti-tank ditch for Germany is finished."

* * * * *

"We must realize that we have 6-7 million foreigners in Germany * * *. They are none of them dangerous so long as we take severe measures at the merest trifles."

Wherein lies the responsibility of these defendants for the murders, tortures, brutalities, and cruelties committed in the execution of this program of wholesale crime? In the first place, they used in the enterprises under their control tens of thousands of impressed foreign workers and concentration camp inmates. The mere utilization of this labor constitutes the crime of enslavement, a crime of which all the defendants are guilty as principals. Flick with his codefendants Burkart, Kaletsch, and Weiss controlled the Flick Konzern, and together they share the responsibility for the widespread use of slave labor throughout its enterprises. Terberger is guilty because of the utilization of slave labor at Maxhuette, where he was the principal management official. Steinbrinck, in his capacity as Plenipotentiary for Steel, and for coal, in parts of the western occupied territories, made extensive use of slave labor.

In the second place, these defendants, by their voluntary participation in this program with full knowledge of the criminal methods used in the recruitment of forced labor, are guilty of the crime of deportation, and of the murders, brutalities, and cruelties committed in connection with such recruitment and deportation. The evidence will show that the defendants knew well the manner in which this labor was being "recruited". In fact, they made

every effort to participate in it directly by sending their own representatives to the occupied territories. As to the voluntary nature of their participation, it need only be pointed out that no employer in the Third Reich was assigned labor against his will. He had not only to ask for the allocation of labor, but his success in getting it depended on the pressure he could bring to bear on the allocating authorities. The enterprises under the control of these defendants were eager, aggressive, and successful in their efforts to obtain workers from all sources involved in this criminal program. The individual firms besieged their local labor offices. The Berlin office of the Konzern was in constant touch with various officials of the ministries connected with the administration of the program. Finally pressure was brought to bear directly on Sauckel, Speer, and others at the top of the Nazi hierarchy by means of the powerful self-administrative associations of industrialists, such as the Reichsvereinigung Eisen (RVE) for the iron industry, and the Reichsvereinigung Kohle (RVK) for the coal industry, to which these defendants belonged. We shall have more to say of these associations later.

Finally, the defendants are guilty as principals for the deaths, inhuman treatment, and suffering of the workers while employed in enterprises under their control. The entrepreneur was responsible for the well-being of the workers on the job. True, he was circumscribed by government regulations as to the amount of pay, the food ration available, and in certain other details. But the primary responsibility for the health and well-being of those unfortunate workers belonged to the owners and managers of enterprises. We shall have occasion to see how these defendants discharged that responsibility.

We turn now to a discussion of the evidence to be presented on this count. According to records taken from files of the Flick Konzern, there were approximately 80,000 persons employed in its various enterprises in 1939. By the end of the war, this number had increased to upwards of 120,000, a remarkable increase in the face of a nation-wide labor shortage. We have available, and will introduce in evidence, pertinent records from many of the separate enterprises showing the composition of this labor force. On the basis of these statistics, which are not complete in every instance, a conservative estimate can be made that between 30 and 40 percent of the employees were foreign workers, prisoners of war, and concentration camp inmates.

It should be borne in mind that these statistics do not reflect the constant turnover in these classes of laborers due to deaths, escapes, and disability. Thus, while approximately 40,000 forced laborers were employed at any one time by the Flick Konzern, a

substantially greater number of individuals were involved in the period from 1940-45.

The Flick Konzern used proportionately more foreign labor than other enterprises in the iron and steel industry. Statistics published on 31 July 1944 disclose that nearly half of the labor force at Hennigsdorf, a plant under the direct control of the Kommanditgesellschaft, was composed of foreign and prisoner-of-war labor. This percentage was greater by nearly a third than it was in the iron and steel industry as a whole. In the coal enterprises of the Konzern there was increasing use of slave labor as the war progressed. Reports from both Harpen and Essen show that by 1944 over half of the entire labor force came from foreign sources.

These same statistics in many instances carry separate columns indicating the number of prisoners of war employed. A comparison of those statistics with reports prepared in the Flick front office from 1942 to 1944, showing the contribution of the Flick Konzern to the war effort, proves conclusively that prisoners of war were used in the manufacture of armaments. For example, shell casings were made at Groeditz, ammunition at Freital, and armored cars at the Linke-Hofmann works. During this period the employment statistics show, for example, that in January, 1944, 1,145 prisoners of war were employed at Groeditz; in December 1943, 671 were employed at Freital; and in July 1943, 1,017 were employed at Linke-Hofmann.

The Konzern, and its Berlin office, from the outset were eagerly interested in taking advantage of all sources of the new labor supply. Scarcely a month and a half after the invasion of Poland, prisoners of war were arriving for work at Maxhuetten. Whenever an additional source was made available, the Berlin office was careful to inform the various companies what steps were necessary to get their share of the new laborers. We find Kuettner, Burkart's assistant in Berlin, conferring with officials of the Labor Ministry in June 1942 concerning the acquisition of Russian and French laborers, and then writing a circular letter to the various member firms exhorting them to file their applications with the proper authorities at once. In 1944, when it appeared that Italians would be used to supplement the labor force, the defendant Burkart wrote to Maxhuetten as follows (*NI-3143, Pros. Ex. 131*):

"Mr. Klaar, Groeditz, who worked in France on a similar mission for about 1 year, has gone to Italy in the meantime in order to recruit workers for the iron industry. It was intended, originally, to employ Dr. Klaar exclusively in the interest of the combine. It is not yet certain if this plan can be carried out in full. It will, however, be possible to give due consideration to the interests of the group.

"In accordance with the annexed note which Hennigsdorf gave to Mr. Klaar, we recommend that the other plants also make documents available to us, so that Mr. Klaar may be informed of all details during his recruiting."

Klaar's report to Burkart from Italy on 5 July 1944 shows the manner in which the recruiting was accomplished. We quote the opening paragraphs (*NI-3216, Pros. Ex. 135*):

"Subject: Removal of Italian workers to Mittelstahl

"In these days the last great drive for workers has been made in Italy. Since voluntary recruiting and firm recruiting as well as work contracts brought no tangible results, this drive was started in the form of military conscription of three age groups.

"Unfortunately, the *military conscription* also brought no more *results* than the former drives. Altogether, we got about 1 percent, who had to be put exclusively into the special groups. Iron and steel [groups], and with that Mittelstahl, again could not be taken care of. We were only able to report to you the arrest of 500 steel workers of the firm Siac-Genoa, who were moved to Linz. Since you were the first to be informed about this matter, we hope that you were able to take action in time when the allotment was made."

Was it news to these defendants in 1944 that force was necessary to compel workers to come to Germany? We need not speculate on this point. Consider a report of the Social Committee of RVK, dated 1 December 1941, a report circulated throughout the Flick office in Berlin and initialed by Kaletsch, Burkart, and Weiss, among others. It reads (*NI-4102, Pros. Ex. 250*):*

"Use of miners from Krivoi Rog in the Ruhr mines

"A commission, consisting of representatives of the interested agencies, namely, the OKW, the Reich Leader SS, government authorities, the Party, and the Reich Association Coal, convened in Krivoi-Rog from 8 November until 10 November 1941, in order to take measures based on the decree of the Reich Marshal of 24 October 1941 with respect to the transfer of miners to the Ruhr mining industry. At the present, about 6,000 out of the scheduled 10,000 to 12,000 miners are immediately considered.

"Representatives of the Reich Labor Ministry and Reich Association Coal, together with the competent army authorities, will carry out the necessary measures locally.

"The apprehension of the workers will be undertaken by the labor officials of Krivoi-Rog***.

"The police examination of the workers will be performed by elements within the Security Police.

* * * * *

"Transportation will take place in sealed and guarded trains. Guards will be furnished, probably through the SS. Rations sup-

* Reproduced in part in section VII B.

plied during transportation will be furnished by army supply offices.”

How about the conditions on the transports carrying the victims of the manhunts to their new masters in Germany—were they unknown to the defendants? The trains were met in most instances by representatives of the firms to which the laborers had been allocated. These representatives saw the misery of these human beings, in fact they sometimes complained because they would be unable to get productive work from such weak and emaciated bodies. Here is an excerpt from one of these complaints, made by a manager of Anhaltische Kohlenwerke to the Vorstand, a report which came to Flick’s attention (*NI-5391, Pros. Ex. 140*):*

“On 16 December 1944, we again received a transport of eastern workers, consisting of 15 men, 36 women, and 36 children; on the whole, 87 persons. Among the men there was an 80-year-old blind man, and several men were over 65 years old. The women were partly ill, or pregnant, or mothers of infants, so that they also could not be used in mining work. There are quite a number of families among them, of whom no one is working at all, and therefore they are not even earning living expenses. The men also, as far as they are in an age group capable of work, are ill or suffering from an ailment preventing their full employment.”

Were the conditions in the Flick plants, where the foreign workers together with prisoners of war and concentration camp inmates were destined to spend their days of serfdom and in some cases their lives as well, any better? The prosecution will present witnesses from some of the Konzern enterprises to tell the story of their pitiful existence as Flick employees. From their testimony, and from documents as well, it will be proved that the treatment in the mines and factories under the control of these defendants was, indeed, “brutal and degrading.” †

† “The evidence further showed that the treatment of laborers in Germany in many cases was brutal and degrading.” See Trial of the Major War Criminals, *op. cit.*, volume I, page 246.

Many of the records of the individual firms within the Flick Konzern reflect this treatment. There were reports of inspectors from the OKW as to the conditions of work in the enterprises where prisoners of war were employed. Not all of these records and reports came to the specific attention of each of these defendants. But the volume of weekly, monthly, and annual reports from the various firms of the Konzern, which flowed into the Berlin office, contained sufficiently detailed information to inform these defendants of everything that was going on in their industrial domain. Nor could Flick and his lieutenants avoid seeing the factory

* Reproduced in section XII B.

guards, barbed wire enclosures, the watch dogs, when they made their inspection trips to their factories. There can be no doubt that these men were fully aware of the terrible conditions under which the enslaved laborers were compelled to work. A few samples of this type of evidence will suffice for our purpose here.

The death rate of Russian prisoners employed at Harpen was so alarming in 1942 that the chairman of the Vorstand, Buskuehl, wrote directly to Flick as follows (NI-5207, *Pros. Ex. 158*):*

“Dear Mr. Flick:

“Enclosed I transmit to you a copy of a secret directive from the president of the Regional Labor Office of Westphalia about employment of Russian PW’s. Supplementing the contents of this directive, which scarcely needs explanation, I inform you that the employment of Russian PW’s in the Friedrich Heinrich Mine has proved a *total failure* inasmuch as *typhus* has broken out among these PW’s in spite of careful delousing and issuing of new clothing. The cases of illness and death have led to a quite extraordinary state of alarm among the employees.

“As things stand, the employment of Russian PW’s *at least in the mines, is not warrantable*, and this method of employment of labor will, at least for the time being, have to be discontinued.”

Weiss’ answer to this letter, dated 18 February, shows that the Konzern had a somewhat different attitude toward the advisability of using prisoners. He writes (NI-5236, *Pros. Ex. 159*):*

“Subject: Utilization of Soviet prisoners of war.

“Dear Mr. Buskuehl:

“Your letter of the 16th instant addressed to Mr. Flick, enclosing a secret report from the president of the Regional Labor Office, Westphalia, was today forwarded by me to Mr. Flick, who is at the moment taking a short holiday at Toelz.

“In this connection, you will be interested to hear that we obtained excellent results with Russian prisoners of war at the Linke-Hofmann Werke in Breslau.

* * * * *

“On the basis of my experiences at Breslau, I am inclined to think that in many cases it is easier to obtain suitable results with Russian prisoners of war than with Italian, Spanish, or other civilian workers who, in addition, have to be handled with kid gloves.”

That conditions in the coal enterprises did not improve appears from the report of an official government investigating commission which, in late 1942, inspected a number of camps housing eastern workers near Essen. Several of the Essener Steinkohle camps were included in the inspection as well as plants of Farben, Krupp, and the Stahlverein. The report begins with some comments on

* Ibid.

conditions generally, comments which were written by a commission of Germans during the war, and, yet, which contain a more damaging indictment of the attitude and philosophy of the industrial lords of Germany toward their new slave class than anything we say here today. We quote (*NI-3013, Pros. Ex. 153*):

“In the inspected areas, however, excepting a few model enterprises, the eastern worker is left to his own fate, being regarded merely as a means of production which at any time can be replaced from the extensive eastern territory. By far the greater part of the plant managers have no appreciation for the essence of the problem of the eastern workers, nor are they willing to take any interest therein.

“Therefore frequently even the most urgently needed matters, such as food and shelter, leave much to be desired; they are insufficient, carelessly prepared, dirty, and to some extent, even bad beyond description. The barracks are partly without any lights and badly aired.

“The camp leaders are generally incapable of carrying out their task, they likewise lack every perception of the importance of the eastern workers in regard to the economy of war.

* * * * *

“A systematic treatment of the sick is lacking. At times, an insufficient treatment lasting months is being observed at the sick wards, bringing along as a matter of course, the danger of voluntary mutilations. Some of the sick wards are downright filthy. No sufficient consideration is given to the question of trained personnel taking expert care of the sick, although the existing lack of physicians, beds, and medicine at the hospitals should render this especially important. All the more regrettable is the fact that comparatively trifling financial reasons are decisive for not employing available physicians.

“As regards punishment, it was said that thrashing was necessary as far as workers in mines are concerned.

“Concerning sick lists, numbers were omitted here as well as for escapes, because the commission ascertained by examining the sick records and the wards that the worst plants had in some cases a very small number on their sick lists. Remarkable, however, was the observation: “The eastern worker is very tough. He keeps on working until he falls face down in the dirt, and nothing remains for the doctor to do but to write out the death certificate.’

“As far as complaints relating to questions of pay were concerned, we ascertained that the pay rolls were just as unclear as the tabulations of food rations, the latter happening nearly

everywhere. The kitchens were partly let on lease, resulting in highly unwholesome war profiteering.”

* * * * *

This report concludes with a brief description of each camp inspected. The Essen camps fared as follows:

“*Camp Katharine.*—At present, the workers from the East are housed in barracks for PW’s, with iron-barred windows and surrounded by a strong barbed-wire fence. Disinfection imperfect. Plenty of vermin. The straw mattresses had to be removed, people sleep merely on wire mattresses. Occasional thrashing. Question pertaining to pay not regulated. Food is not specially good.

“*Camp Prince Friedrich.*—Food sufficient. Postal arrangement imperfect. Sanitary facilities insufficient. Vermin. They sleep on wire mattresses. Warm water supply for the lavatory is insufficient. In the family barracks, 10 persons sleep in 8 beds. There is no separate room for each family. One family with a baby was pretty well provided for. Barracks insufficient as a rule.”

The mines were not the only places where the disease and death rate gave cause for alarm. Thus we find a note, dated 30 December 1941, taken from the files of Maxhuette, reporting a discussion with various medical officers as to the high percentage of sickness among the Russian prisoners. It was decided at a conference to take certain measures to improve health conditions, for example (NI-3149, *Pros. Ex. 193*)—

“Prisoners who report sick at the beginning of a day’s work, and who were up to now driven to work by their camp commander, will from now on be superficially examined by him. If their limbs turn out to be swollen they will have 1 or 2 days’ rest.”

The memorandum concludes with the following statement:

“The eight deaths must not be regarded as giving cause for alarm. This phenomenon had appeared to a much greater extent in Regensburg and Nuernberg.”

This “improved” medical care at Maxhuette apparently caused some difficulties, or perhaps there was a change in attitude as the war progressed. Thus, under date of 22 August 1944, the following memorandum, initialed by the defendant Terberger, was sent to the health officers at the various labor camps (NI-3154, *Pros. Ex. 215*):

“According to a report of the camp commandant Renner, the eastern worker Hohull, file No. 720, was given a pass to see the doctor, even though he only suffered from a slight head wound. In this connection, we call your attention to the fact that these

passes may be given out only in really necessary cases, for it cannot be tolerated that foreign civilian workers go to see the doctor at the slightest ailment, subjecting him to unnecessary work, and even remaining away from their own work."

The defendants will undoubtedly say that sickness and death among the foreign workers employed by them was primarily due to malnutrition. This, in turn, they would have us believe was due to something over which they had no control—the strict food rationing in Germany. Even if this were true, it cannot excuse them from the criminal exploitation of undernourished human beings. They voluntarily and willingly used these workers and continued to use them all through the period of the war, although they knew that the death rates and the instances of sickness were frightful.

But it is not true that they were unable to obtain adjustments in the food ration. When it became apparent to the coal mining industry that the ration for underground workers was insufficient to obtain satisfactory production results, the industry, by means of the RVK, actually did obtain an additional food allotment. The motive was not humanitarian; it was simply a practical businessman's answer to a production problem.

A report made by the manager of the Fella Werke to the workers' kitchen in 1942 succinctly illustrates this same attitude (*NI-5247, Pros. Ex. 170*):

"Concerning: Feeding of Russian PW's.

"Starting today, the Russian PW's will be given 500 additional grams of boiled potatoes per head, to improve the state of nutrition. This addition does not apply to Russian PW's who are sick and unable to work."

The food ration is therefore increased "to improve the state of nutrition", but it does not apply to anyone who cannot also improve the state of production.

Quite apart from the physical suffering which these laborers were forced to undergo, the environment in which they worked was one of loneliness, degradation, and fear. Segregation and discrimination, particularly against eastern workers, was carried to such extremes that German employees were punished for even the smallest acts of kindness to the non-Germans. From Max-huette's files this letter, dated 28 August 1944, to one of its German employees, was taken (*NI-3158, Pros. Ex. 216*):

"I have ascertained that on Friday, 25th instant, you brought a loaf of bread to a Russian prisoner of war at your place of work. This conduct is, as I have already pointed out to you in our discussion, so incredible that we ought really to hand you over to the competent authorities for punishment. It is only

because up to now you have always fulfilled your duties conscientiously, and because you have promised not to repeat this kind of fraternization with prisoners of war, that I refrain from making such a report. I herewith warn you most severely. I repeat that I consider your action of making friends with prisoners of war incredible, especially at a time like this, when many of our fellow workers are being killed by the enemy.

“As you apparently do not need the supplementary food coupons supplied to you by the management, you will not receive the heavy worker’s ration for the next 2 weeks.”

The fear of these workers was constant—fear of beatings, fear of starvation, and particularly fear that a notice like the one set forth below might 1 day include their names. This notice is from the director of Harpen (*NI-5584, Pros. Ex. 167*):

“To the Gestapo

Dortmund-Hoerde

Bennighoferstr. 16

Subject: Gneisenau mine. Dortmund—Derne, 29 August 43

“The western worker August Franssen, born 2 March 1921, home address Dortmund-Derne, Workmen’s Compound, * * * who is employed in our mine, has recently often been absent without leave. In spite of all warnings and punishment, he is continually shirking. When on 17 August 1943 in the pit he was requested by our mining foreman Heinrich Gruenscheidt * * * to work more energetically, he raised his hand and made as if to strike him. During the argument which followed, he said among other things ‘the time will come when you will all put up your hands in surrender’, and he underlined this statement with the appropriate gesture.

“We request you to arrest Franssen immediately and put him into a concentration camp, otherwise we can keep no order among the foreigners, and especially among the Belgians, and they would be even more insolent if Franssen were not arrested.”

We have heard the story of the use and mistreatment by the Flick Konzern of its more than 40,000 forced laborers. The responsibility of most of the defendants, however, does not end with this story. We have mentioned several times in this discussion the self-administrative associations in both the coal industry (Reichsvereinigung Kohle—RVK) and in the iron and steel industry (Reichsvereinigung Eisen—RVE). These organizations played an important part in the slave-labor program, and several of the defendants had influential positions in the organizations.

The leaders of German industry, from the days of Bismarck on, followed a practice of associating themselves in powerful industrial organizations, a phenomenon which is more fully de-

scribed in the brief submitted to the Tribunal marked "B". These industrial groups have always exerted great influence on German economic policies and on German Government, whatever the composition of that particular government.

The Nazis continued these industrial associations, made membership in them compulsory, changed their names, and introduced the leadership principle into the operation of their affairs. But, in most cases, the same men who had been the elected representatives of industry prior to 1933 became the appointed leaders after 1933. Until 1941 the top organization in the coal industry was the *Wirtschaftsgruppe Bergbau* (Economic Group Mining). In the iron and steel industry, it was the *Wirtschaftsgruppe Eisen-schaffende Industrie* (Economic Group Iron Producing Industry). Neither of these organizations had official government powers, but the Reich Ministry of Economics and other governmental agencies made use of them and their elaborate regional organizations in putting into effect many of the economic controls required by rearmament, and later by the war. In turn, these organizations exerted great influence on the policy-making officials of the Nazi government as to the nature of those controls and as to every step taken which affected their respective industries.

At the end of 1940 it became apparent that coal production was going to have to be considerably increased. Furthermore, the organization of the industry was somewhat top-heavy. Certain functions were performed by various offices of the Reich Ministry of Economics, others by the coal marketing associations (syndicates), and still others by the Economic Group Mining, which did not directly control the syndicate. The Reich Commissioner for Coal in the Ministry of Economics, Paul Walther, had ideas about reorganizing the entire industry which alarmed the coal barons, since they felt his plan would lead to too much government control. Consequently, a series of conferences of the leaders of the industry was held (in which Flick, Buskuehl of Harpen, and Tengelmann of Essen participated) from which developed industry's own plan of reorganization—the RVK. The plan was approved by Goering at a conference in February 1941, which Flick attended, and the organization was officially announced in March.

The new association, which served as a model for Reich Associations in other fields, became the top control agency for the coal industry, and reported through the Ministry of Economics to Goering in his capacity as Plenipotentiary for the Four Year Plan.† It was given control over the syndicates, and many functions formerly performed in various offices of the Ministry of Economics were transferred to it. Membership was compulsory for all enterprises engaged in coal production, and authority was granted the

RVK to issue directives binding upon them. The **RVK** itself was headed by a chairman and a Praesidium, composed of the leading coal entrepreneurs. Paul Pleiger of the Hermann Goering Works was designated chairman. Flick, and the head of his Essen Steinkohle, Tengelmann, were on the Praesidium from the start, and Buskuehl of Harpen later became a member. Krupp and the Stahlverein had representatives on the Praesidium, as did other leading coal concerns. The defendant Steinbrinck, who was active in slave-labor matters in the western occupied territories, later became a member.

† In 1943, the supervisory control over the most important functions of the **RVK** was shifted to the Reich Ministry for Armaments and War Production under Albert Speer. [He was a defendant in the case before the International Military Tribunal.]

We are not further concerned here with the general structure and operation of this powerful semigovernmental body of businessmen. That it did its job well, from the point of view of the Nazi war effort, appears in a letter from Pleiger to Flick, 12 January 1944, from which the following is an extract (*NI-4330, Pros. Ex. 217*):*

“The output of hard [soft] coal increased in the past calendar year by about 10.8 million tons, the output of brown coal by about 11.1 million tons, and the production of briquettes by about 3.6 million tons.

“I know what efforts were needed for it, and I also know the joy which the expressive thanks of the Fuehrer and Reich Marshal will arouse in you.”

What was the reason for this upturn in coal production? There had always been sufficient coal in the pits. Labor was the key to the problem, and the **RVK** addressed itself vigorously to that problem. It brought the combined pressure of the entire industry to bear on all agencies involved in the recruitment and allocation of slave labor. Its representatives joined with the Wehrmacht and the SS in the forcible procurement of workers. Its committees collected statistics on labor demands, collated them, and pushed through approvals for such demands at any level necessary. Its Committee for Social Affairs sent a barrage of circulars to the industry containing advice on how to get and how best to use slave labor. The activity of these, and other Reich Associations, was largely responsible for the increasing quotas of foreign labor. Sauckel was ordered to fill.

Pleiger busied himself at the top level. He attended numerous meetings of the Central Planning Board;† meetings at which the allocation of foreign laborers was determined as between different industries. For example, we find him, together with **RVE** representatives, at the Central Planning Board meeting on 22 July 1942,

* Reproduced in section V C.

and the next day Burkart informed Flick of the results (NI-5234, Pros. Ex. 238):*

† The Central Planning Board was organized in 1942 to deal with all major problems of planning in connection with the war effort. It was originally composed of Speer, Milch, and Koerner. Funk was added in 1943.

“I have been informed by Mr. Sohl and Mr. Scheer that the main topics of discussion at yesterday’s conference with Minister Speer were the food situation and the increase in coal production. Gauleiter Sauckel has now finally promised to procure 120,000 Russian workers for the mining industry within the next 4 to 6 weeks, so that Mr. Pleiger can make available the necessary additional coal for steel production.

[Signed] Burkart”

The pressure increased as the war went on. In the summer of 1943 the RVK succeeded in getting first priority on prisoners of war. The following memorandum, signed by Keitel at Hitler’s headquarters on 7 August 1943 is illuminating (NI-2840, Pros. Ex. 246):

“On August 7, the Fuehrer ordered that the necessary *coal production* be guaranteed under all conditions, and the labor demands necessary for that purpose be supplied through prisoners of war, in order to fulfill the increased iron and steel production scheme.

* * * * *

“The chairman of the Reich Association Coal is authorized to select them immediately through his executive functionaries already in prisoner-of-war camps in the area under the Army [Armed Forces] High Command.”

Yet, only 23 days later, the RVK was complaining to Speer that it was not getting its full share. Pleiger’s letter stated (NI-2841, Pros. Ex. 247):

“Dear Party Member Speer:

“I must strongly contradict the intention of the Army [Armed Forces] High Command, I received from you, to include the 50,000 Soviet prisoners of war, who are to be recruited from the civilian sector in July, in the allotment of 200,000 Soviet prisoners of war who, pursuant to the Fuehrer order, have to be allocated to the coal mining industries. Moreover, I must insist on the full allocation of the 50,000 from the so-called July scheme, and of the 200,000 Soviet prisoners of war, pursuant to the Fuehrer order, to the last man.

* * * * *

“When I demanded 250,000 workers, I based it on the assumption that the current losses would amount to about 30 percent. The number of labor for allocation for the period from 1 July

* Reproduced in section VII B.

till 20 August 1943, of which you have been informed, show however that the losses at the moment are considerably higher.”

The losses to which Pleiger refers in this letter were indeed severe. He knew the reasons for these losses, as did every other entrepreneur of the coal industry, but he was careful not to mention them when he was attempting to get more victims to be exploited in the mines. Had he not seen the numerous reports from army inspectors as to the miserable treatment of these prisoners of war? The staggering turnover in this type of labor is easily understood from this report taken from the files of the RVK itself. The report was sent from its regional office to all members of the association in the Ruhr, and is dated 29 January 1943 (*NI-2934, Pros. Ex. 266*):

“The Armed Forces (Wehrmacht) and the civilian authorities are frequently complaining that the treatment of Russian prisoners of war in some pits still leaves much room for improvement; beating and mistreatments have not yet disappeared and all humane treatment underground as well as on the pit surface is still completely lacking.

“From the above, one must conclude that just treatment, or even some interest for the prisoners of war entrusted to them, is not existent. How else could one explain the daily death rate and the sending away of the totally emaciated, half-dead wretches after having been employed for only several months?”

Admonitions such as these had no effect upon the mine owners. Their complete lack of consideration for the welfare of the prisoners continued despite anything the army said to them. They even blandly ignored orders from the Wehrmacht if they thought compliance with such orders might cause a decrease in production. A status report in March 1944, from the same regional group of the RVK to the head office in Berlin, reads as follows (*NI-2745, Pros. Ex. 263*):

“The losses of Soviet prisoners of war were especially great in March, because by order of the Army [Armed Forces] High Command all TB cases should have been released from the mining industries. On the basis of mass X-ray examinations, it was established that this action would entail the loss of 10 percent of the prisoners of war employed. As such a loss would have had very bad influence on the production, in the future only prisoners of war suffering from open TB or active TB—that would involve about 5 percent of the total of prisoners of war employed—would be released.”

As stated above, the RVK was a forerunner of similar associations in other industries. On 29 May 1942, the Reichsvereinigung Eisen (RVE) was established for the iron and steel industry. Her-

mann Roechling, the Saar steel king, was its chairman; Walter Rohland of Vereinigte Stahlwerke and Alfried Krupp were assistant chairmen. The Praesidium in this instance consisted of only seven members. Flick was appointed when the RVE was organized and remained a member throughout the war. There were but two men who were in the Praesidium of both the RVE and the RVK, Flick and Alfried Krupp. Burkart served on several important committees of the RVE, and there were a number of Flick men in key positions throughout the organization.

The activities of the RVE in slave labor paralleled those of the RVK. Roechling and Rohland attended meetings of the Central Planning Board. Close working relationship was maintained with the Reich Ministry of Labor, and a Central Committee for Social Welfare and Allocation of Labor saw to it that the interests of the steel makers were not neglected in obtaining manpower from foreign sources. The RVE also made certain that its members were taking the necessary precautions to get the most out of such labor.

The following quotation is taken from a circular, dated 4 October 1943, signed by Roechling, and distributed throughout the entire industry (*NI-3178, Pros. Ex. 310*):

“Cases of unwillingness, misbehavior, and escapes must be pursued relentlessly; in fact, the factories may have to go as far as reporting the workers to concentration camps. * * * The RVE asks the Gestapo* (Sicherheitshauptamt) and the Ministry of Labor (Reich Trustees of Labor) in such cases to expedite prosecution and punishment. * * *

“With this treatment the foreigners would soon realize that they will fare better if they behave properly and work willingly, rather than be difficult, work poorly, and leave their place of work.”

The extent of the suffering, misery, and death which resulted from that part of the slave-labor program in which these defendants are directly implicated cannot be accurately estimated. We have said that at least 40,000 workers were enslaved by the Flick Konzern. We have seen that some of the defendants must also bear responsibility for the use of slave labor throughout the coal and steel industries. RVK statistics, as of 1 January 1944, show that 402,344 foreign workers and prisoners of war were employed in the coal industry. There are no comparable statistics available for the iron and steel industry, although there is evidence that at least 125,000 were involved.

* The Gestapo (Secret State Police) was Amt (Department) IV of the Reich Security Main Office (Reichssicherheitshauptamt-RSHA).

Such statistics tend to submerge the notion of crime. To say that half a million persons were subjected to slavery—or that hundreds of thousands were mistreated—or that tens of thousands died, blunts the senses. It is perhaps better to think in terms of one man. Let us say he is a Russian farmer, 41 years old. He has a wife and two children. He is picked up by some SS men on his way to a neighboring farm. He is bewildered, and there is no way to get word to his family that something has happened to him. Two days later, he is on a train on his way to Germany. He is crowded in the car and he is hungry, but there are uniformed guards about and he does not want to get in any trouble. Eventually he is assigned to work in a coal mine. He is used to working long hours in the fields. But 12 hours a day underground in the damp cold is different. He stands in water up to his knees. His shoes wear out. There are no boots for him, although the German workers seem to have them. He writes to his family, but he never hears from them. The thin soup, which is about all he has to eat, is not enough to keep him going. He begins to lose weight and becomes more and more tired as the days and months roll on. He develops a cough and thinks he is a very sick man. The foreman won't let him go to see the camp doctor for several months. He collapses at work and is given 2 days' rest. An X-ray is taken of his chest, and they decide to send him back to the pits. In two more weeks he is dead.

The student of criminal law could analyze our story and attach neat labels to various parts of it: kidnaping, unlawful restraint, slavery, manslaughter. He could add labels from the law of nations; violation of family honor and rights, deportation of labor from occupied territories. We need not resort to these labels. The most elementary standards of human decency were violated when this man's freedom, dignity as a human being, and life were destroyed. This is the real nature of the crimes charged in this count of the indictment.

COUNT TWO—PLUNDER OF PROPERTY IN OCCUPIED TERRITORIES

MR. LYON: During the 6 years of the last war the world was rife with shocking rumors that the Third Reich was ruthlessly and greedily plundering the countries and territories which had the misfortune to fall under German occupation. Reality proved even more shocking than rumor. This looting was an essential element in the initiation and waging of aggressive wars. But apart from this, German occupation practices, both in general plan and in detail, flagrantly violated all known standards under

the laws and customs of war prescribing the permissible use of the resources of countries occupied by a belligerent. The International Military Tribunal said in its decision, and I quote: ¹

“The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic ‘plunder of public or private property’, which was criminal under Article 6 (b) of the Charter.”

Like the German slave-labor program, the whole scheme and pattern of the German treatment of property in occupied countries has already been found to be criminal by the International Military Tribunal. It is the defendants’ participation in these illegal plans, programs, and enterprises that is to be determined in this proceeding.

The defendants and other German industrialists played a prominent part in the planning and execution of these crimes. They had been assured that their full cooperation with the Nazi regime, in its feverish preparation for aggressive war, would be amply rewarded. In a speech before the leaders of German industry in December 1936, Hermann Goering had told them; and I quote (*NI-051, Prosecution Exhibit 509*): ²

“The only deciding point in this case is victory or destruction.

If we win, then the economy will be sufficiently compensated.

* * * We are now playing for the highest stake.”

In July 1938, Goering assured leaders of the aircraft industry, in which Flick was also represented, of great material rewards. He said at that time ³—

“And the possibility of victory indeed exists. It depends solely on our own power, on the manner in which we mobilize that power, and on the degree to which everybody is resolved to do his bit, convinced as he is that afterwards every individual will experience personally the advantages, as well as the disadvantages, of the situation.”

The spoliation programs of Germany in France and the Soviet Union, though both criminal, differed considerably in form. In France the process was more subtle and an effort was made to employ legal formalities to conceal what was really happening. In Russia, on the other hand, plans for the crudest sort of plunder were carried out on a very broad scale and the restraints of international law were openly disregarded.

¹ Trial of the Major War Criminals, op. cit. volume I, page 239.

² Reproduced in part in section V C.

³ This statement is contained in a document introduced in the IMT trial as Document R-140, USA Exhibit 160. The full German text is reproduced in Trial of the Major War Criminals, op. cit., volume XXXVIII, pages 375-401.

A. Plunder in France

On 17 June 1940, even before the surrender of France, Flick and the other rulers of the German iron and steel industry were laying plans to seize the valuable iron reserves and smelting plants of Lorraine. Captured records of certain private meetings in the summer of 1940 of leaders of the seven biggest steel companies of Germany have revealed that it was these industrialists who were taking the initiative and actually trying to push the German Government itself into dispossessing the French owners. For some time before 1940, the leaders of these seven companies—Vereinigte Stahlwerke, Flick, Krupp, Mannesmann, Hoesch, Kloeckner, and Gutehoffnungshuette—had privately held regular meetings as a group which called itself the “Small Circle” (Kleine Kreis) or the Siebener Club (literally, “Club of Seven Members”). Meetings of this Small Circle discussed problems of common interest in the industry—before the war, these had been largely problems connected with secret rearmament, procurement of raw materials, and war mobilization—and they frequently shaped policies which would be formally executed by public and semipublic agencies regulating the industry, such as the Economic Group of the Iron Producing Industries, (Wirtschaftsgruppe Eisenschaffende Industrie) which was headed by one of their members, Ernst Poensgen of Vereinigte Stahlwerke.

The preoccupation of Flick and these other leaders of German heavy industry with securing the spoils of aggressive war appears most clearly from the minutes of a meeting of the Small Circle held at the Stahlhof in Duesseldorf on 7 June 1940. These minutes report a conversation between Wilhelm Zangen, head of the Mannesmann concern and Walther Funk, Minister of Economics, whose own participation in the plunder of Europe was found criminal by the International Military Tribunal. The minutes of the meeting state that (NI-048, *Pros. Ex. 516*): *

“Herr Funk referred to the fact that he had given considerable assistance to national economy (i.e., German business) * * * and he now asked * * * that care be taken that no excesses should occur, which might give an opening to the opponents of private enterprise * * * particularly one should seek now to repress all desire for *annexation* (Annexationsgelueste).”

Funk’s admonition apparently had little effect on the steel barons—certainly it had none on Flick—and within 6 months they had persuaded the government to adopt a plan under which the steel mills and smelting plants in Lorraine would be turned over to the big German concerns. These concerns were to operate the plants as so-called trustees, keeping the profits, less a royalty paid

* Ibid.

to the German Government, and they were promised an opportunity to purchase the plants, if feasible, upon the return to peacetime conditions. The plan of distribution, which was put into effect as of 1 March 1941, allocated to Flick the plants of the Société Aciéries de Rombas in Lorraine. These plants were among the most desirable in France, and they increased Flick's total capacity for production of raw steel by over 25 percent. Flick operated the properties through a company formed for the purpose, Rombacher Huettenerwerke G.m.b.H., ownership of which was divided between the Harpen and Maxhuetten companies.

Flick's acquisition of Rombach was the result of careful planning by Flick, Kaletsch, Burkart, and Weiss, and constant efforts were made by them to influence government officials, including Goering, Funk, and von Hanneken.* In early July 1940, Burkart reported to Flick a conversation with Poensgen at a meeting of the Small Circle. Poensgen said he had been told by Steinbrinck, who by this time held the important position of Plenipotentiary for Iron and Steel in northern occupied France, that he should draw up a plan of distribution of plants in Lorraine and Luxembourg. Burkart wrote Flick that Poensgen promised,

"He will not pass on any projects before discussing them with you."

* General von Hanneken was Plenipotentiary for Iron and Steel under the Four Year Plan and a leading official of the Ministry of Economics.

Later, in July 1940, Flick discussed with his old associate Albert Voegler, the leading man of Vereinigte Stahlwerke, a suggestion of von Hanneken's for leaving the French owners at least a minority stock participation of 20-25 percent. A memorandum written by Flick himself states his attitude toward this idea in a short but eloquent sentence. Flick wrote (*NI-1991, Pros. Ex. 523*): "In my opinion this is unnecessary."

A few days later, 5 August 1940, Weiss wrote a memorandum for Burkart which likewise reported a statement by Flick to the effect (*NI-3533, Pros. Ex. 524*): "One should not even consider the question of French circles keeping a minority participation."

Flick naturally had competition in securing such a prize as Rombach. One other German industrialist who tried, but unsuccessfully, to beat Flick in this race was Hermann Roechling, the leading German industrialist of the Saar, who had charge of running the Rombach plant after June 1940 in his capacity as Commissioner for the Iron and Steel Industry in Lorraine. In January 1941, he wrote to von Hanneken vigorously protesting the rumored allocation of Rombach to Flick. Roechling wrote (*NI-3018, Pros. Ex. 29*):

"If the management of the plant were transferred from Rombach to Flick instead of to me, I would definitely consider it as

a personal insult. I cannot deny that Herr Flick is a captain of industry who has succeeded in amassing a large fortune by buying up stocks and shares.

* * * * *

“It is no use telling me that no decision is being made at the moment with regard to distribution, and that only plant management contracts are being made, which can be changed at a later date without any difficulty. If they are intended to be changed later on, they can just as well be drawn up correctly now.”

Roechling stated in conclusion that he was going to take the matter up with Goering. But apparently Flick's connections with Goering were strong enough to withstand even the stoutest attack, for within 2 months the assignment of Rombach to Flick was definitely approved.

Steinbrinck, who by 1940 had left Flick, played a separate role in the illegal occupation policies of Germany. In his official capacity he participated in the formulation and execution of the plans whereby Flick and others secured the French plants. In addition, as Plenipotentiary for Coal and Plenipotentiary for Iron in occupied western territories, he played a prominent part in the direction of the entire German program for the ruthless exploitation of the coal, iron, and steel resources of France, Belgium, Holland, and Luxembourg, without regard for the restrictions imposed by the laws and customs of war.

B. Plunder in the Soviet Union

The plans for plunder of the Soviet Union had been made months in advance of the actual launching of the invasion. These plans, so far as they affected mining, smelting, and steel producing properties, were carried out by a semigovernmental corporation formed in August 1941 called the Berg- und Huettenwerksgesellschaft Ost m.b.H., known as the BHO. Flick was appointed to the Verwaltungsrat (administrative [supervisory] board) of the BHO as one of the four representatives of the coal and iron industry.

Flick's participation in the criminal exploitation of the resources of the eastern territories was, however, by no means limited to his position and activities as a member of the Verwaltungsrat of the BHO. After a few months of operation under the original policy of removing all materials to Germany, it was deemed advisable to attempt to establish industrial operations in the Soviet Union itself. In the plants operated under the sponsorship of the BHO, German industrial concerns undertook to develop the resources entrusted to them as rapidly as possible for the purpose

of supplying the armament needs of the German military machine. In return, the BHO made the following promise (NI-3689A, *Pros. Ex. 630*):

“The BHO will exert its influence so that the sponsor will be given consideration in the final settlement of the ownership of industrial plants in the Occupied Eastern Territories, according to the extent of its cooperation in the development of the economy of this area.”

When this new opportunity arose, Flick and his associates began strenuous efforts to gain possession of a very substantial group of plants in the area of the Dnepr bend. These efforts led to a partnership agreement between Flick and the Hermann Goering Works for joint operation of these and other plants through a company formed by the two partners called Dnjepr-Stahl [Dnepr Steel] G.m.b.H. The agreement reached with the Hermann Goering Works in September 1942 was considered most satisfactory by Flick and his associates. Burkart's assistant, Kuettner, wrote to Flick in October 1942, as follows (NI-3666, *Pros. Ex. 647*):

“The division of work between Mittelstahl and Stahlwerke Braunschweig [Brunswick] in Dnjepr-Stahl G.m.b.H. in the manner prescribed by Mr. Pleiger is undoubtedly more advantageous than we believed up to now. While up to now we assumed that at best we should get only the foundry and railroad car factory, Kamenskeje [Dneprodzerzhinsk], and occupy them with our staff, we shall now have to take over the whole iron manufacturing end, while Stahlwerke Braunschweig is to be responsible for manufacturing munitions. * * * Dr. Burkart and Mr. Weiss also consider the latest working of the Pleiger proposal as quite favorable.”

Before the war these plants employed well over 80,000 workers, or about as much as the entire Flick Konzern before the war.

Having secured the promise of this great prize, Flick defended it against all possible competitors. For example, Flick successfully opposed a suggestion by Pleiger that Vereinigte Stahlwerke be brought into the management of some of the plants. Kuettner reported the meeting as follows (NI-3667, *Pros. Ex. 648*):

“Herr Flick was of the opinion that, by involving the Stahlverein, the situation within the Dnepr Group would become somewhat complicated. Then there would be three partners in all.”

The evacuation of the Dnepr bend in September 1943 frustrated Flick's dreams of an empire there. The German authorities and industrial concerns did not retreat without committing one final act of plunder. The records of the Economic Staff for the East

(Wirtschaftsstab Ost) tell us that over 1,000 railroad cars full of machines and materials were removed from the Dnepr area.

Flick, Burkart, Kaletsch, and Weiss also participated in the illegal seizure and exploitation of a factory in Riga commonly referred to by the name "Vairogs" or "Phoenix", which before the war had manufactured railroad cars and other iron and steel products. Flick's efforts to acquire these properties commenced little more than a month after the start of the German invasion of the Soviet Union, and were finally rewarded in September 1942 when his Busch-Bautzen company gained possession of the plant through a trusteeship arrangement awarded to it instead of to Krupp, who had also been interested in the property. When the officials of the Army Ordnance Office decided in favor of Flick they were promised a suitable reward. Burkart wrote Weiss (NI-3654, *Pros. Ex. 599*):

"* * * that we would ask not only Herr Purucker, but above all, Leyers, to become a member of the supervisory board (Aufsichtsrat) of the Phoenix, in case we managed to found a separate company of our own there. Herr Leyers is said to have been very pleased about this and gladly agreed."

When the contracts were drawn up, the defendants tried in vain to obtain a binding commitment that the government would, at the end of the war, transfer title to the property to the Flick Konzern. However, there was little doubt in their minds that this would be the successful outcome. The authorities were reserving properties in the East for combat veterans after the war. But Weiss noted with apparent satisfaction that there probably would not be any eligible veterans who could afford to enter the railroad car business. In a memorandum of 28 September 1942, Weiss reported on conferences he had had with government officials. The memorandum states as follows (NI-3087, *Pros. Ex. 602*):

"In this connection, we also touched on the question of an option on the railroad car factory Bautzen. The gentlemen pointed out, however, that this was contrary to a decree in which the Fuehrer expressly stated that all enterprises in the eastern territory should, after the end of the war, be made available primarily to deserving combat veterans. We remarked that we would endeavor to operate the works in such a way that the Reich Commissioner would be satisfied with us and that, nevertheless, we hoped later on to have a chance of negotiating on the purchase of the works. The representatives of the Reich Commissioner mentioned, too, that it was very questionable indeed whether one person could be found later on who was a combat veteran and suitable for taking over and operating these large works."

The Vairogs plant was operated by Flick from October 1942 until the evacuation of Riga in the summer of 1944. During this period it was actively engaged in war work, filling orders for gun carriages, armored cars, and freight cars for the armed forces.

In July 1943 it was apparent that the evacuation of Riga was imminent. Without waiting to receive official orders to evacuate, the Flick management began to prepare the machinery for shipment. By 29 September, when official orders to evacuate were received, more than 320,000 kilograms had already been removed.

The reaction of the defendant Weiss to this last note of plunder sums up very well the defendants' point of view toward property in occupied territories. Weiss warmly congratulated his manager at Vairogs, in the following words (*NI-3598, Pros. Ex. 611*):

"The fact that you can still load a total of fifty cars in Riga seems to be a remarkable achievement. Let us hope now that the greater part of the salvaged material may be preserved for the German armaments economy."

The attitude of these defendants, and of other German industrialists was just this—the more property they could seize in other countries, the more "remarkable" the "achievement", as Weiss put it. For them, it was open hunting season in all of occupied Europe, and anything they could lay their hands on was fair game. But it is important to remember that what they participated in was far more than larceny on a grand scale. They were also important participants in a program which had for its basic objective the complete ruination of the economies of the occupied countries and the permanent subjugation of their people and their material resources to German domination. Neither the illegal treatment of the property of occupied countries, nor the illegal enslavement of their citizens, were simple isolated crimes. Whatever the particular motives of individual participants in those crimes, both were really parts of a single over-all criminal purpose and program, which was nothing less than the complete domination of Germany over all of Europe and the ruin, enslavement, or outright extermination of the independent life of other countries, their citizens, and physical resources.

WAR CRIMES AND CRIMES AGAINST HUMANITY

GENERAL TAYLOR: Before proceeding to sketch the evidence under counts three and four of the indictment, the prosecution wishes to outline its conception of the legal principles underlying war crimes and crimes against humanity, as defined in Article II of Control Council Law No. 10. Particularly with

respect to crimes against humanity, counts three and four of this indictment embody charges of criminal conduct before the outbreak of war in 1939. The other cases which have been or are now being tried before these Tribunals do not charge the commission of crimes against humanity prior to September 1939.

The definitions of crimes in Law No. 10, and the comparable definitions in the London Agreement and Charter of 8 August 1945, are statements and declarations of what the law of nations was at that time and before that time. They do not create "new" crimes; Article II of Law No. 10 states that certain acts are "recognized" as crimes. International law does not spring from legislation; it is a "customary" or "common" law which develops from the "usages established among civilized peoples" and the "dictates of the public conscience."¹ As they develop, these usages and customs become the basis and reason for acts and conduct, and from time to time they are recognized in treaties, agreements, declarations, and learned texts. The London Charter and Law No. 10 are important items in this stream of acts and declarations through which international law grows; they are way stations from which the outlook is both prospective and retrospective, but they are not retroactive. Mr. Henry L. Stimson has recently expressed these principles with admirable clarity:²

"International law is not a body of authoritative codes or statutes; it is the gradual expression, case by case, of the moral judgments of the civilized world. As such, it corresponds precisely to the common law of Anglo-American tradition. We can understand the law of Nuremberg only if we see it for what it is—a great new case in the book of international law, and not a formal enforcement of codified statutes."

Law No. 10 is all this and something more besides. It is a legislative enactment by the Control Council, and is therefore part of the law of and within Germany. One of the infirmities of dictatorship is that, when it suffers irretrievable and final military disaster, it usually crumbles into nothing and leaves the victims of its tyranny leaderless amidst political chaos. The Third Reich had ruthlessly hunted down every man and woman in Germany who sought to express political ideas or develop political leadership outside of the bestial ideology of Hitler. When the Third Reich collapsed, Germany tumbled into a political vacuum. The Declaration by the Allied powers of 5 June 1945, announced the "assump-

¹ Hague Convention No. IV of 18 October 1907.

² Henry L. Stimson, *The Nuremberg Trial; Landmark in Law*, (Foreign Affairs, New York, October 1946-July 1947) Volume 25, page 180.

tion of supreme authority" in Germany "for the maintenance of order" and "for the administration of the country", and recited that:

"There is no central government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country, and compliance with the requirements of the victorious powers."

Following this declaration, the Control Council was constituted as the repository of centralized authority in Germany. Law No. 10 is an enactment of that body, and is the law of Germany, although its substantive provisions derive from and embody the law of nations. The Nuernberg Military Tribunals are established under the authority of Law No. 10,† and they render judgment not only under international law as declared in Law No. 10, but under the law of Germany as enacted in Law No. 10. The Tribunals, in short, enforce both international law and German law, and in interpreting and applying Law No. 10, they must view Law No. 10 not only as a declaration of international law, but as an enactment of the occupying powers for the governance of and administration of justice in Germany. The enactment of Law No. 10 was an exercise of legislative power by the four countries to which the Third Reich surrendered, and, as was held by the International Military Tribunal:*

"* * * the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world."

† Control Council Law No. 10, Article III, paragraphs 1 (d) and 2; Military Government Ordinance No. 7, Article II.

The "war crimes" defined in Law No. 10 are, by definition, crimes committed in the course of war. Their primary sources are the Hague Conventions of 1907 and the Geneva Convention of 1929, which declare the law of nations at those times with respect to land warfare, the treatment of prisoners of war, the rights and duties of a belligerent power when occupying territory of a hostile state, and other matters. There are no significant differences between the definitions of "war crimes" contained in the London Charter, and in Law No. 10. The scope of "war crimes" in both is limited to "violations of the laws or customs of war."

The charge of "war crimes" has no application, accordingly, prior to the time when Germany actually embarked on its invasions and aggressive wars. The war crimes count of the indictment in the international trial was restricted to acts committed after the outbreak of war with Poland on 1 September 1939. This limitation was undoubtedly too narrow; the International Military

* Trial of the Major War Criminals, op. cit. volume I, page 218.

Tribunal held that the occupation of Bohemia and Moravia in March 1939 was an aggressive act resulting in a military occupation covered by the rules of war.¹ Argument could perhaps also be made that the occupations of Austria and the Sudetenland in 1938 were sufficiently akin to a state of belligerency to bring the laws of war into effect.

Likewise, the laws and customs of war apply between belligerents, but not domestically or among allies. Acts by German nationals against other German nationals are not "war crimes", nor are acts by Germans against Finns, Hungarians, or Rumanians. Here again, German acts in Austria, Czechoslovakia, and Italy after the 1943 capitulation might present special problems, but we believe them to be academic in this case.

With respect to all three types of crimes recognized in Law No. 10 (crimes against peace, war crimes, and crimes against humanity), those Tribunals are, we respectfully submit, bound by the definitions in Law No. 10, just as the International Military Tribunal was bound by the definitions in the London Charter:²

"The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal.

"The Tribunal is, of course, bound by the Charter, in the definition which it gives both of War Crimes and Crimes against Humanity."

In dealing with any questions which may arise concerning the interpretation of Law No. 10, the Tribunal should, we believe, construe the law with due regard to its dual nature as a declaration of established principles of international law, and an enactment by the Control Council having the force of law in Germany. These factors will be of some importance in analyzing the definition of "crimes against humanity."

The civilized usages and customs upon which the definition of crimes against humanity is based are far more ancient than those which gave rise to the concept of crimes against peace. The idea that aggressive warfare is criminal was, to be sure, hinted at by Grotius, but it cannot be said to have won universal acceptance until the early part of the twentieth century, and its most striking embodiments in treaties, declarations, and texts occurred after the First World War. But the "public conscience" of civilization has, at least since the American and French Revolutions, con-

¹ Ibid, p. 334.

² Ibid, pp. 218, 258

demned as criminal those massacres and murderous persecutions of population groups, which have occurred most frequently in the past on racial and religious grounds. There are, to be sure, the conventions, similar to the Hague and Geneva Conventions, which deal with crimes against humanity. But crimes against humanity are as old as war crimes, even though their substantive content has never been spelled out in meticulous detail.

The London Charter, in Article 6 (c), defined crimes against humanity as follows:

“Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

The comparable definition in Law No. 10 [Article II, paragraph 1 (c)] reads:

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

The addition of words such as “torture” and “rape” in the first part of the definition does not significantly alter its meaning. As will be seen in a moment, the same is true of the omission of the clause “before or during the war”. Of considerably more importance is the clause “in execution of or in connection with any crime within the jurisdiction of the Tribunal” which appears in the definition of the London Charter, but is omitted from the definition in Law No. 10.

The International Military Tribunal construed this clause as meaning that crimes against humanity do not, so to speak, stand on their own feet, but are crimes under the London Charter only if committed “in execution of or in connection with” crimes against peace or war crimes. The Tribunal further determined that the evidence concerning crimes committed prior to 1939 did not sufficiently establish such a connection, but it simultaneously held that all such crimes committed during the war were so connected and constituted crimes against humanity. All this appears in the following extract from the judgment: †

† Judgment of the International Military Tribunal, volume 1, Trial of the Major War Criminals, pages 254 and 255.

“The policy of persecution, repression, and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were crimes against humanity within the meaning of the Charter but from the beginning of the war in 1939, war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.”

Before discussing the International Military Tribunal's construction of the London Charter, it will be helpful to note two points concerning crimes against humanity, as defined in Law No. 10, which are, we believe, quite clear. The first is that the definition of crimes against humanity certainly comprehends such crimes when committed by German nationals against other German nationals.† It is to be observed that all the acts (murder, imprisonment, persecution, etc.) listed in the definition of crimes against humanity would, when committed against populations of occupied countries, constitute war crimes. Consequently, unless the definition of crimes against humanity applies to crimes by Germans against Germans, it would have practically no independent application except to crimes against nationals of the satellite countries, such as Hungary and Rumania.‡ Surely a major cate-

† The same is true of crimes against peace and war crimes, but the application of these crimes to acts by Germans against Germans is almost entirely theoretical.

‡ Even the crimes in Bohemia and Moravia were war crimes under the Tribunal's decision. Judgment of the International Military Tribunal, volume 1, Trial of the Major War Criminals, page 334. The Tribunal apparently held that all persecutions, etc., committed after 1939, were crimes against humanity no matter where committed, and were also war crimes if committed in a country where the laws of war were applicable. (Id., pages 254-55, 259.) Military Tribunal II, in its opinion and judgment, in *United States v. Erhard Milch* (16 April 1947), held that Law No. 10 is applicable to crimes against humanity committed by Germans against nationals of the Axis satellites.

gory of crimes would not have been created for so relatively trivial a purpose. But the matter is put quite beyond doubt by Article III of Law No. 10, which authorizes each of the occupying powers to arrest persons suspected of having committed crimes defined in Law No. 10, and to bring them to trial "before an appropriate tribunal". Article III Par. 1 (d) further provides that:

"Such tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons, be a German court, if authorized by the occupying authorities."

This constitutes an explicit recognition that acts committed by Germans against other Germans are punishable as crimes under Law No. 10 according to the definitions contained therein, since only such crimes may be tried by German courts, in the discretion of the occupying power. If the occupying power fails to authorize German courts to try crimes committed by Germans against other Germans (and in the American Zone of Occupation no such authorization has been given), then these cases are tried only before non-German tribunals, such as these Military Tribunals.

The second point is that Law No. 10 covers crimes against humanity committed prior to the attack on Poland in 1939, and at least as far back as the Nazi seizure of power on 30 January 1933. This is the interpretation most consistent with the obvious purposes of Law No. 10 as an enactment for the administration of justice in Germany. But, again, the provisions of the law itself leave no room for doubt. Article II (par. 5) of Law No. 10 provides that:

"In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect of the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment."

This provision has no application to war crimes, since the rules of war did not come into play, at the earliest, before the annexation of Austria in 1938. Nor, so far as we knew, were there any German municipal laws recognizing or punishing crimes against peace, to which statutes of limitations might have applied, or any Nazi amnesties or pardons with respect thereto. This provision is clearly intended to apply primarily to crimes against humanity, and explicitly recognizes the possibility of their commission on and after 30 January 1933.

Viewing Law No. 10 as a legislative enactment for the governance of Germany, what is the scope of crimes against humanity

as therein defined? We cannot and need not discuss all possible questions at this stage of this one case, and no doubt the Tribunals may desire fuller discussion at a later stage in these proceedings. But certain things are clear. The definition condemns "murder", "rape", and other familiar crimes, but obviously not all murder and rape cases are crimes against humanity in the sense of the statute. Private and occasional murders and sex offenses, such as unfortunately occur even in the most orderly and democratic nations, are not within its intendment. Nor, we believe, are localized outbursts of race hatred, or petty discriminations, covered by the word "persecutions". At the opposite end of the scale are wholesale, nation-wide campaigns, openly supported or connived at by the government, to make life intolerable for, to expel, to degrade, to enslave, or to exterminate large groups of the civilian population. Such persecutions and murders, enslavements, or other inhumane acts committed in connection therewith, certainly fall within the scope of the definition. And it is participating in crime of this magnitude which is charged against the defendants in counts three and four of this indictment.

Acts properly falling within the definition in Law No. 10 are, we believe, punishable under that law when viewed as an occupational enactment, whether or not they were connected with crimes against peace or war crimes. No other conclusion can be drawn from the disappearance of the clause "in execution of or in connection with any crime within the jurisdiction of the Tribunal."¹ And no other conclusion is consonant with the avowed purposes of the occupation as expressed at the Potsdam Conference, cardinal among which are the abolition of the gross and murderous racial and religious discriminations of the Third Reich, and preparation:²

"for the eventual reconstruction of German political life on a democratic basis, and for eventual peaceful cooperation in international life by Germany."

These purposes cannot possibly be fulfilled if those Germans who participated in these base persecutions of their fellow nationals during the Hitler regime go unpunished. Were sovereignty in Germany presently exercised by a democratic German Government, such a government would perforce adopt and enforce legislation comparable to these provisions of Law No. 10. Much better it would be if this legislation were German and enforced by German courts, but there is as yet no central German Government,

¹ As to the application of this clause by the International Military Tribunal, see Trial of the Major War Criminals, op. cit., volume I, pages 66, 67 and following pages.

² Joint Report of the Anglo-Soviet-American Conferences, Berlin 2 August 1945, part III, paragraphs 3 and 4.

old passions and prejudices are not yet completely dead, the judicial tradition is not yet fully reestablished, and the American authorities have not, as yet, seen fit to exercise their discretionary power to commit the enforcement of Law No. 10, as between Germans, to German courts. *

* Such authority has been delegated to the German courts in the French zone. On 4 June 1946, the Court of Appeals of Baden (Badener Oberlandesgericht Freiburg) decided, in a criminal case against an auctioneer (acquitted for other reasons), that the confiscation of certain Jewish property in 1940 was a crime against humanity under Control Council Law No. 10. The decision is reported in *Deutsche Rechts-Zeitschrift*, September 1946, pages 93 and 94.

We believe, accordingly, that crimes against humanity as defined in Law No. 10 "stand on their own feet" and are quite independent of crimes against peace or war crimes. This is the only logical and meaningful construction of Law No. 10 as an occupational enactment. But it must not be forgotten that the dictatorship of the Third Reich was highly integrated, and it would be a serious mistake to overlook the close connection between the crimes against humanity charged in counts three and four of the indictment, and the planning and waging of aggressive warfare and war crimes. The acquisitions of brown coal fields through "Aryanization" of Jewish holdings were part of a general program to render Germany self-sufficient for war by utilizing brown coal for making synthetic gasoline, and independent of ore imports, through the development of low-grade ore deposits situated around Salzgitter near the brown coal fields. The crimes against humanity committed by the SS, which Flick and Steinbrinck helped to finance, were inextricably intermingled with war crimes, and with the preparation and waging of aggressive wars. Those interrelationships and connections will be fully established by the evidence which the prosecution will offer.

The foregoing exposition of the theory and scope of the definition of crimes against humanity in Law No. 10 does not, we believe, raise any substantial questions of retroactivity or *ex post facto* application.

To begin with, a great many of the acts covered by the definition were crimes at the time they were committed, under the law of Germany, even of Nazi Germany. The Third Reich never legalized murder, torture, and other inhumane acts, although the government did openly instigate and support many such crimes. Most of this was done administratively by abuse of the police power, by extralegal organizations such as the SS, by the Wehrmacht, by prostitution of the judiciary, and, in general, by consciously and deliberately suppressing the law and perverting the agencies

for its enforcement. As to those persecutions which were purportedly legalized, as for example by the Nuernberg Laws, the authors and executors of these tyrannical measures surely knew, at the time, that they were acting at peril of just retribution in the event of subsequent overthrow of the dictatorship and revival of democracy and the reign of law.* It is in order to avoid any distinction based on "legislation" such as the Nuernberg Laws that both the London Charter and Law No. 10 declare certain acts to be crimes against humanity "whether or not in violation of the domestic law of the country where perpetrated."

* The confiscation of Jewish property involved in the Baden case, mentioned in the previous footnote [in text], had been ordered in 1940 by the Gauleiter and Reichsstatthalter (Provincial Governor). The Court of Appeal said: "In view of the facts, it cannot be doubted that the Gauleiter, in ordering these measures, was fully conscious of the criminal nature of the acts committed."

What is even more fundamental, the Nazi program for the eradication of Jewry could not be legalized by the Nuernberg Laws, or by any German or national law. This murderous program violated usages long established among civilized peoples, and was criminal under the law of nations.

In approaching this final point in our exposition, it is desirable to refer again to the International Military Tribunal's decision under the London Charter. Since the words were eliminated from Law No. 10, there is no need here to discuss at length the Tribunal's conclusion that the phrase "in execution of or in connection with any crime within the jurisdiction of the Tribunal" limits the definition of crimes against humanity to such as were connected with crimes against peace, or war crimes. Certainly it was not the only possible construction, and it seems to us far more probable that the clause in question was intended to make it clear that the definition was not meant to embrace private or occasional crimes, or local, petty persecutions, but only such wholesale campaigns of eradication as are condemned by civilized usage as contrary to the law of nations, and therefore "within the jurisdiction" of a Tribunal established to apply and enforce the law of nations.

Assuming the validity of the International Military Tribunal's conclusion in this respect, it seems far more difficult to follow that decision in arbitrarily fixing upon September 1939 as the date before which none of the acts mentioned in the definition of crimes against humanity are punishable as such, and after which all are punishable. It is at least theoretically possible that some such crimes were committed after 1939 which had no substantial connection with crimes against peace or war crimes. It

is more than possible—it is quite certain—that many crimes before the war were closely connected with preparations and plans for aggressive war.† The prosecution strongly urges that the degree of connection should have been ascertained on the basis of the evidence establishing the particular crime, rather than by recourse to a plausible but essentially arbitrary date. Perhaps in a proceeding of such wide scope as the international trial, this would have been extremely burdensome.

† In the case of von Schirach, the International Military Tribunal held that Austria was occupied “pursuant to a common plan of aggression” which was a crime within the jurisdiction of the Tribunal and therefore a basis for charging crimes against humanity in connection with the occupation. Von Schirach, however, did not become a Gauleiter of Vienna until July 1940.

It is fair to say that the charge of crimes against humanity did not play an important part in the judgment of the International Military Tribunal,† and that those points may profitably be examined afresh. Mr. Henry L. Stimson’s comment on this aspect of the judgment is instructive: ††

† With the exception of Raeder and Doenitz (indicted on count three and convicted thereon, but not indicted on count four) and Streicher and von Schirach (indicted on count four and convicted thereon, but not indicted on count three), all defendants convicted under either count three (war crimes) or count four (crimes against humanity) were convicted under both. The acts charged against Streicher appear to have been war crimes, and he apparently could have been as readily convicted on count three had he been so indicted. Schirach was convicted on the basis of his actions in Austria beginning in July 1940.

†† Henry L. Stimson, *The Nuremberg Trial: Landmark in Law*, op. cit., volume 25, page 187.

“The charge of crimes against humanity was limited by the Tribunal to include only activities pursued in connection with the crime of war. The Tribunal eliminated from its jurisdiction the question of the criminal accountability of those responsible for wholesale persecution before the outbreak of the war in 1939. With this decision I do not here venture to quarrel, but its effect appears to me to involve a reduction of the meaning of crimes against humanity to a point where they become practically synonymous with war crimes.”

Even more illuminating are the comments on the Tribunal’s decision by the French member of the Tribunal, Professor Donnedieu de Vabres. In a lecture delivered in March 1947, the learned jurist stated: †

† *Le Procès de Nuremberg*, Conférence de Monsieur le Professeur Donnedieu de Vabres, Juge au Tribunal Militaire International des Grands Criminels de Guerre, under the auspices of the Association des Etudes Internationales and the Association des Etudes Internationales and the Association des Etudes Criminologiques, March 1947.

“The anxiety to safeguard the autonomy of states, which is nothing but application to international relations of an incontestable principle of conduct * * * was not neglected by the Tribunal. What shows that point is the attitude it adopted toward two types of crimes declared by the Charter and broadly set forth in the indictment; the ones dealing with the conspiracy and crimes against humanity.

“The general notion of conspiracy is peculiar to British law * * *. The notion of crimes against humanity is also an innovation, inasmuch as it reaches beyond infractions of common law—murders, assaults, and batteries—to reach ill-defined acts that common law does not repress, such as political, religious, or racial persecutions.

* * * * *

“But it is noteworthy that if the Tribunal, bound by the Charter, did not expressly reject these two notions, it did not draw from them any practical consequences. It emptied them of their substance.† Crimes against humanity are confounded with war crimes, so that infractions of this nature, committed before the outbreak of hostilities, are beyond the competence of the Tribunal, and only acts recognized and punished by existing law are declared criminal.”

† “Il les a vidées de leur substance.”

The prosecution respectfully suggests that it is not the function of the Military Tribunals to empty of their substance the provisions of Law No. 10, but rather to determine, and give effect to, what substance is found there. And in ascertaining, that substance we must look, as heretofore stated, to Law No. 10's dual nature as an occupational enactment, and as a declaration of principles of the law of nations.

No doubt its roots are even older, but the concept of crimes against humanity first finds identifiable expression, as an international law concept, in the works of Grotius. His view was much more far-reaching than what the prosecution suggests today. Grotius, the father of the legal distinction between “just” and “unjust” wars, described as “just” a war undertaken for the purpose of defending the subjects of a foreign state from injuries inflicted by their ruler.†

† Cited by the British chief prosecutor, Sir Hartley Shawcross, before the International Military Tribunal.

This doctrine that inhumane atrocities against civilian populations are so contrary to the law of nations that a country is rightfully entitled to interfere and endeavor to put an end to

them, by diplomatic protest or even by force, was repeatedly voiced and often acted upon during the nineteenth century.† We

† Perhaps the earliest such episode occurred in 1744, when England, Holland, six other countries, and the Pope joined in a movement to aid and protect the Jews of Bohemia, whose expulsion Maria Theresa had ordered.

do not propose a parade of scholarship at this time; a few instances will suffice.

England, France, and Russia intervened in 1827 to end the atrocities in the Greco-Turkish warfare.¹ President Van Buren's Secretary of State, John Forsyth, intervened with the Sultan of Turkey in 1840 on behalf of the persecuted Jews of Damascus and Rhodes.² The French intervened forcibly to check religious atrocities in Lebanon in 1861.³ During the latter part of the nineteenth century and up to 1915, there was a series of protests and expostulations from a variety of nations directed to the governments of Russia and Rumania with respect to pogroms and other atrocities against Jews, and to the government of Turkey on behalf of persecuted Christian minorities.⁴ In 1902, Secretary of State John Hay sent to Rumania a note of strong remonstrance "in the name of humanity" against Jewish persecutions, saying "this government cannot be a tacit party to such international wrongs". The Kishinev massacre and other massacres in Russia in 1903 caused President Theodore Roosevelt to say in his annual message to Congress (1904):

"Nevertheless, there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it. The case must be extreme in which such a course is justifiable * * *. The cases in which we could interfere by force of arms as we interfered to put a stop to the intolerable conditions in Cuba, are necessarily very few."

¹ L. Oppenheim, *International Law*, (Longmans, Green & Co., London, New York, 1920) 3d edition, volume I, page 229.

² State Department Publications, No. 9, pages 153-54. [Moore's *Digest of International Law*, volume 6, page 347.]

³ Norman Bentwich, "The League of Nations and Racial Persecution in Germany," *Problems of Peace and War*, (1934), volume 19, page 75.

⁴ By the British Government to Rumania in 1867; by the United States, Germany, and five other powers to Rumania in 1872; Bentwich, *op. cit.* The Treaty of Berlin (1878) contained strong provisions for the protection of religious minorities in several eastern European countries, particularly Turkey. *Idem.* There were further protests to Turkey in 1879, 1880, 1895, 1913, and 1915. The German Government joined in the remonstrance of 1915.

As Roosevelt's reference to Cuba indicates, one of the avowed purposes of American intervention there in 1898 was, as President McKinley stated in his special message of 11 April 1898: ¹

"First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and therefore none of our business. It is specially our duty, for it is right at our door."

There is no need to multiply examples. This sustained and repeated practice caused a learned German law professor to write, as early as 1878, that: ²

"States are allowed to interfere in the name of international law if 'Human rights' are violated to the detriment of any single race."

¹ Charles G. Hyde, *International Law* (Little, Brown & Co., Boston 1945), 2d Revised Ed., volume 1, page 259.

² J. K. Bluntschi (Professor of Law at Heidelberg University), *Das Moderne Voelkerrecht der Zivilisierten Staaten* (1878), 3d Ed., page 270.

As was stated by Sir Hartley Shawcross, the British Chief Prosecutor at the international trial: *

"The rights of humanitarian intervention on behalf of the rights of man trampled upon by a state in a manner shocking the sense of mankind, has long been considered to form part of the recognized law of nations. Here too, the Charter merely develops a preexisting principle."

There can be no doubt, in summary, that murderous persecutions and massacres of civilian population groups were clearly established as contrary to the law of nations long before the First World War. Upon occasion, nations resorted to forceful intervention in the affairs of other countries to put a stop to such atrocities. Diplomatic or military intervention was, accordingly, the sanction traditionally applied when crimes against humanity were committed. Before passing to more recent declarations on this subject, the prosecution wishes to suggest that, in its view, unilateral sanctions of this kind today are ineffective if confined to words and dangerous if military measures are resorted to. Intervention may well have been an appropriate sanction in the nineteenth century, when the fearful resources of modern warfare were unknown, and particularly when resorted to by a strong nation in behalf of minorities persecuted by a much weaker nation.

* Trial of the Major War Criminals, *op cit.*, volume III, page 92.

Indeed, lacking some vehicle for true collective action, interventions were probably the only possible sanction. But they are outmoded, and cannot be resorted to in these times either safely or effectively. It is, no doubt, considerations such as these which led the distinguished French member of the International Military Tribunal to look upon crimes against humanity with such a jaundiced eye. *

* "When he wanted to seize the Sudetenland or Danzig, he charged the Czechs and the Poles with crimes against humanity. Such charges give a pretext which leads to interference in international affairs of other countries." *Le Procès de Nuremberg*, op cit.

But the fact that a particular method of enforcing law and punishing crime has become outmoded does not mean that what was previously a well-recognized crime at international law is such no longer. International criminal law is merely going through a transition which municipal criminal law passed through centuries ago. If I discover that my next door neighbor is a Bluebeard who has murdered six wives, I am thoroughly justified in calling the police; but I cannot legally enter his house and visit retribution on him with my own hand. International society, too, has now reached the point where the enforcement of international criminal law must be by true collective action, through an agent—be it the United Nations, a world court, or what you will—truly representative of all civilized nations. This Tribunal is such an agent. It renders judgment under a statute enacted by the four great powers charged with the occupation of Germany. The principles set forth in this statute are derived from an international agreement entered into by the same four powers and adhered to by nineteen other nations. Although constituted by the American occupation authorities, and composed of American judges, it is, in short, an international tribunal.

The trend away from interventions and toward collective action by international organizations arose after the First World War. All that has happened since that time has served only to reinforce the already well-established doctrine that violent and widespread persecution of civilian population groups is a crime under the law of nations. In founding the League of Nations, special provision was made in regard to the rights of religious, racial, and national minorities in the states newly created after the World War, and for determining questions of violations of minority rights by the Permanent Court of International Justice. Germany herself invoked the jurisdiction of the court in 1923, to enforce the articles relating to Poland.

The early persecutions of the Jews under the Third Reich provoked a storm of indignation outside Germany, which embodied,

“* * * a deeply grounded expression of a legal conviction prevailing among the highest governmental and ecclesiastical authorities, and among professional and cultural leaders, that the measures of the Hitler government were a crime against those fundamental mutual obligations of mankind, which concern every member of the civilized community.” *

* Siegfried Goldschmidt, *Legal Claims Against Germany* (The Dryden Press, New York, 1945), pages 16 and 17

The League of Nations in 1933 appointed a High Commissioner for refugees from Germany (Mr. James G. McDonald) who reported to the League in December 1935 that:

“The developments since 1933, and in particular those of the Nuernberg legislation, call for fresh collective action in regard to the problem created by persecution in Germany. The moral authority of the League of Nations and of states, members of the League, must be directed towards a determined appeal to the German Government in the name of humanity and of the principles of the public law of Europe.”

I hope we do not hear it suggested in this courtroom that the leaders of the Third Reich, and those others who participated in and profited by the deliberate and calculated policies of dispersing and exterminating the Jewish people, were unaware that all civilized men condemned this policy as barbarous and regarded their conduct as criminal. Never was any group of men more thoroughly warned; and never was a warning so utterly disregarded.

COUNT THREE—ARYANIZATION

MR. LYON: The ruthless persecution of Jews under the Third Reich is a matter of common knowledge throughout the world. Much of this was economic persecution of various forms, including the coercive dispossession of Jewish property owners, a process known generally as “Aryanization”.

Count three of the indictment charges the defendants Flick, Kaletsch, and Steinbrinck with instigating and participating in the Aryanization of brown coal properties in central and southeastern Germany, formerly owned by the Petscheks, a Jewish family most of whose members were citizens of Czechoslovakia. These properties were probably the most valuable holdings which were Aryanized under the Third Reich. The same defendants are also accused by reason of their participation in the Aryanization of the blast furnaces known as Hochofenwerk Luebeck and companies which owned stock of Luebeck, including Rawack and Gruenfeld A.G.

The means used by the German Government, the Nazi Party and business interests in Germany to force Jewish owners to part with their property at bargain prices or for no price at all were many and varied. There was no formal statute on the books until the end of 1938 which on its face forced Jewish owners to sell. This was doubtless due to caution rather than conviction. If confiscation of Jewish property took place by government action, German assets in other countries might be attached, and perhaps it was considered unnecessary to enact such a statute since the general anti-Semitic program, involving indignities, cruelties, and discriminatory laws of many kinds, would make life so unbearable for Jews in Germany that they would sacrifice their property in any event, and attempt to depart.

The procedure followed by Germans who were eager to acquire Jewish property frequently involved the procurement of threats by officials of the Nazi Party or the government, including the Gestapo. Under the circumstances prevailing in Germany the mere suggestion of an unfavorable view by the government was often enough. The defendants Flick, Kaletsch, and Steinbrinck are charged with participating in Aryanization projects, not only by taking advantage of the general climate of anti-Semitism in Germany but also by playing a major role in applying various kinds of special coercion to the owners of properties which they desired.

The particular crimes charged against these defendants in this count had many international implications. They were intimately connected with preparation by Germany for aggressive war. These Aryanization projects were carried out with the aid and cooperation of the Office of the Four Year Plan which was headed by Hermann Goering and which was the spearhead of Germany's economic preparation for war.

The intimate connection between Germany's aggressive acts and wars and the defendants' economic persecution of Jews is aptly symbolized by the cynical manner in which they awaited successive invasions or wars with the hope and confidence that these moves would facilitate their efforts to acquire Jewish property. For example, the Petschek transactions were heavily influenced by Germany's invasions and threats against Austria and Czechoslovakia. At the beginning of 1938 the Petscheks were not willing to sell at a hopelessly inadequate price. On 17 February 1938, 23 days before the shotgun marriage between Germany and Austria, the defendant Steinbrinck wrote a memorandum in which he speculated on whether, as he put it (*NI-3241, Pros. Ex. 421*),* "the change in the Austrian circumstances will

* Reproduced below in section VI B.

make any impression on the Petscheks." He added (NI-3241, Pros. Ex. 421): "Some persons state that the acquisition of Petschek is unnecessary because political developments will create a *fait accompli* in a short time."

On 24 March 1938, 12 days after the Anschluss, Kaletsch speculated in a memorandum for Flick that the Petschek problem might be solved by itself through the incorporation of Czechoslovakia. He said (NI-3238, Pros. Ex. 422):

"* * * political developments in Vienna have led certain agencies to take a different view of the problems in connection with Prague than they took several months ago."

One branch of the Petschek family, the Julius Petscheks, saw the handwriting on the wall and concluded a deal with Flick on 21 May 1938, under which they received a substantial consideration, although a great deal less than the full market value of their properties. Steinbrinck blandly explained in a letter to the Ministry of Economics on 4 June 1938 that "The JP interests signed under the pressure of the political crisis."

The Ignaz Petscheks refused to give in so readily, and less subtle forms of pressure had to be devised. Their headquarters happened to be in the Sudetenland. Immediately after Nazi threats to the peace led to the Munich Agreement of 30 September 1938, Steinbrinck reported to Flick on plans worked out with the notorious Wilhelm Keppler and other government officials to take possession of the Petschek business offices, to block all their accounts, and to audit their books with the obvious purpose of arriving at enormous tax deficiencies. The eventual confiscation of the Ignaz Petschek properties was accomplished soon after Germany had seized all of Czechoslovakia in March of 1939.

Still another Aryanization scheme—this time of property in Poland—was planned (but apparently never carried out) by the defendants in anticipation of the German invasion of Poland, which was in fact launched 1 September 1939. In July 1939 Flick and his henchmen, Kaletsch and Rohde, had their eyes on the Rybnick mining properties in Poland, owned by Jewish interests. At that time Kaletsch wrote that it might be advisable to buy up cheaply some foreign claims against Rybnick. Then, he stated, "If Rybnick should become part of Germany we would be in a preferred position to take over the property."

A. *The Blast Furnaces of Hochofenwerke Luebeck A.G.*

Flick's first major industrial acquisitions through Aryanization were the blast furnaces of Hochofenwerke Luebeck, A.G. These were acquired through a series of transactions mostly in

1937 and 1938 by which Flick acquired stock of Luebeck from several of its principal owners, including the Hahn company and Rawack and Gruenfeld A.G., which together held about two-thirds of the stock of Luebeck.

In the course of Flick's campaign to acquire Luebeck, in which he was closely assisted by the defendants Kaletsch and Steinbrinck, and by another of his assistants, Rohde, we find Flick and his associates exploiting not only the general pressure against Jews in Germany, but also a number of special types of fraud and coercion directed against the owners of Luebeck. They repeatedly stressed in the negotiations their special authorization by the government to accomplish the Aryanization of these properties; and Flick was not above warning the owners that if they should try to sell abroad he would have to report it to the authorities, who, as he put it, "might take an unfavorable view". They noted with satisfaction in their memoranda the fear engendered in the minds of the owners by threatening speeches of Goering and other Nazi leaders.

The Hahn interests in Luebeck were induced to sell to Flick by an assurance from the government that they would be left alone and subjected to no pressure with respect to their remaining industrial interests. In point of fact, these interests were Aryanized by another German concern within a few months thereafter. If the Hahns were misled by this assurance, it appears that Flick was not. Within 3 weeks after the assurance was given, Flick wrote to one of his officials, with respect to the Hahns, that, "for the time being they will be left alone to a certain extent".

The details of these somewhat involved transactions need not detain us further at this time. As to the essential nature of the transactions, we can satisfy ourselves with Flick's own explanation of how he acquired Luebeck. In a speech given by Flick in 1940, he stated that, "we acquired Hochofenwerke Luebeck by Aryanization".

While the Luebeck transactions were based upon and reflect the persecution of Jews in Germany, the pressure was still not so great as it was soon to become. The increasingly harsher measures against Jews, which kept pace with German threats and aggressions against other countries, appear clearly in the transactions by which the Petscheks were Aryanized, a project into which Flick threw himself even before the Luebeck matter was concluded.

B. The Brown Coal of the Petscheks

The subject matter of the Petscheks' Aryanization was very extensive brown coal property located in central and southeastern Germany, together with factories and commercial establishments

operated in connection with it. Brown coal was useful not only as fuel, it was also the raw material for production of electricity, synthetic gasoline, and other chemical products. Such production, carried on by I.G. Farben and other German chemical concerns, was a vital part of Germany's efforts at economic self-sufficiency in preparation for war. The properties owned by the Petscheks represented a very substantial part of Germany's brown coal resources. Flick himself estimated their production at 30 percent of the total tonnage of all brown coal mined in Germany.

The Petscheks, who up to 1938 were Jewish citizens of Czechoslovakia, had owned these properties for several decades. Their business interests were split between two groups, the so-called Julius Petschek group, which had its headquarters in Prague, and the Ignaz Petschek group, at Aussig in the Sudetenland. The Julius Petschek group held, through a New York holding company known as the United Continental Corporation; controlling stock interests in the Anhaltische Kohlenbergwerke A.G., known as (AKW) and Werschen Weissenfels (WW). The Ignaz group, the stronger of the two, owned controlling interests in coal mines and factories, fields known as Eintracht, Niederlausitzer Kohlenwerke (NKW), Phoenix and Leonhard, and substantial interests in a concern called Ilse Bergbau.

By the end of 1937 the Petschek properties had excited the interest of various government officials including Hermann Goering, Fritz Sauckel, and Wilhelm Keppler, and several industrial concerns including Flick, I.G. Farben, and the Wintershall and Salzdettfurth chemical and mining companies. That the Petscheks had not been previously Aryanized was perhaps due to the fact that they were not German citizens and had put their stock interests in foreign holding companies. Coercion applied to the Petscheks might lead to retaliation against German interests in other countries. This made the whole problem more difficult as an Aryanization project; and it explains the concern shown by the highest German officials and the subtlety with which Flick approached the matter in its first stages.

1. *Julius Petschek Group.*—The Petscheks, however, had felt the mounting pressure in Germany against Jews and against Czechoslovakia, and by the end of 1937 the Julius Petschek group had entered into preliminary negotiations with German concerns in an attempt to salvage what they could by way of sale at a substantial if inadequate price. Negotiations with the Wintershall concern had proceeded to the point where an understanding had been reached that Wintershall would be willing to pay around \$11,000,000, or \$12,000,000 a good deal less than their market value, but considerably more than Flick eventually paid for them.

Flick's approach was not so ingenuous as that of the Wintershall Company. He had no intention of paying a price determined by competitive offers, even though the transaction would in any case be nothing more than a distress sale. Instead he went directly to Hermann Goering and obtained letters at the end of January 1938 designating him as the only authorized negotiator. And so when a representative of the Julius Petschek group arrived in Berlin shortly thereafter, he discovered that everyone in Germany except Flick had been forbidden to talk to him.

This had come about as part of a plan which Flick, with the assistance of Kaletsch and Steinbrinck, had devised and persuaded Hermann Goering to adopt, early in January of 1938. In preparation for his conference with Goering about 21 January 1938 Flick prepared a comprehensive memorandum setting forth his views on strategy. He advised Goering as follows (NI-784, Pros. Ex. 397):*

"Whatever the position is, they are apparently not prepared to do anything of *their own free will* and have made very thorough arrangements for a possible war. *It should not be forgotten that should we begin to confiscate the property legally or by decree, a thing like that would not be so easy to do and the consequences, from an international point of view, cannot be overlooked. But I feel that possibly they may have to be taken seriously into consideration when negotiating.*"

What Flick proposed as the next best thing to outright confiscation was that only he should be authorized to negotiate. Flick continued:

"I could in the ordinary course, without any particular authorization, start private negotiations for a private purchase of shares in the Petschek group. But a number of persons might also do that at the same time and it is to be feared that a whole row of parties interested might crop up as potential buyers. That would automatically bring about a mutual bidding-up of the price. And finally the State officials would have no insight into the actual situation. (And that is the reason why I should be empowered to negotiate alone for the time being.)"

Flick went on to say in this memorandum that, if a deal could be concluded on what he called a "voluntary basis" with the Julius Petschek group, the tactical position against the Ignaz group would be strengthened. He wrote in this same memorandum:

* Ibid.

"It would indeed be *extremely important* to come to an understanding *with the smaller group*, which—as mentioned before—is ready, in principle, to sell. *This would strengthen the tactical position against the important Ignaz group*. Tactically, *the German position* would be stronger still, if one of them had sold voluntarily. But—as I mentioned already—it will be necessary to make *certain concessions* to 'Group Julius' since they have *formally pointed out their views and added that 'their share of German lignite represents only a small fraction of their fortune, and they would prefer to have their hand forced if they could not get relatively acceptable conditions.'*"

Flick had reason to expect the Ignaz Petschek group to resist. Steinbrinck had reported to him a conference with one of their representatives, Karl Petschek, who had said, "You want war. I am prepared. You want to slaughter me."

Armed with exclusive authority to negotiate, Flick met with the representatives of the Julius Petscheks, an American banker named Murnane, who tried to maintain at least some slight bargaining position by insisting that the Petscheks, while still owning a large portion of the brown coal interests held by the United Continental Corporation, had surrendered control of that corporation to "Aryan" interests. Flick at all times rejected any notion that the properties were not Jewish-owned. Flick proposed to Murnane a payment in German marks, but Murnane demanded \$16,000,000 in dollar exchange.

Flick saw no need to pay any such price. His attitude in the negotiations was that it was the Petscheks who had to worry and make concessions, and not Flick. In a subtle warning to Murnane, he said (NI-3451, Pros. Ex. 415):

"If an objective third person had listened to our negotiations so far he would probably have got quite a different impression from what the actual position is. He could perhaps get the impression that I have been in considerable anxiety and have to worry my head off night and day to find a solution—as if our roles were reversed. Such is not the fact."

Murnane left Berlin early in February 1938, leaving further negotiations to his European representative, Viscount Strathallan of London. Negotiations were resumed in May 1938 and led to contracts of sale by which the Petschek holding companies sold controlling interests in AKW and WW and affiliated companies to Flick's Mitteldeutsche Stahlwerke for \$6,325,000 payable in New York, plus 970,000 marks paid in Berlin.

The essence of the crime in this case is the coercion practiced against the Jewish property owner to force him to sell, and it is

technically immaterial whether or not the seller received an adequate price. However, Flick immediately resold part of the properties to other German companies (I. G. Farben, Wintershall, and Salzdetfurth) for a price greater than he paid the Petscheks for *all* the properties. Thus Flick ended up with a very valuable part of the Julius Petschek properties at no cost to himself.

2. *Ignaz Petschek Group*—While the Julius group decided it would be prudent to sell at a sacrifice in order to avoid a worse fate, the Ignaz group made it clear to Steinbrinck that they were not prepared to be “slaughtered.” This caused Flick and the government officials considerable consternation. There was no law yet on the books which forced a Jewish owner to sell. Informal pressures, including threats by the Gestapo, were usually sufficient. But where the owners were not Germans, the problem was not quite so easy.

The situation was entirely changed however, when the Wehrmacht occupied the city of Aussig in the Sudetenland, following the Munich Agreement of 30 September 1938. Government officials, including Keppler, dispatched a squadron of accountants and tax experts to take over the Ignaz Petschek offices. In December 1938 a law was enacted which provided for the appointment of trustees for Jewish business properties, with power to sell without the consent of the owners. A trustee named Leising, who was an official of certain state-owned mines, was immediately appointed for the Ignaz Petschek properties.

In March 1939 Germany invaded all of Czechoslovakia and the trustee soon transferred the properties to a government-owned corporation, Deutsche Kohlen Bergbau (DKB). The papers of transfer stated that the consideration was to be determined later, presumably after the tax assessments. In fact, no consideration at all was ever paid to the Ignaz Petscheks or to the trustee.

Later in 1939 DKB transferred the properties to the Reich-controlled Hermann Goering Works. The HGW [Hermann Goering Works] in turn reached an agreement with Flick in December 1939 whereby it transferred to him certain of the soft [brown] coal mines—known as Eintracht and NKW East—in exchange for hard [soft] coal fields in the Ruhr owned by Flick’s Harpener Bergbau Company. This agreement was executed shortly after Flick received a letter from the Office of the Four Year Plan declaring the exchange to be a matter of urgent State interest.

This outline of what happened to the Ignaz Petschek properties is a true story so far as it goes—and the defendants Flick, Steinbrinck, and Kaletsch wish the story went no further.

It would be the only story now known except for one circumstance, and that is that the defendants kept a faithful record in

letters and memoranda which tell a far different tale. These documents record the constant preoccupation of Flick, Steinbrinck, and Kaletsch with efforts to get as much of the Ignaz Petschek properties as possible. These documents show the defendants secretly advising and directing every move by the Reich government. The role of the defendants was aptly described by Steinbrinck in 1939. On 12 June 1939, he reported to Flick concerning a conference he had had with Dr. Hahn, an official of the Reich Ministry of Economics (RWM), that "Dr. Hahn is not willing to do anything without our consent." (*NI-3364, Pros. Ex. 463*).¹ In June 1939 Steinbrinck recorded a conference with Leising, the government-appointed trustee of the properties. Steinbrinck told him that Flick did not want to participate directly in the transfer of the properties (to the Hermann Goering Works) but, as he put it, they "feel obliged to give hints so that mistakes would be avoided". He added that Leising "appreciates our secret preparation of the transaction, as he himself wishes to have as little as possible to do with the matter".

This "secret preparation" of the Ignaz Petschek matter by the defendants extended from start to finish from January 1938, when Flick obtained from Goering the mandate as sole negotiator, (*NI-900, Pros. Ex. 411*)², to December 1939.

At an early date we find Flick drafting legislation which was intended to force the sale of Jewish property. A note in Flick's own handwriting on January 1938 said (*NI-3675, Pros. Ex. 405*):³

"A draft of a law is to be devised at once, which at first is to be used as a means of pressure."

A memorandum by Steinbrinck on 10 January 1938 continued in the same vein (*NI-3251, Pros. Ex. 407*):⁴

"As according to our latest information it seems unlikely that the shares of the P. group property will be surrendered voluntarily, one must contemplate forcible measures or State intervention. The promulgation of a decree has already been considered which would prohibit foreigners or other non-German citizens from exploiting or profiting from German mineral resources. This decree has weak foundations and may lead to consequences, the effects of which cannot yet be assessed. The question of whether force should be used at all against the P. groups is a purely political one and solely dependent on political factors. If such an action is decided on, it must be

¹ *Ibid.*

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

borne in mind that the most rigorous means may have to be employed."

On 23 March, less than 2 weeks after the march into Austria, we find a memorandum by Steinbrinck reporting a conference with Wohlthat of the Ministry of Economics with respect to what he referred to as "the drafting of a law concerning organization." One of Flick's lawyers, Hugo Dietrich, was meanwhile set to work to prepare further drafts of whatever legislation might be necessary to force a sale of Jewish-owned property. On 20 June 1938 Dietrich wrote Steinbrinck as follows (*NI-898, Pros. Ex. 437*):¹

"Referring to our discussion of Saturday concerning the Ignaz Petschek problem, I enclose an exposé with two carbon copies which you might transmit to Ministerialdirektor Wohlthat."

The exposé referred to an analysis of the existing state of the law with respect to Jewish-owned property and a draft of general legislation which would permit the forced sale of property of the Petscheks, or any other Jews owning German property.

The draft of legislation which Dietrich prepared was strikingly similar to legislation which was in fact enacted in December 1938, and the resemblance was surely more than coincidental. Steinbrinck immediately sent copies of Dietrich's draft to Wohlthat of the Ministry of Economics and Neumann of the Office of the Four Year Plan. It is clear from Steinbrinck's letter to Neumann of 22 June 1938, that Steinbrinck had already had numerous discussions with the Ministry of Justice and other ministers during the preceding few months. Steinbrinck added that the Ignaz Petschek group, and I quote (*NI-897, Pros. Ex. 438*):²

"* * * has become completely indifferent, and other means are needed than were used with the Julius Petschek group
* * * Enclosed are the results of our consideration based on the advisability of statutory measures. We have concluded that a trustee is necessary to accomplish the Aryanization of these properties in the interest of the Four Year Plan."

Other pressures brought to bear on the Petscheks—the blocking of their accounts, the assessment of fraudulent tax claims, and the like, were also planned in advance with the connivance of the defendants. Meanwhile the defendants were active in preventing any sale of the properties to others. Steinbrinck described the defendants' position in a conference with government and

¹ *Ibid.*

² *Ibid.*

bank officials in February 1939 when he said, "We must let Petschek fidget a little longer. No one else but Flick must be permitted to negotiate."

At this time the defendants were planning the exchange of Flick's hard [soft] coal for Petschek brown coal and the elaborate transactions that preceded it. The exchange idea was evolved by the defendants at least a year before it took place, as a means of acquiring a large part of the Ignaz Petschek properties and at the same time satisfying the needs of the Hermann Goering Works for hard [soft] coal out of the abundant supply held by Flick's Harpener Bergbau Company in the Ruhr.

By the first months of 1939 the defendants were talking with various government officials to sell them on the proposal. Finally, toward the end of 1939, an agreement was reached and was embodied in a contract dated 9 December 1939 (*NI-937, Prosecution Exhibit 480*) * between the Hermann Goering Works and Flick's Harpen Company.

We have seen that a few days before this agreement was signed, both parties received letters from Goering's Office of the Four Year Plan, stating that it was a matter of urgent state necessity that the exchange be concluded, and that the parties must come to agreement within a week's time. This too was planned by the defendants. The letter from Goering's office to Flick was actually drafted in Flick's own office, and the government had to be persuaded by the defendants to issue it after an agreement had already been reached.

Why did the defendants desire this phantom order, this expression of public interest in the matter? The reason was that these defendants wanted to do nothing that could not be made to look legal. They were no ordinary criminals. They were highly sophisticated and farsighted. They were closely advised at every step of the Petschek deal by several lawyers, including the same lawyer, Hugo Dietrich, who had helped them draft new Aryani- zation laws. These defendants knew that the seizure of the Petschek properties was illegal under international law or under any other civilized legal system. But they were advised by their lawyers that the risk might be lessened if they could arrange to let the State, or its creature the Hermann Goering Works, take the properties first, and then go through the motions of ordering the defendants to take them. At every stage of the discussions during 1939 the defendants resisted any proposal that they should take the properties over directly from the Petscheks. Around June 1939 Steinbrinck had several conferences with

* *Ibid.*

government officials on the subject. He has written with respect to one of these officials that—and I quote (*NI-3364, Pros. Ex. 463*):¹

“He shared my opinion that the soft [brown] coal properties should be transferred first to the Reich and afterwards the Reich should sell the industrial plants to us.”

The defendants’ anxiety appears most clearly in a memorandum written by Steinbrinck on 8 November 1939 and initialed by Flick. Steinbrinck wrote of a conference he had had with Goering’s deputy, Paul Koerner (*NI-932, Pros. Ex. 471*):²

“I further gave him clearly to understand that, in my opinion, he as State Secretary could justify such transactions just as little as we could. Referring to the brown coal, I said that these transactions of property could later on become the subject of inquiry by international courts.”

And so it is no real surprise to the defendants Flick, Steinbrinck, and Kaletsch that they find themselves in this courtroom today. They knew these transactions could—as they so well put it—“become the subject of inquiry before international courts” later on. They were completely conscious of their guilt at every stage of the game. Yet they never hesitated in pursuit of illegal gain, except to try to disguise their tracks.

One further question will doubtless occur to the Court. Why was it Flick who enjoyed the special blessing of the highest Party and government officials in his pursuit of property owned by Jews? We might infer that people in such a position were the outstanding supporters of the Nazi regime. But inference is unnecessary. Learned Nazi authorities assure us that this was the case. Thus Ministerialrat Krueger of the Ministry of Economics wrote in 1940, and I quote:

“In the course of the regrouping that occurs with the de-Judaization of business, direction must also be had from a higher plane, with respect to who should be chosen to take over Jewish enterprises. Selection of the best must be made. Trustworthiness, reliability, and fitness, as well as an affirmative attitude toward the government, are, in National Socialist economic views, prerequisites for acquisition of a Jewish business * * * ”

Did Flick and his associates meet these tests? Wilhelm Kepler, Heinrich Himmler, and Hermann Goering thought they did. We would be rash indeed to dispute their expert judgment.

¹ *Ibid.*

² *Ibid.*

COUNT FOUR—AIDING AND ABETTING CRIMINAL ACTIVITIES OF THE SS

MR. ERVIN: The evidence to be introduced under count four will make it easier to understand why such men as Himmler, Keppeler, and Goering considered Flick a loyal supporter of the Nazi regime—why, in the words of Ministerialrat Krueger, they considered Flick to have “an affirmative attitude toward the government.” Count four charges the defendants Flick and Steinbrinck with having participated in the criminal activities and programs of the Nazi Party and its subsidiary organizations, particularly the SS, through extensive financial and other support.

We have already adverted to the “financial troubles” of the Party in late 1932, which according to Goebbels made “all organized work impossible” and threatened the possibility “of the whole Party going to pieces.” The SS and other Nazi Party organizations would never have had financial worries if all German businessmen had been as generous as the defendants Flick and Steinbrinck. Before 1933 they were already contributing to the Party, the SS, and the SA. And in their orderly, businesslike way they had worked out with Himmler and Hitler an arrangement for centralizing contributions to the SS by the various Flick enterprises. We have also seen the highly important contribution Flick made to the Nazi cause in February 1933—the donation of a quarter of a million marks to the campaign fund raised to gain Hitler his victory in the decisive elections of March 1933. And we have mentioned the donations by Flick to the SS of as much as 100,000 marks a year which were made through the so-called Keppeler Circle, later known as the Circle of Friends of Himmler, to which he and Steinbrinck belonged. A like amount was procured by Steinbrinck from Vereinigte Stahlwerke after he became one of its leading officials.

Adequate financing of the SS and its related organizations was vital to their success. It took a good deal of money to maintain many thousands of brown shirted SA Storm Troopers and black shirted SS men and permit them to devote their efforts, not to productive labor, but to intimidation, brutality, and murder. According to Karl Wolff, chief of Himmler’s personal staff, and Otto Ohlendorf, head of the [Department III] RSHA, the SS in its early days relied chiefly upon contributions from industrialists for its funds, since it had no budget of its own and practically no revenue from official sources. An official of the Party treasury has confirmed this, stating that the SS was heavily in debt at the beginning, and, as a matter of fact, never did completely get out of its financial difficulties.

The fundamentally criminal character of the Nazi Party leaders and of the SS is notorious. Their crimes on a vast and unprecedented scale have been established beyond doubt by the evidence brought before the International Military Tribunal and by the findings of the Tribunal based thereon.

It is also evident that the financial contributions made by men like Flick and Steinbrinck were of very substantial assistance to the SS and its kindred organizations, and constituted the aiding and abetting of crimes on a wide scale.

But this is not all. What we are here concerned with is no mere technical form of participation in crime, or some more or less accidental financial assistance of the commission of crimes. The really significant thing, which gives the full meaning to the crimes charged, not only in this count but in all the counts of this indictment, is the fact that the defendants assisted the SS and the Nazi regime with their eyes open and their hearts attuned to the basic purposes which they were subsidizing. Their support was not merely financial. It was part of a firm partnership between these defendants and the Nazi regime that continued from before the Nazi seizure of power to the last days of the Third Reich. We have already referred to several types of evidence of the closeness of Flick and Steinbrinck to the political leaders of Germany; how they secured from Goering the leadership and the bulk of the profit from the most important Aryanization projects; how Flick gained possession, through Goering again as well as Funk and others, of extremely valuable smelting plants in France; and how he formed a partnership in plunder with the Hermann Goering Works for the exploitation of industrial properties in Russia. In every direction we find evidence that Flick liked the Nazis, and that they liked him.

Flick ingratiated himself with the regime through contributions of much more than money alone. Nothing was so vital to the accomplishment of the basic aims of the Third Reich at its inception at secret rearmament of Germany as soon and as swiftly as possible. It was here that Flick's partnership with the Nazis, and especially with Hermann Goering, was firmly sealed. We find Flick active in the early development of the Luftwaffe, in the forefront of the expansion of Germany's iron, steel, and coal production, in the production of ammunition shells, and in the construction of tanks and armored cars—in short in the development of all the primary ingredients needed for the Blitzkrieg tactics of Nazi warfare.

In early April 1933, just a month after the elections to which Flick had handsomely contributed, Flick's man Heinrich Koppenberg attended a conference with Thyssen, Voegler, and govern-

ment officials to discuss possibilities for rapid air rearmament. Flick's ATG plant was soon converted to manufacture of airplanes under Koppenberg's direction. In 1935, when the government took over and expanded the Junkers company, Koppenberg was chosen to head it and Flick was invited to participate. Flick's importance in air rearmament, as judged by Goering, Milch, and other leaders of the Third Reich, appears from a memorandum of Steinbrinck's in May 1935 (*NI-10114, Pros. Ex. 829*):

"When Mr. Koppenberg indicated to Mr. Milch that the Mittelstahl group, because of their other engagements, might not be in the position to participate substantially in acquiring shares, State Secretary Milch reportedly said that the Reich Air Ministry attached very great importance to the participation of the Flick group and that the Reich Minister for Air (Goering) would speak to his friend Flick."

In 1933 Flick was also manufacturing ammunition shells in violation of the Versailles Treaty. A secret document of the OKM, the Navy High Command, in September 1933 listed all violations of the treaty in which it was then engaging. One item was the following (*C-32, Pros. Ex. 41*):

"Arranging for the Mitteldeutsche Stahlwerke AG, Lauchhammerwerk Groeditz, to undertake the manufacture of flak shells. Holding ready parts, material, mechanisms, tools for the work, so that the time required for starting work may be shortened."

The only remark written beside this item was, and I quote, "Also not permissible."

In 1942, when the Wehrmacht was at the peak of its power, Flick's office compiled a summary of what it called "achievements of the Flick group". According to this memorandum, Flick showed by far the greatest increase in steel production in Germany in the preceding decade. The memorandum also stated (*NI-3496, Pros. Ex. 39*):

"Today, as far as shell production goes, the group stands in second place after the Vereinigte Stahlwerke as far the largest enterprise.

"Manufacture of Tanks

"In 1938 the group began manufacturing bodies and turrets for tanks. In this production the Flick group stands today at the head of all German concerns. In this connection it has been ascertained by government sources that the works of the Flick group are producing about 30 percent more tanks than the second highest producer within Germany.

"Airplane Construction

"Already at the end of 1933 the Flick group began to convert one of its machine factories (Allgemeine Transportanlagen) in Leipzig to the manufacture of airplanes."

Flick's close working relations with the government, the Party, and their leaders furnishes strong evidence that he was fully aware of the nature and significance of the organizations and activities which he was aiding and abetting through financial assistance. We have earlier referred to Flick's attendance at a meeting on 20 February 1933 at which the campaign funds were raised for the election of March 1933. There Hitler had made it clear that he intended to replace democracy with a dictatorship which would ruthlessly crush all opposition. And he stated (*NI-903, Pros. Ex. 679*):*

"We must not forget that all the benefits of culture must be introduced more or less with an iron fist, just as once upon a time the farmers were forced to plant potatoes."

He also said that he intended to restore the power of the Wehrmacht regardless of limitations of the Versailles Treaty. It was quite clear to his listeners that Hitler had aggressive aims toward neighboring countries which he intended to accomplish by threats of war or war itself. Much the same ideas had been set forth by Hitler in a speech in January 1932 before a meeting of industrialists in Dusseldorf. There Hitler stated (*NI-8544, Pros. Ex. 731*):

"I cannot formulate an aim which, supported by a press campaign in one's own papers, is regarded in the whole world as a political aim of outstanding importance if I fail to secure the political means which are absolutely necessary for the execution of such a plan. And the political means—I cannot today put them any lower than this—lie only in the reorganization of an army.

"* * * there can be no economic life unless behind this economic life there stands the determined political will of the nation absolutely ready to strike—and to strike hard.

"For it was not German business which conquered the world and then came the development of German power, but in our case, too, it was the power-State (*Machtstaat*) which created for the business world the general conditions for its subsequent prosperity."

Hitler discussed his plans still further in May 1932 at the Kaiserhof in Berlin before a group of some dozen business men whom Keppler had gathered together. These were the original members of what was soon known as the Keppler Circle, and they

included the defendant Steinbrinck, who had joined as Flick's representative. Keppler has described Hitler's speech as follows (*NI-903, Pros. Ex. 679*):*

"The Fuehrer made a short speech and in it disclosed, among other things, as points of his program: Abolition of trade unions and abolition of parties other than the NSDAP. No one raised any objection.

"These points of the Fuehrer's program met with the fullest approval of the members of the Circle of Friends, but they expressed their apprehension that he would not be able to carry out these excellent ideas."

Political persecution in Germany and aggressive acts or wars against other countries were thus promised, as a minimum, by Hitler in these meetings. What else did Flick know of the Nazis and their purposes? He knew also of the hideous program to persecute and eradicate the Jews. That was a matter of common knowledge from the birth of the Party. Also a matter of common knowledge throughout Germany in 1932 and 1933 was the fact that the SA Storm Troopers practiced brutalities most openly to gain what they boasted of as "command of the streets."

Flick's intimate acquaintance with the activities of the Party and the SS and with their highest leaders grew stronger with the years. And one of the principal means through which this close acquaintance was nurtured was the Circle of Friends of Himmler. It will be recalled that this group was formed by Hitler's personal economic adviser, Wilhelm Keppler, upon instructions from Hitler late in 1931 that he wanted a group of economic leaders who, as Hitler put it, "will be at our disposal when we come into power." Very soon Himmler became active in the circle, overshadowing Keppler, and the membership was broadened to include some three dozen men, of whom more than half were leading industrialists and financiers, and the balance were Party and government leaders, including some of the highest SS officials. Steinbrinck was a member from the outset, and Flick began to attend the meetings of the circle in 1934 or 1935. As to the character of the industrialists who joined the circle, Oswald Pohl, one of Himmler's chief assistants and himself a member of the circle, tells us that (*NI-399, Pros. Ex. 714*):

"* * * the members of the Circle of Friends were picked, politically reliable, and loyal people; otherwise they would not have been invited by Himmler. Kranefuss, the close confidant of Himmler, undertook the screening of the members. Being an industrialist himself he knew these circles of industry very well * * *. In each case the members were investigated by Kranefuss as to loyalty, political reliability, and he also paid

* Reproduced in section V D.

special attention to their being congenial to the old members, such as Schacht, Himmler, Hans Kehrl, and myself.”

Over the entire course of the Third Reich, indeed even into early 1945, the circle continued to hold its regular monthly meetings consisting of dinner and an evening’s discussion. Himmler became the chief sponsor of the group. In 1934, when Flick and Steinbrinck and the other members convened at Nuernberg for the Reichsparteitag [Reich Party Rally] celebration, they met with Himmler at a special table in the Grand Hotel marked “Reserved for the friends of the Reich Leader.” It also became the practice of the circle to make financial contributions to Himmler, aggregating over 1,000,000 marks a year. The individual contributions by many of the leading industries and banks of Germany ran as high as 100,000 marks in a few cases, including the Flick Konzern, and including Vereinigte Stahlwerke after Steinbrinck became influential in its affairs. The contributions of all the members were solicited primarily by Steinbrinck and the treasurer of the circle, Baron Kurt von Schroeder, the Cologne banker who had played host to the fateful meeting of von Papen and Hitler in January 1933, which led immediately to their alliance in a coalition cabinet and Hitler’s appointment as Chancellor. Members of the circle would transmit funds to a special account in the Stein Bank of Cologne headed by von Schroeder. All contributions would be totaled up by von Schroeder each year and the list would be sent to Himmler in a letter from von Schroeder, such as this one written 27 August 1943 (*EC-454, Pros. Ex. 681*):*

“My Very Honorable Reich Leader,

“With great joy I learn of your appointment as Reich Minister of the Interior, and take the liberty to extend my heartiest congratulations to you on assuming your new post.

“A strong hand is now very necessary in the operation of this department and it is universally welcomed, but especially by your friends, that it was you who were chosen for this by the Fuehrer. Please be assured that we will always do everything in our power at all times to assist you in every possible way.

“I am pleased to inform you at this opportunity that your Circle of Friends has again placed at your disposal this year a sum slightly in excess of 1 million Reichsmarks for ‘special purposes.’ An exact list showing the names of the contributors will be sent to you shortly.

“Again all my best wishes, as well as those of my family. I remain yours, in old loyalty and esteem.

Heil Hitler!

[Signed] von Schroeder
SS Major General”

* Reproduced in section V C.

If the members of the circle considered themselves "friends of Himmler," he returned the compliment. He not only invited them to monthly or biweekly meetings, he personally conducted them to the innermost shrines of the Nazi faith. Each year, under Himmler's auspices, they attended the Reichsparteitag celebrations at Nuernberg. Each 9 November they went to Munich to attend a Nazi memorial exercise and witness the swearing in of new SS men. We also know that Himmler took the circle on tours of the concentration camps at Dachau, Oranienburg, and elsewhere. He also frequently invited them to visit his headquarters. Members of the circle recall one such visit to his headquarters on the eastern front in December 1943. Himmler told them, among other things, that he was considered a cruel man by many people because of the stern measures he applied. He assured his guests that the application of such measures caused him a good deal of anguish, but that he acted as he did only because the interests of the German people required it.

While we of course do not know everything that was said at the many private meetings of the Circle of Friends, it is impossible to believe that Himmler did not give his special friends some idea of what sort of things the SS did. As good business men, they were no doubt curious to know how the money they contributed to Himmler's "special funds" was spent, and Himmler must have satisfied their curiosity. Himmler was not a man who went to much trouble to hide his purposes. He boasted in a book written in 1936 that "there are some people in Germany who grow sick when they see the black coats" of the SS. And if Himmler wished not to speak publicly of some matters, Flick and Steinbrinck and others in the Circle of Friends were among those he could confide in. As Otto Ohlendorf has said (*NI-3510, Pros. Ex. 715*).*

"I approved wholeheartedly of the Circle of Friends because I thought it right that the Reich Leader should have people with whom he could speak freely."

A few words from Himmler are worth volumes of history of the entire Nazi regime. In speeches made by him to SS leaders in 1943 he said (*1919-PS, Pros. Ex. 746*):

"We have, I would say, as very consistent National Socialists, taken the question of blood as our starting point.

"One basic principle must be absolute rule for the SS man. We must be honest, decent, loyal, and comradely to members of our own blood, and to nobody else. What happens to a Russian, to a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type we will take,

* Reproduced in section V D 3.

if necessary by kidnaping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only insofar as we need them as slaves for our *Kultur*; otherwise it is of no interest to me.

"We were the first really to solve the problem of blood by action, and in this connection, by problem of blood, we of course do not mean anti-Semitism. Anti-Semitism is exactly the same as delousing * * *.

"We have only 20,000 lice left and then the matter is finished within the whole of Germany. But for us the question of blood was a reminder of our own worth, a reminder of what is actually the basis holding this German people together.

"Most of you must know what it means when 100 corpses are lying side by side, or 500, or 1,000. To have stuck it out and at the same time—apart from exceptions caused by human weakness—to have remained decent fellows, that is what has made us hard."

But it was not Himmler alone among the members of the circle who could give Flick and Steinbrinck an expert account of what the SS meant and what it did. Himmler's chief lieutenants were also members. There was Oswald Pohl,¹ now on trial before another Tribunal for his activities as head of the WVHA, the Economic and Administrative Main Office of the SS, which had charge of all concentration camps. It was in these camps that millions were exterminated and Pohl had the added task—one that would have been gruesome to anyone but an SS man—of collecting every scrap of wealth from the victims: their money and jewelry if any, their gold teeth, their clothes, even the hair of women to be used for mattress stuffings. Pohl also naturally had charge of the supply of concentration camp labor, and in this connection he has stated (*NI-382, Pros. Ex. 72*):²

"Because of the acute manpower shortage, almost all armament concerns approached my office to obtain labor from concentration camps. Those who already employed such labor in most cases constantly requested that the number of prisoners working for them should be increased."

Another member of the circle was Karl Wolff, Himmler's adjutant and the one to whom the financial contributions were dispatched by von Schroeder. Wolff has written a letter which records for posterity his pleasure in learning that each day 5,000 members of what he ironically referred to as "the chosen people" were being transported to Treblinka for extermination. Still

¹ Defendant in case of United States vs. Oswald Pohl, et al., Case 4, volume V, this series.

² Additional affidavits given by Pohl to the prosecution were Document NI-399, Prosecution Exhibit 714 and Document NO-407, Prosecution Exhibit 757.

another member of the circle was Otto Ohlendorf, of the RSHA (Reich Security Main Office) of the SS, which had charge of the Gestapo and Sicherheitsdienst. Ohlendorf confessed before the International Military Tribunal his participation in the murder of at least 90,000 persons, and has stated (2620-PS, Pros. Ex. 750):

“When the German Army invaded Russia I was leader of Einsatzgruppe D in the southern sector, and in the course of the year during which I was leader of Einsatzgruppe D, it liquidated approximately 90,000 men, women, and children. The majority of those liquidated were Jews, but there were among them some Communist functionaries too.”

The Circle also was well represented in connection with the medical experiments in which many concentration camp inmates were murdered and suffered unbelievable tortures. Oswald Pohl provided the victims for these experiments. Wolfram Sievers, another member of the Circle, was manager of the SS Ahnenerbe Institute, a pseudo-scientific enterprise. The nature of the “research” conducted by Ahnenerbe appears from one sentence of a letter written by Sievers in November 1942 (NO-086, Pros. Ex. 760):

“I have already reported to the Reich Leader SS that for some anthropological studies 150 skeletons of inmates, that is, Jews, are needed and should be provided by the Auschwitz concentration camp.”

Of course these members of the circle were not the only sources of detailed knowledge of SS crimes available to Flick and Steinbrinck. For example, the important role of the SS in the slave-labor program was well known to them. They themselves made use of the services of the SS to recruit foreign workers, especially for the coal mines of the Ruhr. Both were members of the Praesidium of RVK and received the bulletins of the RVK Social Committee, such as the one referred to earlier which reported that the SS was assisting in the forced recruiting of Soviet workers from the Krivoi-Rog area. And it happens that the two foremost coal enterprises which were to use these workers were Vereinigte Stahlwerke, in which Steinbrinck was an official, and Flick's Harpen and Essen companies. They also paid the SS for the concentration camp workers employed by the Flick Konzern and Stahlverein. In the criminal enslavement and mistreatment of these unhappy people Flick and Steinbrinck were in another criminal partnership with the SS.

We need not elaborate further on the crimes of the SS; they are all too well known. No doubt the defendants will say in this case what so many defendants have said in other cases—that they

knew nothing about these horrible crimes until after the war was over. Their Jewish business acquaintances disappeared and the Jewish retail store around the corner changed hands; yellow stars appeared on people's clothes; French and Polish workers suddenly became available as labor for their mines and factories; numberless Germans, many of whom the defendants must have known, mysteriously disappeared. But these defendants will say they knew nothing. They did business with Goering, they met regularly with Himmler and his most rabid colleagues, but we are asked to believe that all these men must have been Dr. Jekylls. They helped Himmler through his lean years and enabled him to live and work in the manner to which he became accustomed, but presumably they know nothing of where the money went.

All this, the prosecution respectfully suggests, is quite incredible.

GENERAL TAYLOR: Your Honors, before concluding, may I respectfully suggest that the mimeographed version of this statement, which is now available, has certain footnotes and references which have not been read and which might conceivably be useful to the Tribunal or defense counsel to check the sources of the statements, and I request that the transcript as prepared by the court reporters reproduce the references as well as the actual text.

COUNT FIVE—MEMBERSHIP IN THE SS

The fifth and final count of the indictment concerns the defendant Steinbrinck alone. The legal basis of the charge in this count is quite distinct from that embodied in the first four counts. It derives from Article IX of the Charter of the International Military Tribunal, which authorized that Tribunal, under specified circumstances, to declare that certain "groups" or "organizations" were "criminal organizations." Pursuant to this article, the International Military Tribunal held that the SS was a criminal organization. The defendant Steinbrinck is charged with membership in the SS, in which he was a Brigadefuehrer, a rank equivalent to that of a brigadier general in the American Army.

Article II of Control Council Law No. 10 provides that—"membership in categories of a criminal group or organization declared criminal by the International Military Tribunal" is to be "recognized as a crime". Paragraph 3, Article II of Law No. 10 specifies the punishments which may be imposed for crimes recognized by that law.

In its decision, the International Military Tribunal set forth certain limitations upon the scope of its declaration that these organizations were criminal.*

* Trial of the Major War Criminals, *op. cit.*, volume I, pages 255-57.

Under these limitations, in order to render membership criminal, two things, in addition to membership, must be shown:

1. That the individual in question became or remained a member of the organization after 1 September, 1939, and
2. That the individual in question either (a) became or remained a member with knowledge that it was being used for the commission of acts declared criminal by Article VI of the London Agreement, or (b) was personally implicated as a member of the organization in the commission of such crimes.

The prosecution believes that, once it has established that a defendant was a member of one or more of the criminal organizations, it is incumbent upon the defendant to come forward with evidence that he neither knew of the criminal activities of the organization, nor participated in their commission, or that he ceased to be a member prior to 1 September 1939. We believe that any questions concerning the burden of proof will be entirely academic in this case. Steinbrinck was not a lowly laborer in the vineyard. He held high rank, and consorted constantly with Himmler and Himmler's lieutenants. He is a man of ability and discernment and had more than ample opportunity to discern. The charge of membership in the SS, particularly when it involves a man of this calibre, is a very serious one. The prosecution believes that there are absolutely no circumstances to be considered in mitigation.

CONCLUSION

The prosecution has in its possession a document, written chiefly by the defendant Kaletsch, which rehearses the life of Friedrich Flick and the history of the Flick Konzern. The authors of this document have been at great pains to prove that Flick and most other leading German industrialists were not Nazis and did not agree with the ideology of Hitler. They appear much troubled by the circumstances, now widely known, that Fritz Thyssen—the best known German industrialist of recent times—was an early and ardent supporter of Hitler. An interesting passage in this document states—

“The example of Fritz Thyssen does not carry much weight. Thyssen was not a person like his father, August Thyssen, who built up the big enterprise. Fritz Thyssen, after all, was a fundamentally honest character, but subject in his ideas and actions to moods and changes. It is not clear what induced Fritz Thyssen to support the ideas of national socialism and the Nazi Party to such a great extent. He might, perhaps, have had similar reasons as other persons who, due to the lack of their own ability, meant to conquer or reconquer by means of national socialism a lost economic position * * *.”

This is, I believe the most illuminating passage in the entire documentation of this case. It reflects a basic misconception which is entirely too prevalent even outside of Germany and which, unless set straight, leaves scant room for hope of Germany's reconstruction. It reflects the obstinate belief that the only crimes of the Third Reich were those of the Nazi Party and that, indeed, the only crime was to be a Nazi. Passages such as this bring home to one that this case is not a mere rattling of dead bones.

The contrast that the author of this passage appears to think he has drawn between Thyssen and, we must assume, Flick, might be amusing if it were not for the appalling state of mind which it reflects. The prosecution holds no brief for Fritz Thyssen; Hitler had much to thank him for. We can only guess at the true reasons which brought about the break between Thyssen and the Nazis but, however good or bad those reasons may have been, Thyssen broke and broke decisively. He left Germany the day of the attack on Poland, and cast his vote, as a member of the Reichstag, against the declaration of war.

The contrast between Thyssen's behavior and that of Flick is indeed sharp, but it is hardly the contrast which Kaletsch seeks to draw. As Hitler's power grew, Flick drew ever closer to the political masters of the Third Reich. He profited by the ideology of the Nazis and the conquests of the Wehrmacht. He made friends with the most shudderingly wicked figure of modern times. He wanted to be in on the kill. If Hitler had achieved victory, Flick would not be an unhappy, troubled man, and all that he regrets today is that he was not endowed politically with the same foresight and shrewdness which he manifested in business; he guessed wrong. All this appears to have escaped the author in the passage quoted above.

We pointed out, at the outset of this statement, that the law of nations is concerned with conduct and not with status. But leadership does carry with it responsibility, and a man's position and education do affect the measure of his guilt. We are not dealing in this case with murderous fanatics to whom one may pay the single compliment of sincerity. We are dealing with men so bent on the attainment of power and wealth that all else took second place. I do not know whether or not Flick and his associates hated the Jews; it is quite possible that he never gave the matter much thought until it became a question of practical importance, and not their inner feelings and sentiments.

The story of this case is, in the last analysis, a story of betrayal. The defendants were men of wealth; many mines and factories were their private property. They will certainly tell you

that they believed in the sanctity of private property, and perhaps they will say that they supported Hitler because German communism threatened that concept. But the factories of Rombach and Riga belonged to someone else. The defendants will tell you that they were not anti-Semitic, and even protected individual Jews against the Nazis. Yet it was not beneath them to appear in public with, and pay a king's ransom to Himmler, who all but rendered the Jew extinct in Europe. They fattened on the misfortunes of wealthy Jews. Their mines and factories were worked by human labor and they, of all men, should have understood the true dignity of toil. Yet they turned back the clock and revived slavery in Europe. These men shamelessly betrayed whatever ideals they might have been expected to possess and, in the end, they betrayed Germany. In this lies their true guilt.

B. Opening Statement for the Defendant Flick *

PRESIDING JUDGE SEARS: Now, Dr. Dix, we will hear your opening statement.

DR. DIX: May it please the Tribunal.

Quid interest, sub cujus imperio vivat homo moriturus, si illi, qui imperant, ad impia et iniqua non cogant. In English: "What matter under whose government mortal man lives, as long as those who govern do not compel him to commit impious and iniquitous acts." The defendants lived in the Third Reich under a government that did compel those under their government to commit impious and iniquitous acts. This was their tragedy, but not their guilt, not even their tragic guilt, which has involved them in the mental martyrdom of sitting in this dock. The prosecution maintains that they are guilty. The opening statement of the defense has to represent the theory of my defense. I request the Court not to lose sight of the fact that the contents of this quotation will be the leitmotif of my defense. Whoever was active in Germany during the Third Reich and, at that, in an eminent and exposed position, ran guiltlessly the risk of being a suspect of a culpable deed such as the defendants, and especially the defendant Flick whose defense I am handling, are charged with by the prosecution. That is the tragedy of all men compelled to live in an environment where culpable deeds are being committed.

This quotation manifests a sovereign contempt for the formal system of government. Ultimately, it attaches importance only to the sovereign nature of a government. Such a point of view is

* Transcript pages 3122-3149, 2 July 1947.

unpopular and disliked in the present-day world with its spiritually tyrannical and intolerant love of dogma, with its peremptory idea that there is no salvation outside whatever political dogmas it happens to proclaim; its habit of drawing out fixed dogmas in nonsensical variations which finally, in spite of assurances to the contrary, kills all freedom of thought and expression, and moreover, vilifies politically and civically not only every representative and apostle of a different creed, but also anyone who merely doubts the infallibility of the dominant opinion, and brings him to the point where his existence, his freedom, and sometimes even his life are lost. Therefore, if a defense counsel makes this quotation the leitmotif of his argumentation, the philosophical and spiritual authority of the person whose pronouncement he refers to must be recognized generally. Now, he who spoke these words is a man who exerted a unique influence not only upon the shaping of the history of the human mind, but also especially upon the structure of political ideas in occidental history, upon the political formation and spiritual fundamentals of the Byzantine Empire, nay, even upon the medieval Holy Roman Empire and the Catholic Church up to modern times. If it is necessary, therefore, as in the case before us, to reveal the political and sociological problems in the background when considering criminal facts—and this had to be done by the prosecution as well in the arguments of its eminent leader, General Telford Taylor—one may well make use of such a man's words as a leitmotif for the defense. He is St. Augustine in his book *Civitas Dei*.

To avoid repetitions and overlapping, the defense has divided up the work among themselves. Whether, and to what extent, the outer facts of the individual points of the indictment are those of an international or national criminal offense will be presented to the court in detail by my learned legal friends on the defense counsel's bench. With regard to this theme, I shall limit myself to general fundamental remarks, to occasional allusions, particularly with regard to professional controversy about these legal problems and their relativity. I shall base my defense principally on the assumption that the purely jurisprudential arguments of the prosecution with regard to the legal subsumption are hypothetically correct—that is to say, I do *not* admit, but only assume them hypothetically correct. This means, as a logical consequence, a limiting of my line of argumentation to the outer facts of the case. I am aware that the distinct continental differentiation between the so-called outer actual facts of the case and the inner so-called subjective facts of the case is foreign to American legal thought. I shall endeavor to enter into the spirit

of this foreign legal thought. However, American legal thought also recognizes the difference between an outward act and personal guilt in the said act. Also, American legal thought takes it as a matter of course that a criminal offense cannot have been committed by a person if there is no causal connection between the acts of this person and the facts which are punishable *per se*, if these criminal facts have not been brought about by these acts, but these acts, on the contrary, run parallel to these facts completely independently and in no way causally. It is also of course current in American legal thought that a person can only be punished for having committed a deed objectively punishable, if this person recognizes the individual characteristics of the deed and intended to carry it out. In short, we are in agreement about the significance of the concept of criminal guilt, and we have to be impartial representatives of civilized and professionally disciplined legal thought. Even if, for example, a criminal statute has been drafted so loosely with regard to assumption of a criminal act, as was the case in Control Council Law No. 10, there can hardly exist a controversy between us that the causality which we have just defined and the subjective guilt of the perpetrator which we have also defined must always be existent in order to arrive at a conviction based on the standards of Control Council Law No. 10. If, therefore, Article II [paragraph] 2 (*d*), goes so far as to say that any person is deemed to have committed a crime who was connected with plans or their execution involving the commission of an act, punishable under this law, a free act of volition on the part of the perpetrator must, of course, be a prerequisite. This must always be existent even though the outer participation of the perpetrator in the punishable act is limited to a minimum in the law. Or, if, according to Article II, [paragraph] 2 (*e*) it is sufficient for punishment for the perpetrator to be a member of an organization which was connected with the commission of the act, a punishable act of the perpetrator himself could only exist—even according to your legal thought, and in the face of this broad concept—if it involved an organization the membership in which was in itself compulsory and enforced by law, *ipso jure*, such as was, for instance, the case in the Reich Association Coal and the Reich Association Iron. There can be no further controversy of the fact that, in spite of this compulsory membership by law, punishable acts may be committed by individual members or even by members of the board, as a result of their activities in these organizations, or other organs. The prerequisites of these, however, always are—a relevant individual criminal act and individual guilt, at least if a crime against humanity is involved, as in such a case criminal

proceedings cannot be instituted against the perpetrator as a member of a conspiracy, in contrast to facts constituting a crime as defined by Article II, [paragraph] 1 (a) and (b). Rather, according to Control Council Law No. 10, a purely individual guilt and perpetration is required with regard to the inner and outer facts of the act.

Thus, my line of argumentation will, especially, and with regard to all four points of the indictment, bear upon the contention that such an individual guilt of the defendant Flick, and thus of necessity of the rest of the defendants, does not in any way exist. The argumentation of the jurisprudential question as to how far Law No. 10 can be reconciled with the IMT judgment, by which the new law was created as a *lex posterior*, and whether it may at all apply to facts antedating 1 September 1939, I shall leave to another learned legal friend on the defense counsel's bench. As for myself, in this respect as well, I shall assume hypothetically the correctness of the legal stand taken by the prosecution, without, as mentioned before, conceding that it is correct. With this reservation, I am going to develop the theory of my argumentation for defense and shall also include specific events which took place before 1 September 1939. Altogether it appears necessary for the defense to give an account at the very beginning of its argumentation with regard to the total complex of occurrences in question, and that essentially, as outlined before, under the hypothetical assumption that the jurisprudential theory of the prosecution is correct, in order to make it easier for the Court to obtain an over-all picture. As mentioned before, my colleagues will conduct the polemic against it, so far as it is necessary and possible. I should like to say only one thing as to these discussions which will follow later, and especially as to those concerning international law.

There is no denying that fundamental differences exist between the Anglo-Saxon concept of international law and that of the European continent, not only of Germany alone but of the whole continent. But it is not possible to base judgment upon the Anglo-Saxon concept of law exclusively when American judges pass judgment on Germans in Germany concerning acts which took place in Germany under the prevailing concepts of continental law. On the contrary, an attempt should be made at least to bring about a compromise between the two concepts of law. We, the defense counsel, too, make an effort to familiarize ourselves with the concept of Anglo-Saxon law. Continental lawyers have been educated by and are versed in the concept of positivism; we, of the continent, at least know in penal law and also in international penal law only codified law. We live exclusively under civil law; the United States and the British Empire chiefly according to

common law and equity. Anglo-Saxon law has remained untouched by the concept of Pandects and Roman ideas. Codified law predominates in our country, whereas in your country it is flexible law, the law made by the judge, i.e., case law. We are inclined towards abstractions; you regard them unfavorably. The Anglo-Saxon jurist knows no law written in the stars, a law with which we were born. The continental inflexible theory of natural law is alien to him; he knows only the law adapted to each individual case, equity law. For us, international penal law, at least in the past, was binding for the individual citizen of a continental state only if, by a sovereign act, it had become law in the country concerned. Only too gladly will we open our minds to the principle of a community of civilized states of the world under international law. Civilization and humanity imply to us the same lofty legal concepts, and we readily admit that he who acts in an uncivilized and antihuman manner violates international law. However, this does not solve the problem, for war is inherently uncivilized and antihuman. You cannot apply the yardstick of divinity to the devil. From this results the tremendous complexity of questions concerning individual problems in international law during a war. Added to this are the scientific polemics concerning international law. In them almost everything is controversial, as was lamentably stressed on one occasion during proceedings before the International Military Tribunal by the renowned teacher of international law, Professor Exner, my esteemed colleague and codefense counsel in the great international trial. My highly esteemed teacher, Adolf Wach, at whose feet many an American lawyer has sat as a student, once remarked during a lecture with sad resignation: "We professors live on controversy", and a joke defines a professor as a person who is always of a different opinion. Not wishing to be a self-righteous faultfinder, I shall say that the same applies to literary lawyers. In view of the discrepancies and the polarity of professional opinion concerning problems of international law, the judge must exercise discretion before pronouncing criminal guilt, particularly in the legal sphere of a country whose fundamental legal concept, as I have just propounded, is different from that of the judge. Beyond that we have to deal with the depravity of war caused by the levelling down of the profession of arms and the mechanization of warfare up to the atom bomb, in the face of the requirements of international law for the conduct of humane and civilized warfare. I dare prophesy that through this leveling down and mechanization of the soldier's profession the brutality of war will increase in the same ratio as the amount of literature on international law will increase. Particularly in

this sphere no judge dare ignore these phenomena of human inadequacy in the face of moral requirements. It is the judge's duty here to exercise prudence within the boundaries of what is humanly possible, if the individual is not to suffer injustice. In view of these controversial opinions, recognizing the diametrically opposed development of scientific and moral-philosophical tendencies on the one hand, and the actual progressive brutalization of war caused by sociological and technological developments on the other hand, it is certainly incorrect and cannot constitute a principle for a judge who loves justice and therefore aims to attain it, to pass a self-righteous judgment that ignores human nature; or even more so, to pass one that purely represents the viewpoint of the victor. Do you not believe, Your Honors, that in the face of these demolished cities and in memory of the countless harmless civilians killed by air attacks in purely peaceful communities far from any war industry, German judges, in a different outcome of the war, would inversely have been under the obligation to exercise the most stringent self-discipline and the highest objectivity? "Ideas dwell easily together, but things clash violently in space." I therefore ask you to refrain from such a spirit as is manifest, for example, in the judgment of the Milch case. The defense counsel had pointed out, for instance—and, at least from his own point of view, rightfully so—that in judging the illegality of employing French workers in Germany from the standpoint of international law, one should not lose sight of the fact that the Vichy government had concluded an agreement with the German Government which was legally binding in international law. The judgment, in an unmistakable personal reproach, answers the defense counsel's argument as follows. I quote:*

"It is claimed with a straight face that the Vichy government, headed by Laval, entered into an international compact with the German Government to supply French laborers for work in Germany. This contention entirely overlooks the fact that the Vichy government was a mere puppet set up under German domination, which, in full collaboration with Germany, took its orders from Berlin."

If that judgment represented that opinion and expressed it so pointedly, it should at least not have lost sight of the fact that the government of the United States itself maintained an accredited ambassador with the Vichy government and thus presumably recognized it as a legal government in matters concerning international law, as was done by other countries. But things are not as simple as that. Out of the mouth of the well-known Swiss

* See judgment in case of *United States vs. Erhard Milch*, volume II, page 788, this series.

pacifist, Foerster, came the evil words that "Germany opposed the world with defiant laughter in matters of international law." Generalizing in such a manner might be termed unjust, for in the fight for principles of international law against our own government we too have had martyrs. I shall only name Count Moltke, who was condemned to a martyr's death by the Nazi People's Court, and this may mainly be traced to the fact that as a Referent in the High Command of the Wehrmacht he had acted as a strong exponent of the principles of international law, particularly with regard to the treatment of prisoners of war. No such defiant laughter will meet you from the bench of the defense counsel. However, there is one thing we demand; that this Tribunal, in consideration of the pertinent arguments of the defense, take into account the tremendous complexity of problems of individual questions of international law, as well as the above-sketches fundamental difference between the Anglo-Saxon and continental legal concepts, and that it avoid even the slightest sign that the legal views of a court of a victorious state are justified by the mere fact of victory. We do not fail to recognize the victor's generosity in the treatment of the so-called war criminals in waiving the victor's rights, which resulted from Germany's unconditional surrender, and by guaranteeing these suspects the benefit of a fair trial.

However, it follows from this generous gesture, that if it is not to remain a mere gesture but is to have some real purport, the complexity of the legal position, as exemplified by the many problems in international law in question, is to be treated with that restraint of one's own opinion which is fitting for a just verdict in a controversial legal situation. In particular, my learned colleagues on the bench of the defense counsel will have to examine many such problems. As examples, among many of these, I shall name, for instance, the legal effects of the canceling of the Hague Convention, by and the refusal of the U.S.S.R. to join the Geneva Convention; furthermore, the significance of Defense Exhibit 49 in the Milch trial, namely, the ruling of the Council of People's Commissars of the U.S.S.R. of 1 August 1941 concerning prisoners of war, in accordance with the provisions of which, under paragraph 25, the use of prisoners of war, except in the sphere of combat and for service as batmen, is not subject to any limitations. Further, in this connection, Defense Exhibit 51 of the Milch trial, concerning the employment of German female prisoners of war in Russia, taken from the "Nuernberger Nachrichten" of 5 March 1947, No. 18, page 3. Further, the significance of Article 55 of the Hague Convention for Land Warfare, in judging the illegality of action concerning enterprises representing state property of the

U.S.S.R. within the framework of the authority of a legally defined usufruct of the occupying power, that is, the right of the same to enjoy the use and benefits of industrial enterprises. Further, the admissibility of carrying off of enemy property or the taking away of such, in cases where this removal or taking away is urgently warranted by exigencies of war. With regard to this it will have to be examined whether the latter applies to the removal and taking away of property, even if objects concerned originally were not German property—a question that remains to be proved. Further, there is the question, at what stage of production, from the mining of ores to the manufacture of finished products, the definition of “furthering the war effort” is complied with, and many other things which my colleagues will discuss and plead in detail.

Before I briefly outline my argument with regard to the four counts brought against my client, I feel obliged to enter into a discussion on several points made in the opening statement by the eminent Chief of Counsel for the Prosecution, General Taylor. Such a step is necessary, first, because these points, if they were as factually true as they were represented to be, would yield important circumstantial evidence for establishing the guilt of my client; second, because it is my firm conviction that they also furnish the psychological clue to the question as to why the government of the United States should, above all, take legal action against typical representatives of German industry. General Taylor produced no evidence in support of those points. I therefore find myself engaged in a violent battle over facts with the prosecution, and, in particular, with my esteemed adversary, Mr. Ervin. It goes without saying that this conflict in no way affects our excellent personal relationship, nor, particularly, my personal respect for Mr. Ervin. In the text of the opening statement by General Taylor I find the following sentence, and I quote—

“Krupp, Flick, Thyssen, and a few others swayed the industrial group; Beck, von Fritsch, Rundstedt, and other martial exemplars ruled the military clique. On the shoulders of these groups Hitler rode to power, and from power to conquest.”

He further states—

“Hitler was, to be sure, the focus of ultimate authority, but Hitler derived his power from the support of other influential men and groups, who agreed with his basic ideas and objectives.”

Study of the context makes it apparent that General Taylor is here referring to heavy industry in particular. I quote again—

“But, unless Jewish, the business man and the officer lived comfortably and flourished under Hitler.”

Further on, and I quote again—

“The Third Reich dictatorship was based on this unholy trinity of Nazism, militarism, and economic imperialism.”

And, to quote from another page, I find the following statement—

“The small group of coal and steel kings had in their hands great power to mould German economic structure, and to influence German policies and the German way of life. We will see in this and other cases how they utilized that power.”

The General, in support of his thesis, alludes to the well-known contribution of 3 million Reichsmarks which were to be used for the elections then pending, and which, at the instigation of Goering, was approved of at the meeting of 20 February 1933; he also mentions Flick's contribution to the amount of 240,000 Reichsmarks and more of the like. Now, anyone in Germany who has followed the development of affairs in Germany up to the time of the seizure of power with open eyes and an unprejudiced mind, requires no proof to convince himself of the incorrectness of this statement that Hitler's rise to power was primarily effected by virtue of the fact that he had secured the backing of heavy industry. Hitler's rise to power is typically that of a pure demagogue, of a public seducer, and, ultimately, of a public corrupter, consequently that of a corrupter and destroyer of wealth, and particularly of the influence of the leading industrial stratum. Demagogues of that type, however, ride to power on the shoulders of the masses, and not on any individual crests of the upper strata, and this is particularly true when they owe their rise and seizure of power to the ballot and not to a violent *coup d'etat*, or even to the sword. It is an incontestable fact, however, that Hitler's election victories, at least until after the seizure of power, proceeded according to the rules of the game generally associated with conventional democracy, so that the vote of the masses was actually the driving force behind his seizure of power. The masses, however, who marked those ballot papers, are not to be found in the administrative offices or in the villas of the steel kings or coal barons; they are to be found living in much more modest quarters. A desire to avoid the introduction of disputes concerning home politics into this room of factual objectivity restrains me from particularizing on these social strata. The establishment of this fact, negatively, seems sufficient for the proper discharge of my duties. These arguments, which in the final analysis serve but one main argument, were introduced into these proceedings by the prosecution, as I mentioned before, without the production of any proof of their correctness. The prosecution, of course, is entirely within its rights by following

such a line of procedure. Having recognized the potential application of these arguments as circumstantial evidence against my client, I have, during the preparation of my argument on behalf of his innocence, entered a motion for permission to produce witnesses to prove the incorrectness of these arguments. Mr. Ervin entered objections to my motion on the grounds, among others, that since the prosecution on its part had abstained from producing evidence in support of these arguments, there was no justification for sustaining the motion of the defense for the production of evidence relevant to the same arguments. The Court sustained the objection raised by the prosecution. I reentered the motion and gave extensive reasons for doing so. I need not repeat them here, and am respectfully awaiting the Court's decision. Nevertheless, whatever the Court's decision may be with regard to my motion, I cannot be denied the right to counter, with cause, unproven points made by the prosecution in their opening statement with points also unproven in presenting my opening statement. I should be guilty of disservice to my duties as counsel for the defense were I not to do so, because I am of the opinion that the position maintained by the prosecution is supported by strong circumstantial evidence which I consider of importance, not directly, perhaps, but nevertheless indirectly, in establishing the guilt or innocence of my client. The prosecution again falls back on Hitler's speech at the Industrie Club in Duesseldorf on 26 January 1932 in support of the correctness of these arguments, and even offer in evidence a remark made by Fritz Thyssen in his publication, "I Paid Hitler," to the effect that this speech had made a deep impression on the assembled industrialists. Now, Fritz Thyssen was as much a victim of self-deception when he made that utterance as he was later when he staked his life on Hitler and, subsequently, was forced into a realization of the grave consequences of his mistake as early as 1934. Better witnesses than Fritz Thyssen, whose attitude toward this matter would necessarily have to be a subjective one, are to be found in press notices that appeared in newspapers at that time. These notices reported on the speech and described its effects on the assembled industrialists. The newspapers which published these reports were strictly democratic ones, that is, newspapers opposed to Hitler, none of which, certainly, could be suspected of harboring a particularly friendly attitude toward the magnates of industry.

I quote from the *Berliner Tageblatt*, dated 27 January 1932, as follows:

"The effect of the speech on the audience was a decidedly divided one. Several prominent business leaders in particular voiced grave objections to Hitler's economic views, and, above all, to his foreign policy."

The commentary by the *Vossische Zeitung*, dated 27 January 1932, writes in a similar vein. I quote—

“As for the rest, Hitler’s arguments were received with noticeable restraint.”

And in the *Koelnische Volkszeitung* of 28 January 1932, we read—

“One would be disparaging the Duesseldorf Industrie Club and the bulk of its industrial members and underestimating them if one were to speak of an impression that Hitler’s arguments created there. It would be more accurate to state that the majority was moved to the core by a sensation of emptiness. Therefore, the reception given to Hitler’s speech was a cool one. When viewed objectively our impression could not even be altered by the unvarnished and open display of enthusiasm and acceptance shown by the already confirmed and inveterate industrial adherents of the Third Reich. That task was reserved for Herr Thyssen, who, when summing up the results of his concurrent report, declared that he and his friends could endorse everything Hitler had said.”

Without wishing to overestimate the intelligence level of industrial leaders, it seems that one may safely consider the majority of them as having been capable of recognizing the fact that they would face great losses in terms of power and influence under a Hitler government, or of having grasped the truth of that German proverb which says: “Only the biggest calves choose their own butchers.” Even in the face of extreme skepticism concerning the intelligence level of industrialists, it would be necessary to discount completely their general educational background and their business training, if one were to assume that they did not know that warfare never pays, even though it might yield, for a brief period of time, increased receipts and a concomitant rise in the liquidity of available capital; or to assume that they did not know of the disproportionately greater disadvantages that lie in the wake of these material advantages, or to assume that they were ignorant of the fact that a brief time-conditioned liquidity ultimately spells destruction of productive forces in any economy. One could discourse for hours on this subject in an interesting fashion before exhausting it. Time, however, does not permit it. Instead, I shall cover the essential points briefly when, in further support of my thesis, which is opposed to that of the prosecution, I quote from a pamphlet of the present liquidator of the Reichsgruppe Industrie [Reich Group Industry], the successor of the Reichsverband der Deutschen Industrie [Reich Association of

German Industry], namely, the pamphlet of Bernhard Skrotzki of Berlin.* I quote:

“Above all, it must be stressed with great emphasis that, in the face of such argument, only a small part of industry and the other branches of the German economy supported national socialism in its rise to power. We may, in this respect, look forward with much interest to the results of the Nuernberg trial of the industrialists. This also applies to the big industrial concerns. It is just a myth that big business helped Hitler to gain power. It will give anyone, who wishes to see, food for thought that the organizational pillars of industry, such as the ‘Verein zur Wahrung der Interessen der chemischen Industrie’ (Association for the Safeguarding of the Interests of the Chemical Industry), the reputedly very Nazi Largnamverein in Dueseldorf, and last, but not least, the Reich Association of Germany Industry, the representative of the whole of German industry, in 1933 had first of all to be ‘coordinated’ by the removal of their leading executives in order to find any grace at all in the eyes of the new wielders of power. The Reich Association was suspected so much that they caused its activities to be watched by two commissioners. Even so, none of the posts in these associations were filled with officials from the Nazi circles and thus made instruments of Nazi politics, as, for instance, the Reich Food Estate. The Reich Association of German Industry as well as the Reichsgruppe Industrie, and numerous leading industrialists, during the whole duration of the National Socialist era were in spiritual opposition to national socialism and were never considered as willing tools for its policies.

“The industrialist class, as such, was anti-imperialist and in favor of peaceful competition, because they knew that there they had the best opportunities. The First World War and the period of inflation had also taught them such a painful lesson that they regarded any new war as a misfortune. Besides, if one wishes to consider these things from the purely economic point of view of profit and loss, as our opponents say industrial circles did, these industrial circles knew very well that in the long run more money can be earned out of a long peace than out of the best of wars. That a Second World War would result in an intensification of the technical warfare carried on in the First World War, and that Germany, through the great technical superiority of American industry, would run the risk of suffering frightful devastation—nobody knew that better than the industrial circles.

“Does one really believe that German industry, conscious of its high standard and its high-quality work, and with the inten-

*The pamphlet quoted was not offered in evidence.

sity of its export drive, the close-meshed fabric of its world economic relations, its foreign market organizations which were as large and widely ramified as they were delicate, should have been so shortsighted and so foolish as to take upon itself the enormous risk of a world war in order to start a wild-goose chase after a nebulous imperialistic target?

“Industry here only shares the fate of the whole German people. ‘Politics not economics, are our fate’—under this slogan national socialism pushed aside and condemned to impotence the economic circles. No other blame than that which has been brought against the whole German people, and against labor, too, can be brought against industry—namely, that they did not stand up in time and fight resolutely enough.

“Again and again, as proof of the support of national socialism by the Ruhr industry, the speech is mentioned which Hitler delivered on 26 January 1932 before the Industrie Club in Duesseldorf. It is here that allegedly the ‘pact’ between Hitler and heavy industry against the democratic system and the working class was concluded, and the foundation laid for the National Socialist seizure of power.

“Now, what happened, in reality, at that time? We must go into this a little more closely, in order to nip in the bud a myth which begins to form here.

“First of all: This was not in any way a meeting of the leading industrialists of the Ruhr valley specially arranged for the purposes hinted at, but one of the regular evening lecture meetings which were held by the Duesseldorf Industrie Club every winter. After the democratic parties had voiced their opinion through Clemens Lammers and Cohen-Reuss in the first two meetings in the winter of 1931–1932, on 26 January 1932, at the suggestion of Fritz Thyssen, Hitler was given the opportunity to expand the National Socialist economic program.”

I here interrupt the quotation and add, in explanation, that Cohen-Reuss was a Social Democrat; and that, in April 1932, Dr. Goerdeler, in May 1932 Popitz, subsequently Prussian Finance Minister—in November 1932 the former Reich Defense Minister Dr. Gessler, and at the same time, at a date I do not now know exactly, Ambassador Hassel, spoke before the Industrie Club. Goerdeler, Popitz, and Hassel were men who were prepared to die and who, as a result of the revolt of 20 July, were hanged, while Gessler was taken into custody for the same reason. Thus, they were members of a resistance movement who had joined the resistance not after it had dawned upon them that the war was lost, but whose resistance movement dates back at least

to 1938, as presumably was established in the International Military Tribunal trial in the Schacht case.

I resume quoting from Skrotzki's pamphlet:

"Hitler developed his views before an audience of several hundred persons without meeting with any response from the great majority. It was customary for a second speaker to reply to the lecturer. When Dr. Albert Voegler of the Vereinigte Stahlwerke asked to be allowed to voice a criticism, the chairman of his Aufsichtsrat, Fritz Thyssen, would not permit it, but took it upon himself to reply. He advocated Hitler's ideas, it is true; but his amplifications, and also the 'Heil, Herr Hitler' with which he concluded his reply, met with so little response that Hitler left the Park Hotel immediately after the lecture without taking part in the customary supper. Nor did a talk in a smaller circle on the following day, quickly arranged by Thyssen in order to cover up the embarrassment of the poor result of Hitler's appearance in the Industrie Club, succeed in bringing about a better state of affairs. The result, in any case, was that Hitler did not obtain any support from the industrialists, even if he had had something of the sort in mind, which was not the case with the industrialists.

"How quickly, however, did even Thyssen himself change his views. Only 1 year after the seizure of power, he had already disassociated himself more and more from national socialism, and he completely turned his back upon it afterwards. In the end, he, the big industrialist, was the only Reich deputy who protested against the war when summoned to the Reichstag meeting of 1 September 1939, by sending to Hitler the following telegram from Badgastein: 'Cannot come. Opposed to any war and any cooperation with Soviets which can only lead Germany to communism.' Thyssen then went to Switzerland, and later to France, where after the occupation he was arrested and put into a concentration camp. These facts are too little known to the general public. But it should still be in everybody's recollection that Hitler, with few exceptions, often attacked the industrialists very sharply in his speeches and treated them as rabble. Even Thyssen to whom he certainly owed much, was subjected to this when he no longer proved to be a useful tool.

"These facts, as I have stated already, are too little known to the general public. It is, therefore, easy for a politically biased propaganda to create through continuous infiltration, the opposite opinion, and through this to create fertile soil for the rise of class-war—and that at a time when, in order to conquer the enormous difficulties of reconstruction, the closest and most trusted collaboration between employers and employees should

be the order of the day. Nothing is more harmful to reconstruction than a poisoned political atmosphere. Therefore, not only the German industrialist but the working man too has an interest in the clarification of the real attitude of industry. Thyssen, Kirdorf, Baron Schroeder, and some others were not typical representatives."

This interest of the German industrialist and worker is also shared by the Tribunal, which serves the truth and knows how to estimate the harmful effects that a prejudice magnified to a myth through propaganda may have upon the sources of the search for truth, such as legal investigations and judgments, historical research, let alone politics. No, the planned economy of the Nazi government killed that type of industrialist who, as a great entrepreneur, even inspired his political opponent with respect through his influential power. The title "Economy Leader" (Wirtschaftsfuehrer) was invented merely to look impressive on visiting cards, and was introduced just at a time when the real type of economy leader was being killed. The consequences were so far-reaching that, from 1933 onward, physiognomists noticed changes in the physiognomy of some of the leading figures of German economy, giving them the physiognomy usually associated with officialdom. To be sure, they had money, but their power was taken away from them. From the proud heights of free enterprise they were reduced to tools carrying out the orders of a State economic planning system which wallowed in bureaucracy. Its all-powerful chief of State felt for them, just as he did for all higher ways of life, a profound inner antipathy, and not only for them but also for the intellectuals, the intellectual officer class and their representatives, and the German General Staff—in short, in keeping with his character, for all the higher classes. If the prosecution, therefore, in the same context mentions the name of the leader of the "other Germany", who was killed on 20 July, or that of General von Fritsch, then these two dead men would have the right to turn over in their graves. Your Honors, you have already heard Gritz-bach relate the absolute antagonism that Beck felt toward Hitler, right from the beginning and for which he paid with his life. Concerning General von Fritsch, the findings of the IMT trial have proved that he, a victim of Hitler and of other leading Nazis, as a representative of true military virtues, suffered greatly, and finally fell in battle before Warsaw. It is appropriate here to describe his death in the words of the Swedish captain in Schiller's play "Wallenstein", who, when talking about the heroic death of Colonel Max Piccolomini, said—"They say he wanted to die."

Even the reference, made in the opening statement of the prosecution [in this case], to the authority of the chief prosecutor in

the big International Trial, cannot change the statement's incorrect description of the soil on which Hitler's seizure of power ripened. As Mr. Justice Jackson put it in his opening before the International Tribunal, I quote from it:*

“We know it [Nazi Party] came to power by an evil alliance between the most extreme of the Nazi revolutionists, the most unrestrained of the German reactionaries, and the most aggressive of the German militarists.”

That the most radical Nazi revolutionaries and the most aggressive German militarists cast their votes for the Nazis is obvious; however, one must not look for the latter in the circles of the then (1933) leading and responsible generals. What Justice Jackson understands by the term “reactionaries” he does not say. The conception of this term apparently lacks clarity. The democracy of the Weimar Republic, the Third Reich, as well as the present regime, all apply it to the same stratum of society. These so-called reactionaries are obviously the scapegoats of every regime, even of those which are diametrically opposed to each other. This is devoid of logic. Do these people, or at least some of them, belong to the extremely rare species of “independent thinkers?” Are they being persecuted as representatives of freedom of thought? The Nazis, at any rate, regarded them as their greatest peril and most dangerous opponents. I still remember a press conference with the notorious president of the People's Court, Freisler, which took place shortly before 20 July 1944, and in which I participated in my capacity as a defense counsel—I frequently appeared before the People's Court as a selected defense counsel. Newspapermen asked Freisler who the most dangerous enemies of the Third Reich were, and mentioned the Communists. Freisler smiled mildly and remarked that this danger had been overcome completely. They then mentioned ecclesiastical circles. Freisler characterized their potential dangerousness as insignificant. Thereupon he was asked: “Who, then, is the enemy?” Freisler replied: “Reaction,” having in mind, as I stated before, the very same circles as we have today. The definition of the term “reactionary,” therefore, is completely obscure. So much for the general statements of the indictment. I shall now present my case-in-chief with regard to the individual counts of the indictment.

Your honor, if you agree, I think we will be able to finish before the recess. There is not much more.

PRESIDING JUDGE SEARS: Very well. You may go on to the finish. You may proceed to the end.

*Trial of the Major War Criminals, *op. cit.*, Volume II, page 103.

COUNT ONE OF THE INDICTMENT—SLAVE LABOR

DR. DIX: The international provisions relating to this will be dealt with by one of my colleagues. I shall not submit counter-evidence to the assertion of prosecution that the defendant Flick had known of the coercive methods used in the recruitment of foreign labor. I believe I remember that the prosecution once expressed the idea that these defendants, as some had done in the big trial, would also claim complete ignorance of the practice of such coercion. I have reason to assume that the prosecution, if my memory is correct, will be found to err in respect of Flick, for whom alone I am pleading here. From the witness stand Flick will explain to you how much he knew, what his convictions were, and what he assumed. These statements will make any further evidence with regard to this count superfluous. The same applies to his knowledge, at that time, about the employment of prisoners of war and concentration camp inmates. It is, however, the argument of the defense—and I refer in this respect to the beginning of my plea—that Flick could never, even with the broadest interpretation of the broad definition of “perpetrator” within the meaning of Control Council Law No. 10, be regarded as a responsible perpetrator. It is for the purpose of supporting these legal points of view that I plead. Concerning the treatment of the so-called slaves in the works of his combine, the prosecution’s arguments did not prove that a bad state of affairs did indeed exist and that ill-treatment had taken place there which exceeded the limits of what, under the circumstances, were the most regrettable but natural consequences of those circumstances, which, however, does not contradict the fact that—according to my impressions—everywhere in this world, at least in certain strata of society, a certain “sergeant spirit” cannot be eliminated; I am thinking here of ill-treatment by certain foremen. The decision concerning Flick’s responsibility for any alleged abuses and ill-treatment that may have existed is essentially not a question of evidence but one of law. I, at any rate, have never yet heard that in an army the army commander was held responsible for ill-treatment of soldiers in the company, unless he neglected his duties as instructor of his officers, and unless he had taken no punitive measures after hearing that such incidents had occurred. This example illustrates, *mutatis mutandis*, my legal views as to the responsibility of a leader of a concern for such incidents. My conception of the law can also not be refuted by the testimony of the so-called expert witness, Kimmich, whose economic “blinkers” and whose judgment, untroubled by expert knowledge, were surely revealed quite openly. Nevertheless, as an additional precaution, you will find

that this topic will also be dealt with in the case-in-chief of the general defense.

Above all, however, the concern of my case-in-chief, and that of my fellow defense counsel, will be to prove that the institutions of the State alone were responsible for the so-called slave-labor program, and that the individual citizen is obliged to obey the criminal laws or orders of his government. We will say more on this subject in the final speech for the defense.

I will therefore undertake to prove that the defendant Flick did not, as the prosecution maintains, voluntarily and willingly let these workers be used in his plants. The opinion, however, that in the Third Reich anyone would have been in a position to refuse to fulfill the production demands made by the government with the explanation that he refused to employ foreign workers or concentration camp inmates, or, for armament works, prisoners of war or any foreign workers whatsoever, because they did not come voluntarily—the opinion that anyone could so refuse without having to pay for this refusal with the penalty of death for alleged sabotage and undermining of the German defense morale, is inconceivable to those familiar with the justice of the Third Reich and with the tasks and habits of the Gestapo. The defense cannot unhesitatingly presume that the Court is acquainted with this. Proof will therefore be furnished for this also. No one who knows the Third Reich can hold the opinion that a voluntary martyr's death could have changed anything in the conditions which are censured by the prosecution. We will also undertake to prove this theoretical question. If such conditions existed, however, then the conception of the unimportance of an order, a law, or any other government injunction is untenable. No legal obligation exists to die a martyr's death without obtaining any result whatever. To assert the contrary would be inhuman.

COUNT TWO — SPOILIATION

The authoritative legal points of view for this count have been briefly sketched at the beginning of my argument. We will undertake to prove that Flick did not personally enrich himself by administering the works in the east and west as a trustee, but rather pursued a policy of investment, particularly in Rombach, which improved the real capital of the enterprise; that the original owners were never divested of their property; and that the so-called seizures and returns were dictated by necessities of war insofar as it was not a question of objects, machines, etc., originally imported from Germany. Moreover, the question of the exploitation of the productive capacity of these works for the war potential is not a matter of evidence, but rather a legal question

in which the eastern state enterprises should be given special legal consideration from the point of view of the usufruct of the occupying power, Germany.

COUNT THREE — ARYANIZATION

I will undertake to prove the claim that the State was the responsible agent in the legal sense with regard to the Aryanization of the Hochofenwerk Luebeck, the Rawack-Gruenfeld A.G., and the possessions of the Julius and Ignaz Petschek families; that no action by the defendant Flick could have prevented this Aryanization from taking place; that his cooperation, like that of a lawyer, on the contrary, served to protect the rights and interests of the Petscheks, and that the economic results of this Aryanization process, which was unavoidable at that time, would have been incomparably worse if Flick had not intervened; and that it is particularly incorrect to say that a third party and others, especially the Wintershall-Gesellschaft or I.G. Farben, were in a position to bring about a better economic outcome for the Petscheks. This evidence, presuming it already presented, excludes the legal possibility of a criminally responsible guilt for want of a motive, and for want of the necessary causal connection. I will reserve for the final plea legal arguments concerning the question whether and to what extent Aryanizations may be in principle regarded as criminal acts. Formulating briefly the evidence thus anticipated, it would run—of course, with all the shortcomings of brevity—as follows: Flick was not the responsible person for the Aryanization of the Petschek concern, but an advocate representing their interests in this desperate economic situation. The fact that he hereby also tried to gain, at least in some respects, a personal economic advantage and that he also succeeded in doing so, is of no legal importance. The same thing happens in the case of lawyers as in the case of other professions, and justifiably so.

COUNT FOUR — CIRCLE OF FRIENDS

I am of the opinion that the defense could close the files on this count after Lindemann's interrogation.* It will however, as a matter of precaution, continue collecting evidence from witnesses and documents concerning the nature of this circle, the purpose of the contributions made, and the knowledge of the defendant Flick of the criminal actions committed by the SS, from evidence both by witnesses and through documents. How far membership in such a circle could at all be considered as a criminal fact is a legal

*Extracts from Lindemann's testimony are reproduced below in section V D 4.

question which also must be reserved for discussion in the final plea. After having thus outlined my program, and having stated my fundamental attitude towards the general allegations of the indictment, I ask Your Honors' permission to begin my presentation of evidence. I believe that it will help the Tribunal in its legal findings and in its search for the truth, if, right at the beginning, the entire facts are presented to the Court by a witness who can give information about the whole complex, and not just parts of it. The defendant Flick himself is the witness to be called for that. Of course I realize that many tactical aspects of the defense speak against calling the defendant to the witness stand as first witness, if only for the reason that he will then no longer, or only in an exceptional case, be in a position to express his point of view concerning subsequent testimonies of witnesses. I however subordinate these tactical considerations to the greater need of making it easy for the Tribunal to get at the truth. Flick himself also has only this aim in mind, and no tactical considerations. I therefore conclude my statements with the request that Your Honors notify me whether, after the interval, I may call the defendant Flick as first witness to the witness stand.

PRESIDING JUDGE SEARS: The Tribunal will recess for 15 minutes, and after the recess, of course, Dr. Dix, you may call your client to the stand.

C. Opening Statement For The Defendant Steinbrinck*

DR. FLAECHSNER: May it please the Tribunal: *Quidquid delirant reges plectuntur achiivi*. In English this means "The people have to suffer for the madness of their rulers." This definition could also be applied as a motto for the present indictment. The men sitting here in the prisoners' dock do not belong to the group characterized by the poet as kings or rulers. They have been indicted for acts which are essentially connected with, or were even actually caused by measures taken by the State. Defendants Flick and Steinbrinck especially have been charged by the prosecution with having, by their acts, which the prosecution is now submitting for judicial examination, made use of the State or collaborated with State organizations.

We shall show the Tribunal, which comes from a country which has kept the economic activity of its citizens free from intervention by the State, how conditions developed in Germany and how it comes about that the facts being dealt with here can be understood only in the light of this development. This will be shown by the following:

* Transcript pages 3916-3936, 18 July 1947.

Before the First World War the activity of the State in the economic field was confined within quite narrow limits in the German Reich. It was limited to communications, and, through the federal states (Bundesstaaten) and even the communities, to the field of public utilities. The remaining fields of economic activity were left to the initiative of free enterprise. This was basically changed at the end of the First World War. If the requirements of war economy had brought considerable intervention by the State in economic questions, after the war the activity of the state in the economic field was expanded to an even greater extent. The collection of reparations presupposed a stronger influence of the State upon the economy, and on the other hand, it was also the political forces which had come into power through the Revolution of 1918, which, in pursuance of trends toward socialization, pressed for a stronger economic activity on the part of the State. Before the war, the State—as far as it took active part in the economic field—had been able to fulfill the tasks it met with in this connection, with a specialized Civil Service which had a very carefully chosen personnel. The Civil Service of the supreme Reich and State authorities enjoyed, and rightly so, an extraordinary reputation, because of its specialized training, its ability, and its uprightness. The Preussische Geheime Rat [Prussian Privy Council] had become an established concept in the entire world. The leading officials of the central authorities included prominent personalities who, partly in their youth, partly at a more mature age, found their way into business.

A break in this development came about after the Revolution of 1918-19; the experienced proven forces of the civil service of the central authorities were put out of office in a short time and replaced by men who had been chosen above all because of their political attitude. This change, which began immediately during the first years of the revolution but extended over a rather long period of time, eliminated the old experts in the economic sector, especially in the field of commercial and communications policy. The experts were thus replaced by politicians, especially in the Reich Ministry of Economics (there was naturally a similar development in the other ministries). It was probably due to this shortage of specialized officials, that the Reich Ministry of Economics at an early date used industrialists for limited government service. Characteristic of the shortage of trained officials was the fact that at the time of the negotiations concerning reparations, the Economy was led by Hugo Stinnes, Sr. in the early years, and at the Paris Conference concerning the Owen Young Plan it was not represented by officials but men from the private business world,—at the time, Schacht and Voegler. This fact, however caused the

government to draw personalities with the rank of a von der Porten (aluminum industry) and Pintscher (Reich Credit) as permanent expert advisers for industrial and financial questions, and they, in their turn, consulted with specialist circles.

When this development had reached the point where a reconstruction of an expert civil service for Economy had been set up, it was upset even more basically and more extensively by the Nazis in 1933 than it had been in 1918. This time the ministries were not only purged of so-called unreliable elements, but each field of activity of a civil servant and the tenure of every higher office was made dependent upon Party consent. Just as the officials before 1933 had hesitated, for the most part, to make independent decisions, partly on account of their insufficient knowledge and partly on account of the constantly shifting currents in economic policy between the social democratic conceptions and the liberal attitude of the People's Party [Volkspartei], in the same way now, they were even more afraid of assuming independent responsibilities. No civil servant could foresee how his decision would be regarded by the Party. As a result of this, a reaction set in, of foisting the decision upon one's superiors whenever possible. As a result of this, the highest authorities in the ministry were overburdened with trifles. While Schacht was Minister of Economics he tried to eliminate this overburdening of the highest authorities by appointing men whom he trusted as general experts (Generalreferenten). And these men were Blessing, Wohlthat, Brinkmann, and Herbert Goering. In other fields, however, almost every important problem went to the State Secretary (Staatssekretaer) for a decision, or else the decision was delayed as long as possible. The large economic enterprises however, which had to turn to the State for decisions, and were dependent on them, were therefore compelled to maintain constant contact with the leading officials of the ministry.

A second line of development led to the same result. The social democrats who had come to power after the revolution of 1918, had raised the issue of the socialization of basic industries as part of its program. Since economic and also political factors hindered the carrying out of this aim, it confined itself, together with the other leftist parties in the government, to a state-controlled planned economy, of which Walther Rathenau and Wichart von Moellendorf were the special champions. In this connection, Rathenau was considering not only planned control of imports and exports (indispensable because of the reparation obligations of Germany) but also an extensive regimentation of domestic trade, both from the aspect of production as well as of sales and con-

sumption. The trained and specialized civil service necessary for such extensive economic tasks was lacking. It was therefore decided to organize economic autonomy and to assign it tasks of a State character. An Iron Economy Association and a Reich Coal Council were founded, which, after some time, however, showed themselves to be impractical. During the period after the stabilization of the mark, however, with its trend towards systematization and cartelization, these tendencies were revived. The great amalgamations of the steel industries on the Ruhr, in Upper Silesia, and in central Germany, and the formation of the sales syndicates and international iron cartels, prove how much people were concerned about economic competition from foreign countries, and what pains they took to remain capable of meeting their competition.

The amalgamations in the raw steel industry were soon followed by mergers in the entire iron-processing industry, in the textile industry, and in the chemical industry. Up to the rise to power of national socialism these amalgamations were effected by voluntary union of the entrepreneurs of related industrial branches.

After the rise to power, this system of economic merging into self-governing organs was more strongly organized by the State, which in 1934 passed a law, according to which the right to establish compulsory cartels was vested in the Ministry of Economics. This strict concentration of all enterprises of industrial character became the foundation on which alone, later on, the complete control of export and import within the program of Schacht's new plan, as well as the steering of the home production, could be built up.

The NSDAP, having attained power in 1933, had been hostile to trusts ever since it had announced its party platform, and it was also opposed to cartels. Economic necessity, the economic policies followed under the aegis of the NSDAP which actually presupposed a merger of industrial branches, forced the Party to put up with the increasing trend towards merging of industries.

After the Four Year Plan had practically made State direction of economic activities a point of its program, the State decreed economic planning and compulsory regimentation of the entire economic life, fixing ceilings for wages and prices of production, whereby stabilization of the price level was established and thus any free industrial activities were abolished. Seen from a practical viewpoint, this state-decreed planning replaced the initiative of the individual industrialist by the association as representative of the entire industry. Later on, during the war, from 1942 on, any free initiative on the part of the industrialist was abolished; he was ordered what to produce, he was told how many workers he

could have for carrying out his tasks, and many other things. Even before the breaking out of the Second World War the government aimed at the highest possible export in the interest of facilitating the balance in foreign exchange. Every export deal was checked by a supervising agency. The issuing of an export license depended on whether the country of destination also accepted other German goods. The supervision also included checking on the countervalue for export deals actually coming into Germany. On the other hand the import of nonessential goods was throttled, and everything was done to the effect that imports would come predominantly from countries with which Germany had a balanced exchange of goods. In order to effect this, some—sometimes very complicated—triangle deals were concluded, the combinations of which became even more varied through the fact that foreign nations also began, to an increased degree, to direct their own exports toward certain countries and to limit their imports to those same countries. The winding up of such deals depended, in every phase, on the permission of the foreign exchange agencies—the Reich Ministry of Economics, the Chamber of Commerce, the various supervision offices, etc. The State direction of industry also aimed at elimination of so-called unnecessary competition. This was effected mostly by dividing up the total production according to quotas and giving it to the enterprises affiliated with the various associations of industrialists. In foreign trading too, many subproducers were combined in one administratively responsible authority, in the case of large orders for instance. Since it was the purpose to get the highest possible price for exports and to buy imported goods at the cheapest possible price, a monopoly organization for individual transactions was furthered and some of those groups were given extensive independence and authority whenever the necessity arose. For transactions in steel, railroad, and bridge materials for Turkey, Rumania, and Bulgaria, the leading steel firms, Krupp, Vereinigte Stahlwerke, Gutehoffnungshuette, Otto Wolff, Linke-Hofmann AG, and Henschel were combined in the so-called Ostkonsortium. For the conclusion of transactions with a foreign client the signing authority was, in each case, given to one of these firms. This firm also had to conduct the negotiations with the German authorities. There was also a China-Konsortium, a Schiffsbau-Stahlgemeinschaft (shipbuilding steel association). The buying of ore supplies for the Ruhr works from Sweden, Spain, etc., was centralized at the Vereinigte Stahlwerke, while the sale of tin plate to the foreign canned food industry was handled by the firm of Otto Wolff; and there are many other examples.

The State control of the exchange of goods corresponded to the control of currency exchange with foreign countries handled by the Reich Bank. Since German industry was highly indebted to foreign countries, it was of greatest importance that interests and amortization were safeguarded within the framework of foreign exchange control. This regulation scheme finally became so complicated that one could, without exaggeration, call it a special science. In the later course of the evidence it will be demonstrated what ways had to be chosen in order to secure the means for paying back credits within the program of the International Moratorium Agreement.

A strong centralization of the respective offices and a trained and experienced staff of officials should have been a prerequisite for such strong influencing of industry on the part of the State. It has already been mentioned that, apart from a few exceptions, the people needed to handle these swelled-up State activities, with regard to industry, were nonexistent. The accumulation of State encroachments on industry would really have necessitated a clear limitation of the competency of the individual agencies.

Instead, after 1933, an ever-increasing parallel system of various authorities with different directives and competencies came into being. The consequence was a bureaucracy whose working methods became increasingly clumsy and vague. Germany probably had the strongest state regimentation of economy in the world, except Russia. The Office for the Four Year Plan, with its extensive functions, encroached on the fields of activity of the Reich Ministry of Economics, of the foreign exchange offices and of economic policies. The Ministry of Labor was more and more curtailed by the German Labor Front which took over numerous social tasks. The Foreign Affairs Office of the Party, Ribbentrop's staff, and the Foreign Office, as well as the Reich Ministry of Economics, interfered with foreign economic policies. Within a short time these agencies issued independent orders. When foreign exchange problems and complicated foreign deals were concerned, partly the Reich Bank, partly the Four Year Plan, and partly the Reich Ministry of Economics were the competent agencies. The Reich Ministry of Economics was competent for the import of ore, as were the Foreign Office and the Four Year Plan. Any transactions planned within Germany, like regrouping, new combinations, etc., were also subject to the consent of the economic-political authorities of the Party, among them the Keppler office. If one neglected to apply in time to these authorities, objections and opposition had to be expected which would delay if not prevent the carrying out of the planned transactions. This comprehensive influence of the State on all economic

happenings was only bearable for the industry if the State also provided the authorities and official agencies with extensive information, and did everything to furnish them with the necessary documents for the decisions expected from them. The agencies on their part could stand this working together since, in cooperating with the respective representatives of industry, a relationship of confidence was created, as long as industry kept up its self-discipline and remained conscious of the responsibility involved in accepting State tasks. While in the twenties the organs of industry were actively engaged in economic legislation and, through their experts, were in a position to make extensive proposals with regard to the formulation of trade agreements, tariffs, tax legislation, etc., they were, after 1933, completely eliminated from the legislature, but were, on the other hand, to an increasing degree, asked to work on individual practical business deals.

The development mentioned above explains Flick's cooperation in the reorganization of the iron industry in German Upper Silesia and the various tasks which were assigned to him by the State, and about which he has already made his statements. It explains why Flick and Steinbrinck were asked to assist in the practical execution of the transfer of Jewish property to the iron and steel industry, which was demanded and furthered by agencies of the State. It explains the transfer of administrative functions in the occupied territories to Steinbrinck. And, finally it is the reason why Steinbrinck, too, is held responsible for activities which he carried out in exercising these functions.

The prosecution, in count one of the indictment, charges Steinbrinck with having been a principal in, accessory to, or, connected with: enslavement and deportation, slave labor of members of the civilian population of countries under occupation, enslavement of concentration camp inmates, and the use of prisoners of war for work having a direct relation with war operations.

As far as the prosecution has submitted evidence concerning the utilization of foreign workers, concentration camp inmates, and prisoners of war in the plants of the Flick Konzern, this evidence, as far as the defendant Steinbrinck is concerned, is irrelevant. As the prosecution itself states, Steinbrinck left the Flick Konzern at the end of 1939. Even if the evidence for the treatment of the workers brought forth by the prosecution were typical, which is contested by the defense, the defendant Steinbrinck could not be charged with any such responsibility. The prosecution is attempting to base his responsibility in such a way that he, as member of the board of directors of the Reichsvereinigung Kohle (RVK), is to be blamed for the policies concerning

labor. This interpretation does not do justice to the actual and legal conditions existing within the RVK. The Reichsvereinigung Kohle was a compulsory association of the German mining industry. The defendant Steinbrinck was called into it as he in his position as chairman designate of the Rheinisch-Westfaelisches Kohlensyndikat, appeared to be especially suited to look after the interests of the distribution of coal in the Reichsvereinigung Kohle; secondly, because Steinbrinck was being looked upon as an expert in the sphere of coal economy, and lastly because he was meant to be the adviser on problems concerning the coal economy in the occupied western territories. Here it is unnecessary to go into the details of the construction, the composition, and the sphere of duties of the Reichsvereinigung Kohle, and on the manner in which business was being done, as these items will be treated separately according to distribution of points among the defense counsels. To avoid unnecessary repetition, all this will be treated here only to such an extent as it seems necessary for the recording of the defense for the defendant Steinbrinck.

The Praesidium of the Reichsvereinigung Kohle was a body of many members; its functions were distributed among the individual members. According to the evidence produced by the prosecution, Steinbrinck was concerned with problems which had nothing to do with production. Further details will be discussed during the hearing of evidence. If the construction and the structure of this compulsory association are being estimated correctly, then it is not justified on the basis of the penal code to make the board of directors jointly responsible for all affairs in which the Reichsvereinigung Kohle participated in one way or another. But now I must point to the fact that it means completely mistaking the actual state of affairs if it is being maintained that direct pressure had been exerted on the part of the RVK on Sauckel, Speer, and other high-ranking people in the Nazi hierarchy; and that the Reichsvereinigung Kohle, as a self-administering organization, was in the position to exert such pressure. The coal industry was not at all in a position to exert any pressure on the authorities for the procurement of labor. It would be mistaking the significance of political leadership in the Third Reich if one were to assume that the heads of the political departments would have given way to any pressure from below. The activities of the Reichsvereinigung Kohle were only those of a collective agency for the individual requirements of the firms, which were made by these firms so that they could fill their quota of the whole of the coal production program which was imposed on them. The Central Planning Board, or Hitler himself, laid down the coal production program, the fulfillment

of which was imposed on the Reichsvereinigung Kohle. The latter did not participate in the stipulation, neither was its Praesidium asked its opinion. The coal requirements of the whole economy were laid down elsewhere, and the activity of the Reichsvereinigung Kohle was limited to determining which quota was to be filled by the individual firms. In most cases this stipulation was made by the president, whose prominent position was dictated by statute and by the actual facts. On the other hand, the Praesidium was only of minor importance, which is already borne out by the fact that it was only made to convene very rarely. At another point an opinion will be expressed on the statement of the prosecution that the Reichsvereinigung Kohle had succeeded in increasing the coal production by ruthlessly applying the slave-labor program of the government. But even apart from the fact that one cannot ascribe to the Reichsvereinigung Kohle an active role in the laying down of the coal production program, the starting point of the prosecution is a wrong one, if it wants to derive a criminal responsibility of the defendant Steinbrinck from the fact that he was a member of the Praesidium of the Reichsvereinigung Kohle. It completely overlooks Steinbrinck's actual position in the Praesidium. Steinbrinck was designated the expert for coal export problems. In this capacity he had nothing whatsoever to do with the actual production of coal, and it is impossible to burden him with a responsibility for which there is no appropriate basis to be found in his activity. Besides, the defense will prove that the individual cases as put forward by the prosecution were not typical ones for the entire state of affairs.

As a reason for Steinbrinck's alleged participation in the so-called slave-labor program the prosecution takes his position as Plenipotentiary for Coal in the West. There are no principal considerations on which to base this responsibility, because Steinbrinck in his capacity as Plenipotentiary for Coal in the occupied western territories, did not possess any executive power of his own, and thus he was deprived of any possibility to influence the slave-labor program. It cannot be disputed that, while Steinbrinck was active as Plenipotentiary for Coal in the West, prisoners of war and eastern laborers were employed in Belgian and French coal pits. As is evident from the document submitted by the prosecution, mainly prisoners of war were concerned and to a smaller extent civilian eastern workers. Testimony will be presented which concerns the treatment of prisoners of war and eastern laborers in Belgian and French pits, which shows irreproachable conditions. So far, the prosecution has not proved that the eastern laborers employed there were subjected to inhuman and undignified treatment. On the contrary, evidence

received by the defense proves that good food and treatment were given the foreign workers assigned to work in the Belgian and French mining industry. As far as the details of the position of the defendant Steinbrinck as Plenipotentiary for Coal is concerned, it has to be said that Steinbrinck had obtained the position of Plenipotentiary for Coal in the West from Pleiger in 1942, since already in 1942 Goering nominated Pleiger Plenipotentiary General for Coal in the Occupied Western Territories. Steinbrinck was competent as far as Holland, France, Belgium, Luxembourg, and the territory of Alsace-Lorraine were concerned. During 1942 both Luxembourg and Lorraine were removed from Steinbrinck's competency. After having been incorporated in the Reich, these territories were affiliated with the Reichsvereinigung Kohle, so that actually Steinbrinck was only competent for Holland, Belgium, and northern France. Since the occupation, the administration of the coal mining industry in these territories was effected according to the orders of the competent military commanders; in Holland according to the orders of the Reich Commissioner.

In these territories Steinbrinck's activity consisted in supporting the military commanders or the Reich Commissioners so as to attain the highest possible production, the adaptation of the coal distribution to the quantities produced in the territories, and also in bringing about an agreement of the requirements of the coal economy of the Reich with the individual interests of the territories. At the military commanders' and Steinbrinck's disposal for this task were six German experts in Holland, approximately twenty-one German experts in Belgium and northern France, six German experts in the remaining parts of France. It has to be noted that the annual production was 12 million tons in Holland, approximately 50 million tons in Belgium and northern France, and 12 million tons in the remaining parts of France. Considering this small staff, it was evident that Steinbrinck had to rely on the assistance of the national industries when executing the tasks allotted to him. This scheme turned out to have good results for, during the occupation, almost 100 percent of the pre-war production was effected in Dutch pits, approximately 85 to 90 percent in Belgium, and almost 95 percent in northern France. By attaining these results it is proved that Steinbrinck did justice to the justified interests of the indigenous mining industry through the policy he adopted with the mine proprietors and the miners regarding wages and prices. It was possible for him to keep the mining industry in the occupied western territories on an almost peacetime level, in spite of shortage of materials and difficulties in the procurement of labor. The assignment of prisoners of war to the mining industry cannot be objected to on the basis of international law. The Geneva Convention does not prohibit it. And

likewise, German prisoners of war were employed and are being employed to a large extent in the French and Belgian mining industry. Foreign civilian workers were employed to a small extent only. Only so far as they were not used otherwise, were foreign workers available for assignment in the mining industry in the occupied western territories. Not Steinbrinck, but either the military commander or the Reich Commissioner, had to decide on the extent of the assignment of foreign workers in the mining industry of the occupied western territories. Therefore it is not permissible to charge Steinbrinck with the fact that foreign workers were employed there at all. The prisoners of war and workers employed were treated in an irreproachable manner, and so was their supply of food and clothing. In this respect the prosecution was unable to procure any evidence to bear out their statements.

Only from May 1940 until the spring of 1942, when he was made Plenipotentiary for Coal, was defendant Steinbrinck active as Plenipotentiary for the Steel Industry in Belgium, northern France, Longwy-Ardenne, and Luxembourg. This activity was based on the commission by the Four Year Plan of 25 May 1940 and the Supreme Commander of the Army of 29 May 1940. It ended when in spring 1942 after taking over the Reichsvereinigung Eisen Roehling was nominated Plenipotentiary General for Iron and Steel in the Occupied Western Territories. The purpose of Steinbrinck's activity was to achieve the reorganization of the iron producing industry according to a uniform plan, the raw material supply of the industry, the directing of production and sales. Concerning this task Steinbrinck was inspired by the intention to reestablish as soon as possible the close economic collaboration which existed between the German and western iron and steel industries from 1925 to 1939, and which was achieved after a comparatively short time. The assignment of foreign workers was unnecessary at that time when the point in question was the restarting of the works. Therefore, no reproach can be made to the effect that Steinbrinck, as Plenipotentiary General for the Steel Industry, participated in the slave-labor program. As a result of Steinbrinck's activity, however, the workers of the firms of which he was in charge were protected against recruitment for Germany.

As concerns the second count of the indictment, the defense of the defendant Steinbrinck need not examine whether the reproach made by the prosecution concerning the taking over of the trusteeship of the Rombacher Huette Werke actually represents an offense. There is no proof that the defendant Steinbrinck participated in negotiations which brought this about. The presentation

of the prosecution, by which the latter tried to support its assertion that Steinbrinck in his official position participated in plans which led to the spoliation of the native industry, remains without evidence. Rombach was not under Steinbrinck's jurisdiction. His powers did not extend to the industrial area of Lorraine, to which Rombach belonged. Thus he could not have participated in any action such as that with which he is charged by the prosecution under count one concerning the Rombacher Huettenwerke. The assertion to the contrary, as advanced by the prosecution, is based on a misapprehension of the facts; probably no attention was paid to the limitation of Steinbrinck's powers. At this point Steinbrinck's defense wishes to emphasize that it does not mean to imply that it does in principle accept as justified the viewpoint of the prosecution, namely, that the taking over of the trusteeship for Rombach represented a spoliation of French industry.

Under the same count of the indictment the further charge against Steinbrinck is that in his capacity as Plenipotentiary General, both for coal and for the iron and steel industry, he held an outstanding position within the controlling body of the German over-all program, aiming at the ruthless exploitation of the supplementary coal and steel resources of France, Belgium, Holland, as well as Luxembourg, without any consideration for the restrictions imposed by the laws and customs of warfare. On the contrary, the defense will prove that the iron and steel industry in the occupied areas was once more set going by Steinbrinck, and that he strove to revive business connections between the German iron industry and that of the occupied areas, which had been interrupted by the outbreak of war. In Belgium they founded the Syndicat Belge de l'Aciér (Sybelac) as well as the associations for iron and steel foundries; associations for the pipe factories and other factories were founded. In northern France it was the Sidenord for the iron producing industry and subsequently the Mecanord for the iron preprocessing industry. In Luxembourg it was the Vereinigung Luxemburgischer Huettenwerke and in Longwy a merger of the Meurthe et Moselle Nord with the Walzwerke der Ardennes [Ardennes Rolling Mills]. These self-administering organizations were responsible for the execution of the monthly production and sales program from time to time agreed upon with the Plenipotentiary. These organizations gave a guarantee to the effect that the orders issued for the rationing system were duly executed as well as that the regulations of wage and price control were observed.

It was Steinbrinck's task to control—that is, influence—this economic activity of the organizations for industrial self-administration with regard to production and sale. It is a mistake to see

therein an act which would have to be branded as an offense against Article II paragraph 1 (b), of Control Council Law No. 10. So far there is no trace of detailed description indicating on which facts the prosecution relies in charging the defendant Steinbrinck with participation in this program of plundering. The reference to findings of the IMT judgment of a general nature cannot replace such a detailed presentation. Even less can a presentation of this kind be regarded as proof of an activity which would fulfill the facts of the quoted paragraph of the law. It is not feasible to maintain that every German who held some official position within the administration of the western occupied areas should merely on the strength of this be convicted of the crime of plundering or participation therein.

The same applies to Steinbrinck's activity as Pleiger's* deputy as Plenipotentiary for Coal in the Occupied Western Territories. Here again the assertion cannot be substantiated and there is even less proof that Steinbrinck's activity was directed at a ruthless utilization of the industrial forces of the occupied areas. Steinbrinck's statement submitted by the prosecution reveals that the requirements of the home industry were met as far as possible. The western areas, however, after their occupation by German troops were included in the allied sea blockade *en bloc*, thus eliminating the import of foreign coal at a single stroke. It is obvious that hardships thus were created also for the industry of the country. These conditions necessitated a reorganization of industrial requirements along new lines as the industrial overseas connections hitherto employed were now cut off. There can be no doubt that in this respect the defendant Steinbrinck had to comply with the directives he received from the authorities competent for the occupation and its carrying out. Within his scope, Steinbrinck succeeded in combining the requirements of the home industry with the demands of the occupying power. In his capacity as Plenipotentiary for Coal Steinbrinck was Pleiger's subordinate. Even on the assumption that the prosecution should be able to prove that the industrial branches under Steinbrinck's administration were subjected to an excessive strain on their industrial resources in favor of the occupying power—which the defense emphatically denies—he could not be prosecuted for this. When deciding to what extent an administration of the occupying power drew supplies from the supplementary industrial resources of the occupied country, this is not a question which can be answered clearly so that the border line may be easily recognized. This is particularly difficult in the basic production of coal and iron as

* Paul Pleiger was a defendant in the Ministries case, *United States vs. Ernst von Weizsaecker, et al.*, volumes XII-XIV, this series.

the use of this production is extremely manifold. It is a fact that the local industries of those areas for which Steinbrinck was Plenipotentiary for Coal, were more adequately supplied with coal than the industries in some parts of Germany. This does not alone apply to the coal supplies for the industry but also includes the supplies for the civilian population. Where Steinbrinck was in charge the distribution of the coal industry was such that coal was also exported to the other western areas, e.g., from Holland to northern France, from Belgium to Luxembourg and partly also to Germany. This could not be challenged. The coal regions with their mining industries have always exported coal. In view of the interwoven commercial relations between neighboring countries it is unavoidable—in normal times even imperative—that products are exchanged. It is impossible to take the point of view that due to the stoppage of imports the export of coal should have been discontinued; this would mean to disregard the fact that the mutual economic interrelationship and dependence of the various areas on each other absolutely required such an exchange. At any rate these economic relationships were so complex that to export part of the production from the occupied country into another could not possibly be considered an act of plundering. It is impossible to define the concept of “plundering” in such an unequivocal fashion—at least concerning the charge under consideration—as to be able to use it as basis for a penal sentence.

The prosecution has attempted in most detailed statements of a legal factual nature to create a legal basis for count three of its indictment. The prosecution wishes the activity of the defendant, which it has circumscribed by the word “Aryanization”, to be considered as a crime against humanity in the sense of the Control Council Law. For this purpose the prosecution has tried to eliminate the restrictions of the legal concept “crime against humanity” as undertaken by the IMT, by taking the point of view that the case under discussion could not be decided on the same legal basis which served the IMT for its decisions. Within the bounds of this brief representation it is impossible to discuss the very detailed statements of the prosecution; this must be postponed to a later date. This much however can be said, that the very wording of the Control Council Law contradicts the opinion of the prosecution. The Control Council Law as well as the Statute of the IMT rest on the same basis, i.e., the London Agreement which is explicitly designated as an inseparable part of the Control Council Law. The IMT Statute is part of the London Agreement and has been authentically interpreted by the IMT to the effect that crimes against humanity in the sense of the London Agreement cannot be considered before 1 September 1939. It would be inexpedient at the present moment to enter into a discussion of

the reasons cited by the prosecution against this. To be brief I will only state that these reasons cannot withstand an examination, to say the least they do not necessitate the conclusions drawn by the prosecution.

The prosecution charges that the defendant, with the help of official agencies, put pressure on the owners of industrial enterprises, and that he caused them to give up their property. However, one has to start from the point of view that it is impossible to assume that the defendant exerted any pressure or influence on official agencies. The material submitted by the prosecution as proof of its assertion does not necessitate this conclusion. What is correct is that a far-reaching cooperation on the part of official agencies in these deals did take place; according to the assertions of the defense the State even took the initiative in these deals. This will be amplified in the course of the hearing of the evidence. In regard to this point we just want to state briefly that the defense will prove that pressure on official agencies did not occur to the extent that the latter, as tools of the defendant, had forced the owners to give up their property.

As to the next count of the indictment, the activities of the defendant Steinbrinck in the "Circle of Friends" of the Reichleader SS, the former "Keppler circle," the defense can make good use of the statements of the witness Lindemann, whom the prosecution brought in for this very count of the indictment. Apart from the declarations of this witness, the defense will bring further evidence for the assertion of the defense to the effect that the activity of the "Circle of Friends," as represented by the prosecution, does not at all correspond to the actual situation. The "Circle of Friends" was not an agency which advised the government of the Third Reich in economic or economic-political matters. The members of this circle did by no means form a homogeneous body which might have been able to exercise such advisory functions. Opposite the prominent industrialists invited by Keppler, or Kranefuss to the meetings of the Circle were persons who were full time officials in the SS and who, according to their origin and activity, presented completely divergent points of view, so that uniform aids or a uniform attitude of this group as such was inconceivable.

As to the other charge against the defendant Steinbrinck, his membership in the SS, it will be proved that Steinbrinck did not do any duty in the SS, that the rank of Standartenfuehrer with which he was taken into the SS was given to him for one reason only: Himmler wished to increase the respect of the public for the SS by taking persons like Steinbrinck into the SS. The latter enjoyed great public esteem as one of the best-known subma-

rine commanders in the First World War, and as knight of the order Pour-le-Mérite. On his fiftieth birthday Steinbrinck received from Himmler the rank of Brigadefuehrer. He never saw any duty in the SS. Only when in 1933, the National Socialist government convened in Godesberg with the top generals of the armed forces, Steinbrinck was asked to attend for purely representative reasons. On this occasion Steinbrinck was a member of Himmler's entourage. This did not imply any special functions, it was a purely representative affair. The assertion of the prosecution to the effect that Steinbrinck had particularly close relations with Himmler will be rectified in the course of the argumentation. Steinbrinck's membership in the SS was of a purely formal nature and it is to be examined whether the bestowal of an honorary position falls at all under the regulations of the Control Council Law pertaining to membership in criminal organizations. Even if this should be part of the indictment, the prosecution will not be able to charge the defendant Steinbrinck with this membership. Details will result from the personal examination of the defendant and from further presentation of evidence.

D. Opening Statement for Defendant Burkart*

DR. KRANZBUEHLER: Honorable Judges!

As part of the over-all defense I have undertaken to deal with the question of foreign workers. The prosecution combines both the procurement of foreign workers and their employment in Germany under the term "Slave Labor Program" and describes all defendants as chief perpetrators responsible for this program.

The legal reply to his charge shall be reserved for a later part of the proceedings. At this point I only want to point out two facts, which have to be taken into account in any just estimation. Only he who sees not only the foreground but discerns also the background, can form a correct judgment of the contents of a picture. But the background of this indictment and of all its charges is total war with all its undreamed of effects of an economic and ideological kind. Evidence will show over and over again that the defendants became involved in these events as a fact, which they had not caused and which they could not alter.

The second fact of a general nature is that since the First World War conceptions have changed, whether the state is justified to force individuals to do certain work against their will. I shall prove this change of conceptions from the laws of

* Transcript pages 3937-3943, 18 July 1947.

some European states. I shall endeavor to trace this development up to the latest times and to explain not only its theoretical regulations, but also its practical consequences. While requesting the Tribunal to join me in remembering the described historical background when looking at the charges against the accused industrialists, I shall then consider the so-called slave-labor program in detail. By the judgment of the International Military Tribunal this program has been declared criminal in its entirety. Such a comprehensive statement may have been sufficient as long as the question of over-all responsibility for this program was under discussion. But it is not sufficient where a criminal participation in this program has to be proved. For the program, as described by the prosecution, extends over many years and many countries. It comprises totally different functions—the procurement of workers, their distribution, their employment, and their treatment. If it can be proved that the defendants participated only in such sections of the program which are not criminal, or that they only knew of such sections, then no individual guilt is established and there is no possibility of punishment. In taking evidence, therefore, we have to investigate the individual sections of the program and to establish the defendants' participation in them. In this process it will become evident that the prosecution bases its arguments in a decisive question on wrong figures.

According to the opening statement of the Chief Prosecutor, of the 5 million foreign workers, only 200,000 went to Germany voluntarily. The remainder, that is 4.8 millions, was—I quote from the statement—“corralled in man hunts in which houses were burned down, churches and theaters were searched, children were shot, and families were torn apart by the SS and other recruiters.” These 4.8 million workers, who were displaced by criminal means, form the basis of the indictment. And this basis is quite obviously and to an enormous extent wrong. In proof of this I shall refer to the same chief witness who has been used by the prosecution, namely, Sauckel. The same applies to the question of the time when forcible drafting of workers started to any extent worth mentioning. Sauckel, in the affidavit submitted by the prosecution, declares this time to coincide approximately with the fall of Stalingrad, i.e., in January 1943. (*NI-1098, Pros. Ex. 71.*) Kehrl, in the minutes of the Central Planning Board of 1 March 1944, which have also been submitted by the Prosecution, speaks of an even later time, namely, of June 1943. (*R-124, Pros. Ex. 81.*)

The high number of voluntary workers, as well as the time when coercive measures began, will play an important part in

the discussion of the documents submitted by the prosecution to prove its case. The defendants and witnesses will express their opinion on these documents, and it will become clear from this, that the constant identification of foreign workers and "slave workers" as effected by the prosecution in its presentation of evidence and its argumentations, is in no way in accordance with the facts. The chief prosecutor in his opening statement quoted remarks by Sauckel and Himmler on the exploitation of foreign workers, to characterize the criminal intentions of the government agencies. Neither the defendants nor the plant leaders, who were responsible for the treatment of foreign workers in the plants, knew these remarks, nor has the prosecution offered any proof of such knowledge. The plant leader was confronted with the government "program"—I am for once willing to use this expression—in the shape of a multitude of laws, regulations, and orders of government agencies. These regulations make no enslavement manifest. On the contrary, many of them have the character of welfare measures, and the International Military Tribunal expressly attested to Sauckel that it does not appear as if he had been in favor of a brutal treatment of foreign workers.

In any case there was not the slightest reason for the plant leader not to comply with these government regulations. When dealing with the decisive charges raised by the prosecution on account of the use, treatment, housing, feeding, etc., of foreign workers I shall submit to the Tribunal the most important regulations issued on these points. These regulations were not inhuman in their contents. They had to be carried out by the plant leader. Their execution was constantly supervised by government and Party agencies, and in many cases these agencies directly interfered with the treatment of foreign workers in a way which was outside the competence and the influence of the plant leaders. Where, however, a remnant of liberty of action was left to plant leaders in spite of all regimentation, they always used it in the interest of their workers.

Just as the State was responsible for the treatment and employment of foreign workers, so the State was likewise the sole decisive agent in their procurement. The cooperation of the factories in the procurement of workers was restricted to voluntary recruitment. It was not left to the discretion of the plants to requisition workers, as is asserted by the prosecution. On the contrary, this was just as voluntary as it is voluntary for a man who is afloat in water to swim or to drown. I shall explain to the Tribunal in what manner and with what emphasis the production programs were imposed on the plants and through what channels the requisitions of workers were made. This will show

at the same time, that the plants had not the slightest influence on whether, in any country, workers were forcibly recruited or not.

As the prosecution tries to prove participation in the criminal slave program by membership in certain economic organizations, I shall deal with the tasks of these organizations, as far as these are of importance in this context. As the prosecution still maintains its charge in this point only against Dr. Flick, I shall to this extent speak for this defendant in agreement with Dr. Dix and with the consent of the Tribunal.

In doing so I shall confine myself to the Economic Group Iron Producing Industry and to the Reich Association Iron, while Dr. Siemers will deal with the Reich Association Coal. My evidence will show that the Economic Group Iron Producing Industry lost its significance completely after the foundation of the Reich Association Iron in 1942. The Reich Association Iron was concerned with problems of quite a different nature than those of allocation of labor, and I shall furnish proof of this with both documents and witnesses.

In recalling the powerful words of the prosecution with which it lashed out against the criminal method of the slave-labor program during the indictment and during the opening speech, it can already be established after the case-in-chief of the prosecution, that of those allegations very little has remained concerning the plants of the Flick group. In presenting our own case in chief this will dwindle down to such an extent, that any participation in a criminal setup will be out of the question. On this point too we have distributed the work among us. While Dr. Siemers will deal with conditions existing in the hard coal and finishing group, and Dr. Pelckmann will examine the Maxhuette and its affiliated subsidiaries, my own evidence will take up the plants of the iron producing and the soft coal group. It will deal, in particular, with the allocation of concentration camp inmates to Groeditz, and the alleged ill-treatment of prisoners of war in Lauchhammer. It will further deal with the treatment of foreign workers in the Havel group in Spandau and Brandenburg. Finally, we shall give particular attention to the remarkable statements made by the witness Voytovitch concerning Rombach, that witness who used to wash herself every morning in her tears.

At this point reference should perhaps be made to the almost insurmountable difficulties which present themselves to the procuring of evidence concerning the above-mentioned plants. For these plants are either in the Soviet Zone of Occupation or in France. Hence, they are practically inaccessible to the defense. Individuals who could make exonerating statements are silent for

fear of reprisals. An unscrupulous hate campaign against the "hyenas of monopolistic capitalism," paralyzes any attempt in the eastern zone to support the defense. I beg the Tribunal to take these abnormal circumstances into consideration if the evidence on this point should not turn out to be as complete as might be desirable and possible if conditions were normal.

It may seem strange that the person of the accused does not appear until almost at the end of my statements. But in this, I only follow the methods of the prosecution which characterize this kind of trial. The prosecution has taken the greatest pains to prove, on the basis of documents, the decisive participation of the Berlin administrative office of the Konzern in the procurement of foreign labor, as well as the knowledge of the defendants who were active there, of abuses or criminal methods in the procurement, use, or treatment of foreign labor.

Dr. Nath has undertaken to elaborate in greater detail the duties and responsibilities of the Berlin administrative office. My evidence on this count will therefore mainly confine itself to the question of knowledge of and participation in the problems of the foreign workers by the Berlin administrative office. I hope that this knowledge and participation will completely remove the charge of criminal complicity.

Regarding the second count of the indictment, namely, the spoliation of occupied territories, I shall, on the basis of the work distribution, deal with two cases. The first is Rombach. Although I find it difficult to refute the evidence of the indictment, which I did not quite understand, I shall, however, endeavor to prove that the activity of the defendants had in no way anything to do with the traditional concepts of spoliation. Neither can there be any questions of exploitation, inasmuch as one sees in it an unsound, excessive strain. The Rombach blast furnace plants have been returned to the French administration in a better condition, without doubt, than they were in when they were placed under the trusteeship of the Flick Konzern in 1941.

In judging conditions of Dnepr Steel it is even more difficult to discern what should really constitute the criminal action of the defendants. The legal argumentation on this subject will belong to a later phase of the proceedings; but in point of view of fact it must be stated that the activity of the Dnepr Steel Company was not in the nature of exploitation, but on the contrary, a constructive one. In this, however, the defendants can be apportioned neither praise nor blame, for the Flick Konzern had to furnish the personnel for Dnepr Steel exclusively, but exercised no material influence on its management. This was the responsibility rather of the Berghuette Ost of which Mr. Pleiger was in charge. I shall prove, through introducing wit-

nesses, that this assignment of responsibilities conformed not only to the articles of incorporation, but also to factual conditions.

Finally, in limiting myself to the utmost, I shall produce evidence concerning the character of my client, Dr. Burkart. I fully realize that he has been indicted here not as an individual but as the incumbent of a certain position. For this very reason I shall demonstrate that the character of this man is anything but that of a criminal. In this way, I should like to remind the Tribunal that a sentence is neither aimed at a system nor at a position, but at an individual. Should there be any doubt as to his personal guilt,—and I think that doubt is the most unfavorable possibility left after the evidence at our disposal—then let his character tip the scales for the decision.

E. Opening Statement For Defendant Kaletsch¹

DR. NATH: Mr. President, gentlemen of the tribunal.

The defense of the defendant Konrad Kaletsch gives me reason to rely on the fundamental perceptions and legal conceptions which, for a long time now, have been counted among the basic demands of human rights in the penal law system of all democratic civilized nations, especially in the United States of America. I mean, in the first place, the principle which requires the personal guilt of the perpetrator, if he is to be held responsible under criminal law.

In his excellent opening statement, my highly esteemed co-defense counsel Dr. Dix, has justly called attention to the differences between Anglo-Saxon and Continental legal conceptions. However, I believe that in this matter I may also point to legal conceptions which Anglo-Saxon and Continental legal circles have in common.

I am in complete agreement with the opinion of the International Military Tribunal in its judgment, if this International Court declares it to be one of the most important principles that criminal guilt is a personal one. (Compare judgment of the International Military Tribunal, *The Accused Organizations*, Article 9.)²

As German defense counsel I therefore welcome it, if in this Court, the American Military Tribunal No. II, in its reasons for the judgment against the former Field Marshal Milch, refers to the ancient and basic conceptions of Anglo-Saxon jurisdiction, which are anchored in the English common law, and have been vigorously

¹ Transcript pages 3944-3956, 18 July 1947.

² Trial of the Major War Criminals, *op. cit.*, volume I, page 255.

defended in the United States since their inception as bases for jurisdiction by American courts. He, who as defense counsel, had to experience during 12 years of Nazi dictatorship how these principles, hitherto in force also in Germany—especially the principle of a just hearing before an unprejudiced court before which all human beings are equal—were more and more disregarded, will welcome with all his heart the reestablishment and application of these legal principles of penal law in Germany which were formulated by the American Tribunal No. II,* (1) Any person accused of having committed a crime will at first be considered as not guilty, and (2) He will be given the benefit of the doubt until such time as his guilt is positively proved. And if this Court, in addition, continues that, if the results of the procuring of evidence may be equally taken as proof for his guilt or innocence, they are to be interpreted in the sense of his innocence; we recognize herein the old legal principle which was taken from the Roman Law and was also in force in the German Penal Law up to the Hitler regime: *in dubio pro reo*.

The prosecution formulates its responsibility with the first sentence of its opening statement when it says—"The responsibility of opening the first trial of industrialists for capital transgressions of the law of nations, imposes on the prosecution, above all things the obligation of clarity."

To the same extent it is the duty of the defense to bring about this clarity by its argumentation and by its submission of evidence. Only a clear and objective ascertainment of the facts by application of the basic legal principles mentioned above can lead to a verdict by the Court which is fit to establish and strengthen one of the most important pillars of the democratic state, namely the confidence of the people in an independent jurisdiction and justice. To the judgments which you, the judges of this Tribunal, pass here in Nuernberg, the attention of a people is directed, a people who had to stand the most severe shocks in its legal sphere during the period of the Hitler dictatorship. Therefore it is not surprising that this people, to a large extent, faces the American courts and the judgments pronounced in Nuernberg with skepticism. Confidence in law and justice and in an independent judgment can only be regained with difficulty when it has been so thoroughly lost as was unfortunately the case under the Hitler regime.

"*Justitia est fundamentum regnorum!*" Thus reads also the warning cry of the venerable fighter during the Hitler period, His Eminence, the Cardinal Count Gahlen. Whoever had the

* See judgment in case of United States vs. Erhard Milch, volume II, page 778, this series.

honor, as I had, to discuss this cry of distress with the late Cardinal during the time of the decay of German legal life, will consider it a legacy to help realize it in a sorely tried Fatherland.

In submitting evidence the necessity for clarity will lead me to discuss definitions, to examine the title and official position of my client, which on first sight may lead to suppositions as to a sphere of responsibility which, however, cannot be brought into accordance with the facts. In this connection it is to be mentioned in advance that it is impossible to deal with every one of the numerous assertions of the prosecution in its opening statement, which could easily be refuted. However, as far as the judicial decision of our case can be concerned by these assertions, I shall comment upon them on the basis of the documents submitted by the prosecution, as far as they concern my client. But it does not appear to me to be essential to correct the arguments of the prosecution which, for instance, say that Konrad Kaletsch owned enormous resources, natural man-made and which made him an enormously wealthy man.

My client was neither owner of the Flick Konzern, nor did he exploit resources created by the hand of man, and he did not become a tremendously wealthy man either. He did not hold any shares of the Konzern or the Konzern companies, he was not personally interested in the net profit, he was an employee who had his fixed salary which definitely did not exceed the customary remuneration for men in his position in industry.

In my argumentation, therefore, I shall show first of all the career and the professional development of my client, which, at the same time, will give me the possibility of indicating the development and reorganization of the Flick Konzern wherever necessary. It will be proved that since that time, namely since the year 1925, until the very end, Konrad Kaletsch was always engaged in one sphere of tasks only, namely finance, balances, and taxes, in a clearly perceptible and logical line. It is correct when the prosecution in its opening statement says "The defendant Kaletsch occupied himself with the financial problems of the Flick enterprises and, in this field, his authority extended to all companies in the Konzern." However, it will be necessary for me to examine the nature of the authoritative powers; and at the same time I shall discuss his positions as Plenipotentiary General of the Flick Kommanditgesellschaft, as member of the Vorstand of the Mitteldeutsche Stahlwerke AG, and as Aufsichtsrat of the different companies. Only if one clearly exposes the duties and rights of the individual defendants, can one free one's self from vague ideas which, at first sight, may be connected with so powerful-sounding a title as that of Plenipoten-

tiary General. Only in this way will one be able to examine whether a criminal responsibility, in the sense of the charge, ensues from the sphere of duties of the defendant. It would mean a violation of the principle of proving personal guilt if one were to exceed the limits established by the sphere of tasks and the possibilities of acting authority for the individual defendants, and to extend them to fields with which the individual defendant had nothing to do.

In connection with this explanatory statement it will be necessary to go deeper into the organization and working methods within the Berlin administrative office in which my client fulfilled his tasks. Then, after this clarification has been made through examination of my client, which I shall supplement and substantiate by sworn statement of witnesses, I shall have to ask the question: "Herr Kaletsch, what did you have to do with the forced-labor problem, you, who since 1925 were exclusively engaged in the fields of finance, balances, and taxes"?

In my argumentation and in my submission of evidence, I now comment on count one of the indictment. For legal consideration this is broken up into three points—

1. The prosecution believes that it can see the facts of a criminal act in the mere fact that the utilization of forced foreign labor and concentration camp inmates who had been employed in the enterprises managed by the defendants, constitute the fact of a crime of enslavement of which all defendants are supposed to be guilty as chief perpetrators.

2. All defendants are guilty of the crimes of deportation on the basis of their voluntary participation in these programs in full knowledge of the criminal methods applied for the recruiting of forced labor.

3. The defendants were the chief perpetrators in the killing, the inhumane treatment and the sufferings of the workers while they were employed in enterprises under their direction.

In my opinion the prosecution did not succeed in proving the guilt of the defendants, especially that of the defendant Konrad Kaletsch, in any of the three points.

As for the first point, namely the employment of foreign labor as such, it touches basic questions of constitutional law and international law upon which my colleagues and myself will comment in our closing statements. My submission of evidence as to this question must be restricted to pointing out to the Court the facts which exclude the establishment of a criminal guilt. By examining my client I shall point to the consequences to which he would have exposed himself, had he opposed government regulations; consequences which the prosecution expressed

so conclusively and eloquently when it said: "The Third Reich ruthlessly exterminated any man or woman in Germany who tried to express political ideas outside the bestial Nazi ideology."

The same holds true for the essential matters for the second point, and I shall show for the third point, which raises the accusation of the responsibility for inhuman treatment and suffering of the laborers within the Flick Konzern, whether the assertion of the prosecution is true, namely that such a knowledge did exist in the case of my client. In this respect the prosecution believes that it can state that the enterprises of the Flick Konzern were also under the supervision of Konrad Kaletsch, so as to find a legal basis for his alleged guilt. This assertion of the prosecution will be proved to be incorrect as must be seen from my submission of evidence concerning the position and tasks of my client in the Flick Konzern. Here I shall also substantiate this point of view by submitting affidavits.

I shall then continue in the same way as the prosecution and discuss the next count, count three of the indictment, namely the alleged crimes against humanity, of which Konrad Kaletsch is said to have been guilty. It is a question here of proceedings which are designated as so-called "Aryanization," which led to the acquisition of the shares of (1) Rawack and Gruenfeld, (2) the Hochofenwerk Luebeck A.G., and also (3) the shares of the Anhaltischen Kohlenwerke A.G. and of the Werschen-Weissenfels A.G., which were sold by the United Continental Corporation and which belonged to the Julius Petschek group. Lastly I shall comment upon (4), the exchange of soft coal for brown coal, which took place between the Harpener Bergbau A.G. and the Hermann Goering Works. The cases of Aryanization were already settled before the outbreak of war. In the case of Ignaz Petschek—exchange of soft coal for brown coal—the circumstances that can be brought into consideration at all for a criminal valuation, also occurred before 1 September 1939. These acquisitions have been included in the indictment by the prosecutor by reason of Control Council Law No. 10, Article II, paragraph 1 (c). The prosecution is aware of the fact that it is here touching upon new territory and is demanding for the first time the punishment of crimes against humanity by an American court of justice in Nuernberg, crimes which are said to have been committed by Germans inside Germany before the outbreak of the Second World War—that is, therefore, before 1 September 1939. General Taylor has therefore considered it necessary to set forth in long detailed arguments the prosecution's interpretation of this legal basis. The defense is of the opinion that the prosecution places itself in clear contradiction to the decision of the Inter-

national Military Tribunal in its interpretation of Article II of Control Council Law No. 10. The International Military Tribunal has declared crimes against humanity punishable only if the deed was committed after the outbreak of war in the process of an offensive war (cf., judgment of the International Military Tribunal).

.That the connection of Control Council Law No. 10 with the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945 was the basis for the decision of the International Military Tribunal, is seen even in the preamble to the Control Council Law No. 10.

Accordingly we must start from the fact that Control Council Law No. 10 contains the codification of those legal stipulations which were also the basis for the decision of the International Military Tribunal. A decision deviating from that of the International Military Tribunal appears therefore impossible, and would, in the interpretation of the defense, be in contradiction also to Article X of Ordinance No. 7.

I do not wish at this point to discuss in detail the manifold arguments which could easily refute the legal arguments of the prosecution. I shall take the liberty of exposing in my concluding speech for the defense, the legal interpretation of the defense which is opposed to the prosecution, and which rests on the judgment of the International Military Tribunal. In this, I start out from the point of view that this Tribunal, which has permitted the hearing of witnesses by the prosecution on Count Three of the indictment, also desires the hearing of witnesses on Count Three of the indictment on the part of the defense, without having formed a decision as yet concerning this question of law.

But let this much be said at this time, that the application of the prosecution's proposed interpretation of Article II of the Control Council Law No. 10 leads to untenable results. A man like Julius Streicher, who is characterized by the International Military Tribunal,* as "Jew-Baiter Number One," by reason of his 25 years of speaking, writing, and preaching of hatred of the Jews, and who was undoubtedly guilty of numberless crimes against humanity in the years before the outbreak of the war, was only punished for those crimes against humanity which were committed by him in the execution of an offensive war, that, is, therefore, after 1 September 1939. There were, moreover, in addition to Streicher, men like Goering and Kaltenbrunner, who were not sentenced for crimes against humanity which they committed before the outbreak of war.

* Trial of the Major War Criminals, op. cit., volume I, page 302.

These examples alone show to what a disproportionate and thus unjust result the interpretation of the prosecution would lead, if one were willing to follow it. I am therefore of the opinion that purely from a legal consideration a condemnation of my client also on this count cannot take place. The submission of evidence on the part of the defense will, however, also prove from the point of view of actual fact that in all the four cases of Aryanization there existed no punishable circumstance; and the defense submits that if such should have existed, Konrad Kaletsch took no part in it.

The prosecution has based its criminal judgment for this count of the indictment on the assertion that the nature of the crime in this case was the pressure which was exercised against the owner of the Jewish property in order to force him to sell.

These statements are made in the opening speech of the prosecution in the case of Julius Petschek, where it is pointed out that "it is immaterial whether the seller receives an adequate price or not." Also in another passage, namely, concerning the acquisition of the Hochofenwerk Luebeck, this point of view is set forth as decisive for criminal judgment, when it says of the Luebeck transaction, "The pressure was as yet not so very great."

The establishment of this criterion ought, in my opinion, to prove decisive for a penal judgment. The fact that Jewish property was sold at all during that period and acquired by non-Jewish persons in Germany, can never, considered by itself, be regarded as a crime against humanity. On a great number of occasions, Jewish owners asked their business friends and acquaintances to take over their property, and these businesses were liquidated in a way corresponding to the circumstances of that period which satisfied both parties. Decisive for a penal judgment from the viewpoint of a crime against humanity could thus be, if anything, only the method in which the transaction was carried out in these cases. For the accusation of my client, Konrad Kaletsch, it is therefore necessary to prove that he—(1) took any part in these negotiations and, (2) that pressure was exerted by him on the other partner in the negotiation, or that he supported pressure or approved of it in a legally relevant way.

I shall in my submission of evidence furnish proof that there was no punishable form of participation in these transactions on the part of my client.

The mere fact that my client, at the conclusion of the decisive negotiations, in accordance with the duties of his department, worked on the technical financial liquidation and, in the case of Julius Petschek, signed the agreement with the United Continental Corporation, can never, considered by itself, make him

criminally responsible. This question in particular will have to be examined under the legal aspect of the form of participation as defined in Control Council Law No. 10, Article II, paragraph 2.

Without doubt it is here a matter of the wordings of the law which, in their general setting and lack of precision, call for our attention as lawyers. I should like, therefore, at this time, to point to the fact that proof of *individual participation* is absolutely necessary. It must be proved that my client knew the incriminating action to be a crime, and either collaborated in it or incited it. It must be proved that he gave his consent for the specified crime. In this connection, however, such consent cannot constitute a general sanction, but a possible consent can only be regarded as participation in a crime if he supported and promoted the alleged perpetrators in their criminal intention by this consent, and in this way contributed to the deed in the form of an action of participation. It will be proved by the defense that even the first prerequisite, namely, the existence of criminal facts in cases of Aryanization, is lacking, and further, that in the case of my client a form of participation in the sense of criminal law does not exist.

The principles of actual and legal confirmation hold good for the third case, in respect of which my client is accused and which the prosecution in count two of the indictment has described as "spoliation in the occupied territories." It concerns the cases of Rombach, Dnjepr Stahl G.m.b.H., and Vairogs.

Here the prosecution, as far as Konrad Kaletsch is concerned, has contented itself with general declarations, without showing in detail the facts of the case which would render possible the establishment of his personal and criminal guilt. In the opening speech of the prosecution it is only quite generally asserted that Kaletsch was guilty together with Flick, Burkart, and Weiss. I shall comment upon the few documents submitted by the prosecution which concern my client on this count.

I shall likewise reserve the legal part of my detailed arguments concerning this problem of international law for my concluding speech.

I hope thus to be able to prove to the Court by my submission of evidence that Herr Konrad Kaletsch is not guilty in the sense of the indictment.

F. Opening Statement for Defendant Weiss *

DR. SIEMERS: May it please the Tribunal.

On the occasion of the Bavarian Export Exhibition, Mr. Kenneth E. Dayton, the Deputy Director of the Military Government for

* Transcript pages 3960-3974, 18 July 1947.

Bavaria, stated that the greatest insufficiency of the Germans in the past months lay in the fact that they had not worked out any plans for industrial development. Planning for German economy must not be left entirely to the government, since it lacked experts with sufficient experience and the knack to unravel the complicated and extensive plans.

I offer no opinion as to whether this criticism of Mr. Dayton concerning German industry is justified. But in any case I have the impression that Mr. Dayton is not in close contact with the American prosecuting authorities. For, otherwise, he would know that the prosecuting authorities started an anticapitalist campaign against German economy 2 years ago, and in connection with that arrested the majority of the leading German industrialists who, to a great extent, are still in custody. It is, after all, no wonder if these measures which were greeted joyfully by the Communists and the anticapitalist eastern states, worked out most unfavorably for the development of German economy. It is this very criticism uttered by the American Military Government which shows how problematic and how dangerous is the procedure of the prosecuting authorities. It must be clearly recognized and explicitly stated that the industrial trials planned by Justice Jackson and conducted by or in the process of being prepared by General Taylor, represent no criminal proceedings against a few industrialists, but are basically an attack against the whole German economy. This results from the extraordinarily comprehensive forms of participation specified in Control Council Law No. 10, Article II. According to the argument of the indictment, a hundred thousand German industrialists, employees, and workers are war criminals, because they have been involved in some way or other in so-called slave labor and in employment of prisoners of war. It corresponds absolutely to general humane feeling if these people are called to account who have themselves committed crimes against humanity. But it is incomprehensible when the charge is not made against real criminals but, purely for reasons of international law, against industrialists whose guilt lies in that they were industrialists and not powerful enough to oppose the measures of a dictatorial government.

1. For the first time in the history of law, here in this trial, industrialists—that is private persons—stand before the court because they are alleged to have violated international law. I consider this legally inadmissible. All previous international treaties, as for instance the Hague Convention on Land Warfare of 1907, and the Geneva Convention on the Treatment of Prisoners of War of 1929, were directed at the State, and not at

private individuals. It was a general principle that the responsibility for observing rules of international law was the state's. The International Military Tribunal has deviated from this principle in the great Nuernberg judgment and it holds responsible not only the impersonal state, but also those persons who have acted for this state. This argument may at least be justified in the interest of the development of international law because it seems to be logical that he who acts in the name of the state is just as responsible as the state itself. But it is not understandable if now the prosecution goes beyond that and wants to make even the individual citizens, that is, private persons, responsible, although these private persons have not themselves acted for the state in the course of its measures, but on the contrary were the victims of the measures taken by the State; that is to say, they were obliged as citizens of the state to suffer the measures taken by this state.

It is in agreement with this when the French Chief Prosecutor de Menthon in the great Nuernberg trials said the following in his opening statement of 17 January 1946:*

"It is obvious that, in an organized modern state, responsibility is limited to those who act directly for the state, they alone being in a position to estimate the lawfulness of the orders given. They alone can be prosecuted and they must be prosecuted." [Emphasis supplied.]

The present prosecuting authorities are opposing this trend of thought when they prosecute the industrialists, that is, private persons who, in contrast to the defendants at that time, such as Goering, Sauckel, Rosenberg, etc., did not act for the State.

This fundamentally new attitude taken up by the prosecuting authorities has consequently evoked considerable opposition in the whole world.

Justice Jackson, the American Chief Prosecutor in the first trial, had not been able to carry through before the Tribunal his idea of the collective guilt of the German people; beyond that he championed the trial of the industrialists and in the meantime, influenced by the IMT judgment, withdrew from further trials while another member of the prosecution, selected by President Roosevelt, General Donovan, did the same thing many months earlier. In December 1946, that is 2 months before the present indictment was made, the prosecutor Pommerantz returned to America and to the journalists stated expressly that he could no longer represent the prosecution out of legal conviction. In the meantime, as is generally known, the Republican Party in the United States declared itself against the Industrial Trials and—

* Trial of the Major War Criminals, op. cit., volume V, page 388.

just as significantly—evidently also the government of the British Empire, since it refused participation in these trials. How much the American trial against the German industrialists was wondered at, not only by the Republicans in the United States, but also in London in spite of the Socialist Government, was shown, for instance, by the inquiry made by the Labor M. P. Rhys Davies on 23 May 1947 in the British House of Commons, whether works managers, foremen of mines, engineers, and manual laborers, who helped the National Socialists to wage war, would likewise be arraigned after the American authorities had now arraigned the leading German industrialists for the same reason.

All this shows that the prosecuting authorities have gone too far in their fundamental attitude; the evidence produced by the defense will show that the attitude of the prosecution is based to a large extent on legal errors, and that the actual conditions under which the accused industrialists lived cannot be made to agree with the legal conception of the indictment.

2. The prosecution quotes in its indictment all the articles of the Hague Convention on Land Warfare and of the Geneva Convention, against which the defendants have allegedly offended. In quoting these articles the prosecution forgets to mention that the Soviet Union did not ratify the Geneva Convention. Still more important is the fact that the prosecution in its argument ignores the fact that internationally legal customs, as well as the codified international law, are decidedly unstable legal regulations. International law is always dependent on historical development and has changed many times in the course of time, becoming both broader and narrower, a fact which has been shown particularly in the development of modern warfare in the First World War. Therefore the International Military Tribunal says the following on international law in its Nuernberg judgment:*

“This law is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.” [Emphasis supplied.]

Therefore, when applying the provisions of international law, the historic development of the methods of warfare must be taken into consideration. The methods of warfare known in the year 1907 were so very different from the methods of modern warfare, that is, the methods of the Second World War, that it seems hazardous to apply the internationally legal principles codified in the year 1907, without modification. It would be far more correct to adapt these codified principles, as in the quotation already

* The Trials of the Major War Criminals, op. cit., volume I, page 221.

read, to the "needs of a changing world." Undoubtedly the meaning of the regulations in international law must be adhered to, and the human ideas of these provisions must be taken into account. On the other hand, however, they must be adapted to the development of warfare. It seems to be in direct opposition to the basic ideas of humanity if all inhumane acts in aerial warfare are allowed and are not taken as offenses against international law, or as crimes, for the simple reason that aerial warfare was not conclusively codified either in the year 1907 or at any other time; whereas on the other hand every small formal offense in the treatment of occupied territories is represented as an offense against international law or as a crime, for the simple reason that it was codified in 1907. It seems to me to be opposed to the most basic legal conception if one of the accused industrialists is punished as a war criminal for employing a Belgian conscripted for labor; whereas it is considered unimportant from the point of view of international law, or even as permissible, if the homes of the civilian population are turned into piles of rubble and ashes, as can be seen in almost all German towns, and which we see daily to our sorrow here in the old walled city of Nuernberg; or when, during the war, an airman murdered men, women, and children with machine guns without there being the slightest connection with a military purpose. It is likewise contrary to a sense of justice that submarine warfare is considered restricted by rules of international law, whereas in aerial warfare the civilian population is an open prey to military attacks.

These may also have been the ideas which caused the International Military Tribunal, in contrast to the prosecution, to represent certain actions in submarine warfare as offenses against international law, but not as war crimes. In this very sphere it was shown in the first trial in Nuernberg that international law is dependent on change in methods of war. The Court had to ascertain that, as a result of the technical development of warfare, neither the United States of America, nor Great Britain, nor Germany, had kept to the earlier provisions.

The same ideas that applied to aerial and submarine warfare must also apply to economic warfare. In the course of the terrible and pernicious total war, economic warfare also and thereby war in the occupied territories, was compelled to take on other forms than were formerly known.

I should believe that it is appropriate in this context that Winston Churchill stated in the British House of Commons on 27 February 1940, that he was tired of thinking about the rights of the neutrals, and on 30 March of the same year broadcast on the radio that "It would *not be right* if the Western Powers in the life

and death battle *hold fast to legal provisions.*" A few days later, on 6 April 1940, the English Labor Minister, Ernest Brown, said that neither Germany nor the neutral countries could count on the "*Western Powers keeping to the letter of international law.*"

Likewise in the past 2 years there are innumerable facts which seem to confirm the mentioned principles that international law adapts itself to methods of warfare, and that a victorious nation no longer respects the provisions of the Hague Convention on Land Warfare and the Geneva Convention, to the sorrow of all—as the prosecution would say—well-meaning persons. To make myself understood I need only point out a few facts.

Pursuant to the orders of the British and American Military Governments, *industrial plants were dismantled*, thus pillaged in the sense of the indictment, although such measures are in contradiction to the Hague Convention on Land Warfare. The Soviet Union has dismantled or—again as the indictment would phrase it—pillaged factories to an even much larger extent. In addition to this, the Soviet Union, despite opposition on the part of the Governments of the United States and Great Britain, *has deported people*, from the occupied German territories or—as the indictment would phrase it—carried them off for compulsory labor for the purpose of exploiting them as slaves.

3. Even if, in contradiction to all legal principles valid until now, every private person, every citizen were to be held responsible for the observance of the regulations of international law, and even if, when indicting the defendants, one were to abide strictly by the letter of codified international law, despite the changed circumstances, despite the total economic warfare which altered the base of the entire warfare, particularly so in occupied territories, despite the allied acts which in part were in gross contradiction to the Hague Convention on Land Warfare and the Geneva Convention, there still remains a *third basic objection* against the argumentation of the prosecution.

In section 7 of the indictment the prosecution, in connection with prisoners of war and the occupied territories, has enumerated numerous articles of the Hague Convention on Land Warfare (viz, 11 articles) and to a still larger extent, 38 articles, of the Geneva Convention of 1929 concerning prisoners of war, asserting that these had been illegally, intentionally, and knowingly infringed.

In every infringement of every one of these innumerable articles the prosecution sees not only a punishable act, but even a war crime. I will refrain from debating details before the facts of the case have been clarified by the case-in-chief of the defense, and in particular not in regard to subjective questions, as for

instance the question of intention which can be clarified only in the course of the case-in-chief. I would like to point out right now, however, that the case of the prosecution in this general form is legally not justified, not tenable. It is in the nature of the charge that only serious facts can be considered war crimes. Not every violation of the regulations of the Geneva Convention can constitute a punishable act or even a war crime *ipso jure*. It is exactly the same in international law as in the civil law of every civilized state. Both codes are governed by the principle of faithfulness to agreements. Breach of contract is no more permissible in civil law than it is in international law. But not every breach of contract constitutes a punishable act. A punishable act can exist only when a serious breach of an agreement is involved and if, besides, a specified malicious intent is added.

Examining the articles of the Geneva Convention which have been enumerated by the prosecution, from this point of view numerous instances can be found which clearly prove that there is no violation at issue which can be considered a war crime. In order to make myself clear I would like to mention just a few of the articles quoted by the prosecution, namely the Articles 6, 23, 34, 30, and 57 especially mentioned by the prosecution.

Under Article 6, personal effects as well as steel helmet and gas mask, are supposed to remain in the possession of the prisoner of war. Money may be taken away against receipt only, insignia of rank and decorations must not be taken away from the prisoners of war.

Article 23 deals with the amount of the salary, and Article 34 with the wages to be paid if the prisoner of war works.

In Article 30 the working hours are regulated to the effect that they should not exceed those of civilian workers.

Pursuant to Article 57, prisoners of war under disciplinary punishment may read and write as well as dispatch and receive letters.

This list may be supplemented at will. However, I believe that these brief indications will suffice, as they are merely intended to show that an infringement of regulations of this kind cannot constitute a crime.

With regard to the Russian prisoners of war, special mention must be made of the fact that again and again during the war it was pointed out on the part of the State that the Soviet Union did not sign the Geneva Convention and that consequently the German prisoners of war in Russia were not treated in accordance with the Geneva Convention. That this fact had its consequences and in many cases influenced the attitude toward the Russian

prisoners of war is natural and perhaps comprehensible, if one considers that again and again during the war it became known that the Soviet Union, contrary to the Hague Convention on Land Warfare and contrary to the Geneva Convention, employed prisoners of war directly in the zone of operations without the least scruples, for instance in the factories of Leningrad at a period when Leningrad was besieged by the Germans. Also in other items the prosecution transgresses against the fundamental idea that an infringement of a regulation of international law does not necessarily constitute a war crime, namely, in regard to the charge of spoliation and plundering of the occupied territories; it understands by plundering not merely actual plundering under Article 47 of the Hague Convention on Land Warfare, namely, plundering in the sense of robbery, but it considers the operation of a factory as plundering too. Even if in some individual case the utilization of an existing plant may constitute a formal infringement of an international law regulation, it will nevertheless be morally justified and consequently no crime if the working of the factory at the same time is in the interest of the population, supplying it with work and bread.

After having pointed out some fundamental legal points of view, I would like to take up the matter of the discrepancy existing between the efforts of the indictment and the opening statement of the prosecution on the one hand, and the case-in-chief by the prosecution on the other hand.

After the prosecution had concluded its case-in-chief I reread its opening statement. I could hardly comprehend that the prosecution makes assertions in the opening statement of which scarcely a fraction has been proved. It contains assertions in fact which it has not even tried to prove in the case-in-chief.

The charge is made that the defendants "shamelessly dishonored the image of mankind in the full sight of all men," and they are accused of "greedily plundering the resources of neighboring countries which were overrun by the Wehrmacht."

It says verbally—

"We accuse them, finally, of supporting, joining in, and profiting by the foulest and most murderous policies and programs of the Third Reich, in the course of which the Jewish people were driven from Germany and all but exterminated throughout Europe, and millions belonging to other groups and nations were imprisoned, tortured, and massacred."

Furthermore, the accusation is made "that they set at naught the freedom of other men, and denied their very right to exist, by joining in the enslavement of millions of unfortunate men and women all over Europe, who were uprooted from their homes

and families and imprisoned in Germany to dig in mines and labor in factories, under appalling and unspeakable circumstances, which spread death, disease, and misery." This summary could be supplemented by numerous quotations from the indictment and from the opening statement. However, this is not necessary, because all such quotations from the statement of the prosecution show only a distortion of the actual circumstances and exaggeration without measure. They represent a totally unjustified defamation of respectable people, so that for the rebuttal there remains only the question: What gives the prosecution the right to speak in such exorbitant and insulting terms without proof being offered? How can the prosecution make assertions of which it must have known that they cannot be proved? No evidence was shown in fact and the prosecution did not even try, in part, to adduce evidence. The evidence offered by the defense, on the other hand, will show how different the total aspect of the situation of the foreign workers really was. The prosecution has not been able to prove a single case in which the defendants murdered or tortured, and yet it assumes the right to defame the defendants with such expressions. The evidence heard so far on the part of the prosecution, namely, the statements of its own witnesses, has shown that the foreign workers were not "kept in confinement," but were living in liberty and able to move about freely, just as the German worker. It must be pointed out quite clearly that it is not feasible to stamp respectable industrialists, who are now indicted, as criminals by way of the detour of the horrible crimes on the part of a man like Hitler and his National Socialist collaborators, who were sentenced to death in the course of the first trial. The prosecution could not prove any crime and no unethical act committed by my client, and I therefore dispute the right of the prosecution to defame my client by the afore-mentioned quotations.

As has already been pointed out by the other defense counsel, we have endeavored to collaborate to such an extent that repetitions and overlappings be avoided as much as possible. Within the scheme of dividing up the themes and distributing the work, which became necessary thereby, I have taken charge of the "prisoners of war" topic in reference to count one of the indictment, and consequently I have spoken on this subject today. As the Tribunal has already learned from the statement made by the prosecution, my client, Mr. Weiss, had in the management of the Konzern charge of matters connected with hard coal and the finishing industries. In consequence thereof I deal with the charges which concern the firms belonging to this group, in particular the firms Harpener, Bergbau, Essener, Steinkohle, ATG

Leipzig and the vehicle factories of Busch-Bautzen and Linke-Hofmann, as well as the Fella Works in Feucht near Nuernberg, which, however, holds a special position as a manufacturer of agricultural machinery and because of its financial dependence on Maxhuetten. For the same reason I shall also deal with the fundamental questions concerning the RVK (Reich Association Coal) although my client has been cleared in the meantime of charges concerning this by the statement made by Mr. Ervin on 13 June 1947.* I have nevertheless retained the basic handling of the case in order to relieve my esteemed collaborators, Dr. Dix and Dr. Flaechsner.

The events in connection with the founding of the RVK have been described substantially correct, according to the documents, by the prosecution in its opening statement and in the adducing of evidence. The Reich Association Coal resulted from the struggle of the industry against the Reich Commissioner for Coal, who was appointed by Goering. The endeavors of this Reich Commissioner, whose name was Walther, which aimed at a strengthening of the State influence, were of course not looked at with sympathy by the industry. The coal mining concerns consequently joined, trying to throw off the excessive influence of the State, in order to retain a certain independence despite the totalitarian State. In this respect the Reich Association Coal was nothing else but a combine of the coal industry, therefore, in essence a combination of interests. The wish to retain in this way a certain amount of independence could be fulfilled only temporarily, because in the course of time, according to the statement by the prosecution it was in 1943, due to the increasing dictatorship of the State, the State influence grew gradually stronger in the sphere of coal too, as a result of the actions of the Speer Ministry and of the Central Planning Board which was founded already in 1942.

With regard to count two of the indictment, I shall deal jointly with the two cases Vairogs and Voroshilov in accordance with the activities of Mr. Weiss. With reference to the case Voroshilov, I wish to point out now that the statement of the prosecution contains a legal and factual error, as the taking over of the sponsorship of the Voroshilov plant is represented as a matter concerning the Flick Konzern. Rather was it a matter concerning the firm Siemag exclusively, which has nothing to do with the Flick Konzern, as it belongs to Mr. Weiss exclusively. Counts three, four, and five of the indictment do not affect my client. Bernhard Weiss is a member of a family which has been residing in the Siegen district for a very long time and he comes

* See transcript pages 3106 and 3107.

from an industrial company of medium size which was owned by his family and which became his sole property later on. Only during the war, in the year 1940, he accepted a position, at the request of his uncle, Dr. Flick, in order to assist him in the sphere of the administrative activity in Berlin, which was necessary for the Flick Konzern. I am convinced that Mr. Weiss, in this position too, has kept above every criminal act in the sense of the indictment, including counts one and two.

G. Opening Statement for the Defendant Terberger *

DR. PELCKMANN: May it please the Tribunal.

I consider my task as defense counsel for the defendant Dr. Terberger to consist above all in leading the Court out of the sphere of pure emotion into which the prosecution has tried to bring it in various ways, and in leading up to the facts which concern this defendant exclusively, to wit: the employment of foreign workers and prisoners of war in the works of the foundry "Maximilianshuette."

In this trial the "psychology of the cause célèbre" holds a stronger position than in all hitherto known criminal proceedings of historical importance. It is necessary to recognize the peculiar laws of this psychology in order to prevent their fateful effects on all parties to the proceedings—and above all on the Tribunal—or, after having recognized them, consciously to correct them. The lurking danger of the unconscious which must be recognized and overcome does not originate in the beginning and the course of these proceedings, but imbibes its greatest strength from the sponge of wartime moods which all belligerent parties kept refilling, according to ancient practice, with method and countermethod, propaganda and counterpropaganda.

"Enslavement and deportation to forced labor"—these are terms which designated already during the war, the various methods which were applied by the Third Reich for overcoming the shortage of labor by using foreign workers.

The same expressions have been taken over without a change into the Charter of the International Military Tribunal for the sentencing of the chief war criminals and into Control Council Law No. 10 which is competent for these defendants here. Up to now there is no legal definition of these concepts.

By quoting some statements of the sentences passed by the IMT, by introducing a great number of documents, and by producing only very few witnesses, the prosecution has tried to paint a gloomy picture of the deportation of foreign workers and of their

* Transcript pages 3975-3980, 18 July 1947.

inhumane exploitation, as well as of the prisoners of war in the Flick works—an exploitation which in many cases is alleged to have led to death through hunger and illness.

The defendant Dr. Terberger was a member of the Vorstand of the foundry Eisenwerk Gesellschaft Maximilianshuetten in Sulzbach-Rosenberg—thus of one single factory out of the great number of Flick enterprises.

I assert and shall prove that in these works the foreign workers and the prisoners of war were treated humanely.

I uphold the legal viewpoint that, taking into consideration the system of government labor allocation and the system of police and Party terrorism, a private person, even a member of the Vorstand of a company whose production was essential to the war effort, is not punishable only because of the employment of foreign workers; even if in the course of time he suspected or learned that some of the workers had come to Germany by psychological coercion, i.e., due to so-called drafts or labor conscriptions.

I assert and shall prove that the prisoners of war were not employed in the production or transportation of arms and ammunition in these plants, i.e., not in direct armament production. In addition, it will be necessary to prove legally that the so-called "IMI's" (Italian Military Internees) were not prisoners of war in the meaning of the Geneva Convention and that—since the Soviet Union is not a signatory of the Geneva Convention—the unwritten rules of international law are not to be applied to its prisoners of war in consideration of the lack of mutuality, at least not so far as assignment to armament production is concerned.

Finally, in connection with the responsibility for the prisoners of war, the decisive influence of German military agencies, the military management of the prisoner-of-war camps (Stalags) and the assignment, supervision, and approval of the employment of the prisoners of war by these agencies will have to be shown.

The description of the actual working and living conditions of the foreign workers in the various factories of the Maxhuetten will follow, in particular from a correct evaluation of the so-called incriminating documents, the number of which is small in comparison to the total number of the documents submitted. By an intelligent interpretation of the complete text or its commentary made by competent persons, some of these documents will make the situation of the foreign workers appear not less favorable than the only witness for the prosecution, Kratochvil, stated in his interrogation on 9 May.

Your Honors, I am not reading the remainder of this paragraph as conditions have changed and the witnesses Dr. von Hoven

and Laermann mentioned in it have been available in prison for the last 10 days.

Over and beyond commenting on the documents I shall try, by means of witnesses and affidavits, to develop a really complete picture, describing the Maxhuette plants only, of the actual conditions under which the foreign workers lived there.

Only very few of the documents presented by the prosecution are signed by Dr. Terberger. The distribution of the spheres of duty within the Maxhuette Vorstand accounts for this. Thus I come now to the second essential point of my defense—to the question of the responsibility under criminal law, to the question of the guilt of the defendant Dr. Terberger.

The concepts under Control Council Law No. 10 have been immensely extended; in my introduction I have already mentioned the concepts of enslavement and deportation to forced labor. I continue to quote from this law, Article II, paragraph 1 (c) "other inhumane acts," and point out in particular that the law emphasizes that these examples of punishable acts are not comprehensive. This gives ample opportunity for the formation of analogies which is so strongly criticized before another tribunal in this building. In addition, the law creates in Article II, paragraph 2, entirely new concepts of complicity which are also being applied by the prosecution when charging the defendants with having participated in the afore-mentioned crimes by their consent, by having been connected with their planning or perpetration, and finally by their having belonged to an organization or association which was connected with the perpetration of the crimes.

In view of this boundlessness, a bridge leading to justice can only be built by restricting subjective concepts in an especially narrow sense, by an all the more strict investigation of all facts as to whether and in what the guilt of the accused can be seen, as to whether and why he can be charged in every given situation, taking into consideration all circumstances which have influenced his mental state, his actions, or his commissions. And finally it must be investigated whether—in case the defendant had acted as is now being required of him—really different results would have followed, i.e., whether the actual consequence would have been avoided.

All this can naturally only be decided upon after the evidence has been adduced. But I shall collect the elements of my case-in-chief according to these guiding principles.

Up to now the prosecution has tried to produce only certain external indications for the alleged guilt of the defendant Terberger. The fact that Dr. Terberger was a member of the Vorstand seems to me, according to the opinion of the prosecution

itself, to be no special indication of a responsibility under criminal law, as the other members of the Vorstand have not been indicted. After the lucid statements made by Dr. Kimmich, who was offered by the prosecution as an expert witness, statements made on 5 and 6 May, referring to the "law concerning the organization of national labor" and who regards the "plant leader" as bearing the responsibility, I could limit myself to the statement that Dr. Terberger was neither the plant leader nor the deputy plant leader of the factory.

The activities as a military economy leader (Wehrwirtschaftsfuehrer) or of a counterintelligence commissioner, from certain dates on, neither created nor increased Dr. Terberger's responsibility in questions relating to the utilization of foreign labor.

Each member of the Vorstand was compelled under the strong and permanent pressure of a production program to be fulfilled according to government requirements, to do everything possible in his sphere of duties to carry out this program. This was not possible without information and cooperation on the part of all departmental chiefs. In the performance of these duties and making use of these rights of every member of the Vorstand, Dr. Terberger in every individual case also got his information and dealt with certain questions affecting the situation of the foreign workers.

All members of the Vorstand—including Dr. Terberger—received their information from the competent experts, thus with regard to all welfare and foreign workers questions for all enterprises of the Maxhuetten, which were situated 100 or more kilometers apart, from Dr. von Hoven; and with regard to the individual works from the technical managers who simultaneously were "deputy plant leaders," for example, in the Rosenberg plant, from Director Laermann. It would go too far to present now how that worked out in detail. We shall see that in our case-in-chief. The information described above had to be and could be sufficient for Dr. Terberger, too, for the performance of his duties as a member of the Vorstand. It could only be insufficient if in spite of the supervision by the chief of the welfare department there was reason to assume the existence of abuses.

The analysis of and commentary on the comparatively few documents submitted by the prosecution, and further proofs, will show that in view of the period of time extending over several years, in view of the large number of workers, in view of the abnormal living conditions resulting from wartime distress also for German workers, and especially in view of the government, police, and Party regulations, there existed no abuses which should or could have caused Dr. Terberger to intervene. On the other

hand, certain directives given by Dr. Terberger in his field of activity for the benefit of the foreign workers and prisoners of war will be indications which ought not to be underestimated, pointing against a conscious tolerance of their inhuman treatment.

Thus I hope that the Tribunal, at the end of the case-in-chief, will share my conviction that the intentions of Dr. Terberger were good, that he—like many thousands in Germany—made successful efforts to the best of his ability to act in accordance with the principles of humanity without having to sacrifice his own life uselessly during the time of war which was perilous in every respect.

IV. DEVELOPMENT AND ORGANIZATION OF THE FLICK CONCERN THE POSITION OF THE DEFENDANTS

A. Introduction

Both before and during the Third Reich there were substantial and frequent changes in Flick's control of industrial participations and the manner in which the Flick Concern maintained itself as a working and legal entity in relation to numerous operating companies. This complication is enhanced because contemporaneous documents of the same period often refer to the Concern or branches thereof by different names and by various abbreviations.

The material included in this section deals briefly with the organization and development of the Flick Concern, the distribution of functions as among the defendants and others within the Concern, and the various positions held by the defendants both within and without the Concern. How the prosecution and defense related the functions and positions of the defendants to the issues in the case is indicated in a general way in the opening statements (sec. III). Two charts on the organization of the Flick Concern were discussed in the opening statement for the prosecution (sec. III A) and have been reproduced along with the text of this opening statement. These two charts were frequently displayed in the courtroom during the trial as visual aids in connection with argument and the proffer of evidence.

Basically the evidence and stipulation comprising this section have been arranged to afford a general introduction both to the Flick Concern and to the various positions and functions of the individual defendants. However, the arrangement of the material is also calculated to give a source for subsequent reference when a fuller understanding of evidence reproduced in later sections of the volume may make it essential to refer back to materials on the general status of a particular defendant at a particular time. Accordingly, a number of contemporaneous documents mainly treating the development of the Flick Concern (sec. B below), are followed by six separate sections (C through H below), each of which deals more specifically with the broad outlines of the personal history of one defendant. Each of these last six sections, of course, often goes beyond the role of the particular defendant in question and likewise treats of the history of the Concern and of the functions of various other persons.

A number of German terms are not readily translated into precise English equivalents, a fact with which the participants in the trials were faced from day to day. This is particularly true in the field of German business enterprises and German corporate organization, and confusion may be avoided here by a special note concerning three types of German business enterprises frequently involved in the Flick case: the German "Aktien-gesellschaft" (abbreviated as "A.G."), roughly translated as a stock corporation; the "Gesellschaft mit beschränkter Haftung" (abbreviated as "G.m.b.H."), literally translated as a company with limited liability; and the "Kommanditgesellschaft" (abbreviated as "K.G."), corresponding essentially with the American limited partnership. The "A.G." and the "G.m.b.H." are juristic persons in German law, whereas the "K.G." is not.

The conduct of the defendants often was related to their position as members of the governing boards of a German stock corporation (A.G.). An "A.G." has two governing boards, one charged with general supervision and the other with actual management. These two boards are the "Aufsichtsrat", often translated as the "supervisory board of directors" or merely as "supervisory board", and the "Vorstand", often translated as "managing board of directors" or merely, as "managing board." The "Aufsichtsrat" (supervisory board) is a supervisory board of directors elected by the stockholders at the annual meeting generally called the "Generalversammlung" (before 1937) and the "Hauptversammlung" (after 1937). With some notable exceptions, the members of the Aufsichtsrat appear to correspond functionally with those members of the board of directors of a major American corporation who are not members of the executive committee and who do not participate in the actual or day to day management of the business. The formal rights and duties of the Aufsichtsrat under German law include the election, supervision, and removal of the members of the Vorstand; the general supervision of the management of the enterprise by the Vorstand; the right to examine and audit books and accounts; the calling of shareholders' meetings; and the representation of the corporation in dealing with the Vorstand. Of course, the extent to which the Aufsichtsrat in practice exercises these powers to influence the activities of an A.G. depends upon a number of factors, including for example, who owns or controls the stock. The Vorstand (managing board) is the executive board of directors which undertakes the actual management of the corporation generally and ordinarily represents the corporation in its dealings with others. The members of the Vorstand can best be compared functionally with the principal officers of

a major American corporation who serve on the executive committee and participate in the actual management of the corporation. During the trial, German terms like "Aufsichtsrat" and "Vorstand" were often not translated at all, though sometimes these terms were followed by editorial brackets or parentheses containing the approximate English translations. Since many readers of this volume will not read it consecutively from page to page, the editors have made frequent use of editorial brackets, sometimes to indicate the approximate English translation of a German term and sometimes to indicate the exact German term which has been translated.

A brief summary of the history of the Flick organization and a short description of the positions and general functions of the defendants are contained in the early part of the judgment of the Tribunal (sec. XI, below).

B. Contemporaneous Documents on Flick and the Flick Concern

TRANSLATION OF DOCUMENT NI-3020
PROSECUTION EXHIBIT 5

PAMPHLET PUBLISHED BY THE FLICK CONCERN, 1943, CONCERNING
DEFENDANT FLICK AND THE HISTORY OF THE FLICK CONCERN ¹

Friedrich Flick

Friedrich Flick was born on 10 July 1883 in Ernsdorf-Kreuztal, in the Siegerland; he comes from a long-established Siegerlaender family. His father was a farmer who, however, had close ties with the Siegerland ore mining industry, in which at that time the guild tradition still prevailed. Through him the growing boy, who already attracted attention during his school years, by his serious, forward-looking manner, became at an early age familiar with the world of the local iron industry, so that it automatically became the goal of his vocational aspirations. After attending the Siegerland Realgymnasium [high school], he commenced his commercial training in 1902 at the "Bremerhuetten" [foundry] in Weidenau. In 1902-05 followed his military service in Kassel. Thereupon, Flick attended a 2-year course at the Business College [Handelshochschule] in Cologne, in order to perfect his vocational armor in a special, and at that time hardly customary, manner.

After passing the final examination [Diplom-Examen] with distinction, Flick returned to the "Bremerhuetten" in 1907. Here he became a Prokurist ² at the age of 24, an extraordinary occurrence at that time in an enterprise of such size. Five years later, on 1 May 1913, Flick entered the Vorstand [managing board] of the Iron Industry, at the Menden and Schwerte A.G., and thus attained his first independent sphere of work. In the same year he married Miss Marie Schuss, daughter of City Councillor Robert Schuss, a member of an old Siegen family of merchants. Three sons were born to the couple in the course of the years. The family was formed, which in the coming years of struggle

¹ This pamphlet was published by the Flick Concern in connection with the celebration of Flick's 60th birthday.

² Company or corporation official with power of attorney.

for success, became his retreat, a source of strength and a place of rest.

Flick's appointment to the Vorstand of the "Aktiengesellschaft Charlottenhuetten" in Niederschelden on 1 April 1915, was the starting point of his development which led steeply upward. The Charlottenhuetten became in the course of the years one of the leading enterprises of the Siegerland. Flick now faced a comprehensive, industrial task. The war requirements urged a consolidation of production, and the expansion of the Ruhr concerns into the Siegerland, too, demanded a union of forces as a basic condition for self-preservation. In the summer of 1916 the Koeln-Muesener-Bergwerks-Aktienverein in Kreuztal (a blast-furnace mill) was amalgamated with the Charlottenhuetten. Thus, a considerable expansion of the ore and crude iron sources was attained. In the same year various other ore mines were purchased. The affiliation with the "Eichener Walzwerke" increased the production program still further and assured the Eichener works its own raw material bases. During 1917 and 1918 additional light sheet-metal rolling-mills in Weidenau and Siegen, and the railway-car factory Siegener Eisenbahnbedarf A.G. [Siegener Railway Equipment Co.] were absorbed.

After the war this form of amalgamation was further continued in the Siegerland. The desired amalgamation with Geisweider Ironworks, however, was prevented by the intervention of the Ruhr concerns. For the Charlottenhuetten, however, negotiations resulted in its being freed from any outside influence.

Friedrich Flick became, in the course of these developments, the undisputed leader of the Charlottenhuetten. Since that time his career has been identical with the history of this company, which remained until its amalgamation with the Mitteldeutsche Stahlwerke in 1943, the pillar of his enterprises.

Flick also aspired to independence in the question of raw materials, but since the failure of the "Plan Geisweid," it could no longer be realized within the Siegerland. The influences emanating from the Ruhr were too strong. Germany, as a whole, was politically and economically a country of unrest and decay. The crisis which prevailed compelled those who wanted to survive to avail themselves in a determined manner of every possibility which offered itself. Friedrich Flick, true to his real nature, responded to the call of the moment. In 1919-20, the Charlottenhuetten purchased an interest in the Bismarckhuetten, and soon changed this position into a majority ownership and assumed leadership of the Upper Silesian enterprise. The ore mines of the Bismarckhuetten in the Siegerland and the Harz were

taken over into the direct ownership of the Charlottenhuetten. In 1921 the Upper Silesian base was extended and strengthened by the acquisition of the majority of shares of the "Kattowitz A.G." However, already in the following year a serious menace arose: Bismarckhuetten and Kattowitz [Katowice] were lost due to the cession of eastern Upper Silesia to Poland. The position which was still in the stage of construction was again in doubt, and new deliberations and security measures were called for. Reflections about a new amalgamation led to a participation in the Upper Silesian Iron Industry A.G.

In the meantime the big Montan [mining industry] concerns of the west started to get things moving. Hugo Stinnes and the Rhein-Elbe-Union step to the foreground. Connections are formed based on mutual interests, especially in the sphere of the supply of raw material (scrap metal, coal) and the procurement of semimanufactured goods, which lead to closer cooperation also in more important questions. The Charlottenhuetten became a factor whose influence was decidedly felt. This influence also brings Flick together with men of the Mitteldeutsche Stahlindustrie, who formed a none-too-happy union by combining, first with the "Linke-Hofmann" and later with the "Lauchhammer Werke." The situation demands a regrouping of forces, which is accomplished in the course of a long drawn out process, which cannot be described here in detail. The over-all picture shows, by way of the Upper Silesian position, a participation of the Charlottenhuetten in the "Rhein-Elbe-Union." At the same time the Charlottenhuetten attains a strong influence upon the "Linke-Hofmann-Lauchhammer" companies by the inclusion of the Upper Silesian Iron Industry, A.G. The center of gravity was thus changed which caused Flick in 1923 to move his residence to Berlin.

The stabilization of the mark brought about a period of serious crises for the heavy industry which did not leave the "Linke-Hofmann-Lauchhammer" companies unaffected. Flick devoted his whole strength to preserve these companies, and it is only due to his superior knowledge and iron will that these difficulties were surmounted. The crisis caused the perception to grow within the German steel industry that the forces should be joined more closely. Plans for new amalgamations originate. In the East the "Oberschlesischen Huettenwerke" are formed, in which the Charlottenhuetten invests its interests which had remained there. In the west, the "Rhein-Elbe-Union" becomes the starting point of a great combination, which takes concrete shape in the form of the "Vereinigte Stahlwerke" [United Steel Works]. Flick takes a decisive part in this new formation. The Charlottenhuetten brings into the Vereinigte Stahlwerke not only its works in the Siegerland but also its participation in the Linke-Hofmann-Lauch-

hammer companies. Simultaneously a third combination arises, the Mitteldeutsche Stahlwerke A.G. with the Lauchhammer Werke and the Weberwerk under the leadership of the Vereinigte Stahlwerke.

This great new arrangement made the Charlottenhuetten a pure holding company, however, with a strong position in the west German steel industry. It may be assumed that this position was not very much to Flick's liking, and that he soon longed to have his own sphere of activity again as well as a sphere of personal endeavor in the service of production. The first step in this direction took place in the fall of 1929 by the acquisition of the majority interest of the Eisenwerk-Gesellschaft Maximilianshuetten by the Charlottenhuetten. The second step was realized in 1930 by the purchase of the majority shares of the Mitteldeutsche Stahlwerke from the Vereinigte Stahlwerke. The tempest of the economic crisis of 1931 quickly pushed this development to a conclusion. Flick severs his connection with the Vereinigte Stahlwerke, and obtains through the exchange with the Rheinische Westfaelische Eisenwerk [RWE] a very considerable increase of the heretofore insufficient coal ownership of the Maximilianshuetten. The Charlottenhuetten also takes over the rest of the Vereinigte Stahlwerke ownership of Mittelstahl, and as a further consequence of this new grouping, the decisive influence in Linke-Hofmann and Waggon-Busch as well. Thus, Flick definitely found his new industrial home with its center of gravity in central Germany. The period of great struggles and battles for new consolidations is finished. Changes, however, still take place within the newly-formed group, particularly the amalgamation of the Charlottenhuetten with the Mitteldeutsche Stahlwerke, and the further development of close cooperation between these and the Maximilianshuetten. The coal ownership in the Ruhr is also extended further in connection with the reorganization of the Vereinigte Stahlwerke in 1936, and a few years later, by new purchases of central and east German brown coal which are of great importance for the future of the Stahlwerke. As a whole, there follows a period of expansion and of inner consolidation of the working groups which lead to a significant unity, and at the same time, to a considerable increase in the productive power. The problems arising from the new times were tackled with full energy. Not only comprehensive technical improvements and enlargements of the production facilities were made, but the new factories were placed in the service of the Four Year Plan and industrial armament. Production was steadily increased, and the quality simultaneously improved. The report of the details of the great industrial accomplishment which Flick achieved for Ger-

man reconstruction must be reserved for the future. It should, however, be mentioned that he cooperated already decisively in the year 1934 in the exploitation and processing of low-grade iron ores, and thereby put the ore base of his concern also at the disposal of other German districts at the time.

During these years of internal expansion, the entire enterprise took on its present organizational shape. The holding company is the Friedrich Flick K.G. of which Dr. Friedrich Flick himself is the manager and the personally responsible partner, from which originated three manufacturing groups. The first is formed by the Lauchhammer factories of the Mitteldeutsche Stahlwerke and by the steel works Brandenburg and Hennigsdorf which are owned directly by the holding company. The participation in the Saechsische Gusstahl Werke [Saxonian Cast Steel Works] was an important asset from the point of view of quality. This group derives its raw material from scrap, and in addition, there is the crude iron production of the Hochofenwerk [blast furnace] in Luebeck. The brown coal base is consolidated in the Anhaltische Kohlenwerke [A.G.] whose sphere of activity includes the manufacture of briquettes and the refinement of coal. Principal company of the second group is the Maximilianshuette, whose factories in Bavaria and Thuringia use the product of their own iron ore mines for manufacture. Besides there are the Rombacher Huettenwerke which are managed by a trustee on the order of the Reich. Included in this group, for their coal and coke supplies, are the Harpen Bergbau A.G. and Essen Steinkohlenbergwerke. Chemical refinement also plays a considerable role in the hard coal industry. Finally, the third group consists of enterprises of the finishing industry within special companies. The most important ones are the Waggon-und Maschinenfabriken Linke-Hofmann, and Busch-Bautzen." The technical and economic cooperation between the individual companies and between the main groups in this organic construction is assured in every way.

Flick has been called a collector of industrial participations. That is about as justified as if one looked upon a builder as nothing but a collector of building materials. Flick has always acted in an organizational manner. Affiliations were casually founded on manufacturing connections. In his big, far-reaching activity he always limited himself to his own domain—steel, coal and the finished products thereof. He knew that expansion of force and a sense of proportion go together. This sense for natural measures and limitations was a strong characteristic which may have been a heritage from his peasant forebears. It kept him, in spite of

so much initiative and commercial imagination, from engaging in expansions not within the sphere of his enterprises, even in his younger days, amidst the temptations of the inflation, which old and experienced economic leaders often could not resist.

Flick is a first-class steel expert and has also often shown new ways for the solving of technical questions. Even during the First World War he used shavings in blast furnaces at the Charlottenhuetten to an extent previously unknown. The manufacture of steel iron from shavings and blast furnace slag is due to his initiative, and none has recognized the importance of scrap for the steel industry, or utilized it in such a practical manner, better than he has. The consolidation of the steel industry in the central German area thus took its present form, and developed under his personal leadership into an efficient component of the German steel industry. This enterprising leadership became Flick's real life work. It consists not only in making fundamental dispositions and decisions, but also in the continuous direction and supervision of the works. To this Flick devotes all his powers of concentration and energy which continuously amaze his collaborators. He deals personally day after day with a hardly surveyable quantity of reports, and in discussions with fellow workers and in meetings with factory managers, he always indicates the right way by his simple way of thinking which always emphasizes the essential. His initiative is thereby not limited to material questions. He also knows that all productive work is created by men, and he consciously carries the responsibility for his personnel which devolves upon an industrialist. Exemplary social services have been proposed by him, and the workers communities have often experienced the magnanimous manner in which he has provided for their general welfare.

Friedrich Flick combines in a rare fashion commercial thinking and technical talent. His experience and knowledge find universal recognition among engineers, merchants, and administrators. He carries the academic title of an Honorary Doctor of Economic Sciences, bestowed on him by the University of Cologne, and he is at the same time Honorary Dr. Ing. [Engineering] of the Technical University in Breslau. But his great successes in life are above all due to his diligence, and complete devotion to his work for the companies entrusted to him. The public knows little of him, because due to his tactful modesty he avoids people. But the State leadership [staaliche Fuehrung] knows the great services he has rendered to the German industrial economy. His early appointment to Military Economy Leader [Wehrwirtschaftsfuehrer] and the honors conferred upon him are an outward proof of this.

On 10 July 1943, Friedrich Flick will celebrate his sixtieth birthday. The Second World War finds him at the head of his works personnel, working strenuously for the common aim. At his side already stands his eldest son as manager of a foundry.* His second son died a hero's death on the eastern front in the summer of 1941. Friedrich Flick's life too, is in these times determined by work and sacrifice. His coworkers and friends join the more strongly on his birthday to offer him the best wishes for the future.

* Otto Ernst Flick, manager of Rombacher Huettenwerke A.G., formerly Société Aciéries de Rombas. See "Spoliation—The Rombach Case—Count Two", section VIII.

EXTRACTS FROM THE REICH BUDGET FOR THE FISCAL YEAR 1932, CONCERNING THE GELSENKIRCHENER
TRANSACTION OF THE NIGHT OF 31 MAY TO 1 JUNE 1932 BY WHICH THE GERMAN GOVERNMENT PURCHASED
GELSENKIRCHENER SHARES FORMERLY HELD BY FLICK'S CHARLOTTENHUETTE FIRM

Extract copy: Reich Budget for the Fiscal Year 1932.
Section XVII, pages 458 and 459; 529 and 530.

Chapter	Title	Expenditures	Purpose	Amount Spent RM	Total RM	Total of Expenditures (Colm. 6) compared with total debit more RM less	Expenditures not pro- vided in the budget, budget advances, and extra budgetary ex- penditures.	Notes
1	2	3	4	5	6	7	8	9
(E 20)	Acquisition of Gelsenkirchener Berg- werks A.G. shares.			37,968,295.91	37,968,295.91	37,968,295.91	37,968,295.91	cf. reasons on page 529

Extract copy: Section XVII.—General Finance Administration, pages 529 and 530.

Chapter	Title	Expenditures not provided for in the budget, budget advances and extra-bud- getary expenditures	RM	Reasons
1	2	3	4	5
(E 20)	37,968,295.91	Acquisition of shares of Gelsenkirchener Bergwerks A.G.		The amount of 37,968,295.91 RM represents expenses resulting from the acquisition of Gelsenkirchener Bergwerks A.G. shares at a face value of 110,000,000 R.M. The basis for this transaction was the contract between the firm of Hardy & Company G.m.b.H. and Charlottenhuetten A.G. of 31 May-1 June 1932* which was drawn up in execution of a preliminary contract of March 1932. The firm of Hardy and Company G.m.b.H. concluded the contract by order of and for account of the Reich.

Acquisition of the shares seemed necessary for the following reasons: The financial situation of Charlottenhuetten, which together with her daughter companies owned most of the Gelsenkirchener Bergwerks A.G. shares, which had been bought for account of the Reich, caused great anxiety early in 1932. Due to the close interrelation of Charlottenhuetten with Gelsenkirchener Bergwerks A.G. and Vereinigte Stahlwerke, a serious threat to the bank obligations of those firms had to be expected in case one of these companies had incurred financial difficulties. A weakening of the Stahlverein Konzern could not fail to affect other mining industries. The effects of such developments upon the German banks, which had just been reorganized could not be gauged, but in view of the close relationship of banks and Reich, there would have been serious consequences for the German Treasury. Added to this was the concern that if the Reich did not intercede, the Stahlverein Konzern would be dominated by outsiders. To avert this danger was imperative for the national interest.

According to the contract, the firm of Hardy and Company acquired Gelsenkirchener Bergwerks A.G. shares at a face value of 110,000,000.—for account of the Reich; of these they acquired shares at a face value of 100,000,000 RM for the amount of RM 90,000,000 and the remainder of shares at a face value of RM 10,000,000 in compensation for actual investments (maximum price 6 Million RM). The purchase price for the shares at a face value of 100,000,000. RM was made up by assuming liabilities evaluated then at 65,000,000 RM, 26.2 million RM of which represented liabilities of the Gelsenkirchener Bergwerks A.G. and an amount of RM 25,000,000 which was payable in cash. The amount of RM 25,000,000 as well as the purchase price for the shares at the face value of RM 10,000,000 were paid in cash. In addition, liabilities in the amount of RM 2,000,000 were redeemed.

For the amortization of the purchase price and the interests of the liabilities assumed in compensation with the purchase price, up to 31 March 1933 the Reich paid RM 37,968,295.91 for expenses; no provisions had been made for these funds in the Reich Budget for 1932. The amounts therefore had to be posted outside of the budget.

* The Government of Reich Chancellor Bruening fell on 30 May 1932 and von Papen was appointed the new Reich Chancellor on 1 June 1932. Hitler did not become Reich Chancellor until 30 January 1933. However, the approval of this transaction by Goering and Hitler in 1932 is discussed in a letter of defendant Burkart, dated 17 September 1940 (See Document NI-5432, Pros. Ex. 28, reproduced in section V C). Testimony concerning the discussion of this transaction in Germany at the time is reproduced in sections IV H and V G (extracts from the testimony of defendant Flick) and in section V F (testimony of defendant Steinbrinck).

TRANSLATION OF DOCUMENT NI-5400
PROSECUTION EXHIBIT 63

LETTER FROM DEFENDANT STEINBRINCK TO DR. VOSS, 16 DECEMBER 1936,
TRANSMITTING "A MORE OR LESS OFFICIAL LETTER" ON FLICK'S
REMUNERATION, THE EXTENT OF FLICK'S OWNERSHIP AND CONTROL
OF MITTELSTAHL AND MAXHUETTE, AND RELATED MATTERS

16 December 1936

Dr. Wilhelm Voss
Auditor [Wirtschaftspruefer]
Berlin W8
Taubenstr. 46

Confidential!

Personal!

Dear Dr. Voss!

Enclosed is a more or less official letter [mehr oder weniger offizielles Schreiben],* in which I, on behalf of the Mitteldeutsche Stahlwerke, ask you for an expert opinion on the question discussed between the two of us as to the amount to be paid Mr. Flick. You know, without doubt, that Mr. Flick can be considered the owner of the group Mittelstahl-Maxhuetten, as only a fraction of one percent of the RM 40,000,000 of the shares of Mitteldeutsche Stahlwerke is in other hands, while Mittelstahl itself owns over 80 percent of Maxhuetten.

I assume that the question of payment to the chairman of a supervisory board [Aufsichtsrat] who at the same time is the head of the enterprise or the general director as with Krupp, Siemens, Kloeckner, and others, is under consideration. Perhaps, on the basis of your wide experience, you might give us some indication as to how the work accomplished by such a head of a concern for his companies, can be paid for.

I shall always be at your entire disposition should you consider a private discussion of the matter as expedient.

Yours truly

Heil Hitler!

[Stamp] Signed: STEINBRINCK

* Document NI-5399, Prosecution Exhibit 62, reproduced immediately below.

TRANSLATION OF DOCUMENT NI-5399
PROSECUTION EXHIBIT 62

LETTER FROM DEFENDANT STEINBRINCK TO DR. VOSS, 16 DECEMBER 1936,
CONCERNING COMPENSATION FOR DEFENDANT FLICK FOR SERVICES
IN ADDITION TO THOSE PAYABLE FOR ORDINARY SERVICE AS A
MEMBER OF THE SUPERVISORY BOARD OF VARIOUS FLICK
FIRMS, FLICK'S FUNCTIONS IN RELATION TO SUB-
SIDIARIES, AND RELATED MATTERS

Ga.

16 December 1936

Dr. Wilhelm Voss, Auditor,
Deutsche Revisions- u. Treuhand A.G.
[German Auditing and Trustee Co. Inc.]

Berlin W 8
Taubenstrasse 46

My dear Dr. Voss:

Some time ago we were discussing whether it was necessary officially to report those payments to a director which cannot properly be regarded solely as compensation for the normal services of a member of the Aufsichtsrat [supervisory board].

In the situation which interests us at the moment, Maxhuetten and Mittelstahl want to make payments to the chairman of their Aufsichtsrat, Dr. Flick. Formerly Dr. Flick naturally had received fees from the Vorstand [managing board]. However, after the merger of Mittelstahl and Charlottenhuetten, in the course of which Flick took over the chairmanship of the Aufsichtsrat, those payments were discontinued.

We are now confronted with paying Flick, who certainly cannot live on dividends alone, compensation at a rate greatly in excess of that based on the normal fee of the chairman of the Aufsichtsrat.

The extent of this compensation is predicated on the following considerations: While normally the activity of a member of the Aufsichtsrat, as well as that of its chairman, includes the direction of the plants under discussion, supervision of the adherence to official regulations, in special instances the offer of suggestions or advice, and the maintenance of proper coordination with the different departments of the economic structure—the activity of Flick, as you know, transcends by far the

sphere of duties outlined above. Dr. Flick exercises virtually the functions of a director general over the works of our group, that is to say, Mittelstahl, Hennigsdorf, Maxhuetten, and Harpen. In view of the multifarious nature of his interests, it is, in the nature of things impossible for him to sit on the Vorstand of all these companies, nor can he completely exercise the duties of a director general. Dr. Flick works nevertheless throughout from morning until late at night daily, in the interest of these enterprises; there is not a single important business matter that is not brought to his attention and decided by him. He visits the works at regular intervals and participates in spot discussions of all important questions, including those concerning organization. Dr. Flick also personally conducts most of the various discussions with the different Reich authorities, which, under present conditions, obviously absorb a large part of his energies. This is true, as well, with respect to important transactions between the Konzern and the various sales associations, etc.

The fact that Dr. Flick holds formal membership only in the Aufsichtsrat, and not in the Vorstand, cannot, in my opinion, act as a controlling circumstance, with reference to classifying the income he receives as fees accruing to a member of the Aufsichtsrat. I feel there must be a distinction made between those payments received in respect to his position as chairman of the Aufsichtsrat (a certain proportion should be established between such fees and the payments made to other members of the Aufsichtsrat), and the larger part thereof, which should properly be considered as compensation for that part of his activities which goes far beyond the normal sphere of his duties as a member of the Aufsichtsrat. There would be no necessity of declaring these latter payments in the company reports as directors' compensation.

That such a construction is possible may be gathered, for example, from the fact that the Reich Finance Court [Reichsfinanzhof—RFH] recognized such a separation in its decision of 19 May 1936. For your information I am appending an excerpt thereof to indicate its tenor—

“If payments made to a financially interested member of the Aufsichtsrat are regarded by the Finance Court as compensation for a service that has been rendered on the basis of a special contract to an extent transcending the limits of possible Aufsichtsrat activity, then in those cases where the Finance Office has treated such payments as nondeductible, the Finance Court must officially inquire into the propriety of the payment. If this inquiry is not made, such omission implies a serious procedural defect and the possibility of a mistake of law.”

On the basis of various consultations in other circles, I get the impression that a similar point of view has been taken in other cases involving large industrial enterprises.

I would like to emphasize particularly that the only question we are interested in, is the necessity of reporting those payments in the company report. The tax aspect need not be examined, since Dr. Flick naturally reports his entire income in his income tax return.

I would like to ask you, my dear Dr. Voss, to give us, in your professional capacity as auditor, a comprehensive opinion as to whether you consider the omission from the company report of that portion of payments received by Dr. Flick as compensation for special services outside of his customary Aufsichtsrat activity, as legally permissible. In addition, I wish you would examine the question as to whether the Vorstand has the right, with the approval of the Aufsichtsrat, to enter into such a contract with Dr. Flick, or whether the approval of the general meeting is required.

I have already discussed this with the auditor of Mitteldeutsche Stahlwerke A.G. and Maxhuetten, but would prefer not to rely in this question on only one opinion.

With German greetings,

Respectfully yours,

[Signed]: STEINBRINCK

Enclosure: 1 copy of the bylaws of Mittelstahl and of Maxhuetten.*

* The enclosure was not a part of the document offered in evidence.

PARTIAL TRANSLATION OF DOCUMENT NI-5545
PROSECUTION EXHIBIT 44

EXTRACT FROM PROCEEDINGS BEFORE A BERLIN NOTARY, 28 JUNE 1937,
CONCERNING CONVERSION OF SIEGENER IRON INDUSTRY COMPANY
INTO THE FRIEDRICH FLICK KOMMANDITGESELLSCHAFT AND
THE OWNERSHIP, POSITIONS, AND LIABILITY OF DE-
FENDANT FLICK AND HIS SON, OTTO ERNST FLICK

PROCEEDINGS

Held in Berlin, on 28 June 1937

Before the undersigned notary public, Dr. Hugo Solbrig, residing in Berlin in the District of the Kammergericht [Court of Appeals], the following gentlemen, personally known to him, appeared today in the office, Bellevuestrasse 12a.

- (1) Dr. Friedrich Flick, merchant, in Berlin, Taubertstrasse 23.
- (2) Otto Ernst Flick, merchant, in Berlin, Taubertstrasse 23.
- (3) Dr. Heinrich von Stein, banker, in Cologne.
- (4) Otton Steinbrinck, merchant, in Berlin-Dahlem, Amselstrasse 24.
- (5) Konrad Kaletsch, merchant, in Berlin, Drakestrasse 1.
- (6) Dr. jur. Fritz Streese, in Duesseldorf, Hofgartenstrasse 2.
- (7) Friedrich Staehler, director, in Duesseldorf, Hofgartenstrasse 2.

They submitted the stock record book of the Siegener Eisenindustrie Aktiengesellschaft in Duesseldorf (hereafter called Eisenindustrie) and stated:

We assemble for a general meeting of this company: Friedrich Flick, (1) chairman; Dr. Heinrich von Stein (3) and Otto Steinbrinck (4) are the sole members of the Aufsichtsrat of this company; Konrad Kaletsch (5), Dr. Fritz Streese (6), and Friedrich Staehler (7) are the sole members of the Vorstand. The company has an original capital stock of 25 million Reichsmarks. Friedrich Flick (1) owns shares at a face value of 24,800,000 Reichsmarks and Otto Ernst Flick (2) owns shares at a face value of 200,000 Reichsmarks; certificates of these shares have not been issued.

The notary states that the stock record book lists as shareholders of the company Mr. Friedrich Flick, merchant in Berlin, Taubertstrasse 23, with shares at a face value of 24,800,000 Reichsmarks and Mr. Otto Ernst Flick, merchant in Berlin, Taubertstrasse 23 with shares at a face value of 200,000 Reichsmarks.

The persons present here state further:

The entire original capital stock of the Eisenindustrie is repre-

sented in today's meeting by Friedrich Flick (1) and Otto Ernst Flick (2). Therefore, it is not necessary to call today's general meeting formally. We waive the adherence to all statutory and legal forms and set terms for the calling of this meeting.

* * * * *

II

Conversion of the Company

Konrad Kaletsch (5), Dr. Fritz Streese (6), and Friedrich Staehler (7) have now submitted a conversion balance sheet of the Eisenindustrie as of 31 March 1937 which will be attached to this protocol as appendix 3. The reading of it has been waived.

Friedrich Flick (1) and Otto Ernst Flick (2) as stockholders unanimously declared the following resolutions:

a. The two sole shareholders of the Siegener Eisenindustrie Aktiengesellschaft in Duesseldorf (hereafter called Eisenindustrie) namely, Dr. Friedrich Flick, merchant in Berlin and his son, Otto Ernst Flick, merchant in Berlin, establish a Kommanditgesellschaft [limited partnership] under the firm. Friedrich Flick Kommanditgesellschaft, located in Duesseldorf. By way of conversion in accordance with the conversion law for capital companies, dated 5 July 1934, without liquidation the assets of the Eisenindustrie, including debts, will be transferred to this Kommanditgesellschaft. This conversion is based on the conversion balance sheet of the Maxhuetten of 31 March 1937, submitted as appendix 3 of this protocol, which herewith is approved. The transfer of assets takes place in such a way that the transactions of the Eisenindustrie after 1 April 1937 are considered carried out for account of the Kommanditgesellschaft.

The Kommanditgesellschaft starts with the registration of this conversion in the Commercial Register.

Of the two partners of the Kommanditgesellschaft, Mr. Friedrich Flick (1) is the personally responsible partner and Mr. Otto Ernst Flick (2) is limited partner [Kommanditist].

Mr. Friedrich Flick (1) is authorized to represent the company independently.

The transferred assets are the investments of the partners amounting to the hitherto existing shares of the partners in the Eisenindustrie :

For Mr. Friedrich Flick	RM 37,200,000
For Mr. Otto Ernst Flick	RM 300,000
Total	RM 37,500,000

The investments of the partners will be made up by the transfer of the assets since the value of the net capital of the Siegener Eisenindustrie Aktiengesellschaft has not been reduced since 31 March 1937.

b. The Vorstand and the Aufsichtsrat are being discharged of responsibility for the period of 1 January 1937 until the registration of the conversion in the Commercial Register.

After each resolution the chairman stated that it was passed as recorded above.

* * * * *

*Excerpt from the Business Report of
Siegener Eisenindustrie A.G., Duesseldorf for 1936*

REPORT OF THE MANAGING BOARD

All the firms connected with us have shared to the full extent in the great boom of German business during the past years and were able to increase production and sales accordingly. The close working association of the Steel and Rolling Mill Brandenburg of the Mitteldeutsche Stahlwerke A.G. with our Steel and Rolling Mill Hennigsdorf has proved successful also in the past fiscal year. In the year covered by the report we have acquired from the Linke-Hofmann Werke A.G. in Breslau the overwhelming majority of the shares of the mining corporation Steinkohlenwerk Vereinigte Glueckhilm-Friedenshoffnung and have paid part of the purchasing price in taking over liabilities of the Linke-Hofmann Werke A.G. The main assets of the mining corporation Glueckhilm consist of approximately 25 percent of the capital stock of the Niederschlesische Bergbau A.G. In the current business year these stocks have been distributed by the mining corporation to the holders of its shares in partial liquidation.

From the shares of the Mitteldeutsche Stahlwerke A.G., of which we own 99 percent of the capital stock, we received for the business year which was concluded on 30 September 1935 a dividend of 5 percent. The Mitteldeutsche Stahlwerke A.G. also continued to show good results in the new business year 1935-36.

* * * * *

TRANSLATION OF DOCUMENT NI-3496
PROSECUTION EXHIBIT 39

MEMORANDUM FROM THE FILES OF THE FLICK CONCERN ENTITLED
"ACHIEVEMENTS OF THE FLICK GROUP," 9 JULY 1942, NOTING
INCREASED PRODUCTION OF CRUDE STEEL, SPECIAL WAR
PRODUCTS, MANUFACTURE OF TANKS, AIRCRAFT PRO-
DUCTION, RAILWAY CAR PRODUCTION, AND PROC-
ESSING OF COAL, INCLUDING FUEL PRODUCTS

9 July 1942

Achievements of the Flick Group [Leistungen der F. Gruppe]

1. *Crude steel.*—The crude steel production of works in Ger-
many proper amounted to:

In 1929	15,844,000 tons
In 1941	17,175,000 tons
The total increase amounted to	1,331,000 tons
which equals	8 percent

The works of the Flick group contributed with 700,000 tons, equal to 52 percent, to this increase. Thus, the group itself was able to show by far the largest production increase of all German concerns—73 percent. These figures pertain exclusively to the old works of the Flick group, namely Mittelstahl, Kommanditgesellschaft, and Maxhuetten.

The Flick group, which in 1929 was in fifth place among German combines, has in the meantime advanced from fifth to second place by its increased production, which continued even during the war. The Krupp firm had formerly the second largest steel production. The above figures always exclude the Reichswerke Hermann Goering.

2. *Special war products.*—Before 1935, the group did not manufacture any shells, any guns or gun barrels. The manufacture of gun barrels was limited to two firms. Today, as far as shell production goes, the group stands in second place after the Vereinigte Stahlwerke, which is by far the largest enterprise. In any case, the Army Ordnance Office can confirm that the group has accomplished outstanding achievements in all these fields. The present shell production of the group calculated in terms of medium caliber, runs at 550,000 shells per month. In addition, 1,200 gun barrels and about 25 to 30 guns are completed monthly. In delivery of gun barrels, the firm seems to be one of the largest within Germany proper. In addition, our gun factory will be used to a very large extent for the manufacture of army anti-aircraft guns.

3. *Manufacture of tanks.*—In 1938 the group began manufacturing bodies and turrets for tanks. In this production, the Flick group stands today at the head of all German concerns. In this connection, it has been ascertained by government sources that the works of the Flick group are producing about 30 percent more tanks than the second highest producer within Germany. On the basis of these achievements, the Flick group was granted the designation of “Model Armaments Enterprise” upon recommendation of the Munitions Ministry. During this year, this designation was given in all of Germany to 19 enterprises. This figure includes only 3 firms of the entire steel industry.

4. *Aircraft construction.*—Already at the end of 1933 the Flick group began to convert one of its machine factories (ATG in Leipzig) to the manufacture of airplanes. It has performed continually to the complete satisfaction of the Air Ministry and may also be said to stand in a good position concerning production costs. Its production at present consists of 30 Ju 88 and 15 Ju 52 aircraft per month. By the end of the year, production will be increased by an additional 20 percent. The total number employed in this plane factory is now 8,500 men.

5. *Railway car construction.*—The railway car factory of Linke-Hofmann in Breslau, belonging to the Flick group, began to expand its car production capacity before the war. While in 1937 the capacity ran at 350 normal freight cars a month, it has risen today to about 800. A further increase in production to about 1,300 freight cars is possible within a short period. One can thus speak of a doubling or rather a tripling in production capacity.

6. *Processing of coal, specifically manufacturing of motor fuels.*—Essen Steinkohle, which belongs to the Flick group, began to erect a gasoline plant in 1938 which was to have a production capacity of 50,000 tons per year. The plant was completed shortly before the outbreak of the war and began operating without any difficulties. The capacity was estimated at 50,000 tons per year; at present the production is about 80,000 tons a year and will shortly be raised to 90,000 tons a year. The plant was constructed completely with our own capital, and without government price and sales guarantees.

In addition, the firm has taken over the construction of a lignite smoldering plant, which will manufacture 36,000 tons of tar annually and can also process fuel oil and gasoline. The construction of this plant is at present still in the initial stage.

TRANSLATION OF DOCUMENT NI-5231
PROSECUTION EXHIBIT 14

LETTER FROM DEFENDANT FLICK TO GRITZBACH, CHIEF OF GOERING'S
STAFF OFFICE, 1 OCTOBER 1943, PROPOSING DEFENDANT BURKART
FOR THE AWARD OF DISTINGUISHED WAR MERIT CROSS, FIRST
CLASS, NOTING THAT THE CONCERN EMPLOYS APPROXI-
MATELY 120,000 PERSONS, AND DESCRIBING BURKART'S
RESPONSIBILITIES *

1 October 1943

To Chief of the staff office of the Reich Marshal of Greater Ger-
many, Hermann Goering,

Leipziger Str. 3

Berlin W 8

In my capacity as Leader of the Concern [Leiter des Konzerns]
of the Mitteldeutsche Stahlwerke I herewith beg to propose to
confer on Military Economy Leader [Wehrwirtschaftsfuehrer]
Director Dr. Odilo Burkart the Distinguished War Merit Cross
First Class.

Reasons—The management of the concern Mitteldeutsche Stahl-
werke, to which, next to the Mitteldeutsche Stahlwerke itself, there
belong amongst others the following enterprises chiefly working
directly or indirectly for German armament, is under my control
in Berlin:

Mitteldeutsche Stahl-und Walzwerke Friedrich Flick Kom.
Ges., Brandenburg/Henningsdorf.

Eisenwerk-Gesellschaft Maximilianshuetten, Sulzbach-Rosen-
berg Huette.

Brandenburger Eisenwerke, Brandenburg.

Spandauer Stahlindustrie G.m.b.H., Spandau.

Saechsische Gusstahlwerke Doehlen A.G., Freital/Sa.

Hochofenwerk Luebeck A.G., Luebeck-Herrenwyk.

ATG, Allgemeine Transport-Anlagen, G.m.b.H., Maschinen-
fabrik Leipzig (Flugzeugfabrik) [Aircraft factory].

Linke-Hofmann-Werke A.G., Breslau.

Waggon- und Maschinenfabrik A.G., formerly Busch-Bautzen.

Harpen Bergbau A.G., Dortmund.

Essen Steinkohlenbergwerke A.G., Essen.

Anhaltische Kohlenwerke, Berlin.

as well as the chemical works belonging to the coal mines.

* A copy of the letter transmitting this recommendation of Burkart as well as recommenda-
tions of three other Flick officials, Document NI-5232, Prosecution Exhibit 40, is reproduced
in section V C.

Within the management of this concern comprising about 120,000 employees Dr. Burkart is division chief for the iron and steel works as well as for the brown coal works of the Concern particularly regarding the erection of new buildings, supply of raw material and its use, the production and finishing, as well as all other industrial matters. Dr. Burkart is Plenipotentiary General of the head firm of the concern, the Friedrich Flick Kommanditgesellschaft, and member of the managing board [Vorstand] of the Mitteldeutsche Stahlwerke.

Beyond the normal range of his activity already combined with great responsibility Dr. Burkart has, particularly during the war, done his very best for the execution of projects important for the German armaments industries, and by doing so he deserves special merits.

It would, therefore, be a pleasure for me if, for the reasons mentioned above, the wish to grant Dr. Burkart the recognition due to him could be complied with, since the Distinguished War Merit Cross Second Class has already been conferred at the beginning of January 1941.

Heil Hitler,
[Handwritten] Signed: FR. FLICK

TRANSLATION OF DOCUMENT NI-5451
PROSECUTION EXHIBIT 37

MEMORANDUM OF 12 MAY 1944, WITH COPIES TO DEFENDANT BURKART
AND TWO OTHERS, CONCERNING THE PRINCIPAL ENTERPRISES
OF THE FLICK CONCERN AND THE GENERAL NATURE
OF THEIR PRODUCTION*

[Stamp] Secret

For personal information only. It is forbidden to pass it on.

1. This is a state secret according to par. 88 R.St.G.B. [Reich State Law Gazette].
2. It can be given only from person to person to a personally named addressee in double cover against receipt.
3. Forwarding by courier if possible, if by mail with indication of value of more than 1,000 RM.
4. Reproducing in any way as well as preparing of excerpts forbidden.
5. Safekeeping in vaults under responsibility of receiver.
6. Offenses against rules result in severest punishment.

12 May 1944

Concern "*Mitteldeutsche Stahlwerke*"

(Concern Dr. Flick)

(Total number employed—over 120,000)

Holding company.

FRIEDRICH FLICK KOMMANDITGESELLSCHAFT

I. *Steel group.*—(as to the amount of steel produced, stands in third place in Germany after Vereinigte Stahlwerke and the Reichswerke)

Mitteldeutsche Stahl- und Walzwerke Friedrich Flick K.G.

Work Brandenburg.—Steel works and rolling mills particularly for armor plates, ship plates, boiler plates, as well as refined steel.

Work Hennigsdorf.—Thin plates, particularly refined steel, dynamo plates, and punch sheets, as well as steel castings.

Brandenburger Eisenwerke, Brandenburg Havel.—Tank factory. *Spandauer Stahlindustrie G.m.b.H., Spandau.*—Refined steel production for the manufacturing of tanks.

Mitteldeutsche Stahlwerke with Works at Riesa, Groeditz, Lauchhammer.—Steel works and iron foundries, rolling mills for iron bars, girders, pipes, cannon works, ammunition works, production of motor car wheels, production of sets of wheels (Reich railways), hammer works and forges (eccentric shafts), pro-

* A graphic chart on the various subsidiary firms within the Flick Concern is reproduced in the opening statement for the prosecution (sec. III A).

duction of containers (for submarine construction), iron and machine works (for constructions of bridges, dredges, etc.), brown coal mining, production of briquettes, power station.

Stahlbau Wittenau G.m.b.H., Berlin-Borsigwalde.—Iron construction as well as construction of submarines.

Saechsische Gusstahlwerke Doehlen A.G., Freital/Sa.—Steel works for production of refined steel, rolling mills for refined steel, ammunition factories.

Freitaler Stahlindustrie, Freital/Sa.—Ammunition works.

Stahlwerk Pirna.—Manufacture of refined steel, rolling mills, swaging forges.

Eisenwerk-Gesellschaft Maximilianshuetten.

With works at—Sulzbach-Rosenberg and Haidhof as well as at Unterwellenborn near Saalfeld. Iron ore mining, blast furnaces, steel works, rolling mills for rails, girders, iron bars, metal sheets, refined steel production.

Maschinenfabrik Donauwoerth G.m.b.H.

With works at—Donauwoerth and Unterwellenborn. Machine factories, ammunition factories, fuzes for projectiles, production of rocket guns and requirements of the army.

Hochofenwerk Luebeck A.G. Luebeck-Herrenwyk.—Blast furnaces and coke plants at Herrenwyk near Luebeck and at Kratzwieck near Stettin.

II. Coal group.

Anhaltische Kohlenwerke, Berlin.—(largest brown-coal enterprise in Germany)

With groups of works at—Halle, Senftenberg, Welzow, Klettwitz and Zeitz. Brown coal mining and power stations, production of briquettes, smoldering shops, production of mineral oil, particularly for submarines.

Harpener Bergbau Aktiengesellschaft, Dortmund.

Essener Steinkohlenbergwerke A.G., Essen.

Chemische Werke Essener Steinkohle, Essen.—(Second largest enterprise of the soft coal mining industry in the whole of the Rhine-Westphalian district.) Soft coal mining, coke plants, manufacture of briquettes, extraction of coal by-products of all kinds, hydrogenizing plants.

III. Steel Processing Group.

Linke-Hofmann-Werke A.G., Breslau.—Construction of railroad cars, particularly also for the Reichsbahn and for the required

ments of the army; construction of armored cars, selected construction against special orders of the High Command of the Army [OKH].

Waggon-und Maschinenfabrik A.G. vorm. Busch, Bautzen.—Construction of railroad cars and other vehicles for the Reichsbahn and the Wehrmacht.

ATG Maschinenbau G.m.b.H., Leipzig.—Airplane works.

Fella-Werk A.G., Feucht near Nuernberg.—Works for the manufacturing of agricultural machines as well as for supplies to ammunition plants.

Copies to:

Dr. Burkart,

Dr. Basler,

Dr. Tillmanns.

C. Affidavit of Defendant Steinbrinck

TRANSLATION OF DOCUMENT NI-5326
PROSECUTION EXHIBIT 10

AFFIDAVIT OF DEFENDANT STEINBRINCK, 24 FEBRUARY 1947,
CONCERNING HIS PERSONAL HISTORY

I, Otto Steinbrinck, being duly sworn, depose, and state:

1. I was born at Lippstadt on 19 December 1888. I am married and have four children (Helmut 28 years old; Eva 26 years; Peter 22 years; Klaus 12 years).

2. I entered upon a military career and served actively in the Imperial Navy from 1907 to 1919. During the World War 1914-18, I was commander of a submarine, as well as admiralty staff officer in Flanders, and I was awarded, among others, the following medals and decorations:

Pour le Mérite
Iron Cross First and Second Class
Knight's Cross Hohenzollern
Albrecht Order of Saxony
Heinrich Order of Saxony

My highest rank was Kapitänleutnant [Lt. (s.g.)]. I returned to active service from May 1940 to August 1943, finally as Fregatkapitän [Commander] (promoted on 1 September 1942).

3. *a.* I joined the NSDAP on 1 May 1933. My Party No. was 2,638,206.

b. On 31 May 1933 I became a member of the SS; my rank was that of a Standartenführer. My number in the SS was 63,084. My rank number in 1938 was 140. During my service career I was promoted as follows: to the rank of Oberführer on 20 April 1935, and to that of Brigadeführer on 30 January 1939; apart from that I was awarded the following decorations:

Totenkopfring [Death's Head Ring]
Ehrendegen [Sword of Honor]
Julleuchter

c. In 1932 I joined the so-called Keppler Circle of which I remained a member until May 1945.

4. In April 1938 I was appointed Military Economy Leader by the navy.

5. I held the following offices:

a. Member of the Praesidium of the Reich Association Coal since its foundation in April 1941 until May 1945.

b. Advisory Council [Beirat] of the Economic Group Iron Producing Industry from 1934 to ?[sic].

c. Plenipotentiary General for the Steel Industry in Luxembourg, Belgium, Northern France, and Longwy from May 1940 to July 1942.

d. Reich Commissioner [Reichsbeauftragter] for Coal in the Occupied Western Territories (Bekowest) from the beginning of 1942 to September 1944.

e. Liaison between the Ruhr industry and Army Group B (Field Marshal Model) from December 1944 to April 45.

6. I had the following jobs :

a. From 1918–23 I was employed with the Association of German Iron Steel Industrialists. I started as a scientific assistant and later became legal adviser [Syndikus] and deputy manager.

b. In 1923 I joined the Flick Konzern and at first was secretary of F. Moeller, the Director of the Linke-Hofmann-Lauchhammer works. In February 1925, I entered the private secretariat of Director General Friedrich Flick, and held the following positions within the Konzern :

I. Member of Vorstand [Managing Board].

a. Maximiliansshuette 1930 until March 1939.

b. Mitteldutsche Stahlwerke A.G. from 1927 to March 1939.

II. Chairman of the Aufsichtsrat [Supervisory Board].

a. Linke Hofmann-Werke A.G., Breslau.

b. Waggon- und Maschinenfabrik A.G., Bautzen.

III. Deputy Chairman of the Aufsichtsrat.

a. Anhaltische Kohlenwerke, Halle/Saale.

b. Werschen-Weissenfelser-Braunkohlen A.G., Halle/Saale.

c. A.G. fuer Waggonwerte in Liquidation, Berlin, formerly, Linke Hofmann-Busch-Werke A.G.

IV. Member of the Aufsichtsrat.

a. Harpen Bergbau A.G., Dortmund.

b. Siegener Eisenindustrie A.G., Duesseldorf.

Since the foundation of the Friedrich Flick Kommanditgesellschaft in 1937 (?) * I was the Plenipotentiary General for this firm until December 1939.

* Steinbrinck initially gave 1938 as the date and then changed the date to 1937, adding a question mark. This firm actually was established in June 1937.

c. In December 1939, I was appointed trustee for the confiscated Thyssen property.* In connection therewith I was elected, on 20 March in the Aufsichtsrat of the Vereinigte Stahlwerke A.G. at Duesseldorf, and I remained a member of this, later in the capacity of deputy chairman, until 1945.

d. From 1940 to 1945, I occupied the following positions, some of them temporarily, others during the entire period.

Deputy Chairman of Aufsichtsrat:

Vereinigte Stahlwerke A.G., Duesseldorf.

Gelsenkirchener Bergwerke A.G., Essen.

August Thyssen-Huette A.G., Duisburg-Hamborn.

Dortmund-Hoerder Huettenverein A.G., Dortmund-[D.H. Blast Foundry Plant Association A.G.].

Bochumer Verein fuer Gusstahlfabrikation A.G., Bochum.

Rheinisch-Westfaelische Industrie-Beteiligungs A.G., Muelheim/Ruhr.

Member of Aufsichtsrat:

Braunkohle-Benzin A.G., Berlin.

Rheinisch-Westfaelisches Kohlensyndikat, Essen.

Deutsche Edelstahlwerke A.G., Krefeld.

Deutsche Eisenwerke A.G., Muehlheim/Ruhr.

Rheinisch-Westfaelisches Elektrizitaetswerk A.G., Essen.

Beirat [Advisory Counselor] for—Deutsche Reichsbahn, Berlin.

I have read the above affidavit in the German language consisting of four pages and declare that it is true and correct to the best of my knowledge and belief. I was given the opportunity to make changes and corrections in the above affidavit. This affidavit was given by me freely and voluntarily without any promise of reward, and I was subjected to no compulsion or duress of any kind.
Nuernberg, 24 February 1947

[Signed] OTTO STEINBRINCK

* Fritz Thyssen, one of the earliest supporters of Hitler among German industrialists, emigrated from Germany in protest upon the outbreak of the war with Poland in 1939. Thyssen's German properties were confiscated by the German Government and managed principally through a newly formed special enterprise, the "Gewerkschaft Preussen," of which defendant Steinbrinck was the managing director. Since Thyssen's property included substantial holdings in the Vereinigte Stahlwerke, Steinbrinck became an important official of this large iron and steel concern.

D. Stipulation on the Personal History of Defendant Burkart¹

Stipulation

DR. KRANZBUEHLER (counsel for defendant Burkart) : Prosecution and defense counsel stipulate the following statements on the defendant Dr. Odilo Burkart.

1. Odilo Burkart was born 29 August 1899 in Reutlingen in Wuerttemberg. He graduated from the Gymnasium in 1917 and studied law and political science from 1917 to 1922. He received a doctorate in political science in 1921 and became Doctor of Law in 1922 at the University in Wuerzburg.

2. From 15 July 1918 to the middle of February 1919, he served in the army, without rank.

3. In 1933 he entered the Stahlhelm,² and in 1934 was automatically transferred to the SA reserve and declared his resignation, which was confirmed in 1936.

4. In August 1940 he was appointed by the army as Military Economy Leader [Wehrwirtschaftsfuehrer].

5. In the spring of 1944 he received the War Merit Cross First Class.

6. He held the following positions :

a. Reichsvereinigung Eisen [Reich Association Iron] June 1942 to May 1945.

(1) June and July 1942 Chairman of the Verkehrs and Frachten Ausschuss [Traffic and Freight Committee] (Provisionally).

(2) Chairman of the SG Iron and Steel Association from the end of 1942 to the spring of 1945, to look after the interests in central Germany, as well as member of the Price Committee [Preisausschuss].

b. From 1940 until May 1945, Advisory Council [Beirat] in the Economic Group Iron Producing Industry [Wirtschaftsgruppe Eisenschaffende Industry].

7. He held the following business positions :

a. In Upper Silesia—

¹This stipulation was read into the record by Dr. Kranzbuehler on 21 April 1947, transcript pages 192-194.

²The "Stahlhelm" was a German veterans organization founded in 1918. It was incorporated into the SA in the fall of 1933.

(1) 1 October 1922 until 30 April 1925: At first apprentice, then business administrator with Eisen Silesia.

(2) 1 May 1925 until 31 March 1936 business administrator with the Oberschlesische Eisenindustrie A.G. Bergbau and Huettenbetriebe. Later with the Vereinigte Oberschlesische Huettenwerke A.G. In 1931, he became Prokurist, and became department director in December 1934.

b. From 1 April 1936 until May 1945 he was connected with the Mitteldeutsche Stahlwerke.

(1) From 1936 to 1938, Prokurist.

(2) From December 1938 until Spring 1940, alternate member of the Vorstand.

(3) From 1940 until May 1945 regular member of the Vorstand.
8. In addition he held the following positions in the Flick Concern:

a. Plenipotentiary General, only jointly, of the Friedrich Flick Kommanditgesellschaft since Spring 1940.

b. At different times from 1940 until May 1945 member of the Aufsichtsrat [supervisory board] of the corporations below:

A.G. for Montaninteressen Anhaltische Kohlenwerke.

Hochofenwerke Luebeck A.G.

Eisenwerk Gesellschaft Maximilianshuetten.

Rombacher Huettenwerke G.m.b.H. (since 1941).

Saechsische Gusstahl-Werke A.G.

Spandauer Stahlindustrie (since 1943).

Brandenburger Eisenwerk.

E. Affidavit of Defendant Kaletsch

TRANSLATION OF DOCUMENT NI-5397
PROSECUTION EXHIBIT 16

AFFIDAVIT OF DEFENDANT KALETSCH, 28 FEBRUARY 1947,
CONCERNING HIS PERSONAL HISTORY

I, Konrad Kaletsch, swear, state and declare:

1. I was born in Kassel on 18 December 1898 and was married twice. My only son Otto Albert (20 years old) was from my first marriage, which ended in divorce.

2. My Party number in the NSDAP was approximately 5,372,000 and is dated 1 May 1937. Actually I did not join until the second half of 1938.

3. In 1941 I was appointed Military Economy Leader [Wehrwirtschaftsfuehrer].

4. My decorations are as follows:

War Merit Cross 2nd Class (1941),

War Merit Cross 1st Class (1944),

in addition I possess the Cross of Honor for participants in the First World War.

5. *a.* After graduating from secondary school [Realschule], I started a commercial career in 1915 and joined the Buderus Handelsgesellschaft (Hamburg) as commercial apprentice.

b. After my apprenticeship, I served in the Armed Forces from 1917-18. From the end of 1918 until the next fall I worked for Buderus in Kassel.

c. On the suggestion of my cousin, Friedrich Flick, who paid for my tuition, I studied economics, law, and some technical subjects at the University of Cologne from 1920-22.

d. From 1922-25 I was employed by the firms of—

Ferrum-Handel Mij. N.V. Holland,

Charlottenhuetten A.G., and

Linke-Hofmann-Lauchhammer A.G.,

in order to gain practical experience in business.

e. From 1925-45 I was without interruption employed in the administration office Berlin of the Charlottenhuetten A.G., since 1934 in the administration office Berlin of the Mitteldeutsche Stahlwerke A.G. My most important positions were the following:

(1) 1925-31 Prokurist of A.G. Charlottenhuetten.

(2) 1931-34 member of the Vorstand [Managing Board] of A.G. Charlottenhuetten.

(3) 1934-45 member of the Vorstand of the Mitteldeutsche Stahlwerke A.G. (Since 1943 manager of the G.m.b.H.)

(4) 1925-35 manager of Mercur Gesellschaft fuer Industrie Unternehmen m.b.H.

(5) Since the foundation of the Friedrich Flick Kommanditgesellschaft in 1937 up to the year of 1945 I was Plenipotentiary General in this firm.

I was not, however, entitled to act as sole representative for any of the above-mentioned firms.

(6) Apart from this I was (1937-45) :

(a) *Deputy chairman of the Aufsichtsrat* [Supervisory Board]—

Eisenwerk Gesellschaft Maximilianshuetten 1943-45. (from 1944 Verwaltungsrat)

(b) *Member of the Aufsichtsrat*—

A.G. fuer Montaninteressen, Berlin, Ltd. Comp. [G.m.b.H.] since 1944 (Deputy chairman since 1942)

Essener Steinkohlenbergwerke A.G., Essen, since 1940

Spandauer Stahlindustrie G.m.b.H., since 1943

Brandenburger Eisenwerk G.m.b.H., since 1940

Harpener Bergbau A.G., Dortmund, since 1940

Anhaltische Kohlenwerke, Berlin, since 1939

ATG Allgemeine Transportanlagen G.m.b.H., Leipzig, since 1940

Hochofenwerk Luebeck A.G., Luebeck-Herrenwyk, since 1940

Linke-Hofmann Werke A.G., Breslau, since 1940

Waggon- und Maschinenbau A.G., formerly Busch, Bautzen, since 1940

(c) *Member of the Verwaltungsrat* [Administrative Board]—
Rombacher Huettenwerke G.m.b.H., since 1941.

I have made this statement voluntarily, without any promise of reward, and I was not subjected to any duress or threat whatsoever.

I have carefully read each of the three pages of this declaration, and I have countersigned them with my own hand; I have made the necessary correction in my own handwriting and signed them with my initials; and I affirm herewith on oath that all facts stated by me in this declaration are—to the best of my knowledge and belief—in accordance with the full truth.

Nuernberg, 28 February 1947

[Signed] KONRAD KALETSCH

F. Affidavit of Defendant Weiss

TRANSLATION OF DOCUMENT NI-3125
PROSECUTION EXHIBIT 21

AFFIDAVIT OF DEFENDANT WEISS, 18 DECEMBER 1946, CONCERNING
HIS PERSONAL HISTORY, THE DISTRIBUTION OF DUTIES WITHIN
THE FLICK CONCERN, AND RELATED MATTERS

I, Bernhard Weiss, being duly sworn, do state on oath as follows:

1. *My background and training.*—I am 42 years old and was born in Siegen, Westphalia. I graduated from the High School of Siegen in 1923, and thereupon entered on apprenticeship as a commercial industrial man in the Siegener Eisenbahnbedarf A.G. This company was engaged in the manufacture of railroad cars and parts. After spending 1 year with this company, I spent a year and a half with the Linke-Hofmann-Lauchhammer Company at its office in Berlin and at its office and plant in Breslau. I became connected with the company through Mr. Friedrich Flick who was connected with that company and who was my uncle by marriage. My mother and Mr. Flick's wife were sisters. I left the Linke-Hofmann-Lauchhammer Company in 1925 and attended the University of Cologne for two semesters.

Thereupon I became connected with Siegener Maschinenbau A.G., commonly known as Siemag. I interrupted my work with Siemag in 1927 to spend 9 or 10 months in England to learn the language and become acquainted with its people. I intended to travel in other countries but was forced to return home by reason of my father's ill health and resume my work with Siemag.

2. *The Siemag Company.*—Siemag was a company engaged in the manufacture of engines which up to 1927 was owned entirely by my father and by my uncle, Karl Weiss. At the time of my father's death in 1932, he and my uncle, Karl Weiss, each owned about 42 percent of the stock. Mr. Flick owned the balance which he had acquired in exchange for stock of another company located in Dahlbruch which had been merged with Siemag in 1927. After my father's death there was a family discussion, as a result of which it was agreed that the Siemag shares should be gradually concentrated in my hands. This was managed by buying as many shares by myself as I could afford, and by having the company buy the rest of the shares by way of capital reimbursements,

which reduced the capital of the company. As a result of this program, I came to own a constantly increasing share of the company, and, since about 1941, I am the sole owner.

My uncle, Karl Weiss, was the leading or regular member of the Vorstand [managing board] and I was a deputy member from my father's death until 1937. In that year my uncle withdrew and became president of the Aufsichtsrat [supervisory board]; and I became the regular member of the Vorstand, and my cousin, a son of Karl Weiss, became deputy member. Since 1944 there were three members of the Vorstand, the other member being an engineer. The Aufsichtsrat as of 1937 consisted of six or seven members including my uncle as president, Mr. Flick as vice president and Gustav Knepper of Gelsenkirchener Bergwerks A.G. (a coal mining affiliate of Vereinigte Stahlwerke) and Dr. Ernst Tengelmann. Dr. Tengelmann was a leading official of Essener Steinkohlenbergwerke A.G.

3. *My transfer to the Friedrich Flick Concern.*—In 1939 my uncle, Friedrich Flick, spoke to me about the possibility of coming over to his Concern. I told him I should be prepared to come, but would like to retain a close relation with the Siemag business. Mr. Flick approached me again at the end of 1939 when Mr. Steinbrinck left. Steinbrinck had been Mr. Flick's right hand man in supervising the plants of the Concern with respect to industrial questions. Konrad Kaletsch occupied the same position with respect to financial questions. Shortly after Mr. Steinbrinck left at the end of 1939, I joined the Flick Concern and took over part of Mr. Steinbrinck's duties. His duties were divided into two parts. Dr. Odilo Burkart, who had already worked in Berlin under Mr. Steinbrinck, was put in control of the iron and steel works and brown coal [Braunkohle]. I was put in control of the soft coal [Steinkohle] companies include Harpen, Essener Steinkohle, and Chemische Werke Essen and of the finishing plants including Linke-Hofmann, Busch-Bautzen (railroad car plants), and A.T.G.

4. *Functioning of Berlin office.*—The head office of the Flick Concern, at the FKG offices in Berlin was not very large; the total staff did not exceed, I think, sixty or seventy. Mr. Flick, Mr. Kaletsch, Mr. Burkart, Dr. Streese, a lawyer, Tillmanns, Kurre, and Lang (accounting and tax expert), and others.

Mr. Flick was inclined to leave the separate companies of the Concern decentralized and let them be managed by their own "Vorstand" according to German law. At the same time we received complete reports from almost all main companies on a monthly basis. A copy of these reports was always addressed to Mr. Flick and at least two other copies were addressed to persons

in the Berlin office, one copy going to Burkart or myself in reference to companies under our jurisdiction and one copy going to Mr. Kaletsch. In order to keep in touch with conditions in the various plants, I did a great deal of traveling. Also, the executives [Vorstaende] of the various companies were very often in Berlin. Since the whole German economic system was concentrated in Berlin, everyone had business there and would find it necessary to keep in close touch with Berlin. We of course also kept in close touch with the various companies by telephone and letter. Later on—I think it was 1943 or 1944—we had a teletype.

5. *Distribution of duties in the Berlin office.*—I have been shown a copy of an outline of the duties of the various people assisting Mr. Flick in the Berlin office, attached to a memorandum from Mr. Engel to Mr. Kaletsch dated 24 October 1942. This outline was prepared by Mr. Engel in accordance with Kaletsch's instructions because some people were not quite clear about their duties and jurisdictions. Although it was never put in force as an actual order, it corresponds generally to the actual duties which were performed by the persons named, as far as Kaletsch, Burkart, and myself are concerned, but it does not give a correct picture of responsibilities.

From this outline of duties it will be observed that I was charged generally with supervision of the soft coal companies and the finishing plants. Mr. Burkart was in control of iron and steel works and the brown coal properties. However, Mr. Kaletsch had jurisdiction which cut across all main companies with respect to financial matters. He would be concerned with anything of important character having to do with finance, tax, or accounting matters; and he would be very closely involved in anything having to do with buying or selling of companies. In general, Mr. Kaletsch held the purse strings, but subject, as Mr. Burkart and I were, to the over-all control of Mr. Flick. The yearly balance sheet and profit and loss statements which, by German law, must be prepared by the Vorstand in conjunction with the Aufsichtsrat, was one matter which would be taken up with Mr. Kaletsch. When people from the various companies came to us with their proposals for these annual reports, we discussed them with them and Mr. Kaletsch. There was never any friction between Mr. Burkart, Mr. Kaletsch, and myself in our relations with each other or with Mr. Flick, and we usually worked out our problems jointly. Mr. Flick worked very hard and tried to keep as well informed as possible with respect to conditions at the various companies. On the other hand, Mr. Flick believed that the companies should be directed by the directors (Vorstand members) according to German law, which gives the Vorstand full responsibility for management

of the company. However, it was also true that he was not looked upon by officials of the various companies as merely the chairman of the Aufsichtsrat.* They all knew Mr. Flick as the owner of the companies, and their attitude toward him was obviously influenced by that. After his son Rudolf's death, Mr. Flick was more often absent—partly for reasons of bad health; and he sometimes seemed to let things run more by themselves.

6. *My activities with the Flick Concern.*—As appears in the outline of duties prepared by Mr. Kaletsch in 1942, I had control of the companies which generally can be described as finishing plants, including Linke-Hofmann Werke A.G., Busch-Bautzen (Maschinen und Waggonfabrik Busch A.G.), A.T.G., and Leipziger Werkzeug and Geraetefabrik. Vairogs was a plant in Riga operated by the Busch Company under a trusteeship. I was president of the Aufsichtsrat of all these companies (except Vairogs). I also exercised some supervision over Fella Werk, a company which manufactured agricultural machinery and was located at Feucht, near Nuernberg. My supervision of this plant was not as direct as of the others just mentioned. Fella Werk was operated by a man named Loeffler who acted as a one-man Vorstand. I was a good friend of Loeffler and he asked me general questions about machine manufacture, and I could also do jobs for him in Berlin. However, the real leadership within the Aufsichtsrat of Fella Werk lay with the Vorstand of Maxhuetten, and it really was operated merely as a department of Maxhuetten.

I was also charged with the supervision for the soft coal companies; Harpener Bergbau, Essener Steinkohle (EST) and Chemische Werke Essener Steinkohle (Chemische Werke EST). With respect to Harpener and Essener, however, I was only a member of the Aufsichtsrat, and Mr. Flick himself was president of the Aufsichtsrat. He was more active in the supervision of the finishing plants, and my functions were therefore not as important. Chemische Werke EST was a subsidiary of Essener Steinkohle.

I was also concerned with keeping up the proper relationship between the soft coal group and the steel groups Maxhuetten and Rombacher. Rombacher got most of its coke from Harpen and when questions arose with which Mr. Flick had to deal, they were brought to me and I prepared them for him to study. If, for instance, Maxhuetten did not get the coal they needed, they turned to Mr. Flick and asked him to arrange for it with Harpen. Usually Mr. Flick handled these matters himself when he was available, but when he was not, I handled them in his name. In the coal busi-

* For a contemporaneous document dealing with Flick's position, both formally and in practice, see defendant Steinbrinck's letter of 16 December 1936 to Voss, Document NI-5399, Prosecution Exhibit 62, reproduced earlier in this section.

ness I was more of a secretary to Mr. Flick than an independent executive.*

In addition to my activities in both soft coal and finishing plants I worked occasionally on trade association and syndicate matters including the Rhenish Westphalian Coal Syndicate (RWKS).

I also handled matters pertaining to Reichsvereinigung Kohle (RVK). The RVK was organized by a decree of the government and had jurisdiction over the entire coal production of Germany—both soft coal and hard coal. I was not, myself, an official of the RVK, but Mr. Flick was a member of the Praesidium, and I kept in touch with any questions which arose concerning RVK, and any reports of RVK came through my hands, and I put them before Mr. Flick. It is my impression that the RVK was run in a rather dictatorial fashion by Mr. Pleiger and that members of the Praesidium, although they attended meetings and received reports, were not able to exercise much influence over Pleiger's or the Ministry's decisions. I do not think they would have had much opportunity to do it successfully if they had wanted to. I do not think, however, that there were any arguments between Mr. Flick and Mr. Pleiger in the Praesidium meetings.

7. *Functions of Mr. Burkart*—In Mr. Burkart's department, he had assisting him, Dr. Kuettner and Mueller for iron, Tillmanns for coal, and Franke who made estimates for costs of production. As appears from the outline of duties referred to above, Mr. Burkart had supervision of the entire steel group including Mittelstahl, Maxhuetten, Rombach, Hochofenwerk Luebeck, and Doehlen (Saechsische Gusstahlwerke). All of these companies were entirely or almost entirely owned by Mr. Flick through FKG, except for Doehlen which was owned 50 percent by Mr. Flick and 50 percent by the State of Saxony. In the outline of duties, the Mittelstahl properties are referred to as Lauchhammer, the name of a previous corporation which operated them. The plants referred to as Havelgruppe are plants at Brandenburg and Hennigsdorf which were owned directly by FKG.

* When Dr. Siemers, defense counsel for Weiss, asked Weiss about this sentence on direct examination, Weiss said: "Of course I did not want to minimize my position. My point in this connection was to underline the difference between my activities in the processing group and my activities in the soft coal group. In the soft coal group I was an assistant of Herr Flick, and as far as the chairman of the Aufsichtsrat had to make decisions at all it was not I who had to make these decisions but Herr Flick. At the time I thought the word 'secretary' had a different meaning in English than the German word 'Sekretaer.' In other words my meaning was that I was Herr Flick's right hand man." (Tr. pp. 8924 and 8925).

Rombacher was the plant that was taken over in Lorraine under trusteeship.* Mr. Burkart was also charged with matters pertaining to the Reichsvereinigung Eisen (RVE). This was an association set up to cover the iron industry comparable to the RVK in the coal industry. Mr. Flick himself was on the Praesidium of the RVE. I do not think Dr. Burkart held any title in the association, but he kept close watch on all RVE matters so that he could discuss them with Mr. Flick. He also, with Mr. Flick, took part in meetings with RVE officials accompanied by executives of the various plants. My impression is that although the RVE was comparable to RVK in purpose and form of organization, it was not so much a one-man organization as RVK. Roechling, who was chairman of the Praesidium, was a man with whom you could discuss questions better than with Pleiger. Pleiger was more dictatorial. The RVE, like the RVK, had a Praesidium as the governing committee or the top group. The members of the Praesidium were the representatives of the most important iron and steel companies.

In addition to his functions with the iron and steel companies, Mr. Burkart had charge of raw material questions. For example, if Maxhuette needed coal they turned to Mr. Burkart, Burkart turned to me, and I would arrange through Mr. Flick to have the coal delivered.

Mr. Burkart also had control of brown coal matters. These properties were all centered in Anhaltische Kohlenbergwerke A.G. (AKW). He supervised, not only the management of the brown coal properties, but also relations between AKW and Mittelstahl which was supplied with brown coal by AKW. Mr. Burkart worked closely with me on RVE matters since RVK covered not only soft coal but brown coal as well.

8. *Mr. Flick's authority within the Concern.*—Mr. Flick dealt with all questions concerning engagement of new members of the Vorstand. Under German law, the Aufsichtsrat nominates the Vorstand, and these in turn appoint all other people. Mr. Flick was a very careful chooser of men; during my entire stay with him I have seen only one instance of removal from the Vorstand and that was brought about by myself, as the man in question. Dr. Kuenzel, and I, had different views about working together.

Mr. Flick, busy as he was with so many companies and their reports, still was careful to place the right man in the right place. He put the right people in the right places and then controlled them. He was therefore always interested in the people who had responsible positions.

* See section VIII, below.

The members of the Vorstand he appointed were loyal to him; in my opinion they had to be, as he was the owner of the works. He indicated the policy he wanted them to follow, gave them the right approaches, etc. However, in the Third Reich the government had more and more to say in business, and the policy was often decided by government agencies.

I am thoroughly conversant with the English language. I have read the above statement consisting of seven pages which was given by me in the English language, and I declare that it represents the complete truth to the best of my knowledge and belief. I have been given equally the opportunity to make changes and corrections. This statement was given by me voluntarily without my having been subjected to threat or pressure of any kind and without my having received any promise of reward, nonprosecution or other form of immunity.

Nuernberg, 18 December 1946.

[Signed] BERNHARD WEISS

G. Affidavit of Defendant Terberger

TRANSLATION OF DOCUMENT NI-5418
PROSECUTION EXHIBIT 18

AFFIDAVIT OF DEFENDANT TERBERGER, 5 MARCH 1947,
CONCERNING HIS PERSONAL HISTORY

I, Hermann Terberger, swear, state, and declare:

1. I was born on 5 July 1892 at Schwerte in the Ruhr district. I studied law at the Universities of Tuebingen and Marburg and passed my first law examination in June 1914. During the [First] World War I at first served in the army as a private first class up to the time when I was wounded in 1915 by a bullet lodging in my lung. From March 1918 until the time of my discharge from the army at the end of 1918 I was lieutenant in the reserve in the antiaircraft artillery. From 1919 to 1921 I served my preparatory term for a law career and in the year 1921 I passed the bar examination.

2. On 1 May 1933 I became a member of the NSDAP; my Party Number was 2 580 883. I belonged to the SA reserve from 1933 to 1934 without rank.

3. From the end of 1937 until May 1945 I was Beirat [advisory counselor] of the Economic Group Iron Producing Industry. I also was a member of the Beirat of the District Economic Chamber [Gauwirtschaftskammer] at Bayreuth.

4. 1940-41 I was appointed Wehrwirtschaftsfuehrer [Military Economy Leader] by the Ministry of Economics.

5. I occupied the following positions:

a. From 1922 to 1925 I was legal adviser [Syndikus] with the Hacketal-Drahtwerke with power of attorney.

b. From 1925 to 1927 I was Prokurist with the Linke-Hofmann-Lauchhammerwerke in Berlin.

c. From 1927 to 1936 I was Prokurist at the Mitteldeutsche Stahlwerke.

d. From the year 1937 up to October 1945 I was a member of the Vorstand of the Eisenwerk Gesellschaft Maximilianshuetten.

I have made this declaration voluntarily, without any promise of reward, and I was not subjected to any duress or threat whatsoever. I have read carefully each of two pages of the foregoing deposition, and have signed it myself. I have made the necessary corrections in my own handwriting and countersigned them with my initials. I declare herewith on oath that all the facts given by me in this declaration are true to the best of my knowledge and belief.

Nuernberg, 5 March 1947

[Signed] HERMANN TERBERGER

H. Testimony of Defendant Flick

EXTRACTS FROM THE TESTIMONY OF THE DEFENDANT FLICK¹

PRESIDING JUDGE SEARS: Dr. Dix, you may call the witness.

(The defendant Friedrich Flick came to the witness box.)

Witness, raise your right hand.

Do you swear by God, the Almighty and Omniscient, that you will speak the pure truth and will withhold and add nothing: Do you so swear?

DEFENDANT FLICK: I so swear.

PRESIDING JUDGE SEARS: You may be seated.

DR. DIX (counsel for defendant Flick): May it please the Tribunal. In this examination I must ask you to be patient. In order to shorten the proceedings, I will not ask any questions concerning the birth and education of Flick, I will leave these facts as contained in the documents submitted by the prosecution. The contents of these documents generally are correct and there is no need for an oral commentary on these contents, but I shall have to sketch for you in broad outlines a history of Flick's development beginning with his entrance into the Charlottenhuetten firm, which was in the year 1913.

From my first question you will realize why this question is a barrier, directly and indirectly, and also evidence for the criminal acts themselves. It will, of course, take considerable time to go through the thorny path of these documents, especially in the Petschek case, in which we have to make our own way without suffering injury from the thorns. This will take some time, and I hope that the detail with which we will pursue this interrogation will be considered in that light.

DIRECT EXAMINATION

DR. DIX: Defendant Flick, you heard what I said just now, and I should like to ask you when I have finished my question to wait a few moments so that the interpreter can follow, until he has finished the translation of my question. Otherwise he will have to translate the question while you already begin with your answer, which makes it very difficult for the Tribunal and the interpreter to understand.

You have already heard that I told the Tribunal that we shall base your Curriculum Vitae (*NI-3020, Pros. Ex. 5*)² up to your entrance into the Charlottenhuetten, on documents submitted by the prosecution and I would like to ask you to give us broad out-

¹ Complete testimony is recorded in mimeographed transcript, 2, 3, 7-11, 14-17 July 1947, transcript pages 3150-3915, 10329. Further extracts from the testimony of the defendant Flick are reproduced below in sections V G, VI D, VII E, and VIII D.

² Reproduced earlier in section B.

lines about the economic development of your enterprises from this point, from 1913, the beginning of your entrance into the Charlottenhuetten, until the time when you as liaison man of the Weimar Republic dealt with government orders in Upper Silesia.

From my last words, the relevancy of this question becomes evident.

A. My entry into the Charlottenhuetten was in April 1915. Charlottenhuetten, when I entered the firm, was the largest plant of the Siegerland industry district. If I now say that it was the largest plant, I do not want to say that it was a particularly large plant at all. Charlottenhuetten was similar in its structure, that is, in its inner organization, to the large concerns in the Ruhr in as far as it dealt with all stages of manufacturing of a so-called mixed mining enterprise. It was based on its own ore base and also contained all stages of steel manufacturing, starting with the pit, then furnaces which manufacture crude iron, then rolling mills for rolling products, and also the finishing works. For this reason, one also called it a mixed enterprise, on a small basis. In order to describe my activity, I have to explain the structure at that time of the Siegerland industrial district. The Siegerland was a closed district. It was in the south of Westphalia, had no immediate connection with the Ruhr country, and by its geographical position it had always been in difficulties.

The worries, as it were, of the industry of the Siegerland devolved mainly from its geographical position. No connection, no transport by water, bad position for export, high costs of freight for coal from the Ruhr area, another disadvantage, far scattered properties, though my own company exteriorly had the character of a mixed enterprise as far as structure went, but not in volume.

On the other hand, in my native Sieger country, there were also pure rolling mills. By that we mean such rolling mills which had only one manufacturing process. That means they bought raw steel and also coal, had only one manufacturing process, and sold the end product on the market.

* * * * *

During the First World War the Ruhr industry had started to influence the large Siegerland enterprises through various purchases, and I also suffered from that. A large, well-known Ruhr concern, through buying on the stock exchange, had gained influence on me and my firm. My attitude to this fact was this—to maintain the independence of my company, and this was the most important point of view, at least for me. And the following negotiations which I had with the Ruhr concern in order to get out

of their sphere of influence did result in considerable sacrifices on my part. I had to give up a very important position in the Siegerland. I had to hand it over to the Ruhr concern in question—these measures which had already been agreed on for the preparation of our own coal base for my own company I could not then achieve any longer, and I was glad in this way and with so little sacrifice to fight my own way again and to have won back at least the independence of my own company. That was in 1919 or 1920, and after matters took this course I looked to Upper Silesia and central Germany.

In the year 1920 I purchased the Upper Silesian Bismarckhuetten. Bismarckhuetten was an enterprise of medium volume. It was an enterprise of quality, but without its own coal. In the year after that, in 1921, I used an opportunity to provide for the Bismarckhuetten what it had lacked, its own coal base. The occasion came when the owner of the majority of the shares of the Kattowitzer Aktiengesellschaft, Winkler, had adopted a skeptical attitude as to the further political and economic development in Upper Silesia. He could not judge matters very well, and he decided to sell his property so that I, on the ground of my own political and economic judgment of the future development, could purchase them.

In the same year I interested myself in another company, the Oberschlesische Eisenindustrie Aktiengesellschaft [Upper Silesian Iron Works A.G.]. The year 1922 was of decisive importance for the whole Upper Silesian industry and also for my own plants. In the spring of 1922, through the decision of the League of Nations in Geneva, the larger part of the whole Upper Silesian industrial district went to Poland and only a small part remained in Germany. By this, difficult situations came into existence. The larger part of coal went to Poland, almost the whole zinc production, and approximately three-quarters of the steel production, but the worst blow was that the new border line went through the plants, in part at least, and plants were on this side and the other side of the border, and it became very difficult to work.

* * * * *

[The testimony here omitted deals principally with general, political, and economic developments and Flick's relations with various political personalities. Some of this testimony is reproduced in section V G.]

Q. Now I would like to go back from this illustrious society to the development of the economy. You should still show us how the period from 1926 to 1933 developed. Would you please give us some details concerning your own personality during that period and tell the Tribunal about it?

A. The period from 1926 until 1933 is marked by membership in the United Steel Works [Vereinigte Stahlwerke], and I told you already this morning under what circumstances this largest German combine in coal and steel economy had been brought into life in 1926. I was a member of the supervisory board [Aufsichtsrat] of the Vereinigte Stahlwerke, I took care of the Mitteldeutsche Stahlwerke; I took care of the eastern interests, the Bismarkhuetten, Kattowitz [Katowice], Upper Silesia, and apart from that I had constant contact with the chairman of the Aufsichtsrat and with the general management of the Vereinigte Stahlwerke. As far as property and influence are concerned, the situation was the following: We, that is, the Charlottenhuetten, which was my company as I told you already, when the Vereinigte Stahlwerke was founded, took care of getting the main property from the Siegerland and the central German property, and paying an amount of nominally forty millions in shares and also seven and a half million in bonuses. The situation there was a little difficult, and I shall try to clarify it as far as possible.

The companies of the Ruhr area as, for instance, Gelsenkirchen, had ceded their establishments to the Stahlwerke. However, as legal entities they continued to exist, and the contents [Inhalt] of the company replaced the work shops which they had before, and it now became a property in shares of the Vereinigte Stahlwerke. It had taken the character of a holding company, and from the period before 1926, I already had an interest in Gelsenkirchen from my Upper Silesian transactions, and, therefore, we had now the following situation [Konstellation]: My company had a share in Gelsenkirchen from before 1926. Gelsenkirchen again was the largest shareholder in the Vereinigte Stahlwerke. Now this property which I had with Gelsenkirchen on the one hand, and also with the Stahlverein, I consolidated in a way that I exchanged the shares of the Stahlverein again with the shares of Gelsenkirchen, and the final result was that we only had Gelsenkirchen shares now. On the other hand, Gelsenkirchen was the largest shareholder in the Vereinigte Stahlwerke, and that way I managed to be the largest shareholder in the Gelsenkirchen company. It is true that I had no absolute majority in the general assembly, but holding shares of forty percent in a company in which there are no other large shareholders means, in fact, that I had the actual and practical majority in the general assembly. Therefore, we had reached the situation that I had the practical majority of the Gelsenkirchen company, and Gelsenkirchen again had the majority in the Stahlverein, and that way, of course, doubtlessly as far as the possibilities of influence are concerned with respect to the share holdings, we had

an incredible position of power. And I repeat, from the viewpoint of shares and of influence, but only if one thinks that in that way one can decisively rule and influence a corporation—but that doesn't apply to the Stahlverein nor does it usually apply. One cannot always say when somebody has the majority of the company, he really now has all the influence over the company, because, after all, it is still necessary that the man who directs the company allows himself to be influenced by the large shareholders, and it is generally known that efficient people don't allow that.

I only want to say that I had the power, and I don't want to be misunderstood. I did not exercise the power. I didn't have to exercise it because I had very friendly relations with the management of the Stahlverein. All the same, in the long run I didn't feel very well in this new company. The organization was too large for me. I didn't have enough opportunity to take personal action, and also I didn't have sufficient possibilities to use my personal initiative and develop it. Everything had to be discussed in large circles.

Well, in short, I came to the conclusion that for me, in the long run, it was not the right situation and, therefore I strived at getting a direct work basis, and discontinue exercising my influence on a large combine through an interlocking by holding companies.

This way we reached, in 1929, the point where I received from Roechling the majority of the Maxhuetten. This is the same Roechling who later on appears again on the Rombach scene.* Roechling at that time could not keep up this property and he sold it to me. In 1930 I purchased 50 percent of the Mitteldeutsche Stahlwerke from the Vereinigte Stahlwerke, and under these conditions we then reached the period of the new crisis of 1931-32.

Q. Before I ask you, Witness, to describe your economic fate during this crisis, I would now, at this point, put the following question to you: Your economic prosperity and the highest point of your economic influence and your economic power—was that point before 1933 or after 1933? When, altogether, did you have the highest industrial position in this connection?

A. My highest industrial position I held, doubtlessly, in 1930, or maybe even in 1931, because at that time my company, apart from Maxhuetten and Mittelstahl, which I have mentioned already, had the majority of Gelsenkirchen and thereby controlled the majority of the Stahlverein; the Stahlverein included a large part

* Hermann Roechling was tried before a military tribunal in the French Zone of Occupation. See appendix B, indictment and judgment, the Roechling case, Volume XIV, this series.

of the whole Ruhr industries. The Stahlverein for Germany would be what the United Steel Works are in the United States. The Stahlverein, one might estimate, had 35 to 40 percent, well, perhaps better 35 per cent, or at least 30 to 35 percent of the German steel production. It had 25 percent of the German soft coal production. That should be about the same proportion. I repeat, that my highest position of power doubtlessly was in 1930. In 1930 also, from the viewpoint of my fortune—if you take the capital stock of my fortune—even if you have to deduct the considerable liabilities which we had then in 1931 and 1932, even then, from the viewpoint of the capital stock of my fortune—you can, of course, not take the exchange rates—but you come to the result, all the same, that even from the viewpoint of my fortune, my position was the most powerful. Of course, not according to the exchange rates, because the rates in 1931–32 were very low and in 1936–37 were very high; of course, if you take it that way, it may be different. But if Dr. Dix puts the question to me whether my economic prosperity took place after perhaps the Third Reich had risen to power, then it is true I have to answer very clearly and not leave any doubts at all, and I have to say that it would be quite wrong to say that it was after the Third Reich. Because if you see my development not as a usual thing that happens every day and if it is supposed to have been a trick, then it was a trick as from 1916 until 1930, because there I started from the lowest beginnings and I got into a position where I ruled the largest German Montan* combine, that is, the Vereinigte Stahlwerke. Apart from my own fortune, which includes two large German steel works, Maxhütte and Mittelstahl—I have not counted those—perhaps that was something extraordinary and nothing that happens every day. I think that I succeeded alone in that. I did not have any help with it. I could, perhaps be quoted as an example that in Germany one could achieve something without having the help of national socialism. I did not need the help of national socialism, neither for my economic development nor for my fortune. I have to reject decidedly the insinuation that I had to thank national socialism for my economic prosperity. This is libel. I was glad if I was left alone and I have proof that I could get to some point, economically speaking, without having the crutches of national socialism. As I said, I have to reject it most decidedly, that I am submitted to any doubts as if I had to thank national socialism in any one point for my fortune or my economic prosperity. I did not need that. I was glad if I was left alone and

* A "Montan" combine refers to an enterprise engaged in mining and the making and processing of iron and steel. There is no exact English equivalent for this word.

if I had my security. I did not ask for more because I wanted to live in peace and quiet and continue with the work of my life. Of course I needed some protection for that, because after all, I had some political record. I want to conclude there that if I should have increased my fortune from 1933 until 1945, then this increase would have taken place also if I had only taken some walks and not done anything, just because the exchange rate changed. There were shares of heavy industry which perhaps in the spring of 1933 would have been quoted at 30 percent, and which, a few years afterwards, were quoted at 150 percent; everybody who had invested his fortune in such shares, theoretically, but not as far as capital stock is concerned, but at least as far as the stock exchange is concerned, had an increase in his fortune because the exchange rate changed. But that was not only given to Flick alone but also to every Tom, Dick, and Harry—every one who held shares in Germany, not only myself.

* * * * *

Q. As far as the period from 1931 to 1932 is concerned, we will stop here. We come now to the sale of your Gelsenkirchen shares to the Reich. This is a matter, it is true, which is not included in the indictment, but which, after all, was brought into this trial in such an elegant manner, that a third person, or an uninformed person could presume some mud-slinging from your side in the transaction. I therefore think it advisable that you give a short description of this sale and explain your motives, as well as those of the Reich Ministry of Finance.

A. I already mentioned that the situation was critical as far as the German economy was concerned in 1931 and 1932. If I recall, at that time there was a world crisis, and particularly a crisis in Germany. The happenings of 1925 and 1926 were repeated especially in the German heavy industry. Again old enterprises with good names were faced with the necessity to liquidate. I recall the case of Borsig, an old industrial family, which had to liquidate the largest part of its industrial holdings.

Other collapses also occurred every day. The steel industry had been reduced to minimum employment, and it was quite natural that the general crisis of confidence of that period also affected the Vereinigte Stahlwerke and its holding company, that is, the Gelsenkirchen Mining Company. As far as Gelsenkirchen is concerned, it was also a question of stopped credits; we, ourselves, all of us, as all enterprises of steel industry, had considerable liabilities. We saw that it was necessary and advisable to voluntarily pay off part of our liability and thus discharge our financial position. That could have been done in

different ways. We could have separated from the Maxhuette. We could have found someone to take it over; for instance, the Arbed, which was the largest Luxembourg company. We also could have separated from our properties in the Rheinische Braunkohle (Rhenish Brown Coal Company), but we did not take that course because it would have been contrary to my plans which I have already mentioned, that is, from 1929 onward, I started to build up my own companies again under my direct supervision by acquiring the majority of shares. Therefore, we decided to take the opportunity which we had, to sell the majority of Gelsenkirchen to the German Reich.

In this connection, I would like to say we had a lot of possibilities concerning selling Gelsenkirchen to foreign companies. The large Kreuger concern had approached me years before that and asked me to give them an interest in Gelsenkirchen. At that time, the Kreuger concern was one of the largest shareholders of the Swedish iron-ore companies at Regelsbuerg. This company by that means tried to gain influence on the largest buyer of Swedish ore, and that was the Vereinigte Stahlwerke. I only mentioned that in order to draw your attention to the fact that I did not use any of these ways and means. The transaction with the Reich was started by the trustee of the Reich, Dr. von der Pfordten. He was the man who carried out the negotiations. I did part of it myself, but von der Pfordten did most of it.

You asked me about the reasons the Reich had. The Reich, at that time, as far as I can recall, did not tell me the reasons it had, at least not in clear-cut and unmistakable form; but it is true that I had been informed by von der Pfordten and the then Minister of Finance, Dietrich, who concluded the deal and delivered a radio speech concerning the Gelsenkirchen deal in Germany last summer. In this radio address he exposed the reasons in much detail, the reason which in 1932 led him together with Bruening to start the acquisition of Gelsenkirchen. I think in this connection, the reasons are quite clear before the public. They are very interesting. Dietrich said, "Now, after all, I can talk about the matter, and I can tell you what I meant to do with that purchase. My plan was, through this possession of Gelsenkirchen, which was the key to the Ruhr industry, to prepare for international collaboration with the French." The program was to give the French an interest in the Ruhr coal, and vice versa, give the Ruhr an interest in the French Minette, that is, the ore in Lorraine. The French need coal from the Ruhr, and the Ruhr, again, needs ore from the French in Lorraine. The Reich Minister of Finance, Dietrich, at that time intended to use this economic basis of mutual participation to reach a political collaboration be-

tween Germany and France. At least I repeat the words he spoke in his radio address of the year before. This address has been published in all the newspapers. That was the aim of the Bruening government and Dietrich.

The Bruening government, soon after the conclusion of the coal deal, had to resign, not because of the deal, but for other reasons. Of course the deal afterward was criticized by the succeeding government. After all, that was no miracle. It had been concluded in the last days of the [Bruening] government. It was criticized by opposing parties, also by the Social Democrats. The amount paid was considerably above the exchange rates of the day, but still the amount was very low considering the value. And a few years afterward, the German Reich resold the shares and made a profit which I must estimate to be about RM 30,000,000. If the German Reich had waited a few years longer, then they would have made a profit of about 30,000,000 or 40,000,000 more, but the German Reich in 1936 sold the shares.*

* * * * *

* Cross-examination concerning the Gelsenkirchen transaction was closely related to the question of defendant Flick's contributions to political parties. Extracts from Flick's testimony on this subject upon cross-examination are reproduced below in section V G.

V. RELATIONS WITH GOVERNMENT LEADERS, VARIOUS POLITICAL PARTIES, THE SS, AND THE "CIRCLE OF FRIENDS" OF HIMMLER

A. Introduction

Count four of the indictment (sec. I, above) alleged that the defendants Flick and Steinbrinck were connected with plans and enterprises involving, and were members of organizations or groups connected with atrocities and various inhumane acts committed by the Nazi Party and its affiliated organizations, principally the SS. This count further charged that defendants Flick and Steinbrinck were members of a group of SS and business leaders known as the "Circle of Friends", the "Friends of Himmler" (the Reich Leader SS) or the "Keppler Circle", and that through this group these defendants worked closely with the SS and supported it in various ways. Under count five the defendant Steinbrinck was charged with membership after 1 September 1939 in the SS, an organization declared criminal by the International Military Tribunal.

The Tribunal, in its judgment (sec. XI) found both Flick and Steinbrinck guilty under count four and Steinbrinck guilty under count five.

Some of the political history developed in the case antedated Hitler's rise to power, among other reasons because the "Circle of Friends" was founded before 1933, and because Flick claimed that his contributions to parties other than the Nazi Party before 1933 were far greater than his contributions to the Nazi Party and its organizations, both before and after 1933. The political history of the defendants, particularly of the defendants Flick and Steinbrinck, was also brought into issue as well in connection with counts one, two, and three, dealing respectively with slave labor, spoliation, and Aryanization, where such questions as initiative and duress came to the fore. For example, one of the principal general defenses of the defendant Flick was his claim that he constantly acted under duress, and that his actions were basically influenced by the fact that he was considered politically unreliable by Nazi leaders.

Thus, the political history of the defendants cuts across all counts and in its beginnings antedates the conduct expressly charged as criminal in counts one, two, and three. Accordingly, evidence bearing on counts four and five, as well as on the general political aspects of the case, have been grouped together in this section. This arrangement partly avoids duplication in later sections.

B. Affidavit of Defendant Steinbrinck

TRANSLATION OF DOCUMENT NI-3508
PROSECUTION EXHIBIT 770

AFFIDAVIT OF DEFENDANT STEINBRINCK, 28 JANUARY 1947, CONCERNING
POLITICAL CONNECTIONS OF THE FLICK GROUP, AND ARRANGEMENTS
CONCERNING CONTRIBUTIONS TO POLITICAL PARTIES ¹

I, Otto Steinbrinck, after having been duly informed that I make myself liable to punishment if I make false statements, hereby declare on oath, voluntarily and free from any compulsion, the following:

Connections with the political parties and their financial support.—Previous to the assumption of power [of Hitler] the Flick group had no permanent political connections. In cases where it had to guard its various interests, which extended over Prussia, Bavaria, Saxony, and Thuringia, in relation to the parliaments and the public, it had to rely on incidental coordination. Flick and I were averse to any active party policy. As far as I know, he sympathized with the German People's Party. I myself did not belong to any party, and I never was a member of any political organization, union, or club until 1933, except in the years 1920 to 1922 when I belonged to the National Club. I usually voted for the German Nationalist People's Party [Deutschnationale]. Therefore, if the need arose, it was necessary to contact right wing parties, for instance through Voegler-Boehringer, or center parties perhaps through Freiherr von Richthofen, while scanty contacts were established with the left wing parties with the help of men from the press. During the critical years of 1931-32 it was more than ever to our advantage to stop or intercept in good time unfriendly remarks in the press or attacks on the part of local authorities. It was for this purpose that the "Press Office"—Dr. Sholz-Braatz—which had been set up in collaboration with the Wolff group,² was extended in order to establish contact with the more radical papers and the left wing parties; and furthermore a special man was appointed to watch all happenings which might concern us in political unions and organizations, such as Stahlhelm, Jungdeutscher Orden, Eiserne Front, and the SA. Our first connections with the NSDAP were brought about by the press (Ley, Graf Reischach, Funk). In the

¹ Testimony by defendant Steinbrinck concerning various political relationships is reproduced below in section F.

² The so-called Wolff group was composed of industrial commercial persons, the most important of whom was Otto Wolff. Otto Wolff should not be confused with Karl Wolff, chief of Reich Leader SS Himmler's personal staff, whose name frequently came up during the Flick trial and who appeared as a prosecution witness (Tr. pp. 10023-10033).

middle of 1932 I entered into the known connections with Keppler-Kranefuss¹ within the Schacht Circle. Sometime later I met Reich Leader SS Himmler through Count Helldorf,² the SA leader of Berlin. These connections also were of a purely defensive character at first, in order to protect us from unfriendly actions by all these offices, because the publicity of the Gelsen transaction with the State in April 1932 caused a great stir.³ There were many inquiries, investigations by most of the parties (in south Germany demonstrations against Flick took place), which on their part used the opportunity to manifest their own desire for donations and support. After having just overcome a crisis of existence, we were not in a position to avoid such demands. In this period of economic and political ferment a calming of the atmosphere which threateningly surrounded us was essential to the Konzern at any cost. We were in need of an objective middle class [buergerliche] government in order to insure that the whole transaction was smoothly carried to its conclusion and to maintain the established connections with the middle class parties. It was due to this attitude that we made donations to all groups which asked for them, from the Independents and Social Democrats to the right wing parties, and especially also to the left wing newspapers. During the years 1931-32 we naturally made donations also to the Party, SA, SS, and NSDAP newspapers. I am not in a position any more today to give reliable details with regard to this.

As far as I remember, toward the end of 1932 an agreement with the Reichsfuehrung SS was reached, presumably through the mediation of Kranefuss, on the strength of which the Konzern was entitled to pay all contributions intended for the SS and its organizations exclusively to the Reichsfuehrung SS. This arrangement was made to protect the works from excessive demands by individual local offices.

¹ Keppler was economic adviser to Hitler and Fritz Kranefuss was one of Keppler's early associates. Kranefuss later acted as secretary of the "Circle of Friends". An affidavit of Keppler and extracts from Keppler's testimony are reproduced below in sections D 1 and D 2, respectively. Keppler was a defendant in the case of United States vs. Ernst von Weizsaecker et al., Case 11, Volume XII-XIV, this series.

² Count Wolf von Helldorf, Berlin chief of police and an important SA leader in Berlin, played a prominent role in the so-called Roehm purge, when Ernst Roehm, chief of staff of the SA, and a number of other persons were assassinated because of an alleged plot to overthrow Hitler. Later Helldorf joined the resistance movement and took an active part in the abortive plot against Hitler's life on 20 July 1944. He was arrested, tried before a People's Court on 9 August 1944 and subsequently executed.

³ Reference is made to the sale to the government of Flick's shares in the Gelsenkirchener Mining Company, which company in turn held a majority of the shares of the Vereinigte Stahlwerke. See Document NI-7589, Prosecution Exhibit 769, reproduced above in section IV B and the testimony of defendant Flick reproduced above in section IV H and below in section G.

As far as I remember we were informed by the staff of the Reichs Leader that this centralization of payments was customary also for other enterprises and that the Fuehrer's consent had been obtained in principle.

I hereby declare on oath that this statement contains the full truth to the best of my knowledge and belief.

Nuernberg, 28 January 1947

[Signed] : OTTO STEINBRINCK

C. Contemporaneous Documents

PARTIAL TRANSLATION OF DOCUMENT D-203
PROSECUTION EXHIBIT 734

EXTRACTS FROM A REPORT OF SPEECHES BY HITLER AND GOERING TO
GERMAN INDUSTRIALISTS ON 20 FEBRUARY 1933, FOUND IN GUSTAV
KRUPP'S FILE "PRIVATE CORRESPONDENCE 1933-34" *

With the year 1918, an entire system collapsed. That it had to come about was often predicted, also by economic leaders, especially Geheimrat Kirdorf. The revolution which the year 1918 brought us was only conditional. In any case it did not bring about the revolution such as in Russia, but only a new school of thought which slowly initiated the dissolution of the existing order. Bismarck's statement—"Liberalism is the pace-maker of social democracy" is now scientifically established and proved for us. A given school of thought—thought direction—can unsuspectedly lead towards the dissolution of the foundation of the state. In our country also, a new direction of thought has gained ground which slowly led to internal disruption and became the pacemaker of bolshevism.

Private enterprise cannot be maintained in the age of democracy; it is conceivable only if the people have a sound idea of authority and personality. Everything positive, good and valuable, which has been achieved in the world in the field of economics and culture, is solely attributable to personality. When, however, the defense of this existing order, its political administration, is left to a majority it will irretrievably go under. All the worldly goods which we possess, we owe to the struggle of the chosen.

* * * * *

With the very same courage with which we go to make up for what had been sinned during the last 14 years, we have withstood all attempts to move us off the right way. We have turned down the benevolence of the Catholic Center Party [Zentrum] to tolerate us. Hugenberg has too small a movement. He has only considerably slowed down our development. We must first gain complete power if we want to crush the other side completely. As long as one still gains power, one should not start fighting the opponent. Only when one knows that one has reached the pinnacle of power, that there is no further possible upward development, should one strike. In Prussia we must gain another 10

* Complete document is reproduced in the I. G. Farben case (United States vs Carl Krauch et al., Case 6, vols. VII and VIII this series) where it was received in evidence as Document D-203, Prosecution Exhibit 37.

seats, and in the Reich proper another 33. That is not impossible if we throw in all our strength. Only then begins the second action against communism.

Now we stand before the last election. Regardless of the outcome there will be no retreat [Rueckfall] even if the coming election does not bring about a decision. One way or another, if the election does not decide, the decision must be brought about even by other means [eben auf einem anderen Weg fallen]. I have intervened in order to give the people once more the chance to decide their fate by themselves. This determination is a strong asset for whatever must possibly happen later. If the election brings no result, well, Germany will not go to ruin. Today, as never before, everyone is under the obligation to pledge himself to success. The necessity to make sacrifices has never been greater than now. For the economy, I have the one wish that it go parallel with the internal structure to meet a calm future. The question of restoration of the Wehrmacht will not be decided at Geneva, but in Germany, when we have gained internal strength through internal peace * * *. There are only two possibilities, either to crowd back the opponent on constitutional grounds, and for this purpose once more this election, or a struggle will be conducted with other weapons, which may demand greater sacrifices. I would like to see them avoided. I hope the German people thus recognize the greatness of the hour. It shall decide over the next 10 or probably 100 years. It will become a turning point in German history, to which I pledge myself with glowing energy.

* * * * *

Goering—He counted on it that with political appeasement, domestic economy will also quiet down. No experiments would be made; however, to attain the goal, all forces must be mustered on 5 March. Above all, it is important to penetrate into the circles that are still disconcerted with Marxism and slumber uselessly in anger and bitterness. Most of the internal political obstacles had been removed after unity with the other groups of similar ideology was achieved under one plan. This present unity should be made deeper. No matter how the election comes out, the distribution of forces should remain the same. In the coming struggle everyone must perform in his own field. The Deutschnationalen * will attack where successes can no longer be achieved by the National Socialists. On the other hand, the National Socialists will be given a task which has no prospects for the other. Without any doubt we must do the most work, for we must pene-

* Presumably reference is made to the Deutschnationale Volkspartei (German Nationalist People's Party).

trate with our SA men into the darkest quarters of the cities and operate there from mouth to mouth and fight for every single soul.

Goering considered to some extent the great dangers connected with this election battle. He then led over very cleverly to the necessity that other circles not taking part in this political battle should at least make the financial sacrifices so necessary at this time. These were so much more necessary because not even one penny of the taxpayer's money would be asked for. Government funds would not be used. The sacrifices asked for purely would be so much easier for industry to bear if it realized that the election of March 5th will surely be the last one for the next 10 years, probably even for the next 100 years.

TRANSLATION OF DOCUMENT NI-3218
PROSECUTION EXHIBIT 780

LETTER FROM DEFENDANT STEINBRINCK TO WALTHER FUNK, 11 DECEMBER
1931, PROPOSING THAT FUNK MEET BARON VON SCHROEDER,
A COLOGNE BANKER, WHO "IS NATURALLY VERY MUCH
INTERESTED IN THE ATTITUDE OF THE PARTY TOWARD
THE PROBLEM OF FOREIGN DEBTS"

11 December 1931

Mr. Walter Funk
Press Service for Political Economy [Wirtschaftspolitischer
Pressedienst]
Berlin W 35, am Karlsbad 19

Dear Mr. Funk: *

Baron Kurt von Schroeder, partner of the banking firm J. H. Stein, Cologne, and a cousin of the well-known London banker, is in Berlin today and tomorrow and would like very much to see you for a short while. For many years he has been closely connected with the whole movement [der ganzen Bewegung] and therefore had much understanding when I told him your new ideas on enlightening foreign countries. As he has far-reaching connections abroad and sees foreign bankers frequently because of his close friendship and connections with the international firm in London, he is naturally very much interested in the attitude of the Party [Stellungnahme der Partei] toward the problem of foreign debts.

I would be very much obliged if, in spite of the fact that your time is occupied very much, you could spare a few minutes for him one of these days, or rather tomorrow, so that he may get from you a picture of the decisive attitude to this problem.

The best thing would be if your office would call me over the telephone to give me place and time of the interview. I would then try to reach Mr. von Schroeder who stays at the Kontinental Hotel.

Besides I hope to meet you again early next week. I have studied the English Information Service with great interest.

With best regards I am

Very sincerely yours,
[Stamp] Signed: STEINBRINCK

* When Hitler became Reich Chancellor on 30 January 1933, Funk was made Press Chief in the Reich government. Shortly thereafter he became Under Secretary in the Reich Ministry of Propaganda and in early 1938 he became Reich Minister of Economics. He was a defendant before the International Military Tribunal. See Trial of the Major War Criminals, op. cit., volume I, pages 304-307.

TRANSLATION OF DOCUMENT NI-10095
PROSECUTION EXHIBIT 782

LETTER FROM DEFENDANT STEINBRINCK TO REICH LEADER SS HIMMLER,
13 JULY 1933, CONCERNING ELIMINATION OF "PERSONS
IN QUESTION" FROM THE SUPERVISORY BOARD OF
CERTAIN INDUSTRIAL PLANTS

[Handwritten] to be filed

Otto Steinbrinck

Berlin W9, 13 July 1933
[Illegible initial]

To the Reich Leader of the SS and the Commander of the Political
Police of Bavaria Herr H. Himmler

Munich 6

Dear Herr Himmler,

Only today I could speak to Alvensleben¹ since his time was very much taken up. In a discussion with Herr Flick I found out that it is true that the proposition mentioned in Alvensleben's letter to you was discussed between him and Alvensleben; thus I have wronged our mutual friend.

At the moment, however, it does not seem advisable for you to initiate anything. Since a new Aufsichtsrat of Linke-Hofmann-Busch² has to be elected anyhow, and since the city of Breslau doubtless will express special wishes, it will be best in this connection to eliminate the persons in question.

Furthermore, I should like to report that on Monday I resumed my activity in old vigor and I hope now also to be reinstated by and by into our common work.

With best regards and Heil Hitler!

Yours

[Signed] STEINBRINCK

¹Ludolf von Alvensleben was a prominent SS leader who eventually obtained the rank of SS major general. During several periods he was active in the industrial area of southeastern Germany.

²Reference is made to several closely related plants in southeastern Germany in which Flick acquired controlling participation. See "Slave Labor—Count One", section VII, below.

TRANSLATION OF DOCUMENT NI-8280
PROSECUTION EXHIBIT 741

LETTER FROM REICH LEADER SS HIMMLER TO DEFENDANT STEINBRINCK,
2 OCTOBER 1933, CONCERNING STEINBRINCK'S FORTHCOMING
STAY IN HIMMLER'S HOME

The Reich Leader SS

[Handwritten] File
2 October 1933

Mr. Otto Steinbrinck
Berlin W9
Bellevuestrasse 12a

Dear Mr. Steinbrinck!

In great haste many thanks for your letter of 25 September 1933.

My wife and I are very pleased that you will be in Munich on 14-15 October 1933 and the days following, and I hope you will live with us during your stay in Munich. I also hope that notwithstanding the festivities we shall have much time to talk. Unfortunately I shall be away the first week of October.

You suggest that you have in mind the matter we already discussed, and I wish to urge you to accept the offer then made to you.

With best regards to your wife and Heil Hitler,

Yours,

[Initials] H.H. [Heinrich Himmler] .

File
To file 4

TRANSLATION OF DOCUMENT NI-3877
PROSECUTION EXHIBIT 771

LETTER FROM DEFENDANT FLICK TO DR. SCHACHT, PRESIDENT OF THE
REICH BANK, 28 NOVEMBER 1933, CONCERNING A CONFERENCE
FLICK HELD WITH GENERAL VON BLOMBERG, REICH
DEFENSE MINISTER, ON THE NATURE AND PRO-
DUCTION OF CERTAIN FLICK PLANTS

Personal

28 November 1933

[Initials] ST [STEINBRINCK]

To the Reich Bank President Dr. Schacht
Berlin

My esteemed President, dear Dr. Schacht,

Today I called on Minister von B. [von Blomberg] and with reference to the enclosed small draft, which might be of interest to you, I reported briefly on the structure, production basis, supply of raw materials, and financial conditions of the plants in question. I could point out in this connection that at present all the decentralized plants in question in their entirety hold third place in German steel production and—which will be of particular interest to you—they can be adjusted for the purposes in question with comparatively not too large investments.

Mr. von B. showed very great interest and stated that until now he obviously did not have the right conception of the importance of the enterprises in question. On his own account he suggested an inspection which will take place on the 6th of next month; first all the plants of the so-called Lauchhammer group (Lauchhammer, Groeditz, and Riesa) will be inspected.

The reception was extraordinarily kind. I believe that this was primarily due to your influence, and I want to express to you my best thanks.

With friendly regards, I remain,

Always very devotedly yours,

[Stamp] Signed: FLICK

1 Enclosure.*

*The enclosure was not a part of the exhibit offered in evidence.

TRANSLATION OF DOCUMENT NI-10056
PROSECUTION EXHIBIT 773

MEMORANDUM BY DEFENDANT STEINBRINCK FOR DEFENDANT FLICK,
20 AUGUST 1934, CONCERNING A CONFERENCE WITH GENERAL
KURT LIESE, CHIEF OF ARMY ORDNANCE, ON THE
PROSPECTS OF MILITARY ORDERS FOR FLICK

St/Fr.

Berlin, 20 August 1934

Strictly Confidential

Memo for Mr. Flick

[Initial] F. [FLICK]

Today at a conference General Liese informed me that Mitteldeutsche Stahlwerke should not hesitate to prepare themselves for a continuous flow of big orders for a number of years. He asked whether we had received large orders since July. I answered that to my knowledge about 50,000-60,000 shells had been requested and an additional order for drilled pipes was promised. The total of our orders, including the promised orders amount to 3 to at most 3.5 millions, whereas investments for equipment bought or still to be bought amounted to 7 millions. The orders for 3.5 millions—to be delivered by next spring—could not be considered very big therefore.

General Liese agreed with me and advised Major Warlimont,* who was present, to see to it that Mittelstahl receives more consideration, if possible—for the rest, he seemed to be generally informed on the progress of the new constructions as well as the development of orders already placed. In any case he emphasized that further developments proceeded satisfactorily.

He finally emphasized again that we could certainly count on bigger orders by 1938 and advised us to use our own means also to prepare ourselves for the speediest possible execution of orders.

The reference to this statement of General Liese on the one hand and the gradually more deflated prices for pressed shells on the other hand seem to make it expedient to improve the pressing installation with our own funds. Our shipping and delivery method is still very primitive and could undoubtedly be reduced in cost and improved by means of rollers, automatic conveyors, etc.

[Initials] ST [STEINBRINCK]

Carbon copy to Mr. Moeller.

File:

HWA—RWM—Groeditz III

1-8-31-Dec. 1934

* Walter Warlimont, defendant in High Command Case, United States vs. Wilhelm von Leeb, et al., Volumes X and XI, this series.

TRANSLATION OF DOCUMENT NI-10103 *
PROSECUTION EXHIBIT 788

LETTER FROM VON SCHROEDER AND DEFENDANT STEINBRINCK TO DR.
MEYER, DRESDNER BANK OFFICIAL, 25 FEBRUARY 1936, NOTING THAT
THE CIRCLE OF FRIENDS WOULD PUT FUNDS AT HIMMLER'S
DISPOSAL "FOR CERTAIN TASKS OUTSIDE OF THE BUDGET"
AND HAD ESTABLISHED A "SPECIAL ACCOUNT S"
FOR THIS PURPOSE

Berlin, 25 February 1936
[Illegible handwriting]

To Prof. Dr. Emil H. Meyer
SS [Untersturmfuehrer] [second lieutenant] Member of the
Managing Board [Vorstand] of the Dresdner Bank
Berlin W. 56,
Behrenstr. 38

Personal!

To the Circle of Friends of the Reich Leader SS

At the end of the 2 days' inspection tour of Munich to which the Reich Leader SS had invited us last January, the Circle of Friends agreed to put—each one according to his means—at the Reich Leader's disposal into "Special Account S" [Sonder-Konto S], to be established at the banking firm J. H. Stein in Cologne, funds which are to be used for certain tasks outside of the budget. This should enable the Reich Leader to rely on all his friends. In Munich it was decided that the undersigned would make themselves available for setting up and handling this account. In the meantime the account was set up and we want every participant to know that in case he wants to make contributions to the Reich Leader for the afore-mentioned tasks—either on behalf of his firm or the Circle of Friends—payments may be made to the banking firm J. H. Stein, Cologne (Clearing Account of the Reich Bank, Postal Checking Account No. 1392) to the Special Account S.

Heil Hitler!

[Signed] KURT BARON VON SCHROEDER

[Signed] STEINBRINCK

*Photographic reproduction of this document appears in appendix A.

PARTIAL TRANSLATION OF DOCUMENT NI-051
PROSECUTION EXHIBIT 509

EXTRACTS FROM THE REPORT ON GOERING'S SPEECH BEFORE LEADING
INDUSTRIALISTS AT THE "PREUSSENHAUS", 17 DECEMBER 1936,
CONCERNING THE EXECUTION OF THE FOUR YEAR PLAN *

*Minister President General Goering for the Execution
of the Four Year Plan*

Speech in the big assembly hall of the "Preussenhaus" on
17 December 1936

After a short survey of world politics and the dangers of bolshevism and the world revolution, Goering said among other things—

The *old laws of economics* have no longer their former value. In economics there are no laws of nature, but only those made by man. These are interpretations by man adapted to special circumstances. We see today the realization of things which only a few years ago appeared to be Utopia.

* * * * *

Two difficulties stand in the way of *rearmament*:

1. The supply of raw material and foodstuffs
2. The shortage of labor

We must create reserves of food supplies and raw materials, just as the Prussian King did in the Seven Years' War. The *daily bread* must be absolutely guaranteed. It is more important than guns and grenades. I have the complete confidence of the Fuehrer and a far-reaching power of decision. I am master of *German money*; but I am sorry to say not of foreign exchange. Here my work must begin.

* * * * *

Then I always hear objections, such as—what is to happen to my investment, once rearmament is finished? Gentlemen! Inasmuch as we would have to increase our capacity in order to be prepared for any eventuality, that we cannot do. Whatever happens, our capacity will be far too small. The struggle which we are approaching demands a colossal measure of productive ability. No end of the rearmament can be in sight. The only deciding point in this case is victory or destruction. If we win, then the economy will be sufficiently compensated. Profits cannot be con-

*This report was also introduced in the Ministries Case (United States vs. Ernst von Weizsaecker, et al., Case 11), as Document NI-051, Prosecution Exhibit 964. The full text of this report is reproduced in volume XII, this series, under section VI B, "Military Economy—The Four Year Plan—The Financing of Armament."

sidered here according to bookkeepers' accounts, but only according to the necessities of policy. Calculations must not be made as to the cost. I demand that you do all to prove that part of the national wealth is entrusted to you. It is entirely immaterial whether in every case new investments can be written off. We are now playing for the highest stake. What could be more rewarding than orders for rearmament?

* * * * *

In closing, Goering demanded unrestricted utilization of all forces in the whole economic field. All selfish interests must be put aside. Our whole nation is at stake. We live in a time when the final dispute is in sight. We are already on the threshold of mobilization and are at war, only the guns are not yet being fired.

TRANSLATION OF DOCUMENT NI-9983
PROSECUTION EXHIBIT 833

PROGRAM OF THE CIRCLE OF FRIENDS ON 8 AND 9 FEBRUARY 1937,
LISTING LECTURES BY SS MAJOR GENERAL HEYDRICH AND OTHERS
ON THE SECURITY POLICE AND SECURITY SERVICE, JEWRY,
COMMUNISM, HOMOSEXUALITY, AND FREEMASONRY, AND
VISITS TO HITLER'S OWN REGIMENT, THE POLICE INSTI-
TUTE, FREEMASON'S MUSEUM, AND HOUSE OF FLYERS

PROGRAM

Monday, 8 February 1937

- 0900 hours Meeting place at the conference hall, Security
Main Office, Wilhelmstr. 102.
- 0915-1000 hours *Lecture by SS Major General Heydrich*
Subject: Security Police and Security Service.
- 1000-1030 hours *Lecture by SS Second Lieutenant and Govern-*
ment Counsellor Hasselbacher
Subject: Jewry.
- 1030-1045 hours Intermission
- 1045-1200 hours *Lecture by Reg. and Kriminalrat Heller*
Subject: Communism.
- 1200-1210 hours Walk through the park of the SD [Security
Service] Main Office to
- 1215-1330 hours Lunch in the Kasino Gestapa
Lunch Recess
- 1530 hours Departure from Wilhelmstrasse 102 to Adolf
Hitler's own regiment [Leibstandarte].
- 1630 hours Beginning of inspection of Adolf Hitler's own
regiment.
- 1900 hours Dinner in the Kasino of Adolf Hitler's own
regiment.

Tuesday, 9 February 1937

- 1000 hours Departure from Wilhelmstrasse 102 to the
Police Institute Charlottenburg
- 1030-1130 hours *Lecture by SS Lieutenant Colonel Meisinger*
Subject: The Fight against Homosexuality and
Abortion as a Political Task.
- 1130-1300 hours Inspection of the Police Institute. Short intro-
duction by SS Second Lieutenant, Regional
Criminal Director Thiele

TRANSLATION OF DOCUMENT NI-6460
PROSECUTION EXHIBIT 832

LETTER FROM DEFENDANT STEINBRINCK TO RASCHE, MEMBER OF THE
MANAGING BOARD OF THE DRESDNER BANK, 18 FEBRUARY
1937, REQUESTING RASCHE TO PAY HIS SHARE OF THE
EXPENSES FOR THE MEETING OF HIMMLER AND
HIS FRIENDS ON 9 FEBRUARY 1937

Otto Steinbrinck

Berlin W 9, 18 February 1937
Bellevuestrasse 12 a
B 1 Kurfuerst 9311

[Handwritten] 20/2

Director Dr. Karl Rasche,¹

Dresdner Bank
Berlin W 8,
Behrenstr. 35
Personal!

[Initials] RA [RASCHE]

Dear Herr Rasche:

As agreed, the expenses of the nice evening which we have spent with the Reich Leader SS and his friends on 9 February, will be divided. The amount has been advanced by us for the time being.

I ask you to remit your share of *24.00 Reichsmarks* to the Postal Checking Account Berlin, No. 51 551, of the Mitteldeutsche Stahlwerke A.G.,² Berlin.

Heil Hitler!
Very truly yours,
[Signed] STEINBRINCK

¹Rasche was a defendant in the Ministries case, Volume XII-XIV, this series.

²This firm, usually referred to as "Mittelstahl" was one of the principal holding and operating companies of the Flick Concern.

TRANSLATION OF DOCUMENT NI-9981¹
PROSECUTION EXHIBIT 830

LETTER FROM DEFENDANT STEINBRINCK AND VON SCHROEDER TO DR.
MEYER, 26 APRIL 1937, NOTING THAT HIMMLER'S TASKS NOT
COVERED BY THE REGULAR BUDGET HAVE NOT DECREASED
SINCE THE 1936 CONTRIBUTIONS OF THE CIRCLE OF FRIENDS
AND REQUESTING CONTINUED FINANCIAL SUPPORT

Berlin/Cologne, 26 April 1937

[Handwritten] Dr. Rasche
What to do?

Professor Dr. Emil Heinrich Meyer,
Dresdner Bank,
Berlin W 8
Behrenstr. 38
Personal!

[Illegible handwriting]

Dear Dr. Meyer:

When last year we sent a circular to the Circle of Friends of the Reich Leader SS,² it was for the purpose to support the Reich Leader to carry out certain tasks which were not covered in the regular budget. This circular had great success and was thankfully appreciated by the Reich Leader. We are aware that the tasks of the Reich Leader have not decreased; they were clearly placed before us at the meeting in February.³

If we therefore point out to the Circle of Friends that, just like last year for the same purposes, a "Special Account S" was set up at the Banking House J. H. Stein in Cologne (Reich Bank Clearing Account, Postal Checking Account Cologne No. 1392), we do this trusting there is understanding for the need of these tasks and we hope that the support might be the same as last year.

According to the Munich decision of 1936, the undersigned again have taken it upon themselves to handle this account.

Heil Hitler!

[Signed] OTTO STEINBRINCK [Signed] BARON V. SCHROEDER

¹Photographic reproduction of this document appears in appendix A.

²The copy of the circular letter of 1936 to Dr. Meyer, dated 25 February 1936, is reproduced earlier in this section as Document NI-10103, Prosecution Exhibit 788.

³Reference is made to the meetings of the Circle of Friends on 8 and 9 February 1937. For these meetings, see Document NI-9983, Prosecution Exhibit 833, and Steinbrinck's letter to Rasche, 18 February 1937, Document NI-6460, Prosecution Exhibit 832, both reproduced earlier in this section.

TRANSLATION OF DOCUMENT NI-3488
PROSECUTION EXHIBIT 472

LETTER FROM GOERING TO DEFENDANT FLICK, 13 AUGUST 1937,
THANKING FLICK FOR MAKING ORE FIELDS AVAILABLE TO
THE HERMANN GOERING WORKS AND FOR DISTINCTIVE
SERVICE IN INCREASING GERMAN ORE PRODUCTION
WITHIN THE PROGRAM OF THE FOUR YEAR PLAN

Minister President General Goering
Plenipotentiary for the Four Year Plan

Berlin, 13 August 1937

Dr. Friedrich Flick
Mitteldutsche Stahlwerke
Berlin W. 9

With satisfaction I took notice of the negotiations which have taken place between you and the Hermann Goering Works [Reichswerke] concerning your placing the ore fields at their disposal.¹ I am glad to hear that an agreement was reached which is satisfactory to both parties.

I know that in contrast to other leaders of the German iron and steel industry you did your utmost to increase, within the program of the Four Year Plan,² the production and finishing of German ores and that you have thus facilitated the execution of my task.

I thank you very much for it and express the hope that you will continue to serve the great task also in the future.

Heil Hitler!
[Signed] GOERING

¹Reference is made to the sale by Flick to the Hermann Goering Works of ore fields and installations in the Salzgitter area.

²Extensive evidence concerning the Four Year Plan is reproduced in the material on the I.G. Farben case, Volumes VII and VIII, this series; and in the Ministries case, Volumes XII-XIV. See particularly section VI B, "Military Economy—The Four Year Plan—The Financing of Armament", in Volume XII.

ARTICLE IN "THE ARCHIVE," DECEMBER 1937, CONCERNING THE
APPOINTMENT OF MILITARY ECONOMY LEADERS *

Appointment of Military Economy Leaders
[Wehrwirtschaftsfuehrer]

Wa 12 December 1937

The Reich Minister for Aviation and Supreme Commander of the Air Force, General Goering, appointed a number of personalities of the German aviation industry to be Military Economy Leaders, who were sworn in to the Fuehrer and Reich Chancellor, their important duties and tasks being pointed out to them.

The following were appointed Military Economy Leaders: Max P. Andreae, engineer; Franz Dinslage, engineer; Claudius Dornier, engineer; Gerhard Fieseler, Ernst Heinkel, engineer Ph. D. h.c.; Walter Hormel, Hans Kalk, Karl Kessler; Commander [Fregattenkapitaen] (ret.) Hans Keilhack, Erich Koch, engineer; Heinrich Koppenberg, engineer, D. Tech. Sc. h.c.; Professor Otto Mader, engineer; Professor Wilhelm Messerschmitt, engineer; Karl C. Mueller, Franz Popp, engineer; Guenther Quandt, engineer; Arthur Rautenbach, Max Roux, Friedrich Wilhelm Siebel, Kurt Tank, engineer; Richard Thiedemann, Richard Vogt, engineer; Lieutenant Colonel (ret.) Felix Wagenfuehr; Wolff von Wedelstaedt.

In this connection, it was announced on 14 December that the Fuehrer and Reich Chancellor ordered the organization of a Corps of Military Economy Leaders in the year 1936. The Reich Minister of War and the supreme commanders of the three branches of the armed forces can appoint as Military Economy Leaders, German citizens who have distinguished themselves or are still doing so, especially in the material reconstruction of the armed forces. In this appointment, the voluntary cooperation of the economy in all tasks of national defense finds expression here at the same time, originating from the military economic conviction and the obligation of every individual to the armed forces. With the appointment as Military Economy Leaders, these personalities obligate themselves to a special extent to a relationship of faithfulness to the State and the armed forces. In foreign countries as well, such ties between the military and the economy have partially

*"The Archive" (Das Archiv) was published by Verlagsanstalt Otto Stollberg, Berlin W 9 and edited by A. I. Berndt. This article appeared on pages 1153 and 1154, Volume 45.

become customary. In the first line, this honor and obligation is contemplated for the leaders of the German economy who further the material readiness of the armed forces by their distinguished accomplishments.

In 1937 a number of economic leaders have already been appointed Military Economy Leaders by the Reich Minister of War and the Supreme Commander of the Navy. After the Reich Minister for Aviation and Supreme Commander of the Air Force has solemnly announced now the first appointment for his field, the Supreme Commander of the Army will, as was announced, also obligate a larger number of entrepreneurs as Military Economy Leaders.*

*All the defendants in the Flick case were appointed military economy leaders, Steinbrinck in 1938, Flick in 1939, and the others after the outbreak of the war.

PARTIAL TRANSLATION OF DOCUMENT NI-3220
PROSECUTION EXHIBIT 9

EXTRACTS FROM A SPEECH BY GENERAL THOMAS, CHIEF OF THE MILITARY
ECONOMIC AND ARMAMENT OFFICE OF THE HIGH COMMAND
OF THE ARMED FORCES, 17 OCTOBER 1941, CONCERNING
THE DUTIES, RESPONSIBILITIES AND ATTITUDE OF MILITARY
ECONOMY LEADERS *

Honorable Dr. Poensgen! When today here in Duesseldorf are assembled the leading persons of the German economy, leaders of the Reich and of the Party in order to honor you on your seven-tieth birthday, the armed forces will not and cannot be missing.

* * * * *

Then, when armament and the new war came, you were again one of those men who employed all initiative in order to further the German armament and therewith help the German banners to victory. For this reason already in 1937 the High Command of the Armed Forces appointed you Military Economy Leader. When we created this new concept of Military Economy Leader, we did not only intend to characterize and to pay tribute to persons and plants, but we also demand duties and responsibilities. The first demand on each Military Economy Leader is his complete devotion to our State ideology; the second demand is that each Military Economy Leader give all his strength to the task of building up his plant to the highest peak of efficiency in accordance with the Four Year Plan and for the defense of the Reich, and our third demand is that they shall be our faithful advisers and helpers in perilous times of war.

*This speech was one of a number of tributes to Poensgen collected in a publication entitled "Ernst Poensgen, the Tribute in the Stahlhof on 17 October 1941". This publication was found in the Flick files.

TRANSLATION OF DOCUMENT NI-3454
PROSECUTION EXHIBIT 694

LETTER FROM DEFENDANT STEINBRINCK TO KARL RAABE, CHAIRMAN OF THE MANAGING BOARD OF FLICK'S MAXIMILIANSHUETTE, 28 MARCH 1938, NOTING "A SPECIAL AGREEMENT BETWEEN OUR GROUP AND THE REICH LEADER SS," IN EXISTENCE SINCE 1931, THAT CONTRIBUTIONS BE MADE DIRECTLY TO THE REICH LEADERSHIP SS, AND THAT "WITH THE CONSENT OF MR. FLICK WE HAVE FREQUENTLY PUT AMOUNTS OF ABOUT 5,000 REICHS-MARKS" AT THE DISPOSAL OF THE SA

At present at Berwang/Tirol
28 December 1938

Director General Karl Raabe
Sulzbach-Rosenberg-Huette
Bayer. Ostmark
Subject: Contribution to Standarte 68.

Dear Mr. Raabe:

It cannot be seen clearly from your letter whether this concerns a contribution to a regiment [Standarte] of the SS or of the SA. If it concerns an SS regiment, then you may safely point to the fact that—in accordance with a special agreement between our group and the Reich Leader SS—we undertook to make any contributions whatever direct to the Reich Leadership SS. This agreement has been in existence since 1931 and had been, at that time, approved by the Fuehrer himself. Should, however, the regiment in question belong to the SA or should it even concern the regiment which is competent in the district of Rosenberg-Sulzbach, then I would like to do something for these men in any case, all the more so as the money in question is not going to be squandered, but is to be used to equip additional SA men, as may be seen from your letter. In my opinion, the personal relationship which you maintain with the regiment, or the sector, plays an important part with regard to the amount of the contribution. At the instance of Lauchhammer and with the consent of Herr Flick we have frequently put amounts of about RM 5,000 at their disposal.

As this concerns the special case of enrolling SA men from the Sudetenland I would even go higher, provided the regiment in question is competent in the residential district of your employees.

I take this opportunity, dear Mr. Raabe, to send you and your wife my very best wishes for a happy New Year. May you continue to enjoy good health and vigor.

Sincerely yours,
[Stamp] Signed: STEINBRINCK

TRANSLATION OF DOCUMENT NI-5432
PROSECUTION EXHIBIT 28

LETTER FROM DEFENDANT BURKART TO GILLITZER, 17 SEPTEMBER 1940,
STATING THAT GOERING AND HITLER, IN 1932, HAD SANCTIONED
PERSONALLY THE SALE OF FLICK'S MAJORITY SHARES IN THE
VEREINIGTE STAHLWERKE, AND THAT CERTAIN FLICK PAR-
TICIPATIONS IN UPPER SILESIA WERE SOLD IN 1936
ONLY BECAUSE OF DEMANDS OF THE REICH

Bu/we 17 September 1940
To: Mining Director, Dr. Gillitzer
c/o the Plenipotentiary General for the Iron and Steel Industry in
Luxembourg and Belgium
Trier, Post Office Box 521

Dear Mr. Gillitzer:

Mr. Flick thanks you for your letter of 13 September. He has read your remarks with great interest.

With respect to the sale of the Stahlverein majority shares,¹ Mr. Flick has asked me to inform you *officially* as follows:

The sale of the majority of shares in the Stahlverein has been *personally* examined and sanctioned at the time—in the year 1932—by the present Reich Marshal in conferences at the Bellevuestrasse² which lasted several days. The Reich Marshal has further personally reported the transaction relating to the majority shares of the Stahlverein to the Fuehrer with the result that the Fuehrer has also recognized this transaction as necessary and has explicitly approved it.³

The question of the Bismarckhuetten was not dealt with in the year 1932 but in the year 1936. Our group has upheld the position of Bismarckhuetten for several years under the greatest sacrifices in the interest of Germanism [Deutschtum] in Upper Silesia, and in agreement with the Minister of Economics and upon the explicit wish of the Foreign Office and the Minister of Economics.

Only in the year 1936 did we finally give up the Bismarckhuetten upon request of the Reich government, after the Foreign Office declared that a clarification of the Bismarckhuetten problem was

¹ "Stahlverein" was a common abbreviation for the Vereinigte Stahlwerke (United Steel Works) in which Flick held a majority participation through his Gelsenkirchener firm. The German Government purchased these shares on 31 May-1 June 1932. See extract from the Reich Budget for 1932, Document NI-7589, Prosecution Exhibit 769, reproduced earlier in section IV B.

² "Bellevuestrasse" was a familiar name for the Berlin headquarters of the Flick Concern located at Bellevuestrasse 12.

³ Hitler became Reich Chancellor on 30 January 1933.

absolutely necessary in view of the amicable relations with Poland at that time. Thus we had, at the time mentioned, to give up the community of interests [Interessen Gemeinschaft (I.G.)] Kattowitz-Laura/Bismarckhütte under great sacrifices as did all other German partners, because superior Reich authorities demanded categorically such a separation.

I should be very grateful if you could inform the gentleman concerned of the Stahlverein transaction as well as of the question Bismarckhütte on the basis of the above explanation.

With friendly greetings, I remain

Yours,

[Stamp] Signed: BURKART

TRANSLATION OF DOCUMENT NI-3506
PROSECUTION EXHIBIT 690

LETTER FROM DEFENDANT KALETSCH TO VON SCHROEDER, 17 FEBRUARY
1942, NOTING THAT ARRANGEMENTS HAVE BEEN MADE FOR
REMITTANCE OF 100,000 MARKS TO THE HIMMLER FUND, AND
REQUESTING VON SCHROEDER TO NOTIFY KALETSCH
IF THE NEED FOR OTHER PAYMENTS ARISES

17 February 1942 kf.

To Baron Kurt von Schroeder
Cologne
Laurenzplatz 3

Dear Mr. von Schroeder,

Coming back to your letter of the 24th of last month, I am referring today to the telephone conversation you had with Mr. Flick in the meantime.

I have arranged for the remittance of an amount of RM 100,000 to the account named.

If in the course of the year need for other payments should arise, I ask you with reference to your telephone conversation with Dr. Flick to inform me accordingly.

Hoping that you are well, I am with kind regards,

Heil Hitler!

Yours very respectfully,

[Initial] K [Kaletsch]

TRANSLATION OF DOCUMENT NI-8108
PROSECUTION EXHIBIT 738

LETTER FROM FRITZ KRANEFUSS TO RUDOLPH BRANDT, CHIEF OF HIMMLER'S
PERSONAL STAFF, 15 JUNE 1942, TRANSMITTING A COPY FOR HIMMLER
OF KRANEFUSS' OPENING REMARKS TO A MEETING OF THE
CIRCLE OF FRIENDS ON THE DEATH OF HEYDRICH, NOTING
HIMMLER'S DESIRE TO DETERMINE THE SPEAKERS AND
SUBJECT MATTER OF SPEECHES AT SUCH MEETINGS

[Stamp] Personal Staff Reich Leader SS
Registry
File No. AR/45

Fritz Kranefuss

Berlin C 2, 15 June 1942
Schinkelplatz 1
Kr/Ki.

To SS Lieutenant Colonel [Obersturmbannfuehrer] Dr. Rudolf
Brandt¹
Personal Staff of the Reich Leader SS
Berlin/SW 11,
Prinz-Albrecht-Strasse 8

Dear Comrade Dr. Brandt:

At the gathering of the Circle of Friends on Wednesday, the
tenth of this month, the presentation of the Tibet film and the
short address by Dr. Schaefer have been very satisfactory. I am
sending you for the Reich Leader SS the part of my opening
remarks which were dedicated to the memory of our SS Lieutenant
General [Obergruppenfuehrer] Heydrich.² I hope that it will
meet with his approval.

The Reich Leader has expressed his desire that I always report
the date of the next meeting of the Circle of Friends as early as
possible, so that he may determine the subject matter of the next
lecture and who the next speaker is to be. I should be very grate-
ful, and I believe that I am speaking for all the gentlemen, if we
asked for a lecture on Security Police and Security Service
[Sicherheitspolizei und SD], for Wednesday, July 8.

[Shorthand: tell about his assignment in the Crimea.]

Here I should like to propose that the Reich Leader request SS
Senior Colonel Ohlendorf,³ who always participates in these

¹Defendant in the case of United States *vs.* Karl Brandt, et al., Volumes I and II, this series.

²Heydrich, Chief of the Security Police and SD and after September 1939 Chief of the Reich Security Main Office, was assassinated near Lidice, Czechoslovakia, just prior to this time.

³Defendant in the Einsatzgruppen case (United States *vs.* Otto Ohlendorf, et al., Case 9), Volume IV, this series.

meetings, to prepare for this lecture and that he inform him or decides with him who the lecturer or lecturers are to be and what topic shall be discussed.

I should appreciate hearing from you soon and remain with cordial and comradely greetings,

Heil Hitler!

yours,

[Signed] KRANEFUSS

1 enclosure

[Stamp] Personal Staff of the Reich Leader SS

Received: 18 June 1942

Calendar no.: AR 14/15/42

To: Reich Leader

Enclosures: 1

[Enclosure]

[Stamp] Personal Staff Reich Leader SS

Registry

File No. AR/45

Gentlemen:

Before SS Major Dr. Schaefer shows us his wonderful film and tells of his trip through Tibet, I must perform a serious and sad duty.

The SS and its Reich Leader mourn these days for SS Lieutenant General Heydrich. We carried him to his grave yesterday. And the Reich Leader and then the Fuehrer himself expressed what the deceased meant to us and will mean to us. You, however, the friends of the Reich Leader, whose activities lie for the most part in civilian life, would perform an act of friendship for him and the SS, if you helped us to uphold among German people the memory of Reinhard Heydrich as that of an SS man exemplary in every respect, in a manner truly befitting to him.

The Reich Leader said yesterday that he, the deceased, was feared by subhumans [Untermenschen], hated and denounced by Jews and other criminals, and at one time was misunderstood by many a German. His personality and the unusually difficult tasks assigned to him were not of a nature to make him popular in the ordinary sense of the word. He carried out many harsh measures ordered by the State and covered them with his name and his person, just as the Reich Leader does every day. Added to this—and I repeat here the words of the Reich Leader—he had the difficult task of developing and leading an organization which deals

only with the dark sides of life, with inadequacies, deviousness, with ignorance as much as with ill will, with criminal instincts and asocial excrescences of human society. The greatest burden of the Security Service of the nation lies in the fact that its men hardly ever come in contact with pleasant occurrences.

You, in turn, need not be brought into contact with all those things which Heydrich diverted from us in his watchfulness in his daily tense struggle with all kinds of such enemies of the Reich, and therefore you rarely hear of the dangers which have often threatened the German people as a whole as well as the individual. The enemy's methods of opposition, however, are adopted, in appreciation of all these efforts, by all those who, whispering more or less loudly, denounce Heydrich as the GPU Chief, the bloodthirsty Chekist, and accuse him of all sorts of things, in a manner which is as much in bad taste as it is stupid and out of place.

I do not intend to assert that it was always easy to deal with Heydrich, and many of his colleagues and comrades had serious differences with him. But of those who really understood him and honestly wanted to help him, each one would be glad and grateful for an opportunity to have such differences with him again and to argue with him, if only fate could return Heydrich to us. Finally you all know that kindness is one of the strongest and most pronounced qualities of our Reich Leader, and one who is so kind by nature does not choose a man for his collaborator, comrade, and friend in such a vital sphere of work, whose real nature remotely resembled the picture which hate and ignorance have tried to paint of him. He demonstrated during the past months, when the Fuehrer's personal directive appointed him to the office of Deputy Reich Protector of Bohemia and Moravia, what he was and what he was capable of doing. In this connection the Reich Leader said yesterday—"During these months, when for the first time he was given a great, positive, and creative task, exposed to the eyes of the world, his abilities were fully demonstrated. He seized the guilty, relentlessly obtained unconditional respect for German might and power of the Reich, but gave the opportunity to collaborate to all those who are of good will. There was not one among the manifold problems of life in the Reich provinces of Bohemia and Moravia, which this young deputy of the Reich Protector did not grapple with, straighten out and already solve partly out of the strength of his heart, a deep knowledge of the law, of our tradition, and our nature, filled with understanding the ideology [mythes] of the Reich." Deep tragedy lies in the fact that fate has taken this mission out of his hands after so short a time. It was gratifying and beautiful that yesterday the Fuehrer

himself paid tribute to Heydrich and his work in a similar manner as that of our unforgettable Reich Minister Dr. Todt, who, by his conduct and ability, is for us the prototype of a good National Socialist. In the same spirit I repeat my request to you. Help us uphold the memory of Reinhard Heydrich as that of an exemplary SS man. I thank you for having allowed me on this occasion to express this plea before you, the Circle of Friends of our Reich Leader.

TRANSLATION OF DOCUMENT NI-10149
PROSECUTION EXHIBIT 859

EXTRACT FROM A GERMAN LANGUAGE PUBLICATION "ARCHIVE OF THE PRESENT", 21 SEPTEMBER 1942, REPORTING A COMMUNIQUE FROM PRAGUE CONCERNING THE ASSISTANCE OF LIDICE INHABITANTS TO HEYDRICH'S ASSASSINS AND, IN REPRISAL, THE SHOOTING OF ALL MALES, DEPORTATION OF FEMALES TO CONCENTRATION CAMPS, AND THE RAZING OF LIDICE

ARCHIVE OF THE PRESENT [ARCHIV DER GEGENWART],
21 SEPTEMBER 1942

* * * * *

B. *Germany*.—Protectorate of Bohemia and Moravia. Czechoslovakia (formerly) Exile Government.—On 10 June the following communique was reported in Prague:

"In the search for the assassins of SS Lieutenant General Heydrich (5514 C) definite clues were found showing that the inhabitants of the village of Lidice, near Kladno, had given support and assistance to the culprits. This information was verified with no help from the inhabitants. Their attitude toward the assassination was emphasized by further acts unfriendly to the Reich, such as—the finding of forbidden printed matter, stores of arms and ammunition, illegal radio transmitter, an exceptionally large quantity of rationed foods, and the uncovering of circumstances showing that several individuals were abroad in active service against the Reich. Because the inhabitants of this village, by their support and assistance to the assassins of SS Lieutenant General Heydrich, broke the law so recklessly, the men have been shot, the women deported to concentration camps, and the children taken where they may have suitable upbringing. The buildings of the village have been razed to the ground and its name erased.

* * * * *

TRANSLATION OF DOCUMENT NI-8123
PROSECUTION EXHIBIT 749

NOTE FROM THE FILES OF HIMMLER'S PERSONAL STAFF, 1 JULY 1942,
NOTING THAT KRANEFUSS HAD BEEN INFORMED OF HIMMLER'S
DESIRE THAT LECTURES TO THE CIRCLE OF FRIENDS COMPRISE
SO-CALLED HIGHLIGHT REPORTS, SUCH AS PARTISAN WAR-
FARE, AND THE ASSIGNMENT OF SS SENIOR COLONEL
OHLENDORF IN THE CRIMEA

[Stamp] Personal Staff of the
Reich Leader SS
Registry
File No. AR/45

Note

I have had a telephone conversation with SS Senior Colonel Kranefuss and have told him that the Reich Leader SS does not desire broad, basic lectures, but rather so-called highlight reports on the various fields of endeavor; for example, on partisan warfare and the assignment [Einsatz] of SS Senior Colonel Ohlendorf in the Crimea, which, together with short reports on activities and episodes, will undoubtedly be just as interesting as lectures of an abstract, general nature.

[Signed] MEINE
SS First Lieutenant

Me/G.
1 July 1942

TRANSLATION OF DOCUMENT NI-6045
PROSECUTION EXHIBIT 684

LETTER FROM HIMMLER TO VON SCHROEDER, 25 AUGUST 1942, REQUEST-
ING VON SCHROEDER TO THANK ALL MEMBERS OF THE CIRCLE OF
FRIENDS FOR AGAIN CONTRIBUTING "OVER A MILLION
REICHSMARKS FOR MY PURPOSES"

RF/V. AR 22 April 1942

Field Command Post, 25 August 1942

Personal Staff Reich Leader SS
Record Department
File No. Ar/45

[Handwritten] Circle of Friends

My dear and esteemed Baron Schroeder:

It is only today that I am at last able to answer your letter of 18 May 1942. Since the arrival of your letter I have lived through difficult days and weeks. The death of SS Obergruppenfuehrer Heydrich has been a heavy blow to me. From the time of his death until now I have had even more work than before, as I have for the time being taken over the administration of the Reich Security Main Office myself. This is why I am only just finding time gradually to deal with correspondence which I intended to answer myself and personally.

Please inform all members of the Circle of Friends how very grateful I am to them for again contributing so generously over a million Reichsmarks for my purposes [fuer meine Verfuegungszwecke]. I know what sacrifices this sum represents and thank all friends with all my heart for making it possible once more for me to heal many a wound, to help many people, and to set in motion much that is valuable to Germany, particularly in scientific spheres.

To you, my dear Baron Schroeder, I extend my particular thanks for again having taken the trouble to sponsor and manage the collection of this gift. I very much hope that during the winter I shall find it possible to take part in a soiree of the Circle of Friends in Berlin. But you know yourself that so far as my appointments are concerned, I cannot make arrangements for more than 3 days at a time.

Here everything is running very smoothly and in every way satisfactorily.

Many kind regards and Heil Hitler!

Yours

[Handwritten] Very sincerely
[Initials] H H [Heinrich Himmler]

Copies sent to—

(2) SS Obergruppenfuehrer Wolff.

(3) SS Oberfuehrer Kranefuss.

for their information.

BY ORDER:

[Illegible initials]

SS Obersturmfuehrer

27 August 1942

TRANSLATION OF DOCUMENT NI-12194
PROSECUTION EXHIBIT 837

LETTER FROM KRANEFUSS TO SIEVERS, DIRECTOR OF "THE AHNENERBE," 3
FEBRUARY 1943, NOTING OHLENDORF'S AGREEMENT TO LECTURE
AT THE NEXT MEETING OF THE CIRCLE OF FRIENDS ON HIS
MILITARY ASSIGNMENT IN SOUTHERN RUSSIA AND THE
CRIMEA, AND RELATED MATTERS

Fritz Kranefuss

Berlin C 2, 3 February 1943
Schinkelplatz 1
Telephone: 16 6611
[Stamp]

Das Ahnenerbe Berlin
30001—4 February 1943
File No. D/F/19

To SS Colonel Wolfram Sievers*
Reich Director of the Experimental and Educational Association
"Das Ahnenerbe"
Berlin—Dahlem, Puecklerstrasse 16

Dear Comrade Sievers,

The next meeting of our Circle of Friends will take place on
Wednesday, 10 February 1943 at the "House of Flyers," Berlin
SW 11, Prinz-Albrecht-Str. 5.

SS Brigadier General Ohlendorf has agreed to report to us at
that time on his military assignment in southern Russia and the
Crimea and to show us a film taken there.

For this purpose SS Senior Colonel Dr. Naumann has again put
at our disposal the hall which you already know in the Reich
Ministry for Public Enlightenment and Propaganda.

I beg you therefore to be at the movie hall (2d floor) of the
Reich Ministry for Public Enlightenment and Propaganda, *en-
trance Mauerstrasse 45*, on Wednesday, February 10, at 1730
o'clock sharp. After the presentation we shall go on to the
"House of Flyers" for dinner and a gathering.

* Sievers was a defendant in the Medical case (United States vs. Karl Brandt, et al., Case 1),
Volumes I and II, this series.

I hope that you will be able to get away on 10 February from 1730 on, and beg you to inform me by Monday, 8 February, whether or not I may count on your presence.

With kind regards and Heil Hitler!

Yours obediently

[Signed] KRANEFUSS

SS Senior Colonel

[Handwritten] Accepted [Illegible signature].

PROSECUTION EXHIBIT 868

MEMORANDUM FROM SS MAJOR MOHR OF HIMMLER'S PERSONAL STAFF
TO RUDOLF BRANDT, 26 MARCH 1943, CONCERNING REIMBURSEMENT
OF EXPENSES OF SS LEADERS FROM FUNDS OF THE GENERAL
SS IN SPECIAL ACCOUNT "R"

VK/III/43/Ha/Schn.

Berlin, 26 March 1943

Subject: Reimbursement of expenses for SS Leaders from the
funds of the General SS [Allgemeine SS].

Reference: Our letter of 26 March 1943.

SS Lieutenant Colonel Dr. Brandt,¹

Hochwald

With reference to my letter of today addressed to you concern-
ing payment to the SS leaders for reimbursement of expenses from
the funds of the General SS, I should like to bring the following
statement to your attention.

This concerns the cases of SS Lieutenant Generals and SS
Major Generals who come under the directive of the Reich Treas-
urer [of the Nazi Party] and are already receiving payment from
Special Account "R"²

SS Lieutenant General v.d. Bach	Representation costs RM 120.00
SS Lieutenant General Heissmeyer	Representation costs RM 500.00
SS Lieutenant General Wolff	Representation costs RM 300.00
SS Major General Roesener	Representation costs RM 300.00
SS Major General Sporrenberg	Representation costs RM 200.00

I am informing you of these payments so that you will know
what amounts are paid to these SS leaders from Special Account
"R" in case the Reich Leader SS should inquire.

With the request that you report it to the Reich Leader SS, may
I again call to your attention SS Lieutenant General Pohl's letter
of 12 January 1943 in which SS Lieutenant General Pohl already
informs the Reich SS of this directive of the Reich Treasurer.

I should also like to add that I shall no longer be able to take

¹ Rudolf Brandt, personal administrative officer to Himmler, was a defendant in the Medical case, Volumes I and II, this series.

² Contributions from the Circle of Friends were sent first to special account "S" in the J. H. Stein Bank and then transferred to account "R" in the Dresdner Bank. (Tr. p. 4444.)

care of paying the Major General bonuses on 1 April 1943, since these are no longer to be paid back by the SS Economic and Administrative Main Office [Wirtschafts-Verwaltungs-Hauptamt].

The payment of the remaining expense reimbursements I shall undertake once more on 1 April 1943. If I do not receive the Reich Leader's decision by May I shall ask you once more. To the SS Economic and Administrative Main Office I shall give as the reason for once more requesting payment for expenses that the planning offices of the General SS for the Personal Staff of the Reich Leader SS have not yet been approved by the Reich Treasurer.

The Chief of the Administration Personal Staff Reich Leader SS

[Signed] MOHR
SS Major

[Illegible initial]
SS Major

Account of expenses paid monthly from special account "R"

1. SS Lieutenant General	Erich v.d. Bach	RM 120.00
2. SS Lieutenant General	Berkelmann	RM 100.00
3. SS Lieutenant General	Baron von Eberstein	RM 200.00
4. SS Lieutenant General	Baron von Eberstein	RM 150.00
5. SS Lieutenant General	Heissmeyer	RM 500.00
6. SS Major General	Kaltenbrunner	RM 200.00
7. SS Senior Colonel	Martin	RM 300.00
8. SS Lieutenant Colonel	Radke	RM 100.00
9. SS Major General	Panke	RM 200.00
10. SS Lieutenant General	Pohl	RM 300.00
11. SS Major General	Roesner	RM 300.00
12. SS Major General	Sporrenberg	RM 200.00
13. SS Colonel	Sollmann	RM 150.00
14. SS Lieutenant General	Taubert	RM 100.00
15. SS Brigadier General	Ullmann	RM 100.00
16. SS Lieutenant General	Wolff	RM 300.00
17. SS Lieutenant General	Wolff	RM 500.00
18. SS Colonel	Mueller	RM 600.00
19. SS Lieutenant General	Schmitt	RM 500.00
20. SS Colonel	With	RM 200.00

RM 5,120.00

Certified true copy.
SS corporal

TRANSLATION OF DOCUMENT NI-8106
PROSECUTION EXHIBIT 722

LETTER FROM KRANEFUSS TO HIMMLER, 21 APRIL 1943, COMPLAINING
ABOUT THE IRREGULAR ATTENDANCE OF NAMED MEMBERS OF THE
CIRCLE OF FRIENDS, RECOMMENDING THAT FIVE MEMBERS NO
LONGER BE INVITED TO THE CIRCLE, AND RELATED MATTERS

[Stamp]

Personal Staff RF [Reichsfuehrer] SS
Registry
File No. secret/45

Fritz Kranefuss

Berlin C 2, 21 April 1943
Schinkelplatz 1.
Kr/Ki.

[Shorthand notes] Reported briefly to the RF. Senior Colonel
Kranefuss may have talked about it to the RF himself. 13 May
43, BR.

To Reich Leader SS Heinrich Himmler
Berlin/SW 11, Prinz-Albrecht-Strasse 8

Reich Leader :

When I visited you in Berchtesgaden late in March, you spoke to me of the reasons for your absence from the meetings of the Circle of Friends during the past 2 years, and you said that you would come again at a time suitable from the point of view of political and military conditions. Your reasoning seemed so clear and convincing that I decided not to express to you the deep regret of the members of the Circle of Friends to have seen you in this group so rarely of late. Nor did I realize at the time how soon I would be obliged to ask your advice in the following matter :

The Circle of Friends numbers 44 gentlemen at present. The latest meeting took place on 14 April. On this occasion, due to the helpful proposal and offer of SS Colonel Sievers, SS Captain Jan-kuhn delivered a lecture on "The Conquest of England by the Normans, as depicted in the Bayeux Tapestry," which was received exceptionally well and found hearty approval. After first accepting, the following excused themselves the day before and the day of the program because of pressing official business: SS Lieutenant General Pohl, SS Brigadier General Dr. Hayler, SS Brigadier General Ohlendorf, and SS Senior Colonel Dr. Naumann after SS Major General Roesener, SS Brigadier General Dr. Schieber, and SS Major Dr. Schaefer had just informed us that they would not attend. Thus almost all those members of the Circle of Friends were absent whom I consider, so to speak, as the inner circle of the SS itself, and I think, justly so.

As I have had to report to you on earlier occasions, the conduct of individual members of the Circle of Friends in regard to invitations of the Reich Leader SS in my opinion leaves much to be desired. In the past years I have always represented the principle that nothing less than an invitation or an order by the Fuehrer himself could be an adequate reason for not accepting an invitation of the Reich Leader SS. I have never consciously been narrow-minded in handling excuses, and have refrained from any comments, especially in the presence of those gentlemen, whom I knew were honestly and cheerfully making every effort to attend all our meetings. As an example, I can report to you that of 38 invitations, the following gentlemen excused themselves:

Bingel	8	Professor Meyer	7
Count Bismarck	3	Olscher	7
Blessing	8	Dr. Rasche	5
Ritter von Halt	6	Reinhart	12
Dr. Hayler	6	Dr. Schmidt I	7
Hecker	5	Baron von Schroeder	5
Keppler	4	Waldhecker	4
Lindemann	12		
Of 36 invitations—			
SS Major General Roesener			11
Of 34 invitations—			
SS Brigadier General Dr. Behrends			3
SS Senior Colonel Dr. Naumann			4
Of 26 invitations—			
SS Brigadier General Ohlendorf			5
Of 9 invitations—			
SS Brigadier General Dr. Fischboeck			1
SS Brigadier General Dr. Schieber			4
SS Senior Colonel Kehrl			3
SS Senior Colonel Dr. Wuest			3
SS Major Dr. Schaefer			3

These figures may be considered quite satisfactory, especially in view of war conditions, and in consideration of cases like those of Dr. Schmidt, I and Baron von Schroeder, for example, who made the trip to Berlin for the sole purpose of attending these meetings.

As clearly unsatisfactory I consider the following cases—of 38 invitations—

SS Brigadier General Boerger	23 absences
State Secretary Kleinmann	31 absences
SS Brigadier General Dr. Kurt Schmitt	26 absences
SS Colonel Dr. Voss	25 absences
SS First Lieutenant Walz (Robert Bosch)	25 absences

Without any loss whatever to the Circle of Friends, in my opinion, the participation of these gentlemen can be dispensed with, because their lack of interest in our meetings is in complete agreement with their attitude in other matters and problems. To be sure, I should regret the elimination of SS Brigadier General Boerger, even though I agree with your opinion of him unreservedly. Unpleasant discussions, in the course of which I noted the absence of any understanding whatever and heard only more or less threadbare excuses, I have had only with Dr. Kurt Schmitt and Mr. Walz.

At the latest meeting and, as I have mentioned, the excellent lecture of SS Captain Jankuhn, the regrettable situation resulted that only 21 gentlemen attended the lecture. I have unfortunately had to refrain from calling attention to the fact verbally or by means of a circular that such conduct on the part of many gentlemen would sooner or later break the Circle, i.e., make meetings impossible; for as I have stated above, the SS leaders excused themselves in great numbers in the last hours and thus set a poor example.

If now, according to your recent explanations, Reich Leader, I cannot count on your own participation in the gatherings of the Circle of Friends, I must consider it my duty even more to hold the Circle firmly together. I cannot tolerate that various gentlemen, as for example Mr. Rosterg and others, excuse themselves, giving as their reason that the Reich Leader SS would probably also not be there. We must rather act on the principle that an invitation from the Reich Leader SS must be considered as a special distinction and must for this reason be accepted, regardless of whether or not the Reich Leader SS will be present personally. If I do not express this principle clearly, i.e., if I do not enforce it, there is a danger that the invitations of the Reich Leader SS will not continue to be valued sufficiently, or that I will be forced to become a policeman and thus feel constantly obliged to call this or that gentleman to task. The latter danger already exists frequently and I am glad that, except in the case of Schmitt and Walz, I have been able to avoid serious discussions.

It is my opinion that the problem described above will be solved satisfactorily in the near future in the following manner:

I emphatically request the presence at the monthly meetings of SS main office leaders and those who, like SS Brigadier General Dr. Hayler, belong to the inner Circle.

You authorize or empower me to consider the opinion described above as in agreement with your ideas.

Messrs. Kleinmann, Schmitt, Voss, and Walz, as well as Boerger—if you agree—will not be invited in the future. This will be

done quietly without any further mention and without attracting any attention. In case a justification should prove necessary or desirable it will be indicated that the frequent excuses had necessarily led to the conclusion that there was no special interest.

In order not to make this discrimination too obvious, the Circle of Friends will not meet during the next 3 to 4 months and will be resumed only in September. No written explanation will be given. If upon inquiry a verbal explanation is necessary, the high number of excuses from the latest meetings and affairs will be mentioned. I am firmly convinced that this news will spread quickly, and we will need no further discussions of this delicate subject when the meetings are resumed in autumn. If the gentlemen mentioned are not invited, the others will certainly draw the correct conclusions.

I do not know if you, Reich Leader, agree with this opinion, which I submit to you after careful deliberation. In any case, I should appreciate your advice and your directions, since I should like to do all I can to overcome this situation skillfully.

With many kind regards and Heil Hitler, I am as ever

Your devoted
[Signed] KRANEFUSS

[Shorthand notes] unless he will come to Berlin.

TRANSLATION OF DOCUMENT EC-454
PROSECUTION EXHIBIT 681

LETTER FROM VON SCHROEDER TO HIMMLER, 27 AUGUST 1943,
CONGRATULATING HIM ON HIS APPOINTMENT AS REICH MINISTER
OF THE INTERIOR, AND ANNOUNCING THAT THE CIRCLE OF
FRIENDS HAS AGAIN PLACED A SUM "SLIGHTLY IN EXCESS
OF 1 MILLION REICHSMARKS" AT HIMMLER'S DISPOSAL
FOR "SPECIAL PURPOSES"

27 August 1943
Wiener Platz 5

Reich Leader SS Heinrich Himmler, Berlin

My very honorable Reich Leader:

With great joy I learn of your appointment as Reich Minister of the Interior and take the liberty to extend my heartiest congratulations to you on assuming your new post.

A strong hand is now very necessary in the operation of this department and it is universally welcomed, but especially by your friends, that it was you who was chosen for this by the Fuehrer. Please be assured that we will always do everything in our power at all times to assist you in every possible way.

I am pleased to inform you at this opportunity that your Circle of Friends has again placed at your disposal this year a sum slightly in excess of one million Reichsmarks for your special purposes [Ihre besondere Aufgabengebiete]. An exact list showing the names of the contributors will be sent to you shortly.*

Again all my best wishes—as well as those of my family—I remain yours, in old loyalty and esteem.

Heil Hitler!

Yours truly,

[Initials] SCH [VON SCHROEDER]

*This list is contained in Document EC-453, Prosecution Exhibit 682, reproduced immediately below.

TRANSLATION OF DOCUMENT EC-453
PROSECUTION EXHIBIT 682

LETTER FROM VON SCHROEDER TO HIMMLER, 21 SEPTEMBER 1943,
TRANSMITTING LIST SHOWING CONTRIBUTIONS BY MEMBERS OF
THE CIRCLE OF FRIENDS TOTALING 1,100,000 REICHSMARKS, AND
EXPRESSING SATISFACTION IN BEING OF ASSISTANCE
TO HIMMLER "IN HIS SPECIAL TASKS"

21 September 1943
Wiener Platz 5

Reich Leader SS Heinrich Himmler, Berlin

Dear Reich Leader:

I thank you very much for your kind letter of the 14th of this month with which you made me very happy.

At the same time I am enclosing a list with the total amount of funds made available to you by your Circle of Friends and totaling RM 1,100,000. We are very glad indeed to render some assistance to you in your special tasks and to be able to provide some small relief for you in your still further extended sphere of duties.

Wishing you, dear Reich Leader, the best of luck, I remain in old loyalty and esteem,

Heil Hitler! Yours very truly,
[Initials] SCH [BARON VON SCHROEDER]
SS Brigadier General

Contributions to special account "S" in the year 1943

By Dr. R. Bingel	
of Siemens-Schuckertwerke A.G.	100,000.00
Dr. Bueteffisch & Geh.Rat Schmitz*	
of I.G. Farbenindustrie A.G.	100,000.00
Dr. Friedr. Flick	
of Mitteldutsche Stahlwerke G.m.b.H.	100,000.00
Ritter von Halt	
of Deutsche Bank Berlin	75,000.00
Mr. Ewald Hecker	
of Ilseder Huette	25,000.00
Staatsrat Helfferich	
of Deutsch-Amerikanische Petroleum-Ges.	10,000.00

*Heinrich Bueteffisch and Hermann Schmitz, were both defendants in the I.G. Farben case, Volumes VII and VIII, this series.

Staatsrat Lindemann	
of Deutsch-Amerikanische Petroleum-Ges.	10,000.00
and personally	4,000.00
Dr. Kaselowsky	
of Dr. August Oetker, Bielefeld	40,000.00
Dr. Alfred Olscher	
of Reichs-Kredit-Gesellschaft A.G.	30,000.00
Prof. Dr. Meyer & Dr. Rasche	
of Dresdner Bank, Berlin	50,000.00
Staatsrat Reinhart	
of Commerz & Privatbank A.G., Berlin	50,000.00
Gen. Dir. Roehnert	
of Rheinmetall Borsig A.G.	50,000.00
of Hermann Goering Works	30,000.00
Dr. Voss	
of Hermann Goering Works	30,000.00
Gen. Dir. Rosterg	
of Wintershall Akt. Ges.	100,000.00
Commander Otto Steinbrinck	
of Vereinigte Stahlwerke A.G.	100,000.00
Kurt Baron v. Schroeder	
of Braunkohle-Benzin A.G.	100,000.00
of Felten & Guillaume Carlwerk A.G.	25,000.00
of Mix & Genest A.G.	5,000.00
of C. Lorenz A.G.	20,000.00
of Gewerkschaft Preussen	30,000.00
of interest and myself	16,000.00
	RM 1,100,000.00

TRANSLATION OF DOCUMENT NI-5232
PROSECUTION EXHIBIT 40

UNSIGNED LETTER¹ TO GRITZBACH, OF REICH MARSHAL GOERING'S OFFICE, 1 OCTOBER 1943, TRANSMITTING FOUR APPLICATIONS FOR THE BESTOWAL OF WAR MERIT CROSS FIRST CLASS ON DIRECTOR LANG AND DEFENDANTS BURKART, KALETSCHEK, AND WEISS; RELATING THESE APPLICATIONS TO THE FLICK CONCERN'S SERVICES IN THE GERMAN ARMAMENT INDUSTRY

1 October 1943
Bro.

To Ministerial Director, State Counselor Dr. Erich Gritzbach
Chief of the Staff Office of the Reich Marshal of the
Greater German Reich Hermann Goering
Berlin, W8, Leipziger Strausse 3

My Dear Dr. Gritzbach:

Referring to our recent discussion I take the liberty to attach to this letter four applications for the bestowal of the War Merit Cross First Class to Messrs. Director Kaletsch, Director Lang, Director Dr. Burkart and Director Weiss.² The gentlemen mentioned are my most intimate collaborators in the management of the whole concern, the importance of which is known to you personally.

In consideration of the particular services rendered by the whole concern within the frame of the German armament industry, I should like to ask you to support the applications.

Thanking you for your efforts in this matter, I am, with kind regards.

Heil Hitler!
Yours very respectfully,

¹ When introducing this document, prosecution counsel made the following statement to which the defense raised no objection: "Although there is no signature on the letter it is apparent that it must have been written by the defendant Flick." (Tr. p. 249.)

² One of these four applications, that concerning Burkart, Document NI-5231, Prosecution Exhibit 14, is reproduced earlier in section IV B.

TRANSLATION OF DOCUMENT NI-8497
PROSECUTION EXHIBIT 725

PROGRAM FROM THE FILE OF HIMMLER'S PERSONAL STAFF, FOR THE
MEETING OF THE CIRCLE OF FRIENDS AT HIMMLER'S
HEADQUARTERS ON 12 DECEMBER 1943

[Handwritten: SS Lieutenant Colonel Dr. Brandt]

[Stamp]

Personal Staff Reich Leader SS
Registry
File No. Secret/ 45

*Program for the Meeting of the Circle of Friends on
12 December 1943*

0926 hours	Arrival railway station "Hochwald". Met by SS First Lieutenant Dr. Fuehrer and SS Second Lieutenant Hoerl. Bus to "Wurzhuette".
0940 hours	Arrival "Wurzhuette". Met by SS Lieutenant Colonel Tiefenbacher.
1000 hours	Weisswurst breakfast at the "Wurzhuette".
1100 hours	Tour through the installation. For this the following men are available: SS Lieutenant Colonel Tiefenbacher, Captain of the Police Eicker, Captain of the Police Kaatz, SS Captain Schmaloer, SS First Lieutenant Botzelmann, SS First Lieutenant Dr. Fuehrer, SS Second Lieutenant Hoerl.
1130-1200	At the disposal of the guests.
1200 hours	Arrival of the guests at "Wurzhuette".
1215 hours	Address by the Reich Leader SS to the Circle of Friends.
Approximately 1330 to 1400 hours	At the disposal of the guests.
1400 hours	Dinner in the dining car.
1515 hours	Showing of a film in the film barracks.
1600 hours	Choral singing by the Panzerjaeger-Ausb. u. Ersatz-Abteilung, Rastenburg. Over approximately 1645.

1700 hours	Arrival of the guests at "Wurzhuette".
1710 hours	Tea at the "Wurzhuette" with the Reich Leader SS.
1830 hours	Departure from "Wurzhuette" by bus for the railway station.
1845 hours	Leave station "Hochwald".

List of guests on 12 December 1943

1. SS Brigadier General Dr. Hermann Behrends.
2. Dr. Rudolph Bingel.
3. SS Senior Colonel Gottfried Graf von Bismarck-Schoenhauzen.
4. SS Brigadier General Willi Boerger.
5. Director Carl Blessing.
6. SS Lieutenant Colonel Dr. Heinrich Buetefisch.
7. SS Brigadier General Dr. Hans Fischboeck.
8. Director General Dr. Friedrich Flick.
9. Dr. Karl Ritter v. Halt.
10. SS Brigadier General Dr. Franz Hayler.
11. SS Brigadier General Ewald Hecker.
12. State Counselor Dr. Emil Helfferich.
13. SS Major General Erich Hilgenfeld.
14. Dr. Richardt Kaselowsky.
15. SS Senior Colonel Hans Kehrl.
16. SS Lieutenant General Wilhelm Keppler.
17. Mayor [of Hamburg] Carl Vincent Krogmann.
18. State Counselor Karl Lindemann.
19. SS Colonel Dr. Emil H. Meyer.
20. SS Brigadier General Dr. Werner Naumann [crossed out in the original].
21. SS Brigadier General Otto Ohlendorf.
22. SS Brigadier General Dr. Walther Schieber.
23. Dr. Alfred Olscher.

24. SS Lieutenant General Oswald Pohl.
25. SS Lieutenant Colonel Dr. Karl Rasche.
26. Director Hellmuth Roehnert.
27. SS Major General Erwin Roesener [crossed out in the original].
28. Director General August Rosterg [crossed out in the original].
29. SS Major Dr. Ernst Schaefer.
30. SS Brigadier General Dr. Kurt Schmitt [crossed out in the original].
31. SS Brigadier General Kurt Baron v. Schroeder.
32. SS Colonel Wolfram Sievers.
33. SS Brigadier General Otto Steinbrinck.
34. Reichsbahndirektor Hermann Waldhecker.
35. Freiherr v. Luedinghausen.
36. SS Senior Colonel Fritz Kranefuss.
37. SS First Lieutenant Kurt Dellmann.
38. SS Second Lieutenant Herbert Reichenberger.

TRANSLATION OF DOCUMENT NI-8542
PROSECUTION EXHIBIT 744

LETTER FROM DEFENDANT STEINBRINCK TO HIMMLER, 3 MAY 1944,
RECITING BRIEFLY HIS DUTIES IN GERMAN OCCUPIED WESTERN
TERRITORIES AND REQUESTING HE BE CALLED INTO THE WAFFEN SS

Otto Steinbrinck SS Brigadier General

Duesseldorf, 3 May 1944

Vereinigte Stahlwerke
Aktiengesellschaft
Post Office Box 320

To the Reich Leader SS

via the Chief of the SS Personnel Main Office

Berlin-Charlottenburg, Wilmersdorfer Str. 98-99

Subject: Application for transfer to the Waffen SS [Armed SS].

Reich Leader:

By decree of 21/29 May 1940 of the Plenipotentiary for the Four Year Plan and Commander in Chief of the Army, I was appointed "Plenipotentiary for Iron and Steel Industries for Luxembourg, Belgium, and northern France" at the beginning of the offensive in May 1940. In order to facilitate my task I was called in by the High Command of the Navy and put at the disposal of the Four Year Plan as Lieutenant Commander [Korvetten Kapitaen], and since 1 September 1942 as Commander [Fregatten Kapitaen]. In July 1942, in connection with the new organization of the iron industry, I turned over that mandate to Mr. Hermann Roechling after I had been nominated "Plenipotentiary of the Reich for Coal in the Occupied Western Territories" early in 1942 pursuant to the decree of the Reich Marshal.

In this honorary capacity I control the entire soft coal and brown coal mining industries in Holland, Belgium, and France. I control the mines and regulate the coal mining industries of those countries for the purpose of greatest possible exploitation in the interests of the war economy. I am charged with providing fuel for all these territories and in particular with securing the needs of the armed forces, railroads, power plants, and war essential enterprises. In order to assure superior planning, my office is not subordinate to military commanders or to the Reich Commissioner; however, there is a far-reaching personnel union between my staff and the military, or rather the civilian administration.

Since my discharge from the navy in August 1943, I have been exercising my office as a civilian. As long as the final goal of my activity was the creation of a western European coal union

and as long as the intended cooperation with the Belgian, French, and Dutch mine owners and syndicates was carried out on the basis of big private industries, the foreigners considered the change of the "Reich Plenipotentiary" from a soldier to a civilian at first an intensification of the idea of private enterprise. When, with the autumn of 1943, relations were more and more strained it became necessary again to place greater emphasis on the military character of my mandate. The navy, however, refused to recall me, since in the opinion of the commander in chief my activity is purely industrial and, as a matter of principle did not consent to my wearing a uniform in the occupied areas.

At present Holland, Belgium, and France have again become war territories. As a member of the Verwaltungsrat of the Deutsche Reichsbahn I consider it my foremost task at present, in addition to my coal work in close cooperation with the military commanders of Belgium and northern France and the Deutsche Reichsbahn, to participate decisively in the reinstatement of the traffic apparatus and the organization of the reconstruction of destroyed roads, with the aid of my personal experiences. Adequate supply for the armed forces, the French and Belgian railroads and power plants is of greatest military significance. For that reason there has to be closer cooperation with the commander in chief in the West and the offices subordinated to him than heretofore.

For the purpose of facilitating my task, I therefore request to be called into the Waffen SS and to permit me to wear the uniform of the Waffen SS corresponding to my former service rank of Commander (commission as of 1 September 1942). I should like to stress expressly that I request this only in the interest of the fulfillment of my task, and that I desist from asking for compensation. I state expressly that as a matter of course I waive any claims to pension or promotion. In case there should be any basic objections to my being called in—since my discharge in August 1943 I have been registered "k.v." [usable for war]—I ask you to consider granting me the authorization to wear the regular uniform of the Waffen SS. My reputation as navy officer from 1907 to 1943 and my activity in this war from May 1940 to August 1943 guarantee that I shall prove worthy of wearing the uniform of an officer of the Waffen SS.

In the expectation of further decisive events in the West I ask you, Reich Leader, to send me your order by telegram.

Heil Hitler!

[Signed] STEINBRINCK
SS Brigadier General

TRANSLATION OF DOCUMENT NI-3805
PROSECUTION EXHIBIT 691

EXCHANGE OF LETTERS BETWEEN DEFENDANT STEINBRINCK AND VON
SCHROEDER, 18 APRIL AND 6 MAY 1944, CONCERNING THE TRANSFER
TO SPECIAL ACCOUNT "S" OF 100,000 REICHSMARKS FROM THE
VEREINIGTE STAHLWERKE AND 50,000 REICHSMARKS FROM
THE GEWERKSCHAFT PREUSSEN

1. Letter from Steinbrinck to von Schroeder, 18 April 1944

Otto Steinbrinck

Duesseldorf, 18 April 1944/Ha
Vereinigte Stahlwerke
Aktiengesellschaft
Post Box 320

To Kurt Baron von Schroeder
(22) Cologne-Muelheim Wiener Platz 5

Dear Mr. von Schroeder,

Unfortunately I was unable to be present at the last meeting of our Circle of Friends, as I spent Easter with my wife at Freiburg. I have now heard to my greatest regret that your wife has been seriously ill for some time. I hope that by now you have no cause to worry and that the condition of your wife is improving. My wife and I wish to send you our best regards and good wishes.

The Vereinigte Stahlwerke¹ will in the next few days pay RM 100,000 into the special account "S" of your bank. The RM 50,000 on behalf of the Gewerkschaft [Preussen]² have already been transferred.

With best regards,

Yours,

[Signed] STEINBRINCK

¹ After 1939 defendant Steinbrinck was a member of the managing board [Vorstand] of the Vereinigte Stahlwerke [United Steel Works].

² "Gewerkschaft Preussen" was a special enterprise formed to take over and manage the confiscated properties of Fritz Thyssen who fled Germany upon the outbreak of war in 1939 in protest against the war with Poland. Steinbrinck was appointed trustee of Thyssen's confiscated properties and became managing director of the "Gewerkschaft Preussen". See the affidavit of Steinbrinck, Document NI-5326, Prosecution Exhibit 10, reproduced earlier in section IV C, and the testimony of Steinbrinck reproduced in section F below.

2. Letter from von Schroeder to Steinbrinck, 6 May 1944

6 May 1944
Wiener Platz 5

To Commander Steinbrinck
Duesseldorf

Dear Mr. Steinbrinck:

Many thanks for your letter of 18 April. At the same time I wish to acknowledge receipt of RM 100,000 to the special account "S", of which you advised me in that letter and for which I want to thank you in the name of the Reich Leader.

I am glad to be able to inform you that my wife is slowly recuperating, and we are hoping that she will soon be fully recovered.

I hope to see you on Wednesday in Berlin. Until then, many regards and

Heil Hitler!

Yours

[Initials] SCH [BARON VON SCHROEDER]

TRANSLATION OF DOCUMENT NI-3809
PROSECUTION EXHIBIT 683

LETTER FROM VON SCHROEDER TO HIMMLER, 27 MAY 1944, TRANSMITTING
LIST SHOWING CONTRIBUTIONS BY MEMBERS OF THE CIRCLE
OF FRIENDS TOTALING 1,015,000 REICHSMARKS *

27 May 1944
Wiener Platz 5

To Reich Leader SS Heinrich Himmler
Berlin

Dear Reich Leader,

With reference to my letter of 6 May, I am sending you enclosed a list showing, in detail, the amounts that were put at your disposal by the gentlemen of the Circle of Friends.

Most respectfully and faithfully,

Heil Hitler!

As always yours

[Initials] SCH [BARON VON SCHROEDER]

[Enclosure]

Sums paid into the special account "S" during the year 1944

Dr. R. Bingel of Siemens-Schuckertwerke A.G.	100,000.00
Dr. Bueteftsch and Geheimrat Schmitz of I. G. Farbenindustrie A.G.	100,000.00
Dr. Friedrich Flick of Mitteldeutsche Stahlwerke GmbH	100,000.00
Ritter von Halt of Deutsche Bank, Berlin	75,000.00
Mr. Ewald Hecker of Ilse der Huette	25,000.00
State Counselor [Staatsrat] Helfferich of Deutsch-Amerikanische Petroleum Ges.	10,000.00
State Counselor Lindemann of Deutsch-Amerikanische Petroleum Ges. and personally	10,000.00 4,000.00
Dr. Kaselowsky of the firm Dr. August Oetker, Bielefeld	40,000.00
Dr. Alfred Olscher of Reichs-Kredit-Gesellschaft A.G.	30,000.00

* Von Schroeder's letter of 21 September 1943, enclosing a list of the contributions for the year 1943, Document EC-453, Prosecution Exhibit 682, is reproduced earlier in this section.

Prof. Dr. Meyer and Dr. Rasche of Dresdner Bank, Berlin	50,000.00
Generaldirektor Dr. Roehnert of Rheinmetall Borsig A.G.	50,000.00
of Busch Jaeger Luedenscheider Metallwerke....	10,000.00
Generaldirektor Rosterg of Wintershall Akt. Ges.	100,000.00
Commander Otto Steinbrinck of Vereinigte Stahlwerke A.G.	100,000.00
Kurt Baron v. Schroeder of Braunkohle-Benzin A.G.	100,000.00
of Felten & Guilleuame Carlwerke A.G.	20,000.00
of Mix & Genest A.G.	5,000.00
of C. Lorenz A.G.	20,000.00
of Gewerkschaft Preussen	50,000.00
of interest and myself	16,000.00
	RM 1,015,000.00

TRANSLATION OF DOCUMENT NI-6046
PROSECUTION EXHIBIT 783

LETTER FROM KRANEFUSS TO RUDOLF BRANDT, 20 JUNE 1944, PROPOSING THAT FUNDS FOR "SPECIAL TASK OFFICE KEPPLER," MAINLY USED FOR EXPENSES OF MEETINGS OF THE CIRCLE OF FRIENDS, BE REIMBURSED FROM SPECIAL ACCOUNT "S" INSTEAD OF BY DEFENDANT STEINBRINCK FROM FUNDS OF MITTELSTAHL OR GEWERKSCHAFT PREUSSEN

Berlin C 2, 20 June 1944
Schinkelplatz 1
Kr/Ki.

Fritz Kranefuss

[Stamp]

Personal Staff Reich Leader SS
Record Department
File No. Secret/45

To SS Standartenfuehrer Dr. Rudolf Brandt
Personal Staff of the Reich Leader SS
Berlin /SW 11, Prinz-Albrecht-Strasse 8

Dear Comrade Dr. Brandt:

For a considerable number of years the Administrative Office of the Personal Staff placed at my disposal a monthly amount of at first RM 2,500—and later RM 1,500—under the heading of "Special Task Office Keppler" to cover certain expenses for personnel and materials. The greatest expenses which had to be paid from this amount were the costs for the meetings of the Circle of Friends, i.e., the accounts of the Aero-Club, etc.

The same amount was, when due, refunded to the Administrative Office of the Personal Staff, i.e., to the special account "R" by SS Brigadefuehrer Steinbrinck, that is, from the funds of the Mitteldeutsche Stahlwerke A.G. as long as Steinbrinck was with them, and later, that is after he had resigned, from the funds of the Gewerkschaft "Preussen." This settlement was made in agreement with SS Major General Wolff, who had obtained the approval of the Reich Leader SS to carry this out.

Some time ago I discussed with SS Brigadier General [Brigadefuehrer] Kurt Baron von Schroeder, who is also informed of the matter as far as it concerns the Gewerkschaft "Preussen," the expediency of taking the required amounts from the yearly contributions made by the Circle of Friends which are placed at the disposal of the Reich Leader SS and which are deposited with Baron Schroeder in the special account "S".

Since it was at the beginning of February 1943 that I received the last sum—amounting to RM 9,000—for the period of 1 July to 31 December 1942, I am now facing the necessity of having to augment the cash holdings in order to pay the diverse current expenses. As already mentioned above these expenses have been decreasing slowly in the course of the years and amount to approximately RM 1,000 per month.

May I now ask you to obtain the approval of the Reich Leader SS to the effect that I have the necessary amounts transferred from the above-mentioned account with SS Brigadefuehrer Baron Schroeder, and that I can receive them as previously via the Administrative Office of the Personal Staff, so that there will be no change in that respect. As from 1 January 1943, therefore, only the Gewerkschaft "Preussen" or alternatively SS Brigadefuehrer Steinbrinck will cease to be a contributor, and will be replaced by the account to which the yearly payments of the Circle of Friends are made.

I have discussed this matter with SS Brigadefuehrer Steinbrinck in the same sense and received his approval.

I should be grateful if you would inform me as soon as possible that the Reich Leader SS approves of this arrangement and remain, with cordial, comradely regards and Heil Hitler, as always,

Yours,

[Signed] KRANEFUSS

25 June 1944

28 October 1944—off.

RF [Illegible initials]

D. Affidavits of Prosecution Affiants and Testimony of Prosecution Witnesses

1. AFFIDAVIT OF KEPPLER

TRANSLATION OF DOCUMENT NI-903
PROSECUTION EXHIBIT 679

AFFIDAVIT OF WILHELM KEPPLER, 24 SEPTEMBER 1946, CONCERNING
THE ESTABLISHMENT, MEMBERSHIP AND ACTIVITIES OF THE
"CIRCLE OF FRIENDS" *

A.1. I, Wilhelm Keppler, former SS Lieutenant General, member of the German Reichstag, State Secretary and President of the Reich Office for Soil Research, from April 1938 to the collapse, state herewith under oath the following facts, known to me by personal knowledge.

2. In the course of the interrogations by representatives of the Office of United States Chief of Counsel, a number of documents were presented or read to me, in order to refresh my memory.

3. At the conclusion of these interrogations this affidavit to which the statements which I had made with regard to Himmler's Circle of Friends had been reduced, was presented to me in German.

B. 1. The Circle of Friends, at first called "Keppler's Circle of Friends," and later "Himmler's Circle of Friends," was a circle of leading personalities of the German economy, which I myself had brought together at the request of the Fuehrer.

2. During a conversation which I had with the Fuehrer in December 1931, the Fuehrer expressed this desire. The Fuehrer said—"Try to get a few economic leaders—they need not be Party members—who will be at our disposal when we come into power." The Fuehrer wanted to have experts who had proved themselves in practical economy.

3. As far as I can remember, the Fuehrer mentioned no other names aside from Schacht and possibly Albert Voegler, and left the selection to me. I, myself, solicited the members for the Circle of Friends mostly in connection with trips I took. Through Kranefuss, who had a large circle of acquaintances, I gained access to his acquaintances, and that helped me greatly in winning for my idea men whom I had not previously known personally.

*Keppler was a defendant in the Ministries case, Volumes XII-XIV, this series. Extracts from his testimony in the Flick case are reproduced below, immediately following this affidavit.

4. Later some gentlemen were added who had not been invited by me personally, above all the gentlemen from the SS, who were sent to the Circle of Friends by Reich Leader SS Himmler. From 1934 or perhaps 1933, on, the Circle of Friends was regularly invited to the Party rally at Nuernberg, an invitation which the gentlemen always gladly accepted. I believe it was because of these invitations that the Circle of Friends from then on was called "Himmler's Circle of Friends."

5. The purpose of the Circle of Friends was to consult upon the plans for National Socialist leadership of the German national economy.

6. In May 1932, after I had met with gentlemen of the Circle of Friends several times, I asked the Fuehrer whether he could not receive the gentlemen some time. Then the Fuehrer received the gentlemen in the small hall of the Kaiserhof [Hotel] on 18 May 1932. As far as I can recall, the gentlemen who were at that time members of the Circle of Friends were all present on that occasion.

7. The Fuehrer made a short speech and in it disclosed among other things, as points of his program—abolition of trade unions and abolition of parties other than the NSDAP. No one raised any objection.

8. These points of the Fuehrer's program met with the fullest approval of the members of the Circle of Friends, but they expressed their apprehension that he would not be able to carry out these excellent ideas.

9. In 1932 and 1933, I often met with the gentlemen of the Circle of Friends. We had consultative meetings concerning finance, questions of economics and currency, and all were on very good terms. The members of the Circle of Friends were always very glad to attend the meetings. The meetings took place later on quite regularly on the second Wednesday of every month, an arrangement which was adhered to through the years.

10. Himmler himself became a frequent participant in the Circle of Friends. After the outbreak of the war, however, when he no longer had the time, he attended only every third or fourth meeting. Himmler or his personal staff regularly sent several SS leaders to attend the meetings. This also made possible the exchange of ideas between the gentlemen of industry and the members of the SS. The relationship between the two groups was always a very friendly one.

11. The Reich Leader SS invited us time and again, and once we were in Dachau when Himmler was present. The gentlemen were interested in seeing the installations of the SS. The re-

quest emanated not from the industrialists, but from the Reich Leader. The industrialists always accepted the invitations of the Reich Leader SS, if it was possible for them to do so.

12. In December 1943, the Circle of Friends was invited to the headquarters of Reich Leader SS Himmler. Himmler spoke about the war situation, giving a rather optimistic picture. Afterward a kind of Christmas celebration of the Waffen SS was held. A film showing the training of the Waffen SS was presented and a male choir of the Waffen SS sang.

C. 1. The members of the Circle of Friends were, as far as I can recall, the following:

Kranefuss, Fritz	Meyer, Dr. Emil
Voegler, Albert (no more in the last years)	Steinbrinck, Otto
Schroeder, Kurt von	Kehrl, Hans ²
Buetefisch, Heinrich ¹	Halt, Karl Ritter von
Rasche, Dr. Karl ²	Helfferich, Emil
Krogmann, Karl Vincenz	Reinhardt, Friedrich
Olscher, Dr. Alfred	Fischboeck, Hans
Flick, Friedrich	Heuer, Otto (?) (Heidel- berger Portland Zement Werke A.G.)
Lindemann, Karl	Hecker, Ewald
Boerger, Wilhelm	Ohlendorf, Otto ³
Walz, Karl	Pohl, Oswald ⁴
Schmidt, Heinrich	Bismarck, Graf von
Waldhecker, Hermann	Wolff, Karl
Roehnert, Hellmuth	Sievers, Dr. Wolfram ⁵
Voss, Wilhelm	Hayler, Franz
Goering, Herbert	Naumann, Werner
Kaselowsky, Theodor	Behrens, Dr. ing. Hermann
Rosterg, August	Schaefer, Dr. Ernst
Bingel, Rudolf	Dermitzel, Dr. Fritz
Blessing, Karl	Hilgenfeldt, Erich
Schmitt, Kurt	

Having carefully read and personally countersigned each of the five pages of this affidavit and having personally made the necessary corrections and countersigned them with my initials, I herewith declare under oath that all facts submitted by me in this affidavit correspond, to the best of my knowledge and belief, to the full truth.

[Signed] WILHELM KEPPLER

¹ Defendant in the I.G. Farben case, Volumes VII and VIII, this series.

² Defendants in the Ministries case, Volumes XII-XIV, this series.

³ Defendant in the Einsatzgruppen case, Volume IV, this series.

⁴ Defendant in the Pohl case, Volume V, this series.

⁵ Defendant in the Medical case, Volumes I and II, this series.

2. CROSS-EXAMINATION OF KEPPLER CONCERNING HIS AFFIDAVIT

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS WILHELM KEPPLER ¹

CROSS-EXAMINATION ²

DR. FLAECHSNER (counsel for defendant Steinbrinck): Witness, will you please tell the Tribunal your full name?

WITNESS KEPPLER: My name is Wilhelm Karl Keppler.

Q. What is your nationality?

A. My nationality is German.

Q. Where were you born?

A. I was born on the—

PRESIDING JUDGE SEARS: It will be well to caution the witness, Dr. Flaechsner, not to answer too quickly, as he may not understand the processes here.

DR. FLAECHSNER: Mr. Keppler, I would ask that after every question I put to you you wait with your answer, making a little pause until the interpreters have been able to interpret. I would also ask you, when you answer to make a little pause after every sentence as you finish, so that the interpreters can finish their translation.

WITNESS KEPPLER: Yes, of course, I will do that.

Q. Now we had come to the date of your birth. Would you please tell the Tribunal?

A. I was born on 14 December 1882, in Heidelberg.

Q. What is your profession?

A. Originally I was an engineer; later I was an economic adviser of the Fuehrer in the Reich Chancellery; afterward I worked in the Four Year Plan; later I became a State Secretary for special tasks in the Foreign Office. I was also president of the Reich Office for Soil Research in Berlin.

Q. Mr. Keppler, on 24 September 1946 you gave an affidavit which the prosecution has submitted to the Tribunal as Exhibit 679. Do you remember the wording of this affidavit, or shall I submit it to you?

¹ Complete testimony is recorded in mimeographed transcript, 18 August 1947, pages 5720-5755.

² The witness was called for cross-examination concerning his affidavit, Document NI-903, Prosecution Exhibit 679, reproduced immediately above. No direct examination took place.

A. On the whole I remember the affidavit. It was submitted to me at the time with many mistakes and I corrected it, but on the whole the affidavit remained as it was. I mentioned that at the time to the interrogator.

Q. Mr. Keppler would you kindly describe to the Tribunal how these meetings of men came about, which were known as your Circle of Friends?

A. In the spring of 1927 I became a member of the Party. I met the Fuehrer in the fall of the same year, when he visited me. I told the Fuehrer at that time that the economic program of the Party and their plans were not to my liking and that I thought it suitable that they should be altered. If I, in spite of it, had become a member of the Party, this had been done for different reasons, particularly for social-political reasons. This criticism of the economic work I often repeated to the Fuehrer. In the fall of 1931 I was asked by Hitler to come to Munich. He told me at the time that he considered my criticism as more or less justified, but at the time he had already appointed somebody else for economic questions; but since the situation had not improved and the economic problems would have to be revised for the program of the Party, he would therefore ask me to put myself at his disposition so that I could carry out this task in the framework of the Reich Leadership [Reichsleitung]. I refused this offer for the reason that I did not agree with the people who were in charge of these matters, either personally or officially. The Fuehrer asked me again to put myself at his disposal in spite of these facts, and eventually I agreed. On this occasion the Fuehrer said that the previous economic program of the Party was mainly theoretical, but that it was really necessary to consider the practical needs of the country. He therefore suggested bringing together a circle of people who had economic-industrial capabilities and had proved them in industry. He suggested that I should form these men into a circle so that they could advise me. He mentioned also that it was in no way necessary that these people be members of the Party. Because of this proposal I went to work, trying to get to know personally a greater number of German industrial leaders, who had through success proven themselves and had been described as men of especially strong character, so as to be able to select such a circle from among them.

Q. I beg your pardon. Would you say that Hitler had suggested names to you?

A. One name had definitely been mentioned—that was President Schacht. He had been suggested for special reasons because he was in charge of economic questions and Schacht had asked

to be put in personal charge of the economic problems of the Party after the Fuehrer had already given me this task. The Fuehrer now asked that I should take Schacht into this circle. Another person who was suggested by Hitler was Dr. Voegler of the Vereingte Stahlwerke.

Q. Now, Mr. Keppler, did you then approach these persons and learn other names from them, or how did you get in contact with the other people?

A. Well, many of them I knew already, and then I exploited my personal relations in order to be introduced to people to whom I wanted to be introduced. The position of business toward the Party was rather skeptical. The Fuehrer had tried during the years 1927 and 1928, as far as I remember, through lectures before industrialists in the Ruhr, to find more understanding for his economic program. These efforts were not very successful. First of all the lecture halls remained empty, later on they were overcrowded; enthusiasm during the lecture was also there but it never lasted very long. Suspicion against the Party was caused to a great extent by the fact that these industrialists were also of the opinion that the economic program of the Party did not allow success to be anticipated. So, when I approached these members of industry and economy and told them quite frankly that the Fuehrer had ordered me to reconsider all economic questions and asked them whether they were prepared to give me their advice, there was a definite sense of relief among those industrialists.

* * * * *

Q. May I interrupt you here, Mr. Keppler? I think the Tribunal would welcome it if you, at least approximately, could tell us when you met for the first time. When this circle of 12 people came together for the first time and where that was.

A. After I made the selection I asked Hitler whether he would be prepared to receive all these people and to speak a few words to them. Hitler agreed and received these people on 18 May 1932. That was in the Kaiserhof Hotel in Berlin. He gave a short talk which then was answered by President Schacht on behalf of the Circle. This was the first meeting of this new circle.

* * * * *

Q. Is that what you meant in your affidavit when you used the words, "The purpose of the Circle of Friends was to make plans for National Socialist leadership of the German economy"?

A. The task as set by the Fuehrer was to consult each other about economic questions, to get over the unemployment and to infuse life into industry. That was our task.

Q. Now, Mr. Witness, a consultation alone cannot be of any help to a leadership if it is not at the same time also handed on to the leadership, if the result of negotiations is not passed on, but if I understand you correctly your main interest was to find out the opinion of well known economists with regard to important problems of the day.

A. Yes, that's correct.

Q. And also to form your own judgment from these negotiations.

A. Well, I myself was on a certain central point as economic adviser of the Fuehrer in the Reich Chancellery [Wirtschaftlicher Beauftragter des Fuehrers in der Reichskanzlei]. In this capacity I was often able to discuss these questions with the Fuehrer himself. During the period of the unemployment I think I saw more of the Fuehrer than any of the other economists did, and I was sort of liaison officer between the Fuehrer and industry, who passed on the Fuehrer's wishes to the leading members, and also in the same way, the questions which ministeries had were passed through me to the Fuehrer. So I was really in the center of things and in all my activity I was able to make use of what I had learned in these various meetings.

* * * * *

Q. Now, Witness, you have stated that these men which were called together by you had met about three times before Hitler came to power, and after Hitler had come to power I think, as far as I know, meetings took place during the Party rally, during the Memorial Day in Munich on 9 November. Would you kindly describe to the Tribunal what happened at these meetings?

A. One day the Fuehrer informed me that he had given instructions that the members of the Circle should take part in the great festival days of the Party, that this should be arranged through Himmler, since Hitler himself had to limit the invitations he sent out. The first invitation was sent out for the Party rally in 1933. Later on it was repeated every year. And in the same way regular invitations were issued for 9 November in Munich. Well, now, if you ask me what happened there, well, some of the people always lived in Nuernberg at the Grand Hotel during those days and since they were guests of the Reich Leader—at least they gave the appearances of it—they were looked after by SS leaders. I mean as far as meals and transportation and such things were concerned. Then the Reich Leader gave a special dinner for his guests where he always had very good discussions and conversations, and these repeated meetings and the Party rallies and the other Party festival days brought about a closer acquaintance between the members and Himmler.

Q. Just one moment, please. Mr. Keppler, when you say it was ordered that these members were to be invited to the Party rally you say the instructions for this were given by Hitler.

A. Yes, these instructions were given by Hitler and without my doing. One day Hitler told me that he had—

Q. And Mr. Keppler, you must wait some time; otherwise the interpreter can't follow, and we lose the record.

A. I have too much temperament.

Q. Well, now, would you continue? But slowly please.

A. Well, without my doing at all Hitler gave instructions and he told me that he had given instructions that these members of the Circle should be invited to the Reich Party rally.

Q. Now, how did it come about that, as you said, these people—as far as appearances went—were guests of the Reich Leader SS?

A. Because the Fuehrer did not want to invite them personally, since the circle of people who received a personal invitation from the Fuehrer was very limited. As the Fuehrer told me at the time, he had arranged that the invitations should be issued by the Reich Leader SS.

Q. So that was the reason. Or was it rather by chance that the name of Himmler was connected with this Circle? I mean, in any other way Hitler might have decided that any of the other Party leaders should have become the formal host.

A. Yes. That is quite correct. Until this day, as far as I knew, there was no connection whatever between this Circle and Himmler. This connection came about only through the invitations issued by the Reich Leader SS.

* * * * *

PRESIDING JUDGE SEARS: Well, the character of the meetings remained the same throughout?

WITNESS KEPPLER: It changed in the course of time. The character on the whole remained the same until the original task of the Circle, that is to help overcome unemployment, had been fulfilled. The success of this task, which surprised the whole world because it had been solved so quickly, was the best basis for a real friendly relationship. Therefore, the Circle remained until the end as a circle of real friends. They kept together although these economic advisory capacities did not function any longer. Later on, these meetings were limited to gatherings at special occasions, so when one met one or the other gentleman

one discussed this or that question. But a meeting of the whole Circle of Friends for economic discussions did not happen later on.

Q. Did the SS members have anything to offer along the line that you have suggested?

A. I am afraid I am slightly deaf and I did not quite catch the question.

Q. The question was this. Did the SS men who attended these meetings have anything to offer on these economic questions that you said were the real subject of the Circle, the object of the Circle?

A. No, your Honor. They had nothing to do with it.

Q. Why were they included then in the Circle?

A. I am afraid because you were speaking so loudly I couldn't hear anything. Perhaps the interpreter could speak more softly.

Q. Why were they invited to the Circle if they were outside those who had any interest in the purposes of the Circle?

A. Your Honor, that came about because after the Circle had been guests of the Reich Leader in Nuernberg, the taking care of all arrangements was done by SS members. Later on we had agreed that we should meet once monthly. For this reason there were again invitations issued by the Reich Leader and on every occasion one or two of the SS members were ordered to attend.

Q. What for?

A. But they had nothing to do with the economic advisory activities of the Circle.

Q. What did they have to do with anything that the Circle had in view? In other words, we had a witness this morning who said that in general the SS representatives or members who were present generally kept to themselves. Was this rally a combination of two groups, one of these industrialists and the other of these SS people?

A. Well, I have already said that the advisory activity with regard to economic problems only took place before Hitler came to power and then afterward for another year or two. After the problem of unemployment had been settled this program was really finished, so after that time the meetings were only social gatherings. During the real economic meetings the SS leaders were never present. They came in later on when it only was a question of social gathering. Then the SS leaders came too, particularly when invitations had gone out from the Reich Leader.

Q. Well, wasn't there a definite purpose in keeping this circle going even after the economic questions, as you say, were settled?

A. We had become friends because we had worked on a task and we just had the wish to remain friends and meet again as friends, even after our task had been finished.

Q. Of course, my next natural question would be this: Large amounts of money were collected through this Circle of Friends. Wasn't it kept together for that purpose?

A. No, Your Honor. As far as these collections are concerned, I personally never took much notice of them and only learned about the collections very late. As far as I can make out, the whole matter took place in such a way that first these invitations came from the Reich Leader to take part in the festivities; the gentlemen went to the Party rally in Nuernberg and were guests of the Reich Leader. So consequently these gentlemen wanted to show their appreciation and therefore they collected certain sums in order to put them at the disposal of the Reich Leader for his special hobbies [Liebhabeereien] but it was not the purpose of the Circle to collect the fund, never was it that.

DR. FLAECBSNER: Let me ask—

WITNESS KEPPLER: Let me just add one thing.

PRESIDING JUDGE SEARS: The witness wants to say something.

WITNESS KEPPLER: I have mentioned already that it was sometimes difficult to refuse gentlemen in a clever way who wanted to become members of the Circle. I can tell you that I had applications from people who offered thousands of marks in case they became a member of the Circle. Everyone who came like this and offered money was immediately refused because we were not out for money.

DR. FLAECBSNER: Now, Mr. Keppler, I would like to ask you the following. You said that discussions of economic questions took place only before Hitler came to power and then a few times afterward; that is, until the problem of unemployment was settled. Now, would you, according to your best knowledge, tell us how often after 30 January 1933, you met these people in the Circle in order to discuss such economic questions?

WITNESS KEPPLER: The discussions in the whole of the Circle were rather rare, but more frequently they were discussions in small groups; but of course these things are all more than 15 years ago so if I should give an estimate today I would say that after 30 January 1933 the whole Circle met only about three or four times in order to discuss economic problems.

Q. Have you any definite reason to make this particular estimate?

A. No. I have no definite clue for this estimate. It's just my memory.

Q. From the other witnesses who have already been heard here we have heard that up to a time which I would put at 1937, you really only met altogether on the occasion of the Party rally on 9 November. I want to confront you with this statement.

A. Well, I think this is entirely the same as what I have said.

PRESIDING JUDGE SEARS: Did you remain in the Circle as long as it met?

WITNESS KEPPLER: I personally, yes.

Q. It had monthly meetings for a number of years in Berlin?

A. Yes. That is what I said previously.

Q. Yes. What I was going to ask you—

A. Every second Wednesday in the month the gentlemen who were in Berlin or could arrange to be there met.

Q. Well, did you attend a great many of the meetings?

A. Yes, Your Honor, most of them.

Q. Schacht dropped out of the Circle?

A. Schacht was originally in the Circle because of the special wish of Hitler, but later on he was no longer invited.

Q. When did he cease to be invited?

A. Well, I can't say for certain, but if I remember rightly he was still invited to the Party rally in 1933, and I think it would have been during the course of 1934 that one refrained from inviting him any further.

JUDGE RICHMAN: Kranefuss originally was just an arranger for these meetings. After that he took a more important part in the meetings, did he not? In other words, his activity increased as years went on?

WITNESS KEPPLER: I haven't understood all of it. Well, Kranefuss I knew when he was a boy. We used to work together in the same firm for some time. Then in 1933 and 1934, perhaps even in 1932, he worked in my firm, but he later left it. He joined the industry but was always taking care of the Circle of Friends. As I mentioned before, he was a friend of Himmler's and he was the aide of Himmler and later always discussed the questions of the Circle with Himmler.

JUDGE RICHMAN: He was Himmler's friend toward the end rather than yours, isn't that right?

WITNESS KEPPLER: Kranefuss, you mean? Yes, he was much closer to Himmler than to me in the end.

* * * * *

DR. FLAECBSNER: Was there any right of membership; did that exist?

WITNESS KEPPLER: No. It was nothing like that at all. It was a completely free gathering. I can just call it a circle of friends really. Of course, not everybody could come in who wanted to get into the Circle, but anybody who wanted to leave could do so. There was no membership or anything. It was completely informal.

DR. FLAECBSNER: I have no further questions to this witness.

3. AFFIDAVIT OF OHLENDORF

TRANSLATION OF DOCUMENT NI-3510
PROSECUTION EXHIBIT 715

AFFIDAVIT OF OTTO OHLENDORF, 28 JANUARY 1947, CONCERNING THE
HISTORY OF THE CIRCLE OF FRIENDS, ITS FINANCIAL CONTRIBUTIONS
TO HIMMLER, AND IT ACTIVITIES *

I, Otto Ohlendorf, former Ministerial Director in the Reich Ministry of Economics, SS Major General and Chief of Department III in the Reich Security Main Office, having been made aware that I am liable to punishment if I make a false statement, hereby voluntarily and without being forced declare the following:

1. With regard to the history of the Circle of Friends, I know that Hitler charged Keppler with the formation of the Circle. The Circle was later sponsored by Himmler, especially at the Reich Party rallies. I probably participated for the first time in a meeting of the Circle of Friends in 1941 or 1942, at which time I was introduced to the Circle of Friends by Kranefuss against Himmler's will. Aside from Himmler's personal attitude toward me, he thought the mere fact that I was a member of the SD would arouse suspicion among the people, that is to say, they might presume that I would sound them out.

2. As to the financial contributions, I only know that they were used for expenses Himmler could not finance out of his own budget. Only about 1½-2 millions came out annually, whereas the members of the Circle in their official positions had a certain advantage in their reputation as Himmler's friends. To my knowledge some of the money went to the "Ahnenerbe" and to the debt clearance funds, most of all to the SS leaders.

3. Hayler and I thought that the means that were raised by the Circle of Friends also could be easily raised anonymously, that is, indirectly, which would have excluded moral obligations toward individual persons.

4. Hayler and I endeavored to eliminate the money contributions. We thought it unworthy that the Reich Leader SS accepted the money. I approved wholeheartedly of the Circle of Friends because I thought it right that the Reich Leader should have people with whom he could speak freely.

5. One of the advantages resulting from the membership in Himmler's Circle of Friends was that the members were somehow respected by the Party and the police.

6. I participated in the trip to Himmler's headquarters mainly because I wanted to meet the businessmen. I expected a closer

*Ohlendorf, commanding officer of Einsatzgruppe D, did not appear as a witness in the Flick case. He was a defendant in the Einsatzgruppen case, Case 9, Volume IV, this series.

contact with people who were strangers to me. As a member of the SD, this was very interesting. I knew the connections of the combines but not their directors. I knew for example, about the personal relationship between Kranefuss and Buetefisch, Kranefuss and Roehnert, Blessing, Bingel, Walz, Waldecker, and others.

7. My impression that the members only wanted to protect their interests in the combines was strengthened.

8. With the exception of a speech made by Rudolf Bingle, I don't know that the Circle of Friends discussed postwar problems. Bingel, in various speeches before his closer circle of colleagues, expressed the opinion that the loss of the war should be faced with open eyes, but that the Siemens Works were prepared to carry on after the war under any circumstances.

9. I have not noticed any special relationship between Flick and Kranefuss. Kranefuss was more or less the business manager of the Circle, who had to make due concessions to Flick. I never noticed any special consideration on the part of Flick toward Kranefuss. Flick was more reserved, as he was in direct contact with Himmler. Therefore it was not necessary for him to take a special interest in other circles.

10. On several occasions I saw Himmler in company of others, two or three times among the Circle of Friends, and then on the trip to Hochwald. And on these occasions Flick, being one of the few who had the opportunity to speak to the Reich Leader alone, did so for some time so that I conclude that a closer contact existed between them.

11. I simply couldn't understand how Flick could play such a part, because I recall very well the time of 1931-32 when he [Flick] was vehemently attacked by the *Voelkischer Beobachter* because of his doubtful business transactions. He was considered to be a typical example of the man who strives to expand his business. So I never had any doubts that he wanted to establish his position as an individual, and that he found this in the Circle of Friends, which was most necessary for him.

12. I do not know, whether the backing that he obtained through Steinbrinck was sufficient, because the Flick Konzern was already too large and Flick as the central figure somehow remained very obvious. The great expansion of Flick's sphere of influence was striking and had to be concealed.

I have carefully read and personally countersigned each of the three pages of this affidavit. I have made the necessary corrections in my own writing and signed them with my initials and I herewith declare under oath that in this affidavit I have told the whole truth to the best of my knowledge and belief.

Nuernberg, 28 January 1947

[Signed] OTTO OHLENDORF

4. TESTIMONY OF LINDEMANN

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS KARL LINDEMANN ¹

DIRECT EXAMINATION

MR. LYON: Witness, will you please tell us your full name?

WITNESS LINDEMANN: Karl Lindemann.

PRESIDING JUDGE SEARS: Mr. Witness, you will have to wait for the translation because of the mechanics of the courtroom.

A. I understand.

MR. LYON: What is your age?

A. I can't hear properly. Sixty-six.

PRESIDING JUDGE SEARS: If you have trouble with the ear-phones you will let the Court know.

MR. LYON: Where were you born, Witness?

WITNESS LINDEMANN: In Goldberg in Mecklenburg.

Q. Will you tell us briefly about your education?

A. My schooling until 1896, I went up to the senior year of high school. From Easter 1896, I had commercial schooling in Hamburg until September 1900. From October 1900 until September 1901, I did my military service.

In October 1901, I was employed by the China trading firm in Hamburg, Vormeister and Company. In July 1902 I went to China for this firm. I was in Shanghai in their service from 1902 until 1903. In 1903, still for this firm, I went as Prokurist ² and head of a branch to Hankow, China. There I remained, in this position until 1907.

After 6 months in Germany I joined the Bremen-China firm, Melchez and Company. In this firm in 1908, as Prokurist, I took over the management of its branch in Hankow, China. Since then I have remained with the Melchez firm in China.

In May 1914, as a result of serious amoebic dysentery, I returned to Germany, and as a result at the outbreak of war I was in Germany. As a result of this dysentery, after military authorities had once again given me a special medical examination in the Tropical Institute in Hamburg in 1917, I did no military service.

In 1920 I then, in agreement with my partners, in order to arrange for the reconstruction of our firm in China, went first to the United States in order to take up connections which

¹ Complete testimony is recorded in mimeographed transcript, 11-13 June 1947, pages 2907-3015 and 3109-3113.

² Prokurist is an official exercising power of attorney for his firm.

had been broken off for 6 years between my China firm and the United States. Shortly before, I had become a partner of the parent firm of Melchez in Bremen. In 1920 I was in the United States for 7 months. Then I went to China for several months and in April 1921, I returned to Bremen to carry on my work there permanently.

Since 1942 I have been senior partner of the Melchez firm in Bremen and in China. That is all I want to say about my activity in the Melchez firm. Would you like me to tell you anything about my activities outside my job?

Q. I was just about to ask you to do that, Witness. Before you do, perhaps I might just be sure I understand your general career. I take it that you were primarily in the import and export business?

A. Yes.

Q. From the beginning; and that you continued this throughout until 1945, as much as circumstances permitted?

A. Yes.

Q. Will you tell us now the other positions in business that you held after, say 1930, aside from your activity with Melchez and Company?

A. In 1930 I entered the cement factory in Salzberg in the Aufsichtsrat, as chairman of the Aufsichtsrat. As a result of the collapse of the Norddeutsche Wollkaemmerei in Bremen in 1931 I became a member of the Aufsichtsrat of the Norddeutsche Kreditbank in Bremen and took over the acting chairmanship of the Aufsichtsrat of the newly founded Norddeutsche Wollkaemmerei, and also of the Toppel and Krueger firm in Leipzig.

In 1932 I joined the Aufsichtsrat of the Norddeutsche [North German] Lloyd. In July 1933, I became chairman of the Aufsichtsrat of the Norddeutsche Lloyd and at the same time became a member of the Aufsichtsrat of the Hamburg-America Line. In the same year, 1933, I took over the chairmanship of the Aufsichtsrat of the Atlaswerke, Bremen.

In 1934 I took over the Praesidium of the Institute for World Economy in Kiel. In 1935 I became a member of the Beirat of the Reich Bank. Approximately in 1936 I became a member of the Aufsichtsrat of Dresdner Bank. In 1937 I took over the Praesidium of the German group of the International Chamber of Commerce. In 1937 I also became a member of the Aufsichtsrat of the Vereinigten Industrie Unternehmen.

Q. That was the company referred to as Viag, was it not?

A. Yes.

* * * * *

Q. And now, Witness, I would like to ask you some questions about an organization called the Circle of Friends of Himmler,

or the Keppler Circle. You were a member of that organization, were you not?

A. Yes.

Q. When did you first become associated with this group?

A. As a result of my activity in the Aufsichtsrat of the North German Lloyd; as chairman, I had a close personal contact with the chairman of the Aufsichtsrat of the Hamburg-America Line, Emil Helfferich. This contact between Helfferich and myself became all the closer since both of us, who knew each other from East Asiatic connections, had the aim of eliminating the old competition between North German Lloyd and the Hamburg-America Line by closer personal collaboration, or, at the very least, of lessening it. Therefore, I had closer personal and friendly contact with Helfferich. Since matters of the North German Lloyd and the Hamburg-America Line, with regard to the Reich government, were in exactly the same position, both Helfferich and myself frequently had to negotiate in Berlin with the Reich government. As a result of these common sojourns in Berlin, Helfferich, about August of 1933, asked me to meet Wilhelm Keppler, the Fuehrer's adviser on economic questions, because he believed at the time that Keppler would become the future Reich Minister of Economics. Helfferich then invited Keppler and myself to a breakfast at the Kaiserhof. Fritz Kranefuss, assistant of Keppler, was also present at this breakfast. This was the first time I met Keppler, and the conversation was concerned mainly with making each other's acquaintance.

Shortly afterward I received from the Fuehrer, from Adolf Hitler, an invitation to be guest of honor at the Reich Party rally in Nuernberg. As I did not intend to concern myself with Party or political matters at all, I did not accept this invitation and did not go to Nuernberg. Then from September 1933, during the time which followed, I met Keppler several times in Berlin, through Helfferich—perhaps two or three times. Then, in August 1934, I again received an invitation to the Reich Party rally at Nuernberg as guest of honor and since, in the meantime, both Helfferich and others who had already taken part in the Reich Party rally since 1933, told me that I had missed something in 1933 and that it was a most impressive ceremony at Nuernberg, and as my colleagues in the Aufsichtsrat of the North German Lloyd held the view that I ought to accept such invitations in view of the fact that the North German Lloyd, to a large extent, was financially dependent on the Reich government—I went to Nuernberg in September 1934. I did not take part in all the Party rally ceremonies. I was only there for the first 3 days. On the fourth day I left Nuernberg, and Helfferich and Kranefuss reproached me

for leaving early. An invitation like this from Hitler was regarded as a special honor and it was expected that I remain for the whole affair. As I had made other arrangements, I left. When in 1934 I spent these 3 days in Nuernberg at the Party rally, I discovered that I was being introduced into a circle which consisted practically only of industrialists. I further discovered that in the Grand Hotel, where as guests we were housed, these industrialists took their meals in a room reserved for them. On the very first day I saw a notice put up there—"Reserved for the guests of the Reich Leader SS." I further saw that those who had a position in the SS appeared in uniform and that the guests were looked after—they were given cars for the ceremonies, and so on. All this was done by the SS. I think that during my first day in Nuernberg I heard for the first time the words Keppler Circle.

Q. And it was your impression that this was a definite organization that had already been established, is that correct?

A. During the first 3 days I did not have this impression, but in the months which followed, when I met these gentlemen again regularly, particularly of course Helfferich, the expression, Keppler Circle, was repeated and I slowly gained the impression that the intention was to form a circle of industrialists, and that the Wilhelm Keppler I have already mentioned—the Fuehrer's adviser in economic matters—was to be closely connected with it. The moving spirit who apparently, according to my impression, mainly had this intention, was not so much Keppler as Fritz Kranefuss, a very active and, according to my later acquaintance with himself personally, a very ambitious person. A practical real effect of this Kranefuss plan, if I may describe it as such, did not develop in the following years. In 1935, I was again invited to the Reich Party rally, as during the following years, and as a result of my experience in 1933 and 1934, from 1935 onward I attended all the Party rallies.

That was then the occasion in Nuernberg, where the so-called Keppler Circle met. This Keppler Circle also met, I think from 1935 onward in Munich, as a result of an invitation from Himmler to participate in the SS ceremony on 9 November.

Q. Is that the ceremony at which SS men were sworn in? Is that correct?

A. Yes.

Q. And the members of the Circle attended?

A. Yes.

Q. You attended that ceremony every year, is that correct?

A. Yes.

Q. And do I also understand correctly that the members of the Circle attended each Reich Party rally celebration?

A. Yes, in practice they did.

* * * * *

Q. You mention that a number of the members of the Circle would wear their SS uniform on these occasions.

A. Yes.

Q. I don't refer specifically to 1934 but to these Party rally celebrations generally. Who were some of these SS officers who wore the uniforms? Could you name some of them?

A. The Reich Minister of Economics, Schmidt; Baron von Schroeder. In the course of time—I don't know from what year on—Hecker, Hannover, Steinbrinck, Rasche, Mayer, of course, Keppler, and Kranefuss.

Q. And I suppose also the more professional SS people, such as Hayler?

A. Yes. Yes, of course.

Q. And Oswald Pohl?

A. I did not meet Pohl in Nuernberg. That was only later, in Berlin, that I met him.

Q. But he, of course, attended the Reich Party rally celebration?

A. Oh, I am certain he did.

Q. And, of course, Karl Wolff, I suppose also?

A. Karl Wolff was in Nuernberg in the so-called Keppler Circle. He perhaps appeared there very briefly, but I don't remember, for instance, that Wolff was present at any meal in that room.

* * * * *

Q. And now, Witness, in addition to the meetings at the Reich Party rally and the 9 November SS celebrations in Munich, were there not other meetings of this organization?

A. Yes. From 1936, I think, the so-called Keppler Circle met several times at Himmler's invitation. They were invited for inspections. I remember these invitations and inspections of the so-called Sachsenhain in Verden, near Bremen; and on the same day a ceremony—a midnight ceremony—at the grave of King Henry, in the Quedlinburg Cathedral. I also remember another invitation to inspect the concentration camp in Dachau; and the SS porcelain factory in Allach. This inspection was followed by a small military field maneuver by an SS formation. There was also an invitation to Berlin to inspect the police institute.¹ This was connected with the Ahnenerbe Society.² I

¹ See Document NI-9983, Prosecution Exhibit 833, reproduced above in section C.

² The Ahnenerbe was a Research Institute founded by Himmler. Its Reich business manager was Wolfram Sievers, a defendant in the Medical Case, Volumes I and II, this series.

remember no further invitations except an invitation from Himmler to his headquarters in December 1943.

Q. Now, Witness, do I understand correctly that all of these were visits which were conducted by Himmler or in his company?

A. On all these four occasions Himmler himself was present.

Q. Now, I would like you to tell me a little more, Witness, about your trip to Dachau. That was a trip to the Dachau concentration camp; is that what I am to understand?

A. Yes.

Q. When was that trip, did you say?

A. I think in 1937 or thereabouts.

Q. And Himmler took you around this camp so that you had an opportunity to inspect. Is that correct?

A. Himmler met us, if I remember rightly, in the Regina Hotel in Munich, and we went by bus to Dachau. Himmler himself took us over the camp. I think we first passed a group of camp inmates who stood there in their uniforms. I had the impression that the intention was to show us some typical criminals and antisocial elements. Then we made a tour which led us to the kitchen, among other places, where we tasted the food that was being prepared. We were also taken to workshops, shoemaker's shop, tailor's shop, carpenter's shop; we went to the hospital. I think that is all that happened.

Q. Did anyone describe to you the nature of these inmates, what their crimes were?

A. No, no. I only remember that we went through a passage where there were cells and Himmler had one unlocked, and a prisoner was shown to us who had committed some special crime. That was done not so much to show us the prisoner, but obviously Himmler wanted to see the man himself. Otherwise, details about prisoners were not given us.

Q. Did you have an opportunity to observe the various conditions of the camp? You referred to having inspected the workshops and the food and the hospital and so forth.

A. During this whole tour of inspection I had the impression that as usual on such occasions it was—well, shall I say a sort of parade which had been prepared to give the visitors the best possible impression with the aim of a positive educational effect that was supposed to be made on the prisoners.

Q. In other words, you got the impression that Himmler was trying to dress things up so that they would look, shall we say, respectable?

A. Yes. As I said, I considered it a sort of dress parade, and what I saw could not prove that things were always as I saw them. They could not prove that they were always like this.

Q. Do you feel that the other members of the Circle who attended must have had the same impression from what you saw there?

A. I don't remember having discussed this matter with any of the other gentlemen. During the entire Dachau inspection I kept myself in the background, but I think that people who are used to inspections of this kind, and have some experience with them, must have assumed that at any rate it had been very carefully prepared and dressed up.

* * * * *

MR. LYON: Now, Witness, before you toured Dachau, you had heard of the concentration camps, of course, hadn't you?

A. Yes. I had.

Q. Had you formed any impression of what these concentration camps were like?

A. Well, as I had no personal experience whatsoever as to the knowledge of people who had been in concentration camps, or had relatives in a concentration camp, therefore, I had only quite a superficial idea of the concentration camps. Until the end of 1938 I didn't think about the matter much, that is with regard to the concentration camps. From the end of 1938, that is after the persecution of the Jews of November 1938, when these people in large numbers were sent to the concentration camps, as far as I can say from that day, I got an idea of what concentration camps were; and since the end of 1938 I want to term that as something horrible, and as an inhuman institution.

Q. And, Witness, when you refer to the persecution of the Jews in November 1938, you have in mind, I take it, the events around 10 or 11 November, 1938?

A. Yes.

Q. And that occasion was sometimes referred to, was it not, as "Crystal week"?

A. Yes.

Q. And that reference comes about by reason of the very extensive damage to store windows; is that correct?

A. Yes.

Q. Now as to the period before your trip to Dachau in 1937, although, as you say, you of course didn't know the details of what went on in the camp, or any other concentration camp, you certainly must have had the impression that the camp was not a nice place to be sent to; didn't you?

A. Yes, I had that impression.

Q. And I suppose that all the other members of the Circle must have had the same impression too, did they not?

A. Yes.

Q. And it was generally known, was it not, that people were sometimes sent to concentration camps who were not of the type that ordinarily could be considered criminal—is that true?

A. I believe so.

Q. And now, Witness, I would like to turn to the visit which you and the various other members of the Circle made to Himmler's headquarters in December 1943, I believe you said. Where were Himmler's headquarters at that time?

A. It was near the town of Loetzen, that is in East Prussia.

Q. Were these headquarters sometimes referred to as Hochwald?

A. Well, I myself cannot recall that expression.

Q. Can you tell us, Witness, in summary what happened during the visit to Himmler's headquarters?

A. We arrived from Berlin in a sleeper about 9 o'clock in the morning. We were received by SS men at the station and we were led into a barracks where we had our breakfast, and there we were shown the surroundings during a walk, and toward 12 o'clock Himmler appeared in the barracks. After a short hello, Himmler started to make a speech and I remember the following from this speech of his: Himmler said that he believed that the guests would expect that he would tell us something concerning the situation of the war and he added that, of course, he could not do that. Everything he could tell us concerning the situation of the war would be that in the course of the past 12 months he had been in Hitler's headquarters and had the reputation of a "Cassandra". Doubtless Hitler wanted to say by that, that he, Himmler, considered the situation of the war as being unfavorable. Then, however, Himmler was frank and very clear in his views, and he said: "We still will get to the Ural [Mountains]."

That was everything that Himmler said concerning the situation of the war. He then continued to say that his intention was to speak to us about the three main occupations which he personally had, and that was, first, in his capacity as Chief of the Waffen SS, second, in his capacity as Chief of the German Police, and third, in his capacity as newly appointed Reich Minister of the Interior. Turning to the first question, Himmler said, approximately, that the Waffen SS everywhere in the war had proved its value and that it had sustained, however, considerable losses and that therefore it became more and more difficult to find the necessary replacements, and more especially with respect to commissioned and noncommissioned officers. In spite of that he hoped, he said, that he would succeed in maintaining the number of the SS divisions. I think he quoted the figure

of 22 divisions; that in the course of the following year he would succeed in increasing the strength to about 25 divisions. As far as I remember, that was most of the substance of what he said concerning this topic. Concerning his position as Chief of the German Police, he said that he considered as his main task the maintenance of absolute order and discipline in Germany. In connection with this remark of his, Himmler further said, as far as I recall, and it seems to me with special intention, that his entourage at various occasions had approached him with the suggestion that something had to be done about his getting the reputation of a bloodhound. He said he had rejected the proposals of his entourage to take any necessary measures because he believed that he wasn't at all sorry about it. That as long as the war went on he would have this reputation of a bloodhound, even if he personally didn't like it.

But he said that such a reputation was in line with the personality he had and that it caused people to be afraid of him, and that in this way it was easier for him to get the discipline which he considered absolutely necessary. Otherwise, I cannot recall anything else of the speech. Of course I only noticed the main points and kept them in my memory.

Concerning his position as Reich Minister of the Interior, Himmler pointed out that he only had been appointed a short time ago and that he couldn't say much about it yet. However, he wanted to say that he would stand up for the administration in the framework of his new Ministry and that it would be decentralized with the exception of the policy staff of the Ministry. This staff, he said, was to be centralized in Berlin. I think that's about all.

Q. Now, Witness, did I understand you clearly to say that Himmler found it useful to have the reputation of creating fear, generally?

A. Yes. That's what he said.

Q. Do you remember his referring to his having the reputation of being a butcher?

A. Well, yes. He used the term "bloodhound", but I mean that corresponds to it. Anyhow, it's bad enough as it is.

Q. Were most of the members of the Circle present at this meeting?

A. I believe so.

* * * * *

Q. Now, Witness, are you familiar with any financial contributions made by members of the Circle of Friends of Himmler?

A. Yes.

Q. Do you remember when that custom commenced?

A. I think that it commenced in 1935.

* * * * *

Q. Was there any particular amount mentioned in this letter from Steinbrinck and Schroeder? *

A. No.

Q. It was left to the discretion of each member of the Circle so far as you could ascertain, to decide how much they should give?

A. Yes, it was left to our discretion.

Q. Now, how much money did you contribute?

A. As I said before, I believed that I couldn't keep out of it altogether, but I was decided to pay only what was absolutely necessary. Therefore, I paid an amount of RM 4,000. That was for the first time, and every time afterward I paid the same amount.

Q. Did this money come from the Norddeutsche Lloyd funds?

A. No. As I saw no reason to pay from my own funds, I paid RM 1,000 each from four different companies. They were the Atlaswerke in Bremen, the Norddeutsche-Wollkaemmerei, the firm Tittel and Krueger at Leipzig, and the Cement Works Salztehelde.

Q. And did you tell these companies what the money was to be used for?

A. I didn't tell them that.

Q. Was it customary for the other members of the Circle to tell the companies from which they got the funds how the funds were to be used?

A. For several years I wasn't informed of that because I did not discuss these payments with any of the other people. I wanted to keep that merely a personal matter, because I considered that a matter which, after all, was rather embarrassing for me and I didn't want to discuss it. Later on, I don't know what year, I had a talk with Kranefuss and he told me—well, he didn't exactly tell me, but I overheard a talk he had with somebody else—that was during the Wednesday meeting in Berlin, and there I heard that a difference of opinion had arisen between Kranefuss and Schmidt concerning the fact that Schmidt, who apparently had taken his payment from other companies as I did, had informed one company of the purpose of these payments. Several years after the contributions had started I noticed from a conversation that one expected that no mention was to be made to the companies concerning these payments.

* This refers to Document NI-10103, Prosecution Exhibit 738, reproduced in C above.

Q. Now, your payments, or the payments which you raised, amounted only to \$4,000 altogether; is that correct?

A. 4,000 Reichsmarks.

Q. 4,000 Reichsmarks, excuse me.

PRESIDING JUDGE SEARS: You mean yearly?

WITNESS LINDEMANN: Yes, yearly.

PRESIDING JUDGE SEARS: Altogether, between the companies?

MR. LYON: Yes, your Honor.

PRESIDING JUDGE SEARS: Yearly.

MR. LYON: Now, Witness, could you have collected more money if you had wanted to?

WITNESS LINDEMANN: Of course, it would have been quite easy for me to draw more money from these companies and also from other companies. It would have been very easy for me to get the Norddeutsche Lloyd to make a payment. I did not do it. First of all, as far as the Norddeutsche Lloyd was concerned, I did not expect anything from the Lloyd because, after all, the Norddeutsche Lloyd was in financial difficulties at that time, in spite of which, of course, an amount of 10 or 20 thousand RM wouldn't have made much difference. But it was my principle in this matter to contribute only what was absolutely unavoidable. I wanted to arrange things in such a manner that my name was not altogether missing from that list.

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Q. Now, Witness, you stated, I believe, that you tried to keep your own contributions, or the contributions that you raised, as low as possible, and I think you said that you wanted to keep them down to a minimum figure that was absolutely unavoidable. Now, did you have the feeling that you had to contribute money to the Circle of Friends in order to protect your personal safety, or was it some other reason?

A. At that time I did not think of questions of my personal safety at all. The payment was made according to my conception, at least, as an unavoidable and logical consequence of the fact that in the interest of the Norddeutsche Lloyd I had joined this Circle; and, as I think I have explained before, I had joined it more by accident by my participation in the Reich Party rally. After all, in these matters the situation was that one could get into these committees intentionally or in the way it happened to me. It was, however, very difficult to get out of it again once one was in it, at least in cases where originally one had joined the Circle, as was the case with me, in order to protect the interests of the Norddeutsche Lloyd; and without doubt, according to my

view, if I had tried to get out of it or if I had resigned from the Circle, or had not paid anything, then the result would have been just the contrary. I would only have harmed the interests of the Norddeutsche Lloyd.

Q. And did you give thought too, to your own personal position with North German Lloyd or with the Chamber of Commerce?

A. I didn't quite get the question.

Q. Don't you think, Witness, that you were probably influenced to join the Circle and to continue in the Circle by wanting to protect and enhance your position with North German Lloyd—

PRESIDING JUDGE SEARS: You mean his personal position?

MR. LYON:—your personal position with North German Lloyd or with the Chamber of Commerce, perhaps?

A. Well, that is a question which I have to deal with in a little more detailed manner. I think that my personal attitude in this question could be defined in the following manner:

Before the war and during the war I believed that I would help the interests of the Norddeutsche Lloyd and also of the other functions I had, among others, those of the International Chamber of Commerce. I understand the question of the prosecution as being the following: Whether only the consideration of these factual matters were the reason for me to pay these sums.

After the end of the war I had the occasion, and I had also sufficient time, to think it over and not only with regard to the fate of my family and my own fate, but also especially the fate of the German people, in their misery and their agony. In this situation I was placed under terrible moral pressure in order to check and to examine my own mind frankly and honestly and to ask myself the question whether I myself, in the Third Reich, always chose the right way.

In this honest examination of my mind I arrived at the conclusion that it is possible that the fact that I remained in this Circle of Friends from the moment when I, in my inner self was completely dissociated from the events in the Third Reich—that is the end of 1938—perhaps was not only due to my intention to serve the interest of the Norddeutsche Lloyd, which at that time I believed in my good faith, but also perhaps personal ambition had a part in it, or a certain weakness or lack of moral character existed which prevented me, in spite of the fact that my attitude was opposed to the events, that I remained in the Circle all the same.

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CROSS-EXAMINATION

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DR. FLAECHSNER (counsel for defendant Steinbrinck) : In what manner did Himmler appear at the Party rally as far as the guests were concerned who were there as the Circle of Friends and invited there? Could one actually talk with him upon occasion and bring about a discussion with him concerning one's own problems, or was Himmler rather so taken up with the other things that there was only time for greetings and a short hello which in general was limited only to courtesy?

WITNESS LINDEMANN: When in 1934 I was in Nuernberg for the first time, I did not see Himmler at all. When, in 1935, for the first time, I attended the entire Reich Party rally, I was presented on Thursday, the fourth day, to Himmler, with the rest of the Circle, and we were invited by him to a dinner in a special room of the Grand Hotel. On that occasion I heard that this event had taken place already in the preceding year, that is in 1934, and perhaps even already in 1933. This invitation on the Thursday evening was repeated in the following years as what one might call a fixed part of the program. I only want to point out that that evening not only members of the Keppler Circle took part, but that rather, at least on some occasions—I do not know whether it was on all occasions—Mrs. Himmler was present too, and that on one of these evenings, for instance, Admiral Canaris* was present also. He was my neighbor at the table, and that is why I remember that he was also present.

PRESIDING JUDGE SEARS: Counsel, may I interpose a question to clarify something in my own mind? The witness has said that the influence of Keppler diminished and the Circle finally became known as the Himmler Circle, while at first it was the Keppler Circle. Can you tell us, in a general way, what year you would say that change took place? Probably it was gradually—but about what year?

A. 1937.

PRESIDING JUDGE SEARS: After that it was generally known as the Himmler Circle. I wanted to connect it with the years in my mind. Go on.

DR. FLAECHSNER: Well, what was the situation at the later meetings which took place every month—these meetings at Berlin? Can you tell us, Witness, about how many times Himmler was present at such evenings?

WITNESS LINDEMANN: As I just pointed out, I think that in 1937 the Himmler Circle started its activities, and I believe that at about the same time, that is, in 1937, these Wednesday eve-

*Chief of Military Counterintelligence of the High Command of the Armed Forces until 1944.

nings started, and these evenings went on during the whole war. I think that during the war Himmler did not attend these Wednesday evenings at all. From 1937 until the autumn of 1939, that is, until the outbreak of the war, Himmler may have been at those evenings; I think the total of them were about, well, let us say 20; out of these 20 evenings in the 2 years, Himmler may have been present 4 times at the very most.

Q. Could you describe one of those evenings in more detail? This morning you already said that one gathered to a dinner, and that once in a while there would be a lecture. Could you tell me whether such a meeting was different from other meetings of social character, in any special way? I mean except for the fact that the invitation was issued by Kranefuss?

A. No. There was no difference between these meetings and any other social meeting within a circle of acquaintances or friends. The whole thing went on in the following way: Before the meal one would take a glass of sherry; then we would proceed to the table, in accordance with predetermined plans; the places at the table were established. After dinner we spread out to take our coffee at individual tables—we chose our own tables.

Q. Within this Circle everybody knew everybody. Was it possible to express your real opinions? Was it possible, for instance, to tell other people your sorrows and worries and doubts about the development of the war?

A. No.

Q. Wasn't the very presence of many active SS leaders already the reason why an open exchange of opinions was impossible?

A. Yes.

Q. Is it correct to say that the Circle of active SS guests slowly increased more and more, while the Circle of gentlemen from the economic field remained on the same level?

A. Well, I can confirm that, insofar as Fischboeck, Schieber, Kehrl, and maybe also some others joined the Circle; while as far as the Circle of the industrialists was concerned, if I remember well, there were no newcomers.

JUDGE RICHMAN: May I ask a question? What did you talk about with these men when you sat down? Was it the weather or how your family was, that sort of thing?

A. When we were at dinner we really discussed only such questions as just indicated by Your Honor—objects of general family nature or other personal character. After dinner I personally tried at least on various occasions to get a small table and to sit together with the industrialists whom I knew to share my opinions, especially during the war—or at least I assumed that—in order to discuss with these gentlemen my troubles, for instance, which increased during the war.

DR. FLAECBSNER: Mr. Lindemann, you already mentioned a while ago that during the war, officials from the highest Reich agencies were invited and these officials at the same time were members of the SS, as for example, Schieber and Kehrl. Did you ever notice whether one or the other members of the Circle had discussions with these gentlemen concerning armament contracts, or government methods or policies, or anything of the kind? After all, Mr. Schieber—if I remember correctly—was a leading official in the Armament Ministry, wasn't he? And Kehrl, after all, was also in the Armament Ministry, and he more specifically was the central point where everything came together, that is, the planning office.

My question now is—Do you know anything about whether a member of the Circle had used such meetings and tried to discuss with these gentlemen armament contracts or anything of the kind, or at least to make the first contact there?

A. Well, I personally have no experience in that field and I had no opportunity and no reason whatsoever and I didn't observe it either. If, for instance, I had been active in the armament industry in some manner, and if from that activity I had dealings with the office of which Schieber or Kehrl was in charge, be it in an official character or in a business way; and if I would have had discussions to conduct with them in their offices, well, then, I could imagine that I would have used this opportunity which was given to me in a natural way to discuss matters with them which normally I would have discussed in their offices.

Q. Witness, my question was caused by the assumption made by the prosecution that the members, or rather the participants in the Circle of Friends, used this Circle in order to conduct their business deals with government agencies or the ministries which were the representatives of the State, and to conclude their bargains with more ease, and I think that I understood you correctly if you say this is out of the question. But, of course, if one had problems which came from such official connections, well then, of course, one would use every opportunity, and also the occasion of such a friendly meeting, in order to discuss these matters and to straighten out possible difficulties as easily as possible. Is that correct?

A. Yes. But personally at least I have no knowledge of members of this Circle using their membership as such or having the opportunity to use the membership to conduct such business deals.

* * * * *

Q. Have I understood you correctly, Mr. Lindemann, that Himmler, during the meetings which you attended, only discussed

general questions and general aims, as attitude and character or something of the kind—that is, slogans as they were often used in SS Circles, the claim for cleanliness of thought, soldierly conduct, readiness for sacrifice, faithfulness to his own country, and so on—that these were the topics of his speeches, especially as far as education was concerned?

A. Well, yes I just said already that as far as the two speeches which Himmler made in Berlin and in Quedlinburg are concerned, if I tried to I could not recall anything and I think that I conclude that there was nothing special in these speeches, because otherwise I think I would recall some parts of it. As far as the speech in the headquarters is concerned, I think that I explained everything this morning.

PRESIDING JUDGE SEARS: May I interpose a question? When Himmler attended these Wednesday meetings, was any particular deference paid to him?

WITNESS LINDEMANN: Himmler used to be the last one to come, and one may well say that he was considered the main person and treated as such.

Q. And would the guests arise when he entered the room?

A. Well, when he came we were already standing.

Q. Were there any greetings given to him on behalf of those who were there?

A. Well, most of the time he was the last one to come into that room and he came to every single one and greeted him, gave him his hand.

Q. Was there any speech made by anyone in either praise or condemnation of the work of the SS?

A. No. .

Q. Neither praise nor criticism?

A. No.

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DR. DIX (counsel for defendant Flick) : Mr. Lindemann, first of all, I would like to introduce myself to you. My name is Dix. I am counsel for the defendant Flick. I want you to know who is being so inquisitive. Mr. Lindemann, I think I remember rightly that yesterday you said that through Helfferich, first in a purely social fashion, you got to know Keppler in view of his probable prospective position as Minister of Economics and as present economic adviser to Hitler, and that to make personal contact with him, you met him at a luncheon. Your membership in this Circle of Friends started at the Party rally in 1934 in Nuernberg. Do you remember that correctly and did I understand you correctly?

WITNESS LINDEMANN: That is correct.

Q. At this Party rally and at the later Party rallies in which you took part, was the diplomatic corps represented?

A. Yes.

Q. It is difficult for this Tribunal, without having been in Germany or lived in Germany under the Third Reich, to gain a living picture of such a Party rally. I think it is necessary that the Court should receive a correct picture of such ceremonies. You answered my question about the diplomatic corps in the affirmative. This Party rally was the meeting of a political party. This is rather remarkable because it is not usual for the diplomatic corps to attend meetings of a political party. That is why I am asking you to help me and help the Tribunal by commenting on my question whether these party conferences of the Nazi Party went far beyond the extent and significance of normal party conferences. Were they not rather in the nature of a state function on a large scale, where actually everything and everyone was represented, at least by deputies? I refer to everyone and everything of importance in the German Reich. Would you comment, briefly, on this question and give us the benefit of your experience? And your impressions?

A. I can do that. What the defense counsel has said about the ceremonies, and its nature, and the way that it was conducted, is more than correct. I myself have had the experience that the Reich Party rallies in Nuernberg, as I knew them in 1934 and the successive years, were of quite a different kind than I myself had previously imagined them to be. When, in 1933, I received the first personal invitation from Hitler to come to Nuernberg, as I said yesterday, I was all the more surprised to receive this invitation because I was not a member of the Party. At that time I imagined that it was, as the defense counsel just said, simply the congress of a party, as is usual in political parties, and I asked myself "What am I supposed to do there?" Then, after the Party rally in 1933, I heard from others who attended, that, as I said yesterday, I ought to have put in an appearance. I also heard that very impressive public ceremonies—show performances shall I say, took place by the Hitler Youth, the Labor Service, the armed forces, and so on. At the Nuernberg Party rally not only the diplomatic corps was represented; I remember, also that in Nuernberg I talked to the British Ambassador, Sir Neville Henderson. Foreign guests were present, too, from England—I remember particularly England and Holland. In Nuernberg, I don't remember exactly in what year, I had a long discussion with Lord McGowan, the chairman of I.C.I., the Imperial Chemical Industries, Ltd. Also with Lord—I don't remember the name exactly—who talked to me for some time in 1938 and told me that he was on his

way to see Lord Runciman in Prague, where Lord Runciman had a special political mission at that time. I can therefore confirm that these Party rallies in Nuernberg were a representative state affair which went far beyond the scope of a normal congress of a political party.

Q. You yourself, then, after once having been there and having seen the extent of this ceremony, which meant something in Germany at that time—after you had seen all this, no doubt you concluded “after all, I am the president of the Aufsichtsrat of the North German Lloyd, a prominent German industrialist. If I look around here it is perfectly proper for me to be here.”

A. Yes. That is correct.

Q. And may I also apply this logical conclusion and this subjective attitude to my client, Dr. Flick, who was, after all, also one of the most prominent figures in German economic life during the past 27 years?

A. I can only confirm that.

* * * * *

Q. And what about these changes in membership? As far as Flick remembers, this influx of higher SS leaders, that is people such as Ohlendorf, Pohl, Schieber, Kehrl, Fischboeck—in fact only happened in the years 1940–41 and later. Does that correspond to your memory?

A. I think I can confirm that as far as my memory goes, we had already been in Berlin for some years and met there regularly without these gentlemen who later joined the Circle.

Q. And when you told the Court yesterday about this first Thursday evening in 1934 in Nuernberg and also in 1935, when you gave us a vivid description of this and told us about your surprise that so many SS uniforms were visible, did I understand you correctly as having meant that these gentlemen in SS uniforms did not appear as members of the Circle but as assistants of the host, Himmler, in the fulfillment of his duties as host, as is usual?

A. Yes, that's correct. They were younger SS officers who were doing the duties as aides and adjutants.

Q. And may I assume the same thing about the Dachau meeting, where yesterday I believe you also mentioned the presence of younger SS adjutants?

A. Yes.

Q. Now, to put in something before I forget it. You no doubt also inspected the Ahnenerbe. This Ahnenerbe, since the publication of certain medical experiments, which are now the object

of a trial in this buliding,¹ has gotten a rather bad odor with the public. When you inspected the Ahnenerbe at that time did you notice that something might be going on there which was not in the nature of serious and honest research work?

A. I think I can remember fairly accurately things which I experienced and saw during these years when they interested me and when they made a certain impression on me. I must say frankly that of this visit to the Ahnenerbe in Berlin, I remember practically nothing. I have a vague recollection that we were led through rooms where on the walls there were charts concerned with the Germanic race and pictures of excavations of burial mounds, and similar things. I believe I also remember that with a certain amount of irony I asked myself, "What is all this?"

Q. I can't hear what you said last—with the noise. Would you be so kind as to repeat that last sentence?

A. I believe that I remember in looking at all these things, I asked myself, "What is all this stuff?"

Q. But no suspicion that something wrong was going on here arose in your mind?

A. No, certainly not.

PRESIDING JUDGE SEARS: Did the whole Circle go to visit the Ahnenerbe?

WITNESS LINDEMANN: As I said yesterday, it was an invitation from Himmler himself to inspect the Police Institute in Berlin where police officers were trained, and so on. And as Himmler himself had issued this invitation, I imagine that most of the members of the Circle were there.

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DR. FLAECHESTER: Witness, may I ask you a question now? This morning a document was submitted which was a letter by Kranefuss in which he asks that Ohlendorf may deliver a lecture in the Circle of Friends on the subject of the Security Police and SD.² A memorandum was submitted by Kranefuss³ from which it becomes evident that the Reich Leader [Himmler] did not want any lectures of any significance, but he suggested that the subject should only be touched; for instance, about partisan fights, about the activities of the SS General Ohlendorf in the Crimea, and such matters. I do not know whether Ohlendorf had the opportunity to speak about these events before the Circle of Friends. Can you tell us something about that?

¹ Reference is to The Medical case, United States vs. Karl Brandt, et al., Volumes I and II, this series.

² Document NI-8108, Prosecution Exhibit 738, reproduced in C above.

³ Document NI-8123, Prosecution Exhibit 749, reproduced in C above.

WITNESS LINDEMANN: I believe that in my various interrogations, I told my interrogator that I heard of reports of Ohlendorf. I do not remember the time when this took place, whether this report was given in the Circle of Friends or whether it was in a discussion after dinner. I believe, however, that it was a lecture before the Circle of Friends where Ohlendorf reported about his activities in the Crimea, and I think I remember Ohlendorf speaking about those racial groups in the Crimea which tried to cooperate with the Germans. He made reports about the cleanliness of the dwellings of some Tartar racial groups in the Crimea, about his own social relations with them. I remember he said that their dwellings had even curtains as compared for instance with the dwellings of other inhabitants of the Crimea. He told us that these people were a racial group which had to be cultivated, and such matters were within the framework of this lecture of Ohlendorf. Apart from that, I do not remember any matters of that kind which were discussed or even touched, and I think I am quite certain that this did not happen.

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E. Affidavits of Defense Affiants and Testimony of Defense Witnesses

1. TESTIMONY OF BARON VON SCHROEDER

EXTRACTS FROM THE TESTIMONY OF DEFENSE WITNESS KURT BARON VON SCHROEDER *

DIRECT EXAMINATION

DR. DIX: Witness, I am Dr. Dix, defense counsel for Flick, and in my capacity of defense counsel I would like to put some questions to you who are a witness before this Tribunal. First of all I want to know some personal data. What is your full name?

WITNESS VON SCHROEDER: Kurt Baron von Schroeder.

Q. And you are a banker?

A. Yes, a banker.

Q. And your bank is in Cologne?

A. Yes, my bank is in Cologne.

Q. And that bank is one of the oldest banks in Cologne?

A. Yes. It is even one of the oldest banks in Germany. It's more than a 150 years old.

Q. Now, in the interest of the interpreters, could I request you to make a short interval after every question I put to you Witness, because the interpreters have to translate, and I will try to do the same if I can. Mr. Schroeder, what we are concerned about here is the so-called Keppler Circle. There were already several witnesses who testified concerning this Circle, but none of them told us or was able to tell us about its origin because none of them belonged to the Circle since the very beginning. I don't know, but I hope that you were one of the men who belonged to that Circle from the very beginning, and I also hope that you will be able to tell this Tribunal how the origin of the Circle came about and how it was founded. What were the aims and purposes of this Circle? First of all, is my hope justified? Were you one of those who belonged to the Circle from the very beginning?

A. Yes.

Q. Well, now, will you then please explain to this Tribunal how it came about that this Circle was founded?

A. In 1932, one day, the then economic adviser of Hitler, Mr. Keppler, came to see me. I knew him from business connections before that time, and he asked me whether I would be prepared to join a circle of businessmen who advised him, and through him Hitler, in economic questions. This idea had originated with Hit-

* Complete testimony is recorded in mimeographed transcript, 28 July 1947, pages 4425-4464.

ler's belief that because his party had increased in volume so strongly, he would have to take over the government one day, and that then he would have to face economic problems, such as unemployment which prevailed at that time, and that he should not be without any preparation at all for those problems, and he wanted to prepare himself properly for these problems in advance.

Q. May I interrupt you just for a minute? Can I draw the conclusion from your explanation that Hitler, who even at that time promised everybody help and relief for the unemployment, like a Savior—that Hitler at that time had no clear conception of how to solve this burning problem of unemployment? Because, after all, this very problem was the reason why the number of people who voted for him increased to such an extent. Isn't that rather the reason why he came to Keppler and told him something to the effect that if some day he would come to power he had a certain notion how to deal with unemployment? Would you please explain that?

A. No, I don't think that's the way it was.

Q. Just a little bit slower.

A. No, that's not the way it was. Hitler had already a ready-made program, and that's why he had his special advisers, for instance, Keppler. But there were also other people in the Party who dealt with these matters, for instance, Gottfried Voegler, who wanted to use money in a way which every reasonable businessman would reject. Therefore, when I was approached with that question, and also the other businessmen who were approached—

Q. Will you please go a little bit slower. It's rather difficult for an interpreter. I am sorry Your Honor, that I interrupted him.

A. And that was the reason for me to join Herr Keppler in matters of economic advice, in order to object to the wrong ideas in the field of economy.

Q. Well, now, what did you do about it?

A. Well, basically I agreed at that time, and I told Keppler so and more particularly because he quoted names of other members—other businessmen, of whom I knew that they knew quite a bit about the economy and that they were intelligent people and people who were not members of the Nazi Party, incidentally. That's how the first small circle was founded. I think it only consisted of eight or nine persons. As far as I know none of them was a member of the Party.

Q. Who were these eight?

A. Well, that was Mr. Schacht—

Q. I beg your pardon.

A. Yes, Mr. Schacht; Rosterg of the Potash syndicate; Mr. Reinhard, chairman of the Vorstand of the Commerz Bank; Mr. Helfferich, formerly an export merchant, later on became chairman of the Aufsichtsrat of the Hapag in Hamburg; Mr. Krogmann, a very well known Hamburg merchant; Mr. Meyer, who was the chairman of the Dresdner Bank; Mr. Steinbrinck, who was a director of the Mitteldeutsche Stahlwerke; and Count Bismarck, who at that time belonged to a government agency, and later on became governor in Stettin and Potsdam.

Q. Therefore, then, Count Bismarck would have been the only man in this circle who was not a businessman?

A. Well, Mr. Bismarck was considered an agricultural expert. Count Bismarck in this Circle represented the interests of agriculture, because the Bismarck family had considerable property.

Q. He is a grandson of the Chancellor Bismarck?

A. Yes, he is his grandson and the brother of the present Prince Bismarck.

Q. That was in 1932?

A. Yes, it was in 1932.

Q. Now, in 1932 what did you do in this Circle?

A. In 1932 in this Circle we met a few times, and in June of the same year the Circle was invited by Hitler, who on that occasion outlined his ideas and thanked them for the activities which this Circle placed at the disposal of his economic adviser Keppler; and he also, as I said, outlined a few ideas.

Q. You mean to say Hitler wanted to outline a few ideas, and he did so?

A. Yes, he did on that occasion. Hitler first of all, thanked these gentlemen because they had placed themselves so willingly at the disposal of Keppler, and he said that he saw the moment approaching when, as leader of the largest party, he would have to take over the government of the country and also see that since he was being faced with a number of tasks it would mean that he would have to base the economy on a reliable system. For this reason he had to get help from the businessman, since he himself did not know enough about economics. So he would only issue the political directives with which the economy had to comply, and the businessmen themselves had to take care of carrying out these directives. These political directives were to the effect that the economy had to serve the people, that finance had to serve the economy for the purpose of providing bread, work, and social life for all Germans.

Q. Now, those are very prudent directives. If I understood you right then in 1932 the circle met several times and discussed economic problems?

A. Yes.

Q. And it was invited by the Fuehrer, and at that occasion Hitler issued those directives. Now, up to the time when Hitler seized power did the situation remain the same?

A. Yes.

Q. Now came his seizure of power. In your circle did you have the opinion at that time that Mr. Keppler would probably become the Minister of Economics of the Third Reich?

A. No. We didn't have that idea. But he was the economic adviser to Hitler, and therefore he could also influence the economic policy of the Party, and he could advise Hitler in quite a few things.

Q. Now, in normal states the adviser, the economic adviser to the chief of state, would be the Minister of Economics, but if I understand you correctly, you at that time believed that Keppler would have a similar position in the field of economy as Ribbentrop had before he became Foreign Minister in the field of foreign affairs. That is, he would be the adviser for the Nazi Party rather than for the State?

A. Yes. That's what we thought. The Party announced quite a number of programs. The influence over the people by the Party programs was not negligible, and we thought that through Keppler we could assume a good influence and make sure that economic problems were solved sensibly by these Party circles.

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Q. Now, Mr. Schroeder, you have already testified that the Circle increased in the number of members. Was that in the beginning a circle of businessmen which increased?

A. Yes.

Q. Now, we know that later on higher—many, or some—SS leaders joined the Circle too, but in the beginning, if I understand you correctly, that did not occur.

A. No. In the beginning the Circle consisted exclusively of businessmen. The members of the SS who did not work in the field of economics only joined the Circle much later.

Q. I understand that quite well.

A. Well, I think Kranefuss made them join, because partly they were friends of his.

Q. Well, you speak of members of the SS who did not work in the field of economy. And from that I draw the conclusion that the members of the economy who at the same time had an honor-

ary rank in the SS, were also in the Circle. May I ask you, then, whether these people at that time had been requested as businessmen, or had they been requested to join the Circle because they had an honorary rank in the SS?

A. They were invited only in their capacity as businessmen.

Q. Well, I see. Now, if you can, will you please tell us how in this Circle of businessmen there came to be representatives of the SS as such, and how especially the Reich Leader came into the Circle and how he approached this Circle?

A. In my view the Reich Leader was introduced by Kranefuss. Kranefuss, who was a very close friend of the Reich Leader, certainly told him of this Circle and of the people represented in it, and I assume that Himmler, who liked to have some contact with all the branches of the economy and administration and saw in this Circle a group which naturally would be interesting for him to meet, therefore invited them to visit—I think that was the first time—to visit a concentration camp and the economic enterprises, the porcelain enterprises at Allach.

Q. May I interrupt you again? You said that it seemed natural to you that Himmler sought exchange of ideas and connections with economic circles. But after all, at that time Himmler was only the Reich Leader SS and Chief of the Police, therefore the highest police chief. Do you think that this position caused him to look for those connections?

A. No. I don't think so. Not his official position.

Q. But then what task or what hobby? After all it could be personal reasons too that led him to look for these connections.

A. He had very, very broad interests, and he had also the intention to build up certain enterprises for the SS and to show to the German entrepreneur that one could produce very cheaply by following his ideas, and that might have been the reason for his seeking some connections with businessmen.

Q. And that was done via Kranefuss, by the services of Kranefuss?

A. Well, the contacts which he established with this Circle, according to my view, went via Kranefuss and Keppler.

Q. Now, in order to judge the character of this contact, we ought to know what at that time—that is, when Himmler approached it—the activities of the Circle were. Did the Circle still work as in 1932 and deal with economic problems, that is, with the discussion of economic policy problems? Or if it did not discuss them, what did it do?

A. No. The Circle didn't work at all any more. They had only social gatherings and the businessmen would talk among themselves and discuss the actual economic problems of the day.

Q. Of course, you could discuss other matters too?

A. Yes, of course. I think that other matters were discussed to a much larger extent than economic problems.

PRESIDING JUDGE SEARS: Dr. Dix, was Kranefuss one of the original group?

WITNESS VON SCHROEDER: I haven't understood—

DR. DIX: If Your Honor please, I am very much interested that this question be answered with much precision. Therefore, I ask your permission to pass this question to the witness, because he is in a better position to answer it.

PRESIDING JUDGE SEARS: Yes, I thought you would do that.

DR. DIX: May I ask that you, Your Honor, put the question yourself?

PRESIDING JUDGE SEARS: When did Kranefuss come into the Circle or become its secretary?

WITNESS VON SCHROEDER: Kranefuss joined the Circle from the very beginning.

Q. Was he an economist?

A. Yes. At times he worked in a bank, and he had worked with his distant relative, Keppler, in the industry. Therefore, he had a certain knowledge concerning economics.

Q. And he was brought in by Keppler?

A. Yes. That's correct.

DR. DIX: And I assume that as a businessman in the Third Reich he had quite a career then?

WITNESS VON SCHROEDER: At first, he did not work in the field of economy, only later on, and I think it was 1935 or 1936 he took a part in the foundation of the Brabag * and was taken into the Vorstand of the Braunkohlenbergbau A.G.

Q. 1935-36?

A. Yes, 1935-36, I think so.

JUDGE RICHMAN: Was Kranefuss closer to Himmler than Keppler?

WITNESS VON SCHROEDER: I think that was about the same. He was a relative of Keppler's and he was a friend of Himmler's.

Q. Well, was it Keppler who brought Kranefuss into the picture or was it Himmler who used Kranefuss to get in the picture?

A. I don't quite understand your question.

Q. Let me state it again. Was it Keppler who brought Kranefuss into the Circle, into this original Circle, or was it Himmler who knew that Kranefuss was close to Keppler and to this Circle, and used Kranefuss to make the contact with the Circle?

A. No. Keppler brought Kranefuss into this Circle with himself at the same time, and only later on, the contact was taken

* "Brabag" was the familiar abbreviation for the firm Braunkohle und Benzin A.G., which principally produced synthetic fuels.

up with Himmler, and as far as I know, the connection between Kranefuss and Himmler was only taken up later on, after the Circle had already started, I mean this close connection between the two.

PRESIDING JUDGE SEARS: Can you say how Himmler came into the Circle? Was that through the influence of Hitler, or was that through the influence of Keppler and Kranefuss, or don't you know?

WITNESS VON SCHROEDER: Well, I think that was the influence of Keppler and Kranefuss, who slowly and by degrees took up this connection.

DR. DIX: Well, if that's the way you answer the question put to you by the President, I have to remind you that a while ago you stated that Himmler himself wanted to get into this Circle for motives of his own or at least to approach the Circle. Would you now please explain that, because there seems to be a certain misunderstanding?

WITNESS VON SCHROEDER: Well, that was not the way I said it. I think that through the conversations with Keppler and Kranefuss, Himmler got an insight into the work of this Circle, and that once he had this knowledge he said to himself, "Well, that might be of interest to me, and I should get into closer contact with the Circle." And then by degrees—I mean that didn't happen all at once, but by degrees—he got acquainted with the members of the Circle, and slowly but surely he became a sort of a protector of the Circle.

DR. DIX: Very well. That seems clear. If Your Honor please, may I go on? Now, you testified that the approach of Himmler to this Circle took place in such a way that Himmler first of all invited this Circle to a concentration camp—I mean to visit a concentration camp, that is. Could you explain the motives which Himmler probably had for this action? Was he so proud of the concentration camps? I think it might be of interest to the Tribunal to have your opinion; of course it can only be an opinion. If Himmler now had the wish to make the acquaintance of some prominent businessmen and to have some social contact with them, the only thing he could find to do was to tell them "now, you come to Dachau and have a look at it."

A. I think he did it just to show the Circle that the rumors which circulated at that time concerning these concentration camps were exaggerated, and that in the concentration camps at that time quite humane conditions prevailed. I think he also wanted to demonstrate that only such persons were interned in the concentration camps as were dangerous to the German people themselves, interned for criminal or asocial reasons, or for political reasons, that is, circulating Communist propaganda, and thereby

he wanted to give certain justification for these establishments, which at that time were quite new to us.

Q. And he apparently thought that he would be successful with these gentlemen, because otherwise he wouldn't have done it, would he?

A. Yes, yes, quite.

Q. Now, we are not interested in details. Now, the gentlemen of the Circle are at Dachau; they have a look at Dachau; everything has been prearranged for the visit and looks beautiful, and now, how does the thing go on? Did you have dinner together?

A. Yes, we dined in the evening together.

Q. At Dachau?

A. No. As far as I remember it was at Munich.

Q. Oh, I see, in Munich. That is also the recollection of the other witnesses, I think.

A. Well yes, we had dinner in Munich.

Q. Well, when did it take place, in 1937?

A. No. It was in 1936, I think.

Q. Oh, I see, in 1936. Well, we will go on. Tell us about this evening in Munich.

A. After the dinner Himmler, for the first time, asked a favor of this Circle on his own initiative, and at that time he said that apart from his actual tasks as highest police executive and as Reich Leader SS, he also had aims in cultural fields and in the social field, and if, of course, he had sufficient means at his disposal for the SS and his state tasks, he was short, however, of the necessary funds for these cultural and social tasks.

Q. May I interrupt you again here? That must have seemed understandable to everybody because, after all, for personal hobbies, even if they are the most interesting in the world and the most valuable in the cultural field, there are no state funds available. Was that your impression?

A. Yes, of course, that was quite clear, and especially because Himmler stressed emphatically that "for the SS and my other tasks I need no money and want no money, but for these cultural tasks and for doing away with certain states of emergency for which I have no funds at all, if you want to place funds at my disposal for that purpose, then I would be most grateful to you."

Q. Was that Himmler himself who said so?

A. Yes, Himmler himself.

Q. In an after-dinner speech to these gentlemen?

A. Yes, yes, in this Circle when we had our dinner and we joined together after dinner too.

Q. And that's the way these so-called contributions [Spenden] came about?

A. Yes.

Q. And you were the bank trustee of these contributions, of these donations?

A. Yes. We were asked in what way that should be done. Everybody was quite free, whether he wanted to contribute and how much, and it was stated that it was to be paid by forwarding it to a bank; and as I was the banker in this Circle, of course, to a bank account in my firm, and thus, the amounts were paid to my bank, and I reported on the amounts paid to Himmler, and then the amounts, once in a while, would be withdrawn in large sums.

Q. To the account of Himmler?

A. Yes, to an account at the Dresdner Bank.

PRESIDING JUDGE SEARS: As I understood you, Witness, Himmler said he didn't have money for cultural matters or for emergencies—that was the word that the interpreter used. Did he say what he meant by emergencies, or what did you understand he meant?

WITNESS VON SCHROEDER: Well, he said for cultural aims he had no funds, and in order to do away with hardships, if there were emergencies in the circles which were near to him, if he wanted to do some social work—that was what we understood by these emergencies.

Q. You didn't understand that it had anything to do with the SS, or did you understand that it might be emergencies arising in the SS?

A. Well, that these emergencies would be in cases of members of the SS, well, that had to be assumed, yes, of course.

Q. Of uniforms and that sort of thing?

A. No, no, of course not. Only, if for instance, by sickness or accidents, or in some way difficult situations arose, then to help in cases of emergency. That's what we understood.

DR. DIX: May I now supplement the question put to you by the President. First of all, you spoke of cases of social emergency. Now when the President asked you, you said cases of social emergency within the SS. Now I would like to ask you did you understand Himmler's statement concerning the aims of the collection, first, cultural aims, one thing, and social aims, another thing? Did you conceive this item "social welfare" to the effect that only in cases of social emergency within the SS it would be applied or that it would be applied also for social emergency outside of the SS? Would you—just a minute! Would you give a clearer picture of the Circle to the Tribunal, of those persons for whom the social welfare of this donation was intended?

WITNESS VON SCHROEDER: Our conception was that this was for social needs [soziale Not] in general and that it was meant for people who belonged to the SS and for others who were not members of the SS. In the position Himmler held at that time

he was very often approached for help in social emergencies and that he had to take care of these, regardless of whether these requests came from the SS or not and, therefore, he needed funds.

Q. Witness, we want to avoid even the resemblance of hypocrisy and, therefore, I want to use intentionally a leading question. You quite knew, didn't you, that Himmler would never do any social welfare work for people who were Communists or enemies of the State in his views, and that he certainly did not intend to use the means for that? I wanted to clarify that.

A. Yes. Well, of course we couldn't suppose that he would use it for that.

Q. Quite right. Quite right. I only wanted to clarify it; but you say it was not a mere matter of SS members?

A. No, not a mere matter of SS members.

Q. Well, now, there we have the donations. Now I may assume that everybody participated and assessed his own value. I mean that was sort of a gentlemen's agreement, wasn't it?

A. Yes, it was quite free for everybody. No amount was mentioned. It was quite at the discretion of everybody.

Q. But you yourself thought it was quite natural that the strong shoulders, of course, should take a heavier load than the weak shoulders?

A. Well, they did that themselves on their own initiative. Nobody requested them to do that.

Q. Now, social emergencies within circles whom Himmler did not specifically consider as enemies of the State, that is a clear aim. "Cultural aims" is a little bit vague, isn't it? Did Himmler personally, or through you, tell the gentlemen of the Circle, or did he have somebody tell you for what cultural aims these amounts were to be used?

A. Yes, almost every year one of his deputies came to give us a lecture, and there were people who had some achievements in cultural fields, for instance, Professor Schaefer, concerning his expedition to the Himalayas, concerning also excavations of the early human race, about his work in Braunschweig, about Henry the Lion in Lueneburger Heide, concerning Charles the Great, concerning—

Q. He didn't like Charles the Great.

A. Well, I didn't talk about that with him.

Q. Excuse me. Excuse my interjection.

A. And the restoration of the Wewelsburg, and as I know, he didn't say it in this Circle, but I know he had a collection of early German jewels at a value of several hundred thousand marks.

All these plans were explained to us, and all these experiments cost quite a bit of money; and we had to assume quite naturally that the money was hardly sufficient for these purposes.

Q. Very well. Now how often did this lead to what we may call a club meeting or something like that?

PRESIDING JUDGE SEARS: Before you ask that, may I ask another question. Were these monies put into a fund which had a name?

WITNESS VON SCHROEDER: Well, the money was forwarded first to the bank Stein to a special account "S", and from the bank Stein it was withdrawn in round figures of five hundred thousand or three hundred thousand marks each, and then it was forwarded to an account in the Dresdner Bank which had the designation account "R".

DR. DIX: Did you speak to Himmler or one of his adjutants concerning these payments of money, or did you have correspondence with them?

WITNESS VON SCHROEDER: Well, once a year only I reported what amounts had been received. Then generally the adjutant—that is, the personal adjutant, Obergruppenfuehrer Wolff—sent me a directive to forward a larger amount to the Dresdner Bank. That's all I did and wrote regarding these money matters.

PRESIDING JUDGE SEARS: Do you know how the money was drawn from the Dresdner Bank?

WITNESS VON SCHROEDER: No. I have no idea how that was done. I had no insight into those matters.

JUDGE RICHMAN: Did you ever inquire about it?

WITNESS VON SCHROEDER: No. Every year we were told that the money had been used for these cultural aims and that in many cases emergencies had been met, and the individual members were thanked for their contributions.

DR. DIX: In other words, it was a fund at the disposal of the highest State executive?

WITNESS VON SCHROEDER: Yes. That is the way it was.

PRESIDING JUDGE SEARS: Well, wasn't it a fund at the disposition of one high official, namely, Himmler?

A. Well, the money was placed at the disposal of Himmler. It was at his personal disposal upon the request he had made and for the aims and purposes which he had stated for his personal disposal.

Q. Therefore, it is quite clear that as all funds were at his disposal, it was a payment in trust to Himmler with the prerequisite and in the belief that he would use it only for the purpose for which he had requested it.

A. Yes, of course.

Q. And you never had any reason to doubt that?

A. No. We never had any reason for that.

Q. Do you doubt it today?

A. Not even today. I don't think that any misuse took place concerning these funds.

Q. You never had any doubts, and you never had any knowledge that there was any misuse of the funds?

A. No. I never heard anything about it.

Q. I think that this point has now been clarified.

PRESIDING JUDGE SEARS: But just one more question. Was there a representative of the Dresdner Bank in the Circle throughout its existence?

WITNESS VON SCHROEDER: Yes, Mr. Meyer. He was a director in the Dresdner Bank.

Q. Did he ever report or tell in the meetings that he had given this money over to Himmler personally, or anything else about it?

A. No. He did not tell us anything about it. After all, the money was transferred to the Dresdner Bank to an account at Himmler's disposal, and a director of the Dresdner Bank, and I don't know whether he had any knowledge of the details at all, but at any rate, he had no right to give any information concerning the use of the money without the permission of the holder of the account. Therefore, he never told us anything and he was not asked about it either, because we had full confidence in Himmler's decency.

Q. Is Mr. Meyer living?

A. As far as I know, he is dead.

* * * * *

DR. FLAECHEISNER (counsel for defendant Steinbrinck): Baron, you answered the question of my colleague, Dr. Dix—what interest did Himmler have in 1936 in economics, as such, by saying that Himmler was very versatily interested. I should like to ask you a complimentary question—do you know whether Himmler got in touch with other purely cultural circles, or whether he sought such contact, for instance, with the German Academy in Munich?

WITNESS VON SCHROEDER: I do not know of any such contact but I consider it possible. The institution of the Ahnenerbe¹ gave him a very large contact with cultural circles.

Q. Do you know Professor Wuest,² in Munich?

A. I saw him a few times.

Q. Did you know Professor Jung?³

¹ The Reich manager of the Ahnenerbe, Dr. Wolfram Sievers, was a defendant in the Medical case, volumes I and II, this series.

² Wuest was chief of the office Ahnenerbe.

³ Edgar Jung, a prominent member of the SA, was assassinated in connection with the Roehm purge of 30 June 1934.

A. No.

Q. Baron, you were the trustee of the confiscated property of Thyssen, is that correct?

A. Yes.

Q. Since my client, Mr. Steinbrinck, later had an important function in the property which was generally called the Thyssen property, do you know how this confiscation was brought about?

A. Yes. The confiscation was ordered because Thyssen had emigrated into Switzerland at the beginning of the war and despite requests and representations, he did not have the intention to come back, and then he allegedly had certain conversations and had written letters which were considered treasonable to the State.

* * * * *

Q. At the time, Mr. von Schroeder, you negotiated with Mr. Steinbrinck to win him and to ask him to enter the administration of the Thyssen property. When did you first approach him?

A. As far as I remember, I was appointed trustee in September. The property was at that time first only confiscated, and administered by me as a trustee and later it was actually sequestered and administered as a property of the Prussian State. I was appointed the administrator of this property. The administration of this property demanded a very intensive industrial activity with the Vereinigte Stahlwerke which could only be carried out by an industrialist. Therefore I complained to the Oberpraesident and Reich Defense Commissioner Terboven that my knowledge was not sufficient for these tasks, that I didn't have enough time, and that a man well versed in this territory should be appointed. It must have been about October or November when I suggested to him that Mr. Steinbrinck, who had resigned from his position with the Mitteldutsche Stahlwerke, was the one for this task. Mr. Steinbrinck first of all talked to Terboven, and I was present at the time. And it must have been about the end of the year when he took this over. I do not remember an exact date. It must have been about this time.

Q. You can therefore not remember when you concluded the employment agreement with Steinbrinck?

A. It was in the winter.

Q. Did you suggest Steinbrinck for this position because you knew him from the Circle of Friends, or because you knew him as an SS brigadier general, or did you suggest him because he was known to you as an expert and a long collaborator in the Flick enterprises?

A. Only for the last-named reason. He was known to me as an able and expert and very decent man. I suggested him as such. The

accidental meeting in the Circle of Friends and the matter of his accidental rank in the SS had nothing to do with it.

Q. The main part of this Thyssen property was the Gewerkschaft Deutscher Kaiser, which later was called Gewerkschaft Preussen.

A. Yes, this Gewerkschaft Preussen or Gewerkschaft August Thyssen was the holding company of the entire Thyssen property.

Q. Mr. Steinbrinck, as can be seen from the list of contributors which we have in the files, made contributions from this Gewerkschaft Preussen to the Circle of Friends. Is it known to you that the Prussian Ministry of Finance was instructed that these contributions had been approved?

A. These contributions were made from a contribution fund which existed in this Gewerkschaft, and just as the Gewerkschaft Preussen was investigated by the Deutsche Revisions-und Treuhand Gesellschaft, a report was made to the Prussian Ministry of Finance and the auditing chamber. Every penny that was expended by this Gewerkschaft was known to the Prussian Ministry of Finance in this way.

Q. Did you ever discuss this with Popitz, who was Prussian Minister of Finance about this time; and from such a discussion did you learn that Steinbrinck always had to get the approval of the Prussian Minister of Finance before?

A. Steinbrinck was working with Popitz and with the Referent, Ministerialrat Scheche, on these questions. As a very correct person, I am sure he discussed these matters with him.

Q. The funds which Herr Steinbrinck contributed to this Circle of Friends from funds of the Gewerkschaft Preussen, these funds were moneys of the Prussian State?

A. They were moneys which belonged to the Prussian State, because they emanated from a foundation within the Gewerkschaft, which had been made for charitable purposes and I consider it a *nobile officium* of industry to support cultural affairs, and such a rich enterprise as the Gewerkschaft Preussen should pay such contributions for the cultural purposes which we wanted to promote, and that was a very small affair for these people.

Q. Mr. von Schroeder, do you know that the Prussian Minister of Finance, Popitz, was also competent in Prussia for cultural tasks, such as making means available for maintaining and constructing cultural monuments?

A. The Prussian Minister of Finance had this task automatically.

Q. Do you know that for this reason he probably was especially interested in Himmler's efforts and his contributors—these cultural efforts, excavations in Sachsenheim, Eckheim, Quedlinburg?

A. I can consider that quite possible, although I didn't discuss it with him.

* * * * *

Q. You said before, Herr von Schroeder, that one might easily have stayed away from the Circle of Friends, and that it was also possible to pay or not to pay according to one's own wish; did I understand you correctly?

A. Yes.

Q. How was one admitted to this Circle of Friends?

A. By Keppler's request.

Q. Was that Keppler or Kranefuss?

A. Kranefuss—I would call him the secretary, and Keppler was the head of the club. If Kranefuss, who managed this thing very actively, made some suggestion to admit somebody into the Circle, then Keppler probably would have followed these suggestions. However, the head and president of the club, if you want to call it a club, was Keppler, who requested and who also expressed his approval for the admittance to this club.

Q. That was true at first. Was that true all the time?

A. It is difficult to say, since it was not a club and since members were not listed anywhere officially, whether one was a guest or whether one was invited by Keppler or Kranefuss. It was not a closed society. I believe that this Circle is considered in a much too important light. It was a quite harmless and social function of businessmen who had found each other in the course of years and who found it necessary to talk to each other and to see each other.

* * * * *

JUDGE RICHMAN: These contributions kept up right until 1945, did they not?

WITNESS VON SCHROEDER: No, until 1944. I believe that 1944 was the last year in which any contributions were made. If it is 1944—it may be 1943; yes, 1943 for sure—probably also in 1944.

Q. In what cultural activities was Himmler engaged in 1944 or 1943?

A. His main activities were the excavations and reconstruction of the Wewelsburg, for the reconstruction of which he had demanded a credit of 9,000,000 Reichsmarks which was to be paid back gradually by these contributions.

Q. That was going on in 1944?

A. Yes, sir.

JUDGE RICHMAN: All right.

* * * * *

2. AFFIDAVIT OF KERSTEN

TRANSLATION OF DOCUMENT FLICK 17
FLICK DEFENSE EXHIBIT 17

AFFIDAVIT OF CHIROPRACTOR FELIX KERSTEN, 19 APRIL 1947
CONCERNING HIMMLER'S ATTITUDE WITH RESPECT
TO DEFENDANT FLICK AND HIMMLER'S CON-
STANT THREATS AGAINST FLICK *

Stockholm, 19 April 1947
Linnégatan 8

Felix Kestern
Medical Counsellor [Medicinalrad]

Affidavit

I hereby certify that Dr. Friedrich Flick has been my patient since 1937, and that he was under my medical care regularly every year until 1943. After that, we met often and were in constant touch till the end of the war.

At the end of May 1940, the then "Reich Leader SS" Heinrich Himmler, whom I then treated privately as a chiropractor, said that I should at once break my connection with Mr. and Mrs. Flick, because it could do a lot of damage to my reputation in Germany if I were connected with them who both were traitor-swine to the National Socialistic idea. I said to Himmler that as a Finnish citizen I was not interested in German politics, and that I treat every German who asks me. Himmler then told me he had clear proof that acts of sabotage were being committed in the industry of Dr. Friedrich Flick instigated by Flick. Furthermore that Dr. Flick was probably being employed by the Allies, that he was a dishonest traitor, who, hating the great ideas of the Fuehrer, was selling his country to the Allies for money. Therefore he (Himmler), after termination of the campaign in France, would put Dr. Flick and his family in a concentration camp, because this is the reward for the enemies of the Third Reich. I called Himmler's attention to the fact that I could not believe these infamous accusations against Dr. Flick because I considered Dr. Flick an honest man who had been denounced by mean individuals. Himmler then answered that these accusations were not made by anybody but by an absolutely reliable and responsible person, namely, SS Standartenfuehrer Fritz Kranefuss (director and president of the "Braunkohlen-Benzin A.G.") and his faithful associates. Himmler said that Kranefuss, during several years, watched Dr. Flick closely and found

* Affiant Kersten was not called as a witness by either the prosecution or the defense.

out that Dr. Flick belonged to the most irreconcilable enemies of National Socialist Germany, and that all his orders, regarding the industrial program, contained hidden sabotage against the great armament program of the Fuehrer. After that, I have for days, while treating Himmler, spoken with him about the Flick case until I finally succeeded in convincing Himmler that the accusations against Dr. Flick were without foundation. At the beginning of June 1940, Himmler gave me his word of honor that he would not do anything against Dr. Flick and family and not continue the case. He kept this promise.

In July 1943 I stayed with Himmler in his headquarters in East Prussia for several weeks. Suddenly Himmler began again to scold Dr. Flick severely and said: "I regret that I didn't make Flick and his family harmless at that time. I continuously get reports from the ranks of my Gestapo and my SS friends that Friedrich Flick is a very great saboteur and enemy of the Fuehrer. He makes us difficulties wherever he can. I am convinced that his banking account in London or New York has grown considerably, because such traitors love the British and Americans!" I again calmed Himmler and said that these were the same old charges. Himmler now answered that this time he would test Flick, and that microphones had been installed in his quarters, as in those of most industrialists who were not reliable. A few days later I went to Berlin and visited Dr. Flick at once in order to warn him. He began at once to talk against the Nazi regime, whereupon I interrupted him and asked for a notebook. I wrote upon it—"Please do not talk any more. I know that you are listened to!" Dr. Flick replied whispering—"I know that my telephone conversation is being watched, but against this we have taken, as far as it is possible, security measures!" Then I further wrote—"This is not the question. Microphones have been installed in the room. That's what Himmler has told me. The same has been done with a number of other industrialists. If you want to talk openly with me about politics, then come and see me on my estate Harzwalde!" Dr. Flick followed this advice, and a few days later came to me to Harzwalde. For over an hour I took a walk with him in the forest where I felt secure and informed him about the dangers that confronted him from the National Socialists.

On 12 December 1943 Himmler had invited 40-50 business leaders in order to make a declaration before them. The invitation was sent out a few weeks before, so that Dr. Flick could inform me about it. I urged him to accept the invitation and go there because one could not know what consequences a refusal would have. Because a few days before, the conference took place I had been ordered to Himmler on account of his bad state of health,

I was also present at the conference. Himmler made a speech which lasted 2 hours, and in which he considered victory as a fact and threatened defeatists and saboteurs. After the speech Dr. Flick asked me—"Are we here in an insane asylum or in the headquarters of the Reich Leader? I am not quite certain after this speech. Or are they going to liquidate us industrialists?" When I went again to Himmler the next morning to treat him, he said to me in a biting tone—"This Dr. Flick has again been fortunate. If he would not have come, which I expected, I would have ordered his arrest and turned him over to Krane-fuss, Mueller, and Kaltenbrunner for punishment."

During my help and rescue activities, which I undertook by order of the Swedish Government and the Jewish World Congress, New York, in the war years 1943-45, whereby I succeeded in saving thousands of people from the Nazi concentration camps and in bringing them to Sweden, I also intended to bring Dr. Flick to Sweden. This, however, did not work out because Himmler opposed this plan. Himmler then said to me—it was in December 1944—if National Socialist Germany would perish, he would see to it that Dr. Flick would die with it. Flick should not witness the victory of his Allied friends. At that time Himmler also said to me that Dr. Flick should also be arrested after 20 July 1944. The order was telephoned through by Kaltenbrunner, but the name was written wrong, and for this reason the organization in charge could not find Dr. Flick.

I declare on oath that my statement is true and was made to be presented as evidence to the Military Tribunal in the Palace of Justice in Nuernberg, Germany.*

Stockholm, 19 April 1947

[Signed] FELIX KERSTEN

Medical Councillor, Chiropractor

I, the undersigned C. Ludv. Hasselgren, Notary Public at Stockholm, hereby certify, that Medizinalrat Felix Kersten, who has proved his identity, has personally signed this document.

Stockholm, 22 April 1947

Ex officio:

[Signed] C. LUDV. HASSELGREN

Notarius Publicus

[Notary's Seal]

* Karl Wolff, chief of the Personal Staff of Himmler until February 1943, was called as a prosecution rebuttal witness to the statements made by Kersten in this affidavit. Wolff testified, among other things, that he was also treated by Kersten and made the arrangements whereby Kersten treated Himmler; that Kersten never mentioned to him any derogatory statements which Himmler had made concerning Flick; and that "Himmler's opinion was always to the effect that Dr. Flick was a model, decent industrialist of the best kind, and that he had been chosen out of many, as a sign of distinction, to belong to the Circle of Friends" (Tr. p. 10029). Wolff's complete testimony is recorded in the mimeographed transcript, 4 November 1947, pages 10023-10033.

3. AFFIDAVIT OF NACHTSHEIM

TRANSLATION OF DOCUMENT STEINBRINCK 337
STEINBRINCK DEFENSE EXHIBIT 87

AFFIDAVIT OF JOSEF NACHTSHEIM,¹ 23 JUNE 1947, CONCERNING
DEFENDANT STEINBRINCK'S CONNECTION WITH CERTAIN
CONTRIBUTIONS TO THE SS

I, Josef Nachtsheim, residing in Muelheim-Ruhr, have been warned that I render myself liable to punishment by making a false affidavit. I declare in lieu of oath, that my statement is true and is made to be submitted as evidence to Allied or German authorities or courts.

I thus make the following deposition regarding Mr. Steinbrinck's participation in donations to the SS:

I am Prokurist and head bookkeeper of the Gewerkschaft Preussen² in Muelheim-Ruhr and have ascertained the following from the books and ledgers:

From 1941 to 1944 the Gewerkschaft Preussen made the following transfers from its welfare fund:

- a. To the banking firm of J. H. Stein, Cologne, to the credit of Special Account "S" RM 140,000
- b. To Gruppenfuehrer Wolff, i.e., Administration, Personal Staff of the Reich Leader SS RM 36,000

The payments were openly specified in the books.

The following relevant papers are available:

1. Letter from Baron von Schroeder, dated 29 January 1941, to Mr. Steinbrinck, approving Mr. Steinbrinck's suggestion as per letter of 27 January 1941, for the payment of RM 1,500.00 per month to Gruppenfuehrer Wolff. Furthermore Baron von Schroeder asks for the transfer of RM 30,000.00 to Special Account "S" at the I. H. Stein Bank, Cologne.

2. Mr. Steinbrinck's order dated 10 February 1941 for the transfer of the above-mentioned RM 30,000.

3. Letter from Gewerkschaft Preussen to Baron von Schroeder, dated 14 February 1941; according to which Mr. Steinbrinck had requested the transfer of RM 100,000 instead of RM 30,000 to the Special Account "S", and had promised that Vereinigte Stahlwerke AG would refund the difference of RM 70,000 (refund was made on 20 February 1941).

¹ The affiant was not called as a witness by either the prosecution or the defense.

² "Gewerkschaft Preussen" was a special organization created to administer the confiscated industrial property of Fritz Thyssen. Defendant Steinbrinck was managing director of this organization.

Apart from this sum paid in 1941 of.....	RM	30,000.00
A further payment to Special Account		
"S" on 27 February 1942	RM	30,000.00
Furthermore on 22 May 1943	RM	30,000.00
And on 20 March 1944	RM	50,000.00
		<hr/>
	Total	RM 140,000.00

4. The increase of RM 50,000 in 1944 was effected at the instigation of Baron von Schroeder as per letter of 15 March 1944. Mr. Steinbrinck's consent was asked on 18 March 1944.

The following sums were transferred for the disposal of Gruppenfuehrer Wolff, i.e., Administration, Personal Staff Reich Leader SS:

On 27 January 1941, to Cash Administration of		
Vereinigte Stahlwerke Berlin	RM	7,500.00
On 15 December 1941, to the same address	RM	10,750.00
On 10 July 1942, to Commerzbank Berlin, for the		
account of Mr. Steinbrinck	RM	8,750.00
On 24 May 1943, to Finance Department of		
Vereinigte Stahlwerke in Berlin	RM	9,000.00
		<hr/>
		RM 36,000.00

Cash receipts of the Administration, Personal Staff Reich Leader SS are in the files here and are made out for the respective yearly payment. No direct payments were made by Gewerkschaft Preussen to Gruppenfuehrer Wolff; the payments were transferred in a lump sum each year. The books and balance sheets of Gewerkschaft Preussen were audited by the Deutsche Revision und Treuhand Aktiengesellschaft [German Auditing and Trustee A.G.] Berlin W8.

As far as I know the auditing company used to send one copy of the report to Ministerial Director Dr. Scheche. However, these reports contain only a reference to the balance of the welfare fund account, and the sums withdrawn from this fund are not specified therein.

Muelheim-Ruhr, 23 June 1947

[Signed] JOS. NACHTSHEIM

4. AFFIDAVIT OF PATZIG

TRANSLATION OF DOCUMENT STEINBRINCK 339
STEINBRINCK DEFENSE EXHIBIT 90

AFFIDAVIT OF ADMIRAL CONRAD PATZIG,* 17 JUNE 1947, CONCERNING
DEFENDANT STEINBRINCK'S REAPPOINTMENT IN THE NAVY BECAUSE
OF STEINBRINCK'S DESIRE TO AVOID WEARING THE SS UNIFORM

I hereby make the following deposition in lieu of an oath, realizing that I render myself liable to punishment under the law by falsifying an affidavit. I am aware that this affidavit, given by me, is to serve as evidence in the case of the United States against Flick and others, now before the United States Military Tribunal IV in Nuernberg:

In 1940, around the month of May or June, immediately after the French campaign, the retired Lieutenant Commander Otto Steinbrinck approached me in my capacity as Chief of the Navy Personnel Office, with the request to reappoint him in the navy. He gave as the reason that he had been given a position in the administration of the occupied western zone which would involve the wearing of uniform, and, since his old naval uniform meant more to him than the uniform of an SS Leader, he was keen to appear again in the former. As Steinbrinck's commission in these occupied zones did not come from the navy, it was not easy for me to effect his reappointment in the navy; however, I finally succeeded, and an exception was made. I learned afterward that Steinbrinck had difficulties with the SS for refusing to wear the SS uniform and for his statement to me that he preferred to rejoin the navy. By choosing the naval uniform he had to be satisfied with the rank of lieutenant commander, while as SS Leader he would have been given a higher service rank.
Berlin, 17 June 1947

[Signed] CONRAD PATZIG

* Affiant was not called as a witness by either the prosecution or the defense.

5. AFFIDAVIT OF PASTOR NIEMOELLER

TRANSLATION OF DOCUMENT STEINBRINCK 375 STEINBRINCK DEFENSE EXHIBIT 93

AFFIDAVIT OF PASTOR MARTIN NIEMOELLER,* 9 AUGUST 1947, CONCERNING DEFENDANT STEINBRINCK'S ASSISTANCE AFTER NIEMOELLER'S ARREST BY THE GESTAPO

Pastor D. Martin Niemoeller D.D.,D.D.
Buedingen (Hessen)
Schloss
Telephone: Buedingen 368
Bank account: Buedinger Bank

Buedingen (Hessen)
9 August 1947
Schloss
P. O. Box 19 K./M.

Affidavit

I, Pastor D. Martin Niemoeller, resident in Buedingen, Schloss, am aware that I render myself liable to punishment by making a false affidavit. I declare under oath that my statement conforms to the truth and was made to be submitted as evidence to the Military Tribunal at Nuernberg, Germany.

I have known Mr. Otto Steinbrinck since my youth. In the First World War he was one of the best-known U-boat commanders, and as such was respected and held in esteem for his chivalrous manner of waging war, even by the Allied Powers.

After the war, he went into industry, and I met him again when I became pastor of the parish of Dahlem in 1931. We then renewed our old relationship, and I confirmed his older children and baptised his youngest son there.

When national socialism came into power in 1933, Mr. Steinbrinck and I had many conversations on the relationship of the new government to Christianity and the Church, during which he never left any doubt as to his disapproval of the steps taken by the new rulers against the Church.

Although he held an "honorary" rank in the SS, and felt himself obliged as an industrialist to pay consideration to the State, since the State took control of and governed the entire economy, he had his children attend lessons in religion and had his youngest son baptised by me at a time when I was already considered a "public enemy" by the Nazis, and particularly by the SS, and was persecuted.

* Pastor Niemoeller was not called as a witness by either the prosecution or the defense.

When subsequently I was repeatedly arrested by the Gestapo, he intervened on several occasions with a view to my release, successfully after my first arrest in February 1936, though later without success, but with courage and tenacity. I am eternally grateful to him for this. I am aware that Mr. Steinbrinck, in view of his personal and industrial position, ran a great risk by intervening on my behalf and on behalf of the Church, and I beg that this be taken into account when judging his personal attitude.

During those many years of my detention from 1937 until 1945, my wife, in the course of the occasional visiting hours allowed us, frequently and repeatedly brought me greetings from him which showed me that he had not changed his views and his attitude. I am convinced that Mr. Steinbrinck was and still is a man of entirely honorable character and that he would not have done anything which would have been incompatible with his conscience.

[Signed] D. MARTIN NIEMOELLER

F. Testimony of Defendant Steinbrinck

EXTRACTS FROM THE TESTIMONY OF DEFENDANT STEINBRINCK *

DIRECT EXAMINATION

DR. FLAECBSNER (counsel for defendant Steinbrinck): Mr. Steinbrinck, will you first give the Tribunal a description of your career until you resigned from the navy?

DEFENDANT STEINBRINCK: I was born on 19 December 1888 in Lippstadt in Westphalia. My father was a professor there at the Gymnasium. In 1907 I graduated from high school and in 1907, I joined the Imperial Navy to become a naval officer. From 1909 to 1911 I was a junior officer on a cruiser in foreign waters as far as America and Canada. In 1911 I joined the submarine service and I remained there until 1919. Then I was given leave from the navy in the spring of 1919 and in the autumn of 1919 I was discharged as a Lieutenant (s.g.) During the war I was submarine officer in Flanders and during the last year, 1918, I was an officer in the Admiralty of the submarine units which were committed in Flanders waters.

Q. Now, you received the highest German war medal very early. Will you give the Tribunal a short description of what you got it for, and will you also explain to the Tribunal how the enemy judged your attitude?

A. I was the third one in the navy to receive the highest German war decoration, Pour Le Mérite, and that was in March 1916, in spite of the fact that my big successes only took place in the years 1916 and 1917. My achievements, as my defense counsel says, have been recognized even by the enemy. I have several times been invited by the Royal Navy to hold lectures in London and in Portsmouth concerning submarine warfare, in spite of the fact that, at that time, I was considered a so-called war criminal. Perhaps I may explain for the Tribunal that the verdict was not acquittal, but that the tribunal dismissed the case. A special distinction I received in Belgium, a country where I was active for 4½ years during the Second World War. Belgium gave me sort of a small memorial after the war—after the First World War, that is—but I myself only saw it in 1928. It was in the British-Belgian Naval Museum. There they had put up a big naval map with the waters around England, and on this map there were correct silhouettes with the names of the 216 ships I had sunk with my submarine. Under the map there was a photograph of

* Complete testimony is recorded in mimeographed transcript 30, 31 July; 1, 4-8, 11-13 August 1947, pages 4674-5460, 10329-10331. Further extracts from the testimony of the defendant Steinbrinck are reproduced later in section VI-E.

me with my *curriculum vitae* and a recognition of my achievements by the enemy, and the reason why I mention it is, this memorial finished with the beautiful words—I have to say it in German—“Nach Auffassung der Belgier hat dieser Offizier sich stets aeusserst korrekt verhalten. Er war-das kann man wohl sagen ein wahrer Ritter des Meeres.” [According to the views of Belgians, this officer always conducted himself very correctly and fairly. One might well say that he was a real knight of the sea.]

Q. Mr. Steinbrinck, after you were discharged from the navy, will you please describe to the Tribunal what you did then?

A. I had the intention to study railway traffic management at the technical academy. From there I was called to Berlin into the management of the Association for German Iron and Steel Industrialists, which had at the time the supreme economic-political representation of interests in the iron producing industry, and also of the big engine factories, dockyards, and locomotive producers; in other words, of the industries using iron. After a short time I became syndicus—that is, legal adviser—and afterward deputy manager, together with Dr. Reichert, who also testified before the Tribunal.* This activity was concerned particularly with questions of political-commercial trade and specific trade questions. Besides I was concerned with the foreign trade control which was set up in the framework of the planned economy—1920 to the end of 1922—I was manager of all foreign trade offices, not only for iron and steel but also for chemicals, textiles, and all other things that belonged to it. In this position I was closely associated with the Ministry of Economics and the Ministry of Finance, and from this period my acquaintances and friendships included many of the leading officials of the Ministry.

* * * * *

Q. Would you please tell us how you joined Flick, and would you kindly indicate what sort of duties you had when you worked for Flick?

A. In connection with the stabilization crisis which I have already mentioned, the firm of Linke-Hofmann-Lauchhammer experienced certain financial difficulties, and this caused Mr. Flick to transfer his office activity into this concern so that during this period of crisis he could, as a delegate of the Aufsichtsrat as the law provides it, supervise transactions particularly. For this reason he then called me in 1925 to work for him. So that means from 1925 onward until the end of 1939 I was one of the closest collaborators of Mr. Flick.

* Jacob W. Reichert testified as a defense witness. His testimony is recorded in the mimeographed transcript, 27 and 28 August 1947, pages 6244-6312.

My special field of duties was the industrial interests of the concern. I accompanied Mr. Flick on many of his travels, and I was present at all important meetings as far as they were not concerned with conferences in a very small circle. The manner of working I put down in the affidavit which I submitted, which are things the Tribunal has received. I would like to summarize briefly, that I dealt with all questions which had any connection with the plants themselves. At that time, when I joined the firm, that means I was mainly connected with the Linke-Hofmann-Lauchhammer and the Siegerlaender-Werke of the Charlottenhuetten; afterward with the Mitteldeutsche Stahlwerke and Maxhuetten, and when we bought soft coal [Steinkohle] I became also the liaison man to the soft coal industries. The financial and tax questions, and commercial interests, the administration of those, was in the hands of Mr. Kaletsch. We were on the same basis. Perhaps I was *primus inter pares* insofar as the time was concerned, and in this respect the graph on the wall which has been produced by the prosecution, is not quite correct.* I never was superior to Mr. Kaletsch. In 1927, I then became a member of the Vorstand of Mittelstahl. This is the abbreviation for the Mitteldeutsche Stahlwerke, they call it Mittelstahl. In 1928 I became a member of the Vorstand of the Charlottenhuetten. In 1931 when the combined interests of the Mittelstahl and Maxhuetten were created, I also became a member of the Vorstand of Maxhuetten. In the course of time I also became a member of the Aufsichtsrat of the other enterprises, and when the Friedrich Flick Kommanditgesellschaft was founded, I also became Plenipotentiary General [Generalbevollmaechtigter] of this company.

* * * * *

Q. Why did you leave the Vorstaende [managing boards] in the spring of 1939?

A. Even in the previous years I had, several times, expressed the desire that we should separate. I felt that I wanted to be more independent. I wanted to travel and, prior to my fiftieth birthday, this decision became a definite one, and I decided that toward 1938 I should leave the Vorstaende, that is when the business year came to an end and the annual general meeting had taken place in 1939 I should be free. But I still intended to keep up a loose contact with the concern.

* * * * *

Q. When did you take up your negotiations about the assumption of the trusteeship of the Thyssen property? It was not really

* Reference is made to the chart "Supervisory Control of Flick Concern", reproduced above in section III A.

a trusteeship because we have learned that Mr. von Schroeder was the trustee and you, I believe, if I understood correctly, were the director of the administration of the property.

A. Yes. Fritz Thyssen left for abroad on 19 September 1939, and I myself was asked by Baron von Schroeder at the end of September or beginning of October to enter the trusteeship of the confiscated Thyssen property. The essential part of this Thyssen property consisted of 25 percent of the shares in the Vereinigte Stahlwerke, and the idea and the task that we had was to administer for Fritz Thyssen the influence which he had with these 25 percent of the shares. I thought about this for a long time and decided to agree to the suggestions after I had received three separate guarantees. The Thyssen property was transferred to the Prussian State, and there was a danger that now the Vereinigte Stahlwerke would, in the interest of the State or in the interest of Party politics, get this 25 percent of the shares. I was given assurance by Goering that this would not be done under any circumstances, and that the Stahlwerke would be managed according to the principles of private enterprise without any change.

The second worry that I had was that Pleiger, * that is to say, the Hermann Goering Works, would try to grab this 25 percent of the shares, and also this assurance was given to me that that would not be done, and they actually did not get into possession of the Hermann Goering Works.

The third prerequisite for me was to get unanimous agreement of the Vorstand of the Vereinigte Stahlwerke when I entered the administration. I received that unanimous agreement, but not until the beginning of December 1939 did I definitely promise that I would, during the course of 1940, take over the job. In order to clear up the question a little more, the property was consolidated in a mining company, August Thyssen Huette, which later got the name Gewerkschaft Preussen. The management of this enterprise was carried out by a board of mining officials. This board was composed of the Oberpraesident, the Regierungspraesident, Baron von Schroeder, and myself. I had, so to speak, the management in this matter, but I was supposed to take care exclusively of the interests of the plants of the Vereinigte Stahlwerke, whereas the financial and tax matters were to be taken care of by Baron von Schroeder and administered by him, too.

JUDGE RICHMAN: When you promised to take up this new work, had you already agreed or decided to leave Flick?

A. In April 1939, I had left the Vorstand and been transferred to the Aufsichtsrat. We had hoped that we might understand each other a little better now if we were to cooperate a little

* Paul Pleiger, defendant in the Ministries case, Volume XII-XIV, this series.

more loosely, but new differences arose for other reasons which caused me, especially after the war began, to take up a new task. I decided that actually at the beginning of December 1939; and I left Flick's concern on 16 December.

* * * * *

Q. Mr. Steinbrinck, I now come to the last two counts of the indictment. In the examination we discussed our economic connections with the various authorities before and after 1933. I would now like to discuss your political attitude, particularly your attitude toward the NSDAP, your membership in the SS, and of the Circle of Friends. Did you ever previously to 1933 belong to any political party? Did you have a political past, as I might call it, and what were your reasons for becoming a member of the NSDAP? Since these questions are of extreme importance I would ask you to give me a detailed account.

A. Your Honors, a concern of the importance of the Flick group cannot stay out of political events in the long run, although until about 1930, we took no notice of politics, particularly in view of the fact that we had close connections with the Vereinigte Stahlwerke and through the leading members of the Vereinigte Stahlwerke had a series of contacts with parliament and the press.

When the crisis of 1931-32 began, this picture changed. In connection with the problem of unemployment the difficulties among the parties of the Left, that is the Communists and the Socialists, increased and correspondingly the movement of the groups of the right were increased too. One has to consider that our plants were situated in the most radical territories of the Reich; that is, Saxony, where Riesa, Groeditz, and Lauchhammer were situated. This district had always been one of the most Socialist or rather, reddest parts of Germany, and the plants Brandenburg and Hennigsdorf, very close to Berlin, were almost on the same level as this red Saxony. That's why our plant managements in these plants Brandenburg and Hennigsdorf and also in the Lauchhammer group were rather worried because the same troubles which we had experienced 8 years previously might revive again. At that time—that means 8 years earlier—we had seen fairly severe fighting with the revolutionary red army in the Vogtland; and in Saxony, in Riesa, and in the other plants the memory was still fresh.

Consequently we carefully observed the formation of radical groups, as well as of independent groups and also the formation of opposed groups. Those were the Stahlhelm, later the SA and the SS, and also the more central groups, the Iron Front. All

of these movements we watched with interest from Berlin and from the plants. That was one reason for our first contact with politics.

As I just pointed out, up to that time whenever interesting political questions turned up, we had always been able to rely on the support of Baron von Richthofen in the parties of the center and in the parties of the right on Voegler, Hugenberg, and Dr. Reichert. All these were deputies [in the Reichstag].

There was one more reason. That was the press. Very early in the proceedings we had had contact with the newspapers of every political color, not in order to make active propaganda, but rather in order to defend ourselves and safeguard ourselves. We wanted to prevent the editors from writing unfriendly reports about our plants. At that time the press was not so cosmopolitan or organized as it is today, but at that time they still had their own ideas and their own methods which probably 50 years ago were perhaps also usual in America and other countries.

Our only desire was to be left in peace by the press and newspapers in order to carry on our work. That, however, was only possible if one had good connections with the leading papers, as for instance, the *Frankfurter Zeitung*, the *Berliner Tageblatt*, the *Vossische Zeitung*, and the provincial papers on the same lines. I myself regularly every 4 or 6 weeks, over a glass of beer or a cigar, met these editors and discussed matters with them. The point was that we should inform these people about what we were aiming at and what we were doing. It was, however, much more difficult to get a good relationship with all those radical newspapers which at the time we called "Revolverblaetter" ["Revolver newspapers" or "Yellow Sheets"]. I don't want to mention any names. I don't know whether any of these small papers have in the meanwhile been published again, but the editors of these small papers had even then a very close contact with the deputies of the extreme left wing to whom they gave information, and conversely from those people one could get information to the deputies. In this way via the press, contacts came about with members of the Reichstag, not only of the center parties but also of the left wing parties. It was a matter of course that these members of the Reichstag also expressed wishes of their own which we then as far as possible fell in with.

Q. What kind of wishes were these? Do you mean they were wishes of a financial manner, for financial support or what sort of wishes did they express?

A. Apart from mere technical information, they also had some more material wishes, because at that time we had a new elec-

tion every few months and the funds of every party were rather low. In any case through these press connections we often received requests from deputies who wanted to help their parties and get financial support. Very often we fell in with these requests. We gave them financial help for their funds, particularly the extreme left wing parties and papers. These wishes were usually satisfied, and in that way we were left in peace by them for some time.

Q. I have not heard from you what your personal attitude was toward politics. So far you have only commented on the business attitude toward politics.

A. I have already mentioned that I personally in 1923 changed my profession because otherwise I would have had to become a journalist or a politician if I had stayed with the Stahlwerke. Neither of these was what I wanted, and because of the same disinclination, I refused some positions which were offered to me and which otherwise would have been very suitable to me, for instance, Under Secretary in the Prussian Trade Ministry and Raw Materials Commissioner. My position remained a corresponding one, but it resulted from my activity that in this concern all political matters fell under the heading "Steinbrinck". This cannot be seen from the chart which we have here.

Q. How did it come to your contact with the NSDAP?

A. Here again there were two different ways. I have already mentioned that the Stahlhelm, the SA and the SS, as well as the Iron Front and the Red Front, increased in importance, and we were interested in finding out what they were really up to. We, therefore, had a special liaison officer who had contact with these organizations and gave us general information. These organizations in order to lighten their financial burden, had according to a familiar pattern started to write reports on industrial enterprises from a material point of view, and the results, which were usually far from factual, were sent to bank directors, industrialists, mayors, and so on.

To prevent this, in the course of 1931 I first met Count Hellendorf. He was Gruppenfuehrer of the SA in the district of Berlin, and at his instigation in 1932 for the first time and for the only time I took part in an open rally as a listener on the benches of the NSDAP. Otherwise I only took part in the official Party rallies. The other way in which we came into contact with the Party was through the press. Together with the firm Otto Wolff in Duesseldorf we had set up a press bureau in order to get our interests safeguarded through this press bureau. In other words, this was to prevent our being attacked politically. Of course, this was quite well-known in press circles, and in this

way I first made contact with Robert Ley¹ and Count Reischach, who were the press representatives for the Party. Funk who later became Reich Minister of Economics was at that time a Commercial editor at the *Berliner Boersenzeitung*, and I had known him for some time, perhaps since 1927 or 1928. He at that time mediated in this conversation which has already been mentioned between Mr. Flick and Hitler in February 1932. That was a rather one-sided conversation which rather disappointed both sides. That was the introduction and the first step in my contact with the Party.

Q. What was the purpose of this contact with the Party? Did you mean to gain political influence, or did you want to gain influence on the measures taken by the Party, or did you want to inform yourself whither the wind in the Party was blowing?

A. At this stage all three points were of no interest to us. The purpose of this contact was exclusively defensive. At that time—that means at the beginning of 1932—we were rather in the limelight of general interest,² and we were also open to criticism and, therefore, we had only the one desire, which is probably quite understandable, and that was the help of our press connections to ward off any political attacks on us. The desire to be informed of what the Party was aiming at, that only came later because of other contacts which we had with Kranefuss and Keppler.

Q. Were they similar considerations which decided you to become a member of the Party?

A. I became a member of the Party in April 1933, but I had met Keppler and Kranefuss already as early as the summer of 1932. I met Himmler through Count Helldorf. That was in the late fall of 1932. I met Himmler again several times before 30 January 1933 in the office of Kranefuss, since even then Kranefuss had a close connection with Himmler. I may add here that at the time Keppler called himself the economic adviser to the Fuehrer and I think at that time already managed the Central Office of the NSDAP for questions of economic policy. That means he was the source of information when one wanted to know where the way was leading and whither the wind was blowing.

¹ Reich Organization Leader of the Nazi Party and Chief of the German Labor Front. Ley committed suicide after the indictment in the IMT case, which named him as a defendant, was served upon him.

² Steinbrinck refers to the "Gelsenkirchen" transaction. Flick's Gelsenkirchen Mining Company in 1932 owned the majority stock participation in the Vereinigte Stahlwerke. The German Government purchased these shares from Gelsenkirchen on 31 May-1 June 1932. See the extract from the Reich Budget for 1932, Document NI-7589, Prosecution Exhibit 769, reproduced above in section IV B; defendant Burkart's letter to Gillitzer, 17 September 1940, Document NI-5432, Prosecution Exhibit 28, reproduced in C above; and Steinbrinck's affidavit, Document NI-3508, Prosecution Exhibit 770, reproduced in B above.

Q. Now in December of 1938 you wrote a letter to General-direktor Raabe. This man had asked you what steps he should take with regard to his desire for holding office in an SS Standarte or something of the sort. In this letter you said that you had met Himmler in 1931 and that you had made an agreement with him with regard to support. Would you please explain this?

A. Unless this is a typing error in the document—the error would be 1931. This really should read 1932.

Q. Have you got this document, Mr. Steinbrinck?

A. Yes, I have got it.

Q. Would you then please tell the Tribunal the Exhibit number?

A. It's Document NI-3454, Prosecution Exhibit 694¹ on page 86 of the German document book. It's 14-A. I have already said if this isn't a typing error it must be a mistake of my own, because this letter was written by me, by hand, on 28 December 1938. I was at that time in the Tyrol, where I was on a holiday, so I had no documents to fall back on. It is correct that this agreement was made in 1932; this agreement with Himmler. Now, as toward the end of 1932 at the instigation of Kranefuss and Wolff, who at the time was adjutant to Himmler, he suggested that we should refuse all demands from local SS offices—refuse to give them support of any kind, and that we should, in order to be able to refuse such demands, make all payments to the SS management in Berlin. That meant all donations were to be paid to this central office. He mentioned at the time that Hitler had approved of such a settlement and Mr. Wolff mentioned in an affidavit which has also been submitted here,² that such a central payment was the aim of the SS in order to prevent corruption. For us this settlement had the effect of getting from Himmler some information with respect to what was going on, and we also knew what happened to the money we paid.

Q. In this letter you advised Mr. Raabe to pay RM 5,000. Don't you think that was quite a large sum at that time?

A. If that had been 1932 I would have said "yes". In 1938, however, that wasn't such a large sum, because one would have to consider that a Standarte consists of a thousand men and that in this case these people were young men who had only just arrived from the Bohemian-Moravian border districts which had been incorporated into Germany. Up to that time they had been unemployed and were rather in need. The third point was that we, the Maxhuetten—it must be remembered—were the

¹ Reproduced in C above.

² Document Flick 69, Flick Defense Exhibit 68, not reproduced herein.

largest Bavarian plant, I think, and in consideration of all these circumstances RM 5,000 cannot be considered a very large sum; but in order to prevent a wrong impression being obtained with respect to our generosity in these payments I give two small examples which happened during this collection of donations: It once happened in the late fall of 1932 in the Mont Cenis mine we had an accident, a pit accident in which a number of people lost their lives. Herr Paul Pleiger, who even at that time played a considerable part in the neighborhood of Bochum with the people, wanted that his particular friend Herr Kuhlmann, a mining engineer from Mont Cenis, should become the director of this mining enterprise on this occasion. So he attacked the pit as well as myself and charged us with responsibility for the accident. The manager of the pit told me when I happened to be there—at that time I was there every 2 or 3 weeks—that a former schoolmate of mine, Mr. Sattler, was employed in Mont Cenis and was the leader of the [SS] Standarte which was stationed there. He also said that Mr. Karl Sattler would probably be the only one who had some influence on Pleiger. In order to make peace with Pleiger and to prevent Kuhlmann from becoming director of the mining pits at Pleiger's wish, we agreed rather quickly with Herr Sattler to pay them. I don't quite remember whether it was RM 800 or RM 1,000. That was to go to the Standarte.

Another example—in July 1932 Count Helldorf called on me together with Count von Arnim. He was a Knight of the Pour le Mérite. They were the leading personalities of the SA group Berlin. These men said they needed money because after the election which was to take place in July 1932, they were going to have a torchlight procession for Hindenburg. For this purpose they wanted to buy shoes for the SA men. When we discussed the matter, they had arrived in a beautiful white car and I told them that that was a suitable car for a film star but not for poor SA officials. So I didn't give them anything, but later they came back in a little Opel car and I gave them a thousand marks. At any rate they were satisfied to have a thousand marks, so you can judge the donations which were paid at the time. They were just in the neighborhood of a thousand marks to the SA, SS, press funds, and to others, but there were no higher amounts.

* * * * *

Q. The prosecution asserts that you had been a very good acquaintance of Himmler's. I would ask you, therefore, did you have close personal relationship with Himmler?

A. I think I can state that very definitely. I met Himmler, as I have already mentioned, in 1932. During the course of 1932 and 1933 I met him repeatedly, either with Kranefuss or Keppler, and occasionally in the headquarters of Roehm, the chief of staff of the SA. As can be seen from the submitted documents, Himmler called me into the SS in July with the honorary rank of Standartenfuehrer. In all, I had invited Himmler twice to my house, once in the fall of 1933—as far as I remember it could also have been the beginning of 1934—then he came along with Admiral Patzig who at that time was chief of the Navy Intelligence Department.* Previously Himmler had been a member of this group, "Deutsche Kriegsflagge" [German War Flag] and he had expressed the desire to meet with Patzig and other naval officers. The second time Himmler was a guest in my house, I think was in the second half of 1934—and he came at that time in the company of Schacht and Keppler, and Kranefuss was also there—for the express purpose of settling the difference which existed among those three. I was in Himmler's house in Munich only once. That was the beginning of 1934, but it may also have been the end of 1933. In order to return this hospitality I asked Himmler and his wife and also his adjutant Heydrich and Heydrich's wife to have dinner with me at a Munich hotel. Apart from that in a semiofficial capacity, I went to see him twice at his private estate on the Tegernsee, but since 1934 I had been to see him, Himmler, neither at his Berlin office nor in his private home, which was only a few steps from my own. I would like to be perfectly correct here. I had leased the house in Hagenstrasse to him at that time, so I might have been in the same house as he but not as a guest. I remember those meetings with Heydrich and Himmler because at this dinner we all had together in Munich, Heydrich asked Himmler to become godfather to his eldest son. That was roughly about Easter or Whitsun 1934. That is proof that at that time the anticlerical attitude was not very extreme among even the highest SS leaders, if such a fanatic as Heydrich was going to have his son baptized.

Q. What was Heydrich's position at that time, and what was your personal relationship to him?

A. As far as I remember, Heydrich at that time was the so-called chief of staff of the SS, but he may also have been one of the first adjutants. Heydrich had been a naval officer, but in 1928, as far as I know, he had left the navy and had nurtured a certain hatred—I would call it—for anything that had any connection with the Imperial or War Navy. I had met him only

* Patzig executed an affidavit on behalf of Steinbrinck, Document Steinbrinck 339, Steinbrinck Defense Exhibit 90, reproduced in E above.

during 2 days—I shall mention this case again—that was in 1934, September 1934, at the funeral ceremonies for Field Marshal Hindenburg. I accompanied the Hindenburg family. Heydrich and myself never got on very well with each other. I remember at the twentieth commemoration of the Battle of the Skagerak in Kiel, that on this occasion he reproached me that at that time—that was in 1936—I came there in the uniform of a naval officer and not that of an SS officer. He characterized me at that time, saying that I was “too much of a naval officer and not enough of an SS man.” I let him know at that time that I had been brought up as a soldier and I hoped to maintain my attitude as an officer until my death. That was my attitude and I thought that it was a higher one than that of an SS man. Heydrich never forgave me for that, and from that day onward I had even less contact with him.

Q. Did you later than 1934—that means after the funeral ceremonies for Hindenburg—have any private contact with Himmler? By private contact I mean, were you invited as a guest to his house? Or did you at any rate have any long private conversations with him?

A. I have already mentioned that as far as I remember I had two lengthy conversations with Himmler. These were also in his house. In both cases they were significant for me, and even today they have the same significance for me in judging Himmler, and they also indicate the way I considered Himmler all the time.

Q. What were the reasons for these conversations?

A. At the first occasion the subject was Pastor Niemoeller.* He was the well-known leader of the Evangelical Church. I had been a friend of Niemoeller since our childhood. We had grown up in the same town and his father baptized me. We had been naval officers together. We had been U-boat captains. We had been close friends. And when he went to Dahlem, near Berlin, in 1929 our old friendship and our friendly relations started up again. Niemoeller confirmed my two oldest children, and he baptized my youngest son. At the end of 1935—it could also have been 1936—I don't quite remember, but I suppose we can find out from the documents, Your Honors, just in order not to give you a wrong date. Anyway at that time, by merest chance, I was at Niemoeller's house when he was called outside in order to be arrested, that is, by the Gestapo. I exchanged a few words with the Gestapo man. He had a written order, so I went directly to Goering, whom I found at the driving and riding tournament.

* Niemoeller executed an affidavit on behalf of Steinbrinck, Document Steinbrinck 875, Steinbrinck Defense Exhibit 93, reproduced immediately preceding this testimony.

That was a large annual event. And 1 day later I had succeeded in getting Niemoeller released. But in spite of all this, some time later the trial against Niemoeller started. Naturally I put myself at the disposition of his lawyer as a witness. Despite the fact that Niemoeller was acquitted at that trial he was put into protective custody later on, and I went to Himmler who, at that time was on his estate at the Tegernsee. I argued for hours with Himmler about this Niemoeller case. I don't want to give a wrong impression here, Your Honors. I am not much of a churchgoer and I didn't take an active part in any church activities. I was not a member of the Dahlem community council, but at the time I had often discussed with prominent members of our community the Niemoeller case, particularly with General Fritsch, who was at that time Supreme Commander of the German Army. I also discussed the matter with the well-known pilot, Brandenburg, as well as with Reich Minister Schwerin von Krosigk. All of them at that time were members of the community and were close friends of Niemoeller. Repeatedly we discussed in detail the problems of church and state, army, and the education of youth. Now, when I went to see Himmler at Tegernsee I had a long conversation with him with regard to the Evangelical and Catholic churches. I told him: "You judge the workers wrongly. You think because you are an NSDAP [member] you can know the soul of the worker. But you do not know our miners from the Ruhr, and you do not know our Westphalian peasants. They are neither Communists nor National Socialists. They are fundamentally good Christians who listen to their preachers, and also they are people who are interested in their pay envelopes. They are not even trade unionists, not at least by conviction, but these have their faith, their creed, and they want to have their family life. Those are the foundations of their well-being. These peasants and these miners of the Ruhr, they will not allow their creed to be taken from them as it was done in Russia, because you have nothing to substitute for this faith."

* * * * *

Himmler was rather impressed by this long conversation, and he promised me that he would report the matter to the Fuehrer and he would try again to get Niemoeller released. Three or four, but even perhaps six weeks later, he called me over the telephone and told me that the Fuehrer had refused to set Niemoeller free, adding that the Fuehrer had refused this because no single Communist had insulted and injured Hitler to the extent that Niemoeller had done. I think my testimony with regard to Niemoeller has been proved by Niemoeller himself, at least as far as he knows these facts; the rest of it he can judge for himself.

Q. You have already told the Tribunal that you, as an SS Standartenfuehrer had been accepted in the Party. Did you continue to be a member of the Church or did you follow this general order to SS officials, to leave the Church?

A. No, I remained a member of the Church, and Himmler knew that quite well. Also, I personally do not remember that any pressure had been exerted upon me to leave the Church. I think the issue would have been quite clear to me.

Q. Would you please now describe to the Tribunal the other case because of which you had a personal discussion with Himmler?

A. The second occasion also throws a peculiar light on that Himmler as we came to know him later. I think I can mention this after Mr. Lindemann, when he was interrogated, mentioned the case here himself.¹ The following was the matter: Between the two chairmen of the Aufsichtsraete of Hapag and Lloyd—Hapag was Mr. Helfferich, and Lloyd was Mr. Lindemann—who previously had been close friends, a personal and rather serious conflict had come about, that may have been towards 1936 or 1937. This conflict did not only lead to a rather bitter enmity between those two people, but also had a serious consequence as far as the two companies were concerned, the two largest ship-owning companies of Germany.

Lindemann was reproached for having executed some deals which were not strictly honorable and for having exploited some connections between Hapag and Lloyd. These are activities to which I will refer again later. These he was said to have exploited for the advantage of his own firm, Melchers. Helfferich, on the other hand, who had lived in Java for 20 years, was charged with his preference for colored women. Hapag and Lloyd at that time had terminated their union of interest. The American shipping trade was brought into a special company and the routes to other countries were distributed. The Norddeutsche Lloyd, however, had concentrated mainly on East Asia in which the firm Melchers played a big role, while the Hapag had concentrated on South and Central America. In order to settle this very serious conflict which raged between the two men, and both these men were members of the Small Circle—

Q. I am afraid there is a slight misinterpretation. This was not the Small Circle² but it was the Circle of Friends of Himmler, that is, the Circle of Friends around Himmler, not the Small Circle.

¹ Extracts from the testimony of prosecution witness Lindemann are reproduced in D 4 above.

² This refers to the so-called Small Circle [Kleine Kreis], a small group of prominent Ruhr industrialists.

A. These two men who were members of the Circle of Friends—well, Himmler had asked me to constitute a sort of court of honor. That means he had entrusted me with clarifying the two charges and that he was to decide who was right. It took me months of hard work to clarify these problems objectively.

* * * * *

I have often asked myself what interest could Himmler have had to spend so much time and energy and work on a case and to settle such a problem, and the reason could not really have been anything but a feeling of comradeship and a personal friendship to these two men and the will to help. Both these gentlemen were 25 or 30 years older than he himself was, and he displayed so much tact and so much persuasion, and he was so impersonal in his judgment that neither of these two could feel injured when they finally were instructed and brought together again by him, a man who was so much younger than they themselves. I have explained this in so much detail because it might help you to understand that after those two experiences, in the course of which I was in close contact with Himmler for some length of time, I had come to see him in a different light. I also had to judge him and consider him as possessing really a warm heart and personal feeling of comradeship. So even today I cannot really understand that he should have been the devil and the destroyer of human beings as the documents have proved him to be.

If I may just add, even his close collaborators, for instance, Kranefuss or a man like Wolff or Heissmeier—they were all soft human natures. Heydrich was a completely different type. He was a fanatic. But among Himmler's closest staff, not even the very complicated and almost hysterical Kranefuss—none of them were such ruthless and robust personalities as, for instance, Sauckel or Mutschmann were, or Koch or any of the other well-known politicians. That is still a mystery to me. I still cannot understand it.

* * * * *

Q. Will you now give some details to the Tribunal and as much detail as you can. When did you join the Circle of Friends, and how did you come to join the Circle of Friends?

A. In the summer, 1932. At that time Keppler and Kranefuss approached me, that is, they approached Voegler and Flick with the suggestion to take part in the consideration or in the clarification of the economic problems and of the economic-political line to be followed by the NSDAP. The suggestion originated with Schacht. Dr. Schacht cannot recall the matter, but

I remember it very well, because at that time Dr. Voegler had his office right above the office of Mr. Flick, and he sent these two men, Kranefuss and Keppler, one flight down right to my office. Then before the seizure of power, that is before 30 January 1933, as far as I know, I had two conversations in this Circle. At that time, as far as I remember, it was called the Schacht Circle. But it is possible that even at that time it was already called the Keppler Circle. But I remember it as the Schacht Circle. The one conference at Munich which took place about July 1932, and the other conference which took place in winter 1932, were attended by Keppler, Kranefuss, and apart from them, President Withoff of Hamburg, a very well-known export merchant; Mr. Krogmann from Hamburg; also State Counselor Reinhardt from Berlin; and another collaborator of Keppler's—his name was Pleichinger. I don't recall any other names. At that time it was only a matter of general problems, and I think it is significant for the mentality of that Circle, that they had given me a task—at least they had a task which was intended for me, and they told me: "Mr. Steinbrinck, you are to make suggestions in order to prevent the establishment of concerns [Verhinderung der Konzernbildung], and to prevent the share trade on the stock exchange [Verhuetung des Aktienhandels and der Boerse]." At that time I told the men "there you make the thief the warden of the prison. All that is only fantasy, and I hope that very soon we can demonstrate a few transactions to you which even the strongest opponent of concern politics [Konzernpolitik] must approve in the interest of the economy of the people, and must consider it as sound policy." And I remember the talk in the winter of 1932. There it was a question of creating employment, and the then director of the Kommerzbank, State Counselor Reinhardt, whom we have mentioned a few times this morning, criticized the suggestions for the creation of employment to such a strong extent that he even said in respect to Hitler's suggestion: You might just as well tear out the cobblestones of the Leipziger Platz—a big square in Berlin—during 8 days, and a pyramid could be built, and during the next 8 days you could tear down the pyramid and get the square into shape again. That is my recollection of those two conferences. In other words, nothing else but talk—palaver—a mere superficial conversation, nothing but chit-chat. At the conference with Hitler in May—I didn't attend that conference—I hadn't been called in.

Q. Now from the seizure of power on, you had permanent contact with Keppler and also with Kranefuss. What were the reasons and what were the intentions that made you do so?

A. That is correct. I had taken up the contact with Keppler and Kranefuss, and I also maintained this contact during this whole period of time. For me it was decisive in this connection, and for the reason that I had the wish to protect myself in that manner, and also to find out whither the wind is blowing and what are the aims of these gentlemen, because the only economic-political information agency existing within the Party were the Keppler offices. And in 1932, at the end of 1932 and the beginning of 1933, we were faced with a few very important transactions—the sale of the majority interest in the Rheinische Braunkohle and the exchange for the Harpen shares, the concentration on the Vereinigte Stahlwerke, and the remaining solution of the Vereinigte Stahlwerke. All these transactions seemed only possible to me if we could make sure that on the part of the economic-political Party agency, Keppler, who at the same time was the economic adviser to the Fuehrer, would make no difficulties.

Q. Were you invited to the Party rallies?

A. For the first time I was invited in 1933, but I only stayed at Nuernberg for a few hours. Because of a death I was called back immediately. Then I was invited regularly every year from 1934 onward, and I attended Party rallies in 1934 to 1938, and generally I stayed there for 3 or 4 days.

Q. Who sent you the invitation, or who forwarded it to you?

A. If I remember well, they were forwarded to me by Kranefuss and Keppler. The invitation was sent, as far as I know, for the first time by Hitler, who was Fuehrer and Reich Chancellor. And I think once it said also “the Fuehrer’s deputy invites you.”

Q. During these Party rallies, did SS leaders at the very beginning take a part in attending to the Party rally?

A. Well, SS leaders—rather members of the SS, I should say, because I think the only SS leader at that time was Kranefuss and the SS members of his office staff. They were attached to us in order to get us through the crowds, in order to reserve seats in the buses, and in order to secure the seats which were reserved for us. Only later higher SS Leaders joined the group—I am now speaking of the Party rallies, Your Honors—one or the other was in the company of Himmler when he came. As far as I remember, Himmler attended for the first time in 1935 or 1936. It might have been 1934 too, but I couldn’t tell you that with certainty. And then he regularly, I think on Thursdays, that is, on one day of the Party rally week, invited all the members of this Circle—and not only members of the Circle of Friends; there were also flight officers in their blue uniforms, and other prominent guests—he invited us to have dinner there in the Grand Hotel, and on one other evening we were regularly

guests together with many thousand others in the big bivouac—encampment—and at the dinner which took place in the SS encampment every year.

Q. Will you please tell the Tribunal at what time, according to your recollection, the so-called Keppler Circle turned into the Circle of Friends of the Reich Leader, and especially from what time onward its structure was changed by the fact that higher SS leaders played a larger part in the Circle?

A. Well, I couldn't give you an exact date. I think that that must have taken place about 1935-36. Many had assumed at that time that Keppler would become Minister of Economics. He did not become Minister of Economics. Schacht became Minister of Economics instead, and I think as early as 1936 Keppler had resigned from the Office for Raw Materials within the scope of the Four Year Plan, and this had passed on to the then Lieutenant Colonel or Major Loeb.

Kranefuss, as far as I know, had collaborated with Keppler for several years before 1933—I even think that for a short time Kranefuss had worked in the same factory as Keppler, but I am not quite sure about that. Well, Kranefuss at that time already promoted the approach to Himmler. In other words, the more Keppler's star faded or, if I should term it better, the more his importance in the economy decreased, the more I believe, his ambitious collaborator, Kranefuss, attempted to use this platform, which had been formed by acquaintances of Keppler, to maintain it, and extend it by leaning on Himmler.

I know that at that time Kranefuss had the idea, allegedly on Himmler's initiative, that Himmler wanted to form an intellectual circle, and not only with persons from industry, but also from literature, science, and art.

At some occasions I met the singer, Klewing; then also the publisher Hanfstengl from Munich, Professor Wuest, Professor Jung, the publisher of the then very stirring book in Germany, "The Domination of the Inferior Races." But why Kranefuss or Himmler—

INTERPRETER TREIDELL: It is drawn to my attention that it was not, "The Domination of the Inferior Races" but, "The Domination of the Inferior" [Die Herrschaft der Minderwertigen] only.

DR. DIX: Your Honor, in order to prevent an error, the title is, "The Domination of the Inferior" and not of "the Inferior Races" as it was translated. It had nothing to do with races, Your Honor. It's only the inferior being. The poor Edgar Jung would turn over in his grave if he was considered a fanatic on the racial question, because he became a victim of the famous 30 June 1934

[purge], and he was the author of the famous Papen opposition speech which was instrumental in creating the events of that time.

DEFENDANT STEINBRINCK: As far as I know, Kranefuss wanted to collect such a circle of businessmen around him in order to see that ethics and decency were practiced in the economy. But why he made a secret of these tendencies, which were quite understandable, and why he didn't publish them, and why, on the contrary, he prohibited any discussion of the matter, why that, I don't know even today. I only know that Kranefuss met with considerable difficulties in the [Prussian] State Ministry, perhaps in connection with these plans. Therefore, I am not convinced either that Himmler was the moving spirit of these ideas. It's possible that Kranefuss was the man. Keppler, in these questions, plays only second fiddle. Toward the outside he was always stressed as the main leader; but the moving spirit, [*spiritus rector*] was Kranefuss.

Q. Now, the other question I put to you has to be answered yet; namely, what was the purpose of drawing active leaders of the SS into this Circle of Friends? Will you tell the Tribunal, first of all, from what moment onward they were drawn into the Circle and what, in your opinion, was the purpose of drawing them in?

A. During the first period Himmler sent a few members of his staff in order to represent him if he couldn't come himself, or he took some of his adjutants along when he came. That was after all, something quite likely to happen because he was the host, and as far as I remember, the circle of higher SS leaders, that is, active SS leaders, only increased about 1939, maybe 1938, but I think 1939, and then during the war. The reasons are not quite clear to me. On one occasion I heard, and it was hinted by Kranefuss himself, that he was charged—he, Kranefuss—was charged with dealing too much with economic questions and having too much to do with economic circles. In the meantime he had become a member of the Vorstand of the Brabag, and he was charged by some agencies that he was entering into too strong bonds with the economy and was unfaithful to certain ideals of the SS.

The SS leaders at all times had quite a peculiar conception of what business was. They never understood us, the business men, and they never appreciated us either. That can also be seen, I think, from the testimony given by SS Brigadier General Ohlendorf,* but the most striking and the most significant seems to be the testimony of the former chief adjutant of Himmler, Karl

* Affidavit of Otto Ohlendorf, Document NI-3510, Prosecution Exhibit 715, reproduced in D 8 above.

Wolff,¹ which, insofar as the members of the Circle of Friends who came from the economy were concerned, characterized them as follows: These are people who considered the interest of Germany and were decent and honorable insofar as a business man, a man who deals with money, can be honorable in the meaning of the SS conception.

If that was the conception of large circles in the SS, then I can understand what I have been told; namely, that Kranefuss made a lot of enemies and that in order to protect himself, if I may term it that way, and in order to show that he had no bonds with the economy, he created a larger and larger circle of SS leaders within the Circle of Friends. Whether the watching and the supervision of the members of the Circle of Friends by the SS members was intended, that might be possible, but I hardly think so.

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Q. Now will you please report to the Tribunal on the question of how the contributions of the Circle of Friends came about? With whom did the initiative originate?

A. Only here did I learn—

Q. Please tell us only what you know from your own knowledge. Please don't be guided in your description by what other witnesses have told you here.

A. As far as I am concerned, the contribution started as follows: Kranefuss and Wolff, in the course of 1936, approached me and approached also Baron von Schroeder, and they requested me to start a collection within the Circle of Friends in order to place means at the disposal of Himmler for cultural tasks, for the fulfillment of which he had no state funds at his disposal. Now this first letter of solicitation has been signed by Schroeder and myself,² and it might also contain something else concerning the amount or the purpose of the collection. I don't know that any longer, but I think the letter should be here because all the documents of Baron von Schroeder and all his correspondence concerning the contributions have been found. Later I was informed—I think a few weeks, but it might have been also years later—that the purpose of this collection was to restore the Wewelsburg and to build pottery and weaving training camps. Later on the Tibet expedition was referred to, also excavations, research work, and so on and so forth. Himmler's special hobby had always been old Germanic wood carvings, pottery, and weaving work.

¹ Reference is made to an affidavit of Karl Wolff, Document Flick 69, Flick Defense Exhibit 68, not reproduced herein. Wolff did testify as a prosecution rebuttal witness concerning the statements of defense affiant Kersten (see E 2 above), but this was not until long after Steinbrinck's testimony was completed. Wolff's testimony is not reproduced herein.

² Document NI-10108, Prosecution Exhibit 788, reproduced in C above.

I think not far from here, in Glasbach-Wallen, there is a big restaurant in the old Germanic style which is called "The Star", [Der Stern]. I think that is the one he started. He built this restaurant, and I think that is about the first construction he paid for from the contributions of the Circle of Friends.

Q. Mr. Steinbrinck, the witness von Schroeder told the Tribunal that the first request to pay contributions had been made public during a lecture or during a short speech which Himmler had made personally to the members of the Circle of Friends. Did you attend this speech?

A. This speech is supposed to have been made after a visit in Dachau or Quedlinburg. I did not attend either of the inspections or the meetings and, therefore, this introduction to the collections and contributions was unknown to me and only became known to me here.

Q. Now you have testified that together with Baron von Schroeder you had requested the other members in writing to pay contributions. Who was the originator of this written request?

A. The first request, as far as I remember, was made by Wolff and Kranefuss, and then as far as I remember, the matter was as follows: Every year at some time, mostly toward the end of the year, I think, Kranefuss approached Baron von Schroeder and said, "Now it is about time again, isn't it?" But I can't give you any details about it, because I did not see and I did not sign the subsequent letters soliciting for the collection. Baron von Schroeder took over the office of treasurer-trustee.

Q. Did you at any time receive an informative account about the use of the money?

A. No. I only recall that on several occasions we told Wolff and Kranefuss this whole matter of collections and contributions was not too pleasant for us because it was degrading us rather to a sort of financing club, and I personally didn't like that too much; but as to how the money was used, I personally never saw and I personally never asked either.

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Q. If, from the funds of the Gewerkschaft Preussen which you administered, you paid contributions [to the SS],* then normally you paid these contributions from funds of the State because you have already explained to us a few days ago that the Gewerkschaft Preussen had been transferred to the ownership of the Prussian State and that thereby this became public property. Now, these payments which you made and of which you have just told the

* See affidavit of Nachtsheim, Document Steinbrinck 337, Steinbrinck Defense Exhibit 87, reproduced in E 3 above.

Tribunal, did you make them in agreement with the supervising authority; in other words, with the Prussian Ministry of Finance?

A. Yes. That's correct. The Gewerkschaft Preussen belonged to the Prussian State. However, it was separated from the other holdings of the Prussian State and it was administered separately. The final supervision was carried out by the Prussian Ministry of Finance and the Prussian Minister of Finance, Popitz. Within the Gewerkschaft Preussen there was a fund for special cultural, social, and welfare purposes. It was about 250,000 marks a year. That is an old donation which before was known as a foundation under the name of "Thyssen Dank." About 100,000 marks of this account were paid to the Thyssen family for welfare purposes. The remaining 150,000 marks approximately, were at the disposal of the Prussian State, and in agreement with the Prussian Ministry of Finance they were distributed. The yearly account of the Gewerkschaft Preussen and of this Thyssen Dank G.m.b.H. was audited every year by the German Auditing and Trustee Company with much care, and all the documents in support, with all detailed items of expenses, were then submitted to the Prussian Ministry of Finance, and I personally sent the Prussian Minister of Finance yearly accounts with all the details and reported to him verbally. Regularly also, among other times, I reported the payments we made to the Circle of Friends, or rather to Himmler, and these minor contributions too, I mean these amounts of a thousand marks or so.

It is true that Minister Popitz was not particularly a friend of Himmler's, but at the same time he was acting on behalf of Prussia for the maintenance of the cultural memorials. As far as I know, we had no special minister for cultural affairs in Prussia, and the care for the cultural memorials was the task of Popitz. Popitz had an understanding of Himmler's tasks and for the use which was to be made of the contributions, and he approved them regularly.

In 1943, apart from that, the whole account and every single contribution was checked by the highest German, or rather Prussian, auditing agency, the Oberrechnungskammer; and this agency didn't make any objections either. To repeat, in fact, it's a matter of payments by the Prussian State, in full agreement with the highest financial authority, paid to the Circle of Friends or to Himmler—not to the Circle of Friends, that wouldn't be correct, but to Himmler for these cultural tasks.

Q. Mr. Steinbrinck, will you turn to document book 14-A please, and look at Document EC-454, Prosecution Exhibit 681.* This is a letter which Baron von Schroeder sent to Himmler on 27

* Reproduced in C above.

August 1943. In a general way, that is a letter of congratulations upon Himmler's appointment as Reich Minister of the Interior, and then it reads:

"I am pleased to inform you at this opportunity that your Circle of Friends has again placed at your disposal this year a sum slightly in excess of 1,000,000 Reichsmarks, for your special purposes."

Did you know this letter before it was sent to Himmler, or did you receive information concerning the letter once it was mailed?

A. I only saw it here for the first time. Therefore, I would like to say in order to avoid a misunderstanding, it's not as you said, a general letter of congratulations. It's a personal letter of congratulations; it's Schroeder who presents his congratulations.

Q. Quite correct. Quite correct.

A. There was certainly no commission given to Schroeder by the Circle of Friends for this purpose. I had no knowledge of the letter before, and I don't remember either that once the letter was sent Schroeder informed us about it. I think that Schroeder on his own initiative wrote to Himmler and as he said himself, as at the same time the payments had accumulated on his account, he used the occasion of the appointment of Himmler to be Minister of the Interior as a purely personal matter to congratulate him and to tell him, "Here's another million." I would like to confirm also as far as I am concerned that this does not involve any additional payment. I think it's the general yearly contribution for the year 1943.

Q. All right. Now, did you ever receive knowledge of the total amount of the contributions which were paid during a current year?

A. Well, I couldn't say yes or no with certainty at all. I think it's possible that Schroeder or Kranefuss at any time should have said "It's about a million", but I don't know. I can only tell you that the large firms like Siemens, Wintershall, Mittelstahl, Vereinigte Stahlwerke, and I think later on also the I.G. Farben, that we at some time discussed the matter of what we should pay, and we came to the conclusion that we should pay about 100,000 marks. If I now think of the first contributions for the Winter Welfare Fund, we also asked—what is expected, how much are we to pay—well, there also we asked large corporations with which we had personal contact, "What do you think we should pay?" Insofar as I could get an approximate picture I could imagine that between 600,000 to 700,000 or a million marks were contributed every year, but an official notification concerning the amounts which were paid into the account did not take

place. I personally, perhaps, gained some information on the strength of my connections with Schroeder during the war and my connections with Kranefuss, but I cannot swear to it.

Q. Now as can be seen from Document NI-3809, Prosecution Exhibit 683,* which has been submitted here, the Vereinigte Stahlwerke during the years 1941 to 1944 made contributions, too. Could you tell us to what these contributions amounted?

A. Well, I think you can see that from the same document. That is Exhibit 683.

Q. Yes. That is the list of contributions.

A. Oh, I see, the list of contributions. Now you can see from this list of contributions that the Vereinigte Stahlwerke contributed 70,000 marks in 1941 and that in 1942, 1943, and 1944 they contributed 100,000 marks each year. I see that from the lists of contributions which had been drawn up by Schroeder and were sent to Himmler.

Q. Did you initiate this payment?

A. Well, if by initiate you mean give the orders, then I have to say clearly "No" because I had no right to issue orders for the Vereinigte Stahlwerke. Only the Vorstand, or rather Dr. Voegler, had the right to issue orders. The payments were initiated by Dr. Voegler, the chairman of the Aufsichtsrat, and he also issued the order for the payments. Voegler wanted the general manager, Dr. Rohland, to be received in the Circle of Friends, and I think that was one of the reasons why he gave orders that these current payments were to be made. I don't know it, but I suppose that he regularly discussed the matter with me and told me that he would issue orders to that effect.

* * * * *

Q. Mr. Steinbrinck, will you please explain to the Tribunal how often you participated in the gatherings of the Circle of Friends?

A. Well, without having any support for my memory—I mean, without the support given me by Document NI-8106, Prosecution Exhibit 722 * I could not answer the question. The only way for me to give you an exact answer would be to take only the years 1943 and 1944 because there I still have my notebook and can look it up. In 1943 I attended three times. The dates were 14 April, 8 September, and 13 October; and in 1944 I also attended three times, namely, on 8 March, on 12 July, and for the last time on 9 August. In the year preceding these 2 years, I could not give you the exact information, but as from May 1942 or, I want to correct that, rather from June 1940, I worked in the occupied territories of the west and as I had quite a lot of work during

* Reproduced in C above.

the first years, I should assume that in the years 1940-42 I attended no more than three or at the most four times a year, because I had so much work that it was possible only occasionally to go and participate in a meeting on the second Wednesday in the month, but I couldn't do it regularly. Now, if it is a fact that Kranefuss does not list me on his blacklist, then I think I can find you an explanation for that, too, because I was a soldier from 1 June 1940 until the end of 1943. Kranefuss knew that perfectly well, and his office in Berlin and the office of the Vereinigte Stahlwerke in Berlin were close together. I was a member of the Aufsichtsrat of the Brabag, and Kranefuss was an important member of the Vorstand, and therefore my office reported to Kranefuss' office when I would come to Berlin. Then I would make an appointment if there was time enough for that. During these years usually I went to Berlin twice a month, but it was very rarely I would stay more than 2 days. Kranefuss knew that perfectly well and I should assume that he considered that sufficient excuse in order not to put me on the blacklist, but that's only an assumption, Your Honor.

* * * * *

Q. Did you participate in the visit at Himmler's field headquarters at Hochwald?

A. Yes, I participated in that visit. In order to avoid a misunderstanding I didn't mention that just now, because that wasn't a normal meeting of the Circle of Friends. In order to clarify that altogether, if we have to count that also, then in 1943 I attended four meetings.

Q. Now, you have heard the testimony of the witnesses Lindemann and Flick concerning the speech Himmler made there. Can you confirm their testimony?

A. No. I cannot confirm it, but that doesn't mean that these words were not actually spoken but I have to say that I don't remember that. Maybe you can visualize that briefly. According to the program, the Reich Leader Himmler had an hour to be together with us and to make a speech. Then he had another hour to drink a cup of tea or coffee. That was an immense disappointment for us. At the end of the year 1943, the situation was damned serious in Russia, and we didn't hear practically anything about the war. It's true that we got some very good sausage, and that we saw a beautiful picture concerning the Junker Training School, and we got Christmas cake and choral singing; but not the thing we were really interested in, namely, how the situation was and what was going to happen. Well, concerning that I don't even remember one single word. What I remember

and what I do recall is in quite a different field, and I think, I have to combine my memory and the documents, that the Reich Leader spoke concerning all possible subjects on that occasion. I do remember a description of how he considered his task as Reich Minister of the Interior, and that he was going to try or rather going to carry out the plan to subordinate the Regierungspraesidenten—the heads of the government districts—to the Reich Minister of the Interior. That is, by eliminating the Oberpraesidenten, who are the heads of the next higher level of state administration [Province]. Thereby, he hoped—that is what he said at least—he hoped to obtain a more centralized authority and thereby prevent the dislocation of the Reich by the increasing independence of the Gau leaderships. I remember quite well the word he used, the “weariness of the Reich”, which could only be met by creating a new central authority, and furthermore he had stated that he wanted to rebuild the reputation of the officials, and that the German official should not, as up to that point, remain in his own home town but was to go and see other provinces and German districts. For instance, the Silesian Landrat was not to remain in Silesia always but was to go to Westphalia and should be used there, and the Saxonian Regierungsrat was to be sent to East Prussia and become familiar with the local government and the population there, because he didn't want to have local interest prevail over the general interest of the Reich. That's my recollection of the speech of the Reich Leader.

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CROSS-EXAMINATION

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MR. ERVIN: Now let us go back to 1931. At the time when you first made contacts with representatives of the NSDAP, were these contacts done on your own initiative?

DEFENDANT STEINBRINCK: These first contacts resulted automatically, I would like to say, by way of our press connections and through our Duesseldorf Press Agency. The Duesseldorf Press Agency we ran jointly with the firm of Otto Wolff, and the first contacts with the Party were made through Count Reischach and Robert Ley in connection with the press. As I handled press questions in the Flick Konzern and maintained contact with the press, the automatic result was that I first obtained contacts with Count Reischach and Ley through the press; that was at the end of 1931. As to the question whether it was done on my own initiative, I can only say it arose out of our business and press connections. I don't know—no, I certainly did not approach Robert Ley. He approached me.

Q. That is, the approach to the Party was done in connection with your business, not because of your personal interest in the Party?

A. No. Here it was exclusively a case of ourselves as a concern wanting to protect ourselves against possible press attacks, and attacks by the NSDAP and the papers of the various parties.

Q. How about your association with Count Helldorf?

A. Count Helldorf was the leader of the SA group in Berlin. The SA issued a paper called "The SA Man" and this distinguished itself by the radical and lively tactics of attack on business, among other things. I have already mentioned that we as a concern were also interested to know what was happening in the societies and organizations—the Stahlhelm, the SA, the SS, the Red Front, and the Iron Front. I got contact with Count Helldorf through an agent whom we had appointed to inform us about what was happening in the society as counterweight to possible measures of the left radical elements, of the Communists, and Independents.

Q. And these contacts you had with these people, you reported to the other officials of the Konzern? Did they know you were maintaining such contacts?

A. I believe that my colleagues were informed about that in rough outline, because in the long run it was not a very important matter, but I think occasionally I probably told Mr. Flick or Mr. Kaletsch, "we have contacts" because press allocations and payments from the press fund were initialed by my colleagues, too, if they exceeded a certain sum.

Q. Defendant, how long did your associations with Ley continue?

A. As far as I remember, Ley was responsible for the press for only half a year or a year, and after that the press got entirely into the hands of Count Reischach.

Q. You never saw him on matters concerning the DAF [German Labor Front] after 1933?

A. I saw Ley perhaps once or twice, perhaps even three times later, but we never talked about any definite business matters. We just said, "How do you do?" I never, as far as I remember, talked to him about labor or labor questions. I think that after 1933 I met him perhaps three or four times in the next 10 years.

Q. Now Mr. Funk whom you had known for some time, you had renewed contact with him in 1931 also with reference to Party matters, hadn't you?

A. Yes. Funk remained commercial editor of the *Berliner Boersenzeitung*, and in addition was working in the Party, as far as I remember, from the end or middle of 1932. I can't say

exactly in what function it was. I think he was a sort of liaison officer between the Party and industry, and in this capacity at the end of 1932 or in the autumn of 1932 he came to see me.

Q. You never talked to him about Party matters in 1931?

A. I can't remember, but I don't think so because presumably I would only have talked to Funk about economic matters and about the economic matters of the Party and the Party program. I heard about this not until the second half of 1932, and I imagine that I heard of this through Keppler and Kranefuss.

Q. Don't you remember introducing Schroeder to Funk in 1931?

A. No. I can't remember that. Baron von Schroeder, as far as I know, had been a member of the Aufsichtsrat of Charlottenhuetten since 1925, and as one of the owners of the banking house J. H. Stein which was the "family" bank, if I could call it that, we had a lot to do with Schroeder during the few years, but I can't remember having introduced the later Minister Funk to Baron von Schroeder. It could be possible, but I certainly can't remember it.

MR. ERVIN: Well, I have a letter here dated December 1931, which you wrote to Funk. I ask that Document NI-3218 be marked as Prosecution Exhibit 780 * for identification.

PRESIDING JUDGE SEARS: This may be done.

MR. ERVIN: This letter says—

PRESIDING JUDGE SEARS: May I have a German original? I don't mean the original letter.

MR. ERVIN: The second sentence, to which I direct your attention, says, referring to Schroeder: "For many years he has been closely connected with the whole movement, and therefore had much understanding when I told him your new ideas on enlightening foreign countries." What does that "whole movement" refer to there?

DEFENDANT STEINBRINCK: May I have a minute to read the letter? Then I will be able to answer you better.

Q. Do you remember the question? What does the "whole movement" refer to in the second sentence of that letter?

A. I suppose I may draw conclusions from the letter because I can't remember, but I assume from this letter that Walter Funk was no more, or at any rate, only in part, head of the Political Press Service, and the letter concludes with the words, "The British Information Service I have studied with interest."

I would therefore, assume—I am just reconstructing that now from reading the letter—that at that time the question was one of extensive information for the benefit of German economy about

* Reproduced in C above.

the situation abroad, and conversely, information for people abroad about the situation in Germany, and I believe that for a long time we fought for a kind of information for people abroad about economic conditions in Germany, but for the time being this had no connection whatsoever with the NSDAP, because I think that during the Bruening government and the last Stresemann governments we also did these things. I remember that various so-called societies were formed for German-French understanding and Anglo-German understanding and information; and I believe, but I can't swear, that the economic-political press service was not a Party organ, that is, not an organ or an agency at that time attached to the NSDAP, but probably the German Telegraph Union and News Service, DENA [German News Agency], the German news service organization where Hugenberg worked and other offices. I would assume that this sentence, "For many years he has been closely connected with the whole movement," refers to this movement for information, and not to the Party, because it continues, "Baron von Schroeder himself has had very extensive foreign connections, and that is why he is interested in the attitude of the Party on the matter of foreign debts." These foreign debts and the attitude of the Party in 1931 especially were exceedingly important for the economic crisis in which we were.

Q. The party referred to there is the Nazi Party, isn't it? There isn't any doubt about that?

A. At the bottom of the page? Yes, sir.

Q. There isn't any doubt that Funk was acting as economic adviser to Hitler at this time, is there?

A. No. I can't say that. I don't know whether in 1931 he was Hitler's economic adviser. To my knowledge he was a sort of liaison officer between the Party leaders and business, but his function in the Party at that time I can't tell you.

* * * * *

Q. Did you arrange the meeting of Funk, Flick, and Hitler?

A. The meeting Flick had in February 1932?

Q. Yes.

A. The impetus for this meeting, as far as I know, came from Dr. Scholz in our press office in Duesseldorf, and I imagine that I advised Mr. Flick to agree to go, but unless I am very much mistaken, the original idea for this meeting came from our Duesseldorf press office with which Funk, of course, collaborated, too, and Otto Wolff. It may even be that Otto Wolff had talked to Hitler even before this and that Wolff for the same reason introduced Flick to Funk, and to Schleicher. For the same reason I imagine he advised him to talk to Hitler. I don't know for certain but I am sure I would have advised Flick to go and talk to Hitler.

Q. Now, you told us yesterday after the meeting he mentioned to you that he thought Hitler had confused the two of you. Did he also advise you to have nothing more to do with the Party after that talk?

A. I don't think I heard that quite clearly. "He mixed us up." You mean "he confused us." He believed that Flick was a naval officer, which is what Funk had told him about me. That's what I remember. I didn't quite hear the second part of the question.

Q. Did he tell you after that meeting not to have anything more to do with the Party?

A. No. I don't think so.

Q. Did he say anything about not making any further contributions to the Party, or the SS, or any of these organizations?

A. I have already said that in February 1932 we had, as far as I remember, made no payments at all to the Party. I think there were only small contributions to Count Reischach and Ley for their press tasks, and up to the beginning of 1932 only very small contributions were made to the formations of the SA and the SS. Whether it was already the SS in 1931 I don't know exactly, however, but certainly to the SA and to the Stahlhelm. Payments to the Party as such to my knowledge were made only very much later. The first payment, I believe I remember, was made in the late autumn of 1932.

Q. Immediately after this conference with Hitler, there was no discussion between you and Flick as to contributions?

A. No. I don't remember. We didn't pay any contributions. We never did pay contributions. As far as I know the very first payment was made in the late autumn of 1932 to Funk. That's what I remember.

JUDGE RICHMAN: May I ask a question, Mr. Ervin? Going back to this letter, the second sentence of the letter, it says "for many years he has been closely connected with the whole movement." And what movement had been going on for many years? Does that refresh your recollection any, Mr. Witness?

DEFENDANT STEINBRINCK: No doubt there were two movements, and the reason why I don't remember the letter, which I am reading through again for the first time for many years, there was a movement to inform the people abroad about the situation in Germany, and to inform Germany about the situation abroad. That's the purpose of this political-economic service which in the last sentence of this letter is once again particularly stressed. On the other side, too, perhaps, it might mean the Party movement.

Q. Could it mean the Party movement, in view of the fact that it had been going on for many years?

A. No. I don't think so. Certainly not, because it says here quite clearly in the next sentence—"For many years he has been in touch with the movement. He had full understanding of it, when I reported your idea about enlightening foreign countries." Funk was the head of the political-economic service and it was in this capacity, and not as a Party member, that he had new ideas about informing foreign countries about Germany. Independently of this, Schroeder is interested in the question of Funk's attitude as a member of the Party to the repayment of foreign debts.

Q. Had Schroeder—the English translation says "he has been closely connected with the whole movement." That may not be a very accurate translation. Is it correct?

PRESIDING JUDGE SEARS: Yes, it's a good translation.*

JUDGE RICHMAN: Well, what was Schroeder's connection with this information service? That's what I am trying to get at.

DEFENDANT STEINBRINCK: Your Honor, before the seizure of power, that is, before 1933, in connection with all of the efforts to reach an agreement in the political field between Germany and France on the one hand, and Germany and England on the other, all of this was organized with the support of the Reich Association of German Industry and the big news services. That was the German Telegraph Agency, the German News Agency, which was closely connected with Hugenberg, but also with other circles, and they were trying to spread enlightenment abroad about the situation in Germany. And for this purpose, for instance—I knew more about this because I was a member of the association myself—a German-French association was founded, with its own publications which appeared, I think, every two weeks, in the form of brief circulars or information sheets, and then an Anglo-German association was formed too. This in itself had no connection whatsoever with the Party, and this was supported by the German Reich Government, Bruening and Stresemann.

JUDGE RICHMAN: You don't think then that you were referring to the Party when you said "whole movement?"

A. I will be completely frank. That's what I am thinking today. I don't know what I meant at the time I wrote it, but I would assume that it means general tendencies for enlightenment and not the Party. The Party is mentioned a bit later but I must honestly say I have forgotten the letter and I can't swear to what I meant at the time.

MR. ERVIN: Did Flick say after the conference in February 1932 that this man Hitler had to be stopped?

* Judge Sears, who had studied in his youth in German universities, was very familiar with the German language and often worked during the trial from a copy of the German original as well as from the certified translation.

DEFENDANT STEINBRINCK: I don't remember, but both of us were not for this tendency. We certainly did not want to support or further this movement. If we did give money to it in 1932, then I mentioned already that we supported also other parties.

Q. Did he say anything to you about breaking off relations with Funk and Helldorf?

A. No. Mr. Flick didn't say that, and I think it wouldn't have been right to do that because in 1932, in the big economic crisis, there was still the very grave danger of a Communist revolution, which, it seemed to us at the time, could only be stopped by the right wing parties, Stahlhelm, SA, and perhaps the Iron Front would have joined in, too, I mean, the so-called fighting formations of the center and democratic parties.

Q. Now, as to contributions to Nazi organizations in 1932, you told us that your estimate would be about 75 to 80 thousand Reichsmarks including one payment to Funk?

A. In 1931-32, that is, up to the seizure of power—it may be a couple of months either way—that is the way I remember.

Q. This one rather large payment to Funk was made after he had taken a trip through the Ruhr?

A. Yes. That is as I remember it.

Q. Did you inform Flick about that payment?

A. Yes, because payments amounting to 20,000 marks—it may even have been 30,000 marks, I don't remember exactly, but I consider that the maximum—we could not pay out on our own responsibility, so I told Flick, "I suggest that we pay this sum of 20,000 marks to Funk."

Q. What was the limit of your responsibility as far as amount was concerned?

A. That was a matter of confidence. Nothing was put down in writing. To give an example, we could dispose of 3, 4, or 5 thousand marks, if we paid out such a sum, and I would not have asked Flick; but occasionally, when we totaled up our accounts, we would say: "For the press, and this or that, during the last few weeks or 2 months, I have paid this and that." That was what was usually done.

Q. That is, there was no fixed amount?

A. No. There was no fixed sum laid down from which point I would have had to ask, nor had we agreed either about political donations or about expenses of a personal nature. That was a question of mutual confidence—to what extent I could act personally and where I would have to ask Flick.

Q. Now this payment of 40 to 50 thousand marks to Himmler, at the instigation of Schacht. I would like to have you fix the date as nearly as you can on that payment.

A. I have often thought about the date. It was in the spring, or in the first months after 30 January. I remember the following exactly: Mr. Flick called me up and told me that he had been called up by Schacht. Himmler wanted to get money during the next few days, and he was to get, I think, 40 or 50 thousand marks, something like that. Now I must reconstruct. I don't remember any longer, but what I have said up to now I remember exactly, but from now on I must reconstruct. Then I suppose a few days later Himmler visited me in my office, probably notifying me in advance, so that the cash would have been ready. He sat down at my desk and then I believe I remember I called up Mr. Flick and told him "Himmler is here. Won't you come in—just get some idea of him as a person, and then you can go away again." If I had sent Himmler to Flick, out of politeness, Flick would have had to wait until he had gone. We often did it this way—that the other went into the room of the second person because it was then in his power to leave as soon as he wanted. I just mention that so that you don't say it was peculiar that we didn't tell Himmler "You must call on Flick." That wasn't the idea. He came in for a few minutes, was introduced to Himmler, and then, as far as I remember, he went away again. But the exact date I really can't tell you, but I think it must have been in the first few months of the year, after 30 January, because in the whole of the later period we made no payments.

Q. Well, Flick told us on his examination—this is page 3859 of the transcript—"As far as I remember, it was like this—after 30 January 1933, I once came into Mr. Steinbrinck's room unannounced and there I met Himmler. That is how I got to know him." Did you telephone Flick at that time, or did he come in unannounced—which am I to believe?

PRESIDING JUDGE SEARS: Well, both of them have said that it is their best recollection, Mr. Ervin. I don't know that that question is quite proper.

MR. ERVIN: Well, then, I will withdraw the question, Your Honor.

PRESIDING JUDGE SEARS: Of course you are entitled to test his recollection and ask whether now, after hearing this, he does not find himself mistaken. I am perfectly willing to ask that. That is, if you don't want to. After hearing this testimony of the defendant Flick repeated by the counsel, can you say whether you were mistaken in your statement that you called Mr. Flick to come in?

DEFENDANT STEINBRINCK: I believe I remember that I called up Flick and told him that Himmler was there. Probably I did it from my secretary's office, so that Himmler shouldn't hear it. I can only say that that is what I remember. I know he came in

for a few minutes and I introduced him to Himmler. That is what I remember.

PRESIDING JUDGE SEARS: This statement of the defendant Flick does not change your recollection, does not refresh your recollection to the contrary of what you have said?

DEFENDANT STEINBRINCK: No, I cannot say that.

MR. ERVIN: Do you remember whether this payment had anything to do with the February meeting?

A. I certainly heard of this February meeting at the time, but I had completely forgotten it and only heard of it again now, so I cannot say whether there was any actual connection. I know for certain that Schacht is supposed to have called up, so I suppose there must have been a connection. I think Flick told me that Schacht had told him—"Mr. Flick, Himmler needs that, I think, for financial reconstruction or something." I remember that fairly well, so I imagine that there was a connection, but I am reconstructing that and I cannot say it as having been my view at that time.

Q. You cannot tell us whether the 50 thousand should be included in the 200 thousand listed as contributions at that 1933 meeting?

A. I would assume it but I cannot say, because I had nothing to do with this part of the bookkeeping. That was done by other offices, and I cannot tell you.

* * * * *

Q. Did you have an opportunity to discuss your entry into the SS with your colleagues before you accepted the rank of Standartenfuehrer [SS Colonel]?

A. I cannot remember whether I had a direct offer beforehand or whether I had a possibility to discuss that, or whether I received, first a private and then an official notification from Himmler that he had called me into the SS with the rank of Standartenfuehrer. I cannot remember exactly how this happened.

Q. Did you discuss it at all with your colleagues at the time, was my question—either before or after?

A. After I had been called into the SS I had definitely discussed it because according to the documents here, I received the official notification on 23 July, as far as I remember. And in August I spent several days at Godesberg. That was the well-known meeting; and during this time I was not in my office, so I am almost certain that I must have told my associates that I had been appointed an SS leader.

Q. Who was present at this Godesberg meeting?

A. This meeting lasted for about 3 days. As representatives of the Party there were present the Supreme SA Leadership, which was headed by Roehm. Then there were some of the higher SS leaders; also Himmler. Further, I think from the second day onward there were quite a number of generals and high military officers. As far as I remember, there were about 25 to 30 people—that is, of the military side. Altogether I think there must have been approximately 2 or 3 hundred people. We could not all be billeted at Dreese. I, for instance, lived on the other side of the Rhine.

Q. Did you stay for the entire 3 days?

A. As far as I can remember I arrived in the evening, and the next morning there was a steamer trip up the Rhine. That was about up to Bacharach and Mainz. We visited these villages and places. In the evening we returned to Godesberg, and on the next day Hitler came. On that day too there was also the meeting with the generals. As far as I remember I left in the evening of that day after that meeting.

Q. How long did the meeting with the generals last?

A. I cannot quite remember whether the generals arrived the day before. I myself spent about—I think about—it must have been 2 days that they had been there. I spent some time with them before the dinner. I also saw them during lunch, and after that there was the speech by Hitler to the generals and the military people. I think it must have been a day and a half that they were there.

Q. Was that the speech in which Hitler said he was going to withdraw from the Disarmament Conference?

A. This speech lasted a very long time—as far as I remember 2 hours. I was seated rather close to Hitler, in front, together with General Adam and General von Beck. General von Fritsch, as far as I remember, had left shortly before the meeting. I had talked to him quite a while before the meeting. And I myself cannot recall much of this speech by Hitler. I remember that much—that he had a sort of menu in front of him on which there were some notes, and I remember the words with which General Adam accepted the speech. I'm afraid I cannot remember any details of this speech of Hitler's.

* * * * *

Q. In these letters which you exchanged with Himmler there are certain references to various tasks which you were going to perform and offers being made to you by Himmler. The one I refer to first is on page 8, document book 14-D. That's Document

NI-8280, Prosecution Exhibit 741.¹ Next to the last paragraph it says: "You suggest that you have in mind the matter we already discussed, and I wish to urge you to accept the offer then made to you." That's from Himmler to you. Do you remember what that offer was?

A. As far as I remember, it referred to an offer made to me, either to become Commissioner for Raw Materials or to become State Secretary in the Prussian Ministry of Trade. As far as I remember, the latter only happened in 1935 but Mr. Gritzbach has already stated this must have been in 1933 or 1934. I think this paragraph refers to this offer.

Q. Was Himmler the responsible man for economic matters at that time?

A. Oh, no, he wasn't. These offers came to me from Koerner or from Keppler. I don't remember who else, but General Liese of the Army Ordnance Office also asked me that; but with such propositions, I think, before one ever considers such an idea, one has to make sure how will one be received by the Circle, and of prominent personalities who were in a position to judge this in the Party I knew more intimately only Keppler and Himmler; so that is why I think that on some occasion I may have written or said that such an offer had been made to me and: What was the attitude of the Party to such an offer, particularly the attitude of some of those Party members who were known to Himmler; I think that was the meaning of my question.

Q. This is 20 October 1933?

A. Yes.

Q. You had been made the offer that early?

A. I cannot remember the year. I stated that several times. Only since in 1935, as becomes evident from the files, the Raw Materials Commissioner, Dr. Puppe, had been appointed and was active, I think it was January 1935. I think the idea first had come up in 1933 and 1934. The same applies with respect to this State Secretary job in the Prussian Ministry of Trade. I also had thought that that had happened a few years later, until Gritzbach pointed out here that it must have been in 1933-1934.

Q. Well, I have another letter, one which you wrote to Himmler, and this is dated 13 July 1933. If Your Honor please, I ask that it be marked as 782² for identification.

PRESIDING JUDGE SEARS: This may be marked for identification.

¹ Reproduced in C above.

² Document NI-10095, Prosecution Exhibit 782, reproduced in C above.

MR. ERVIN: You close the letter by saying: "I hope now also to be reinstated by and by into our common work." What was your common work with Himmler? My question was, what is your common work with Himmler that you referred to in the last sentence in your letter?

DEFENDANT STEINBRINCK: Yes. I have understood your question, but I am afraid I just cannot remember for the moment. I really cannot remember. It's completely gone out of my memory. Whether it meant the collaboration and the exchange of ideas with Keppler and Kranefuss in which Himmler occasionally appeared, or what it could have been, I don't know. This was also before I had been with him to Silesia.

Q. Was your common work with Keppler, Kranefuss, and Himmler? After all, you were in Keppler's and Kranefuss' office in 1932. Here we are in 1933. There isn't any doubt about it, is it?

A. No, it's quite right. I say, I cannot say definitely what could have been meant by the common work, because I can only remember a cooperation with Keppler and Kranefuss here. As I said, Himmler sometimes appeared in the office. I am now trying to find an explanation because Linke-Hofmann was mentioned here.

Q. That has nothing to do with the letter.

A. Well, I think it may, Your Honor, because I have just mentioned that I think I can remember that before I became a member of the SS I had once been in Silesia with him. That was Linke-Hofmann, and that would have been in Breslau with [SS] Major General Woyrsch and perhaps a very small circle where I met General von Kleist. I just have to think back.

Q. When was that trip when you met General von Kleist?

A. That must have been before I joined the SS. That means the first few months of 1933.

Q. And who was with you on that trip?

A. I went together with Kranefuss, Udo Woyrsch—I can't remember who else might have been there. I don't even remember whether Keppler was. It's quite probable. I only get this idea because Linke-Hofmann and a Mr. Alvensleben are being mentioned in this letter. That's what gives me the idea.

Q. Well, if you can remember any more about it you can give it to us later. We will pass on to some other subject. We have been talking about the Keppler Circle—

PRESIDING JUDGE SEARS: I didn't understand it; that you would bring it up?

MR. ERVIN: I said, if he can remember any more about it and desires to he can bring it up on redirect.

PRESIDING JUDGE SEARS: I suppose that lies with his counsel.

MR. ERVIN: Now, in the period of 1933, 1934, and 1935, up to the time when the contributions to the Circle began, what had happened to opposition political parties in Germany?

DEFENDANT STEINBRINCK: Well, I think they were rather quiet.

Q. Do you know they were outlawed on 13 July 1933?

A. On 14 July 1933? I am not quite aware what significance that date has. Is that the day on which it was announced there would be only one party?

Q. That's right. What happened to the leaders of the Communist and Socialist Parties?

A. As far as I remember some of the Communist leaders were taken into protective custody. I think also some of the Social Democratic leaders were temporarily in protective custody, but that afterwards they were released again. If I can mention a few names, people like Noske, who was one of the most prominent Social Democrats, and Severing, and as far as I know they had been arrested only for a short time and were then set free again.

* * * * *

Q. Now, you told us that you did not accompany the Circle of Friends on the occasion of their inspection of Dachau. Were you ever in a concentration camp at all?

A. No, not until I was sent to Roechlinghausen on 6 November 1946.

Q. As I understand it, the only two people you knew who had been put in custody were Niemoeller and Thyssen, is that right?

A. No, I don't think I said that. I only—I don't want any misunderstanding, so may I repeat it? The two people whom I knew fairly well and from whom I knew what things were like in concentration camps were Niemoeller and Thyssen.

Q. Do you think it was a general custom for inmates of concentration camps to get paid as Thyssen did?

A. Certainly not to the extent of 2,000 marks per month. That is what Thyssen got.

Q. Do you think that wine was usually sent into concentration camps?

A. I can hardly imagine that they were treated very differently than in the camps which I was in here, and we didn't get that sort of thing either, but obviously it is possible that individual inmates were able to buy drinks and luxury goods through the official legal channels.

Q. Now, this man Pohl who was a member of the Circle, did you know he was Inspector General of Concentration Camps?

A. No, I did not.

Q. Did you know him at all?

A. I got to know him in the Circle of Friends, and I know that he was a former—I think senior paymaster in the navy.

Q. Did you know that he was the head of the WVHA [Economic Administrative Main Office] of the SS?

A. As far as I know, I only knew that for certain in the course of 1943.

Q. What brought it to your attention in 1943?

A. My house was destroyed in an air raid, and I tried to get what was to be had in the way of replacements. Although for a year or so it had been possible to get a purchase permit, one couldn't buy anything on them, nor did I get a foreign currency permit so as to be able to buy things in France, not even for a thousand marks. And occasionally I talked to Pohl about it, and Pohl said we can give you, I think it was six pairs of socks and three shirts, and a few other things. We can give you these things from the stocks of the Waffen SS. And in this way I got from the stocks of the Waffen SS, the clothing stores—as we called it—near Karlsbad, underwear, stockings, and a leather coat.

Q. Did you know that Pohl's office in the SS was the supreme authority on allocation of concentration camp labor?

A. No, I did not know that. Now I do.

Q. Did you know that concentration camp labor was being used in industry?

A. It is possible that I heard it but I don't know, because in 1943 and 1944 I saw very few German plants.

Q. Do you know that Vereinigte Stahlwerke had a number of concentration camp workers?

A. I can't say. I consider it possible, but I can't say.

* * * * *

Q. Did you know that almost all of the Jews in Holland were deported to Germany, and a great many of them wound up at Auschwitz?

A. No, I did not know that. Please take into consideration that when I had business in Holland my business was with the mines, and these mines are situated in the extreme southern corner of Holland, as you have seen on the map, near Aachen and Hasselt. That is completely separated from the rest of Holland. And in The Hague, where the Civilian Commissioner had his office, I was, at the most, twice a year because an assistant was responsible for the coal distribution there, and this was done very efficiently. I only went there occasionally, if there were considerable differences of opinion with the Reich

Commissioner and with the Higher SS and Police Leader in Holland. I only talked to him once in Holland, to the best of my knowledge. Concerning conditions in Holland, I am only informed insofar as the mines in the very extreme southern tip are concerned.

Q. You didn't notice that Jews were disappearing from these occupied territories?

A. No, I could only have noticed that if I had known the people before, or if I had traveled a lot in the country. I couldn't have seen it.

Q. How about in Germany?

A. In Germany undoubtedly, during the war, Jews were deported. However, I do not know, I only heard that here, as I have already said, I heard the first hints after the collapse, that these deportations were directed to extermination camps and were carried out for the purpose of exterminating these people. Up to that time I had never heard anything of that. I have mentioned what I heard about a Jewish state that was supposed to be set up in eastern Poland, but I knew nothing of extermination schemes on a large scale.

* * * * *

PRESIDING JUDGE SEARS: You said something about not knowing anything about any extermination in large numbers. What do you mean by that?

DEFENDANT STEINBRINCK: I was asked about the systematic extermination. That means a system, an idea, to destroy somebody. I said I did not know about such things; I knew that Jews were condemned and died. I knew, nor do I deny it; but I did not know that they were to be exterminated as a race. I thought they were condemned for some definite crime or offense, but not merely on account of the pathological idea, from a sense of mastery, to exterminate another race. I did not know that, and even today I can hardly imagine that.

MR. ERVIN: Do you believe that it did not happen, today?

A. It is very difficult to obtain a perfectly clear picture of what is truth and what is merely claimed; and, if one reads these statements and hears these terrible figures, and if one wants to try to work it out, it is simply unimaginable for a normal human being. If you read four million human beings are supposed to be exterminated in Auschwitz in 3 years, well, that is four thousand people a day. How is that possible? Excuse me, please—but it's a question which excites one and troubles one again and again. One doesn't know any more what to believe.

* * * * *

G. Affidavit and Testimony of Defendant Flick

TRANSLATION OF DOCUMENT FLICK 1
FLICK DEFENSE EXHIBIT 1

AFFIDAVIT OF DEFENDANT FLICK, 6 JUNE 1947, CONCERNING THE EX-
TENT AND NATURE OF "PAYMENTS AND DONATIONS FOR
POLITICAL PURPOSES" FROM 1932 TO 1945*

Payments and Donations for Political Purposes

1932

1. Hindenburg Election (payment Berlin)	RM 450,000	
2. Hindenburg Election (payment Riesa)	RM 500,000	
3. To Bruening, November 1932	RM 100,000	1,050,000 RM
4. To Schleicher	RM 120,000	
5. To Hugenberg, July	RM 30,000	
6. To von Papen, October	RM 100,000	250,000 RM
7. For the NSDAP; estimate	RM 50,000	
8. For the Democrats and left wing parties, estimate	RM 100,000	
9. For other parties of the center, estimate	RM 50,000	200,000 RM

The following amounts were therefore received by:

a. The parties of the center.

Election of the president	RM 950,000	
Bruening and other parties of the center	RM 150,000	
Schleicher	81.8 percent RM 120,000	1,220,000 RM

b. Right wing parties.

Hugenberg	RM 30,000	
Papen (if he is to be considered part of the right wing) 8.7 percent	RM 100,000	130,000 RM

c. Left wing parties 6.7 percent RM 100,000 100,000 RM

d. NSDAP (probably
overestimated .. 2.8 percent RM 50,000 50,000 RM

100 percent		1,500,000 RM
-------------	--	--------------

1933 (up to March inclusive)

Deutsch-Nationale [German Nationalist People's Party]..	RM 100,000	
NSDAP	RM 100,000	
Parties of the center, Bruening (March 1933)	RM 30,000	

* This affidavit is discussed in the extracts from the testimony of defendant Flick reproduced immediately below.

As far as I can remember, *nothing more* was paid for political purposes, except for one or two other small insignificant donations until the payments to the Keppler Circle or Circle of Friends made from 1936 onward. One cannot consider these payments for political purposes or as payment to the SS, since they were requested and were used for cultural purposes, at least they were intended to be used for cultural purposes according to the explanations given.

If one estimates this payment at about	RM 8-900,000
And adds the above payments from the first quarter of 1933, namely	RM 100,000
The total amount during the entire period of the National Socialist regime is	RM 1,000,000
In addition the following amounts were paid early in 1933 to other parties:	
Deutsch-Nationale	RM 100,000
Bruening	RM 30,000
	<hr/>
	RM 130,000

It is therefore evident that during the 12 years of the National Socialist regime the political donations we made represented only a small percentage of the payments which were made *in 1932 alone* to those parties which were opposed to the seizure of power. Even if one considers the payments made to the Keppler Circle to have been of a political nature which, however, would not be justified, the total payments made from 1933 to 1945 would still be below, in any case would by no means exceed, the amount given in 1932 alone to the opposition parties.

The payments made from 1933 to 1945 were largely nonvoluntary, at any rate they were all demanded, moreover, during years of good economic conditions, while the payments before the seizure of power were made during the years of the greatest economic depression, and were meant to be a real sacrifice.

I made the above tabulation largely on the basis of available documents, the remainder on the basis of information obtained, or from memory to the best of my knowledge.

I am making the above statements the subject of my sworn testimony and I expressly affirm their truth under oath.

Nuernberg, 6 June 1947

[Signed] FRIEDRICH FLICK

EXTRACTS FROM THE TESTIMONY OF DEFENDANT FLICK*

DIRECT EXAMINATION

* * * * *

DR. DIX (counsel for defendant Flick): And now I would like to know from you, Mr. Flick, when did Hitler arise as a problem before your mental eye? When did you for the first time concern yourself with it?

DEFENDANT FLICK: Well—

Q. Or to put the question more precisely—not the date but just approximately—when did it become a problem for you?

A. As far as I can remember today, this problem became important for me in 1931. In 1930, 1931, but it became a special problem from 1932 onward. The elections of autumn 1931—or was it in 1930 or 1931—I can't remember any more; these elections contributed materially to the success of the National Socialists, and the problem became more and more difficult the more the inner political difficulties of an economic nature increased in Germany. I also know that unemployment grew from month to month. As a result of all the economic crises, in my opinion and as an essential consequence of the German deflation policy which was being carried on at that time, gradually things developed to such a point that there were six million unemployed, and it was a matter of course, it was natural, that Hitler and his movement should find these new members for his Party.

Q. What was your personal political attitude at that time? I mean before and after. Mention just one party of which you were perhaps a member. What were your leanings; how did you vote?

A. I would like to say first of all that actually I was no political figure. In general, I kept away from politics. My work was devoted to my enterprises. In general, I never took the time to take part in any political activities, and it is a fact that circles of my professional colleagues often reproached me on this account. My political direction was from my youth onward the German People's Party—Deutsche Volkspartei. I belonged to it from my youth onward. I was always a member of the German People's Party up to the time when, after the death of Stresemann, it sank into political insignificance.

Q. Did you know Stresemann personally?

A. Yes, I knew Stresemann quite well. I met him quite often.

Q. Did you ever contribute money to Party funds? Did you help in this way?

* Complete testimony is recorded in mimeograph transcript, 2, 3, 7-11, 14-17 July 1947; pages 3150-3915, 10329. Further extracts from the testimony of the defendant Flick are reproduced above in section IV H and below in sections VI D, VII E, VIII D.

A. Yes, I did. For political purposes I assisted him, and at the same time I think I created the prerequisite for the continuation of his high office.

Q. Now, the answer to this last question leads us quite naturally to the matter which the prosecution has also dealt with, the question of your political donations.

Your Honors, I must ask for tolerance on your part. I have not been able to finish my document book, but at the moment I cannot do without this document. It is a list of Flick's political donations drawn up by him under oath,¹ and now I will ask him whether he is prepared to give evidence on this matter too. It will be submitted in the document book, but the document book isn't here yet. I wanted, with your permission, to submit this list to him. Unfortunately I only have German copies, but we will—

PRESIDING JUDGE SEARS: You may proceed in this way. We accept your assurance that the document will be presented.

DR. DIX: Well, these are the payments and donations of 1932, the most important year in politics perhaps in our lifetime in Germany, and one can see that from its accounts too. I will now submit to you the document—the copy—you haven't got a copy, have you? You have?

A. Yes, I have a copy.

Q. Well then, I will ask you perhaps to read the figures of these donations and at the same time to explain to the Tribunal and then perhaps permit me to ask some questions about it, if necessary.

A. This list is one of payments and donations for political purposes in 1932. In this year we gave for the election of Hindenburg against Hitler, as far as we can today establish, a sum of 950,000 marks, for the presidential election in 1932.

Q. For Hindenburg?

A. Yes, for the Hindenburg election.

Q. Against Hitler?

A. Yes, against Hitler. We also gave the then Vice Chancellor of the Bruening government, that is, the present Commissioner for Agriculture and Food in the British Zone,² the former Reich Minister Dietrich, who, together with Bruening supported and organized the Hindenburg election and financed it—we got a corresponding receipt from him.

Then in 1932 we also gave to Bruening, after his fall, further payments for political purposes; for instance, I think in December

¹ Affidavit of the defendant Flick, Document Flick 1, later introduced in evidence as Flick Exhibit 1. This affidavit is reproduced immediately above.

² Herman Dietrich was chairman of the Bizonal Committee for Food and Agriculture from 1946 to 1947.

the sum of 100,000 marks, and altogether about 150,000 marks for Bruening and other Center parties. After the fall of the Bruening government we also financially supported the governments which followed, because they too stressed the fact that they were again the seizure of power by the Nazi Party. I gave 120,000 marks to Schleicher—Schleicher, who on 30 June 1934, was shot to death. I also supported Papen. Perhaps you will ask me, why did you do that? And I will explain that when I supported Papen in 1932 he was very far from an alliance with Hitler. He called a few industrialists together at the house of a certain Otto Wolff, who was so much against the National Socialist movement that after the seizure of power a state commissioner was put in his house; and from this fact, that the conference with Papen was held in the house of Otto Wolff, when he said that he needed some money from industry in the fight against Hitler, you can see that at that time, in the autumn of 1932, Papen felt rather differently about things; and in the same way, in the summer of 1932, it was the same with Hugenberg. In spite of the fact that he was a member of the Harzburger Front* before the elections in 1932, Hugenberg asked me for financial support. I granted it to him and accompanied the payment with a letter which I believe can also be submitted in the document book—

Q. Yes.

A. —in which it says, “I am giving you this money so that in the coming election the bourgeoisie can consolidate itself against the National Socialists and to prevent the National Socialist movement from taking a radical turn sooner or later.” Hugenberg held the same opinion and this is shown by the fact that in his reply to my letter, he not only confirmed the receipt of the money, but added that my accompanying words concerning the use of the money against the National Socialists had interested him especially and that he absolutely agreed with me on this point.

I only wanted to say if after Bruening’s fall—Bruening resigned at the beginning of June 1932—if after that, I continued to support Bruening in 1932 and still gave him money in November of that year, at the same time I also, to a considerable extent, supported the succeeding governments, always in the same direction and with the same aim, to prevent the seizure of power by national socialism, and in this situation it no longer mattered to me whether I was a member of the German People’s Party, or whether I was a German Nationalist, or whether I was of the Catholic Center Party—I took the standpoint that now this is the decisive time

* The “Harzburger Front” was a coalition of the National Socialist Party, the German National People’s Party, and the Stahlhelm (veterans organization).

and now independently of the gradual differentiation of the party aims; in principle every political movement must be supported which is against national socialism, and that is what I did.

Q. If I may interrupt you, if one looks at this list, the picture that you have just described to the Court is reproduced there. Payments to all parties, from the German Nationalist People's Party to the Social Democrats, so that if one wanted to explain them from a purely ideological point of view one would be faced by a puzzle; but you have already given the Court the answer. All these payments served the purpose of preventing Hitler's election, and at the same time the election of the Nazis. But I must draw your attention to the fact that this list of donations, although it is a very slight sum compared with the others which were made before the seizure of power in 1933, there is still a small sum which went to the National Socialist Party, or at least is entered as such, and this sum, small though it may be, requires an explanation in connection with what you have just said—50,000.

A. 50,000?

Q. Yes. If you would be so good as to look under number 9, small letter "d"—have you got it?

A. Yes.

Q. There it says NSDAP, probably put too high—estimated too high. You made an estimate, but still you should remember this sum; but at any rate a certain sum, however small, was paid to the NSDAP; and this you must explain to the Court.

A. It's like this: At this time all parties approached one and asked for funds, money. I only bothered about important matters, about the main line. I did know that we occasionally gave small contributions in such cases. That was accounted for by the fact that after all, we wanted to be left in peace. At the same time a sum of money was given—a sum of 100,000 marks—to the Social Democrats, about double as much,—

Q. Yes. Well, they were also against Hitler.

A. —and I was no more National Socialist than I was a Social Democrat. In such cases one just gave smaller donations which played no part financially, just in order to have a little peace. That is my explanation, but that in no way indicates support of the political causes of the parties; the general political course was that which I explained just now.

Q. In other words, I am very sorry that I wasn't present at the time when whoever knocked at the door of your office was given a small sum of money.

A. But this was no support of the system, just when somebody came who wanted a few thousand marks, we didn't send him away. Well, just think of the annoyance, the disadvantages we

would have had. It wouldn't have been worth the bother. It was simpler to pay.

Q. I can remember that the SA formations at that time, which were not particularly well off, were looking for money everywhere, where they thought there was money.

A. That's how it was.

DR. DIX: And perhaps in order to explain—to make clearer the contradiction which I myself pointed out—perhaps I may recall to Your Honors that in my recollection of the nasty Karo *vs.* Petschek case, an SA company came to the wholly Jewish Karo, after he won this case, they sent him a wonderful wreath of flowers saying that SA company number 175 congratulated Mr. Karo on his beautiful victory for truth and right. This, of course, was due only to the fact that Mr. Karo had richly supported this detachment with money. Some of them were quite harmless—good boys whom one didn't want to send away, but at the same time I felt—

JUDGE RICHMAN: Doctor, may I interrupt a minute? I am having a hard time keeping separate your—

DR. DIX: (Attempts to continue.)

JUDGE RICHMAN: Pardon me. I say I am having a hard time keeping separate the witness' testimony and your testimony. You put in allusions to other matters that take the drift away from the thing you are asking the witness, and it would be helpful to me, at least, if you would keep a little closer to the text that you have given to this witness. Do you see what I mean? I mean asking him about these particular contributions that he has made and not telling about other things incidentally. It kind of destroys my ability to put together what he is testifying about. Do you see?

DR. DIX: I understand very well, Your Honor. I only mentioned that so as to make it clearer to the Court. I think it serves the purpose, because after all we can't plead for days on end. We can only put in short sentences to elucidate and point out the importance of the evidence for the case-in-chief for the benefit of the Court. He has explained how he, as a fighter against the Nazis and the seizure of power, gave money to all parties who fought against them at this election, and, of course, I had to show him: yes, but after all, you did give a small sum to the Nazis, too. Now he has explained that, and I thought that I might give an even more beautiful example of the affairs of that time concerning the payments to the Nazis, and for that reason to make things simpler for the Court to tell the Court of my experience. It is very difficult for men who were not

in Germany to understand these partly contradictory events, and that is why—but thank you very much for pointing that out to me.

JUDGE RICHMAN: I am not trying to hinder. I am trying to help.

DR. DIX: I am grateful for every suggestion. Perhaps it would be quite useful, Mr. Flick, on the basis of a comparison of figures before 1933 and after 1933, which you also gave on page 2 of your own list, if you could explain to the Court how your later donations, of which you are accused now in the indictment, compare with those before 1933. After all, all of it is important because you are charged with it.

A. To recapitulate I must say that in 1932 we gave money to offices and parties who were against the seizure of power, sums of money amounting to one and a half million, minus the aforementioned 50,000 marks. That is approximately 1,450,000 marks. Then in 1933, on the basis of the well-known conference of industrialists in February,* we gave an amount of about—it may have been 100,000—120,000 marks each to the German Nationalist People's Party and to the NSDAP respectively, but this was a payment made after the seizure of power. And the last political payment which we made after that was that of March 1933 when I again gave Bruening 30,000 marks for the March election. That represents payments of 100,000 marks each to the German Nationalist People's Party and the NSDAP. These payments were a consequence of the well-known industrial conference which we will no doubt discuss presently.

Q. Surely.

A. Afterward, from February 1933 on, during the whole of the Nazi period, I did not pay anything at all for political purposes on a larger scale. There may have been trifling amounts of a few thousand marks which were connected with plants, perhaps a few thousand marks in Berlin, too, for some special purpose, but not at my instigation, partly with my knowledge, partly I was informed later, but these were things which were materially without significance.

From 1936 on, we did make the contributions to the Keppler Circle, later called the Circle of Friends. That is a special subject. Apart from that, in addition to the unique payment in 1933, which was demanded of us and which was not given voluntarily in contrast to what we did in 1932, in 1932 one was a free man—

* Reference is made to the meeting of 20 February 1933 in the residence of the President of the Reichstag, at that time Goering. Both Hitler and Goering addressed a group of industrialists. See Document D-203, Prosecution Exhibit 734, reproduced in C above.

Q. Slower, please.

A. In 1932 I say, we were free men. One had to put one's cards on the table and I could give my money to whom I wanted. One had to choose a party, but after the seizure of power in February 1933, it was a dictatorship from the first day onward.

And if we were called by a telegram of Goering's to the industrialists' conference without previously being told what was going to be discussed, only invited to appear, this, no doubt, looks rather different. If a new regime from the first day onward carries on a dictatorship and demands money, and then I give 100,000 marks and then give nothing at all in the subsequent 12 years, then this is rather a contrast to the one and a half million I gave in 1932. The picture of the Keppler Circle is a matter in itself. It will be dealt with separately. In any case it is like this—we, during the 12 years of National Socialist rule, only paid, for political purposes and to the Party, a modest fraction of what I paid in 1932 in one single year. At the same time I stress the year 1932 was a time of gravest economic crisis when a sum of half a million marks was a sacrifice for me, and a sum of one and a half million was a great sacrifice, while the other payments which came later from 1933 onward to 1945, fall into a time of excellent economic conditions when a sum of a million marks was no longer an important matter for us.

Q. Yes, Mr. Flick, and if now in the sense of the prosecution I take up the question of these payments to the Circle of Friends—

PRESIDING JUDGE SEARS: Well, before you do that, Dr. Dix, may I ask a question?

DR. DIX: Please.

PRESIDING JUDGE SEARS: In 1932 you gave 50,000 Reichsmarks to the NSDAP. Now that was a voluntary contribution on your part?

DEFENDANT FLICK: Yes.

Q. And you looked at it as possible insurance if the National Socialists should win? Was that your idea in giving it?

A. No.

Q. Well, then why did you give it to a party of which you didn't approve?

A. First of all, I must say that these were not donations made at my instigation. These sums were paid by my colleagues and by my office, as I didn't learn the details at all, and small sums—perhaps a man would come and ask for two thousand, three thousand, perhaps five thousand marks—but I did not instigate these donations in the sense that I have mentioned. I didn't make every single small donation. There were funds from which donations were made, partly with my knowledge and approval and

partly without, that is by my colleagues in many small individual cases. Perhaps my colleagues can explain that better than I, but it was not 50,000 marks paid in one sum to the NSDAP, but I think that perhaps that would have been 10 or 20 small individual payments. It may even have been 30 of them made in small sums at a time, but the others can give more details about that later. Perhaps I may add that I once went to the plant, and the Vorstand told me at the midday meal, "We have given Gruppenfuehrer so-and-so 5,000 marks." If I had not happened to go there I would never have known that at all. The Vorstand did not need to ask me—the Vorstand could dispose of 5,000 or even 50,000 Reichsmarks without me—but just because I happened to be there I was told, "We have given him 5,000 marks." That is how one must explain this matter of the 50,000 marks as an estimated sum consisting of many small separate payments, some of which I heard about and some of which I didn't hear about. But in no case were these made at my instigation or initiative.

Q. Well, these were payments from the funds of your companies, I suppose?

A. Yes. That is so.

Q. Weren't those indicated on the monthly or annual accounts of your companies which were handed to you?

A. No.

Q. Well, do you mean "no" or do you mean "I don't know about that?"

A. These payments, if they appeared in the business reports and the monthly reports, never appeared there as such. They were always carried under "expenditure account", "liquidation", and so on. They were never visible to the outside.

Q. Well, you estimated the amounts that in 1932 were paid from your various enterprises to the NSDAP as 50,000 Reichsmarks?

DR. DIX: The President is asking whether the sums you paid to the NSDAP in 1932, as a whole, whether you estimate these at this sum?

DEFENDANT FLICK: Yes, I do.

Q. You mean that is the amount that you estimate that you knew about or that it is the amount absolutely which was given? You could not estimate it very well unless you knew about it.

A. Well—

Q. In 1933 you gave, according to this statement, to the German Nationalist People's Party, 100,000 Reichsmarks.

A. In 1932?

Q. No, in 1933.

A. Yes.

Q. Now, was that a voluntary contribution?

A. No. That was a part of the payment on account of the industrial payment of February 1933. May I explain that briefly?

Q. Well, was that voluntary? You may explain it.

A. In my opinion it was not voluntary. The February payment in 1933 came about in the following way. Goering sent a telegram to a number of industrialists, and at this conference he made a speech; the main speech was made by Hitler, and Schacht acted as collector. At the end, the industrialists were asked to make a payment which was intended for the coming election of March 1933. I have already said that in my opinion it no longer had the character of a voluntary action but that it was demanded. The industrialists at this meeting made the condition that the money to be raised was to be given not only to the NSDAP but also to other parties. The National Socialists stated "Very well, we agree that it should also be paid to the German Nationalist People's Party". Then the industrialists went one step further and the application was made to have the German People's Party included. Then we, the circles represented there, afterward paid these 200,000 marks, and the fact that 100,000 marks went to the German Nationalist People's Party was also a consequence of the Hitler conference. For the other 100,000 marks, it might have been 120,000 marks, I cannot give accurate evidence on the basis of documents. But for most of these payments I have evidence—the payments to Schleicher and Hugenberg and for the presidential election, but here there may be an error of 10 to 20 per cent, it is possible; but, I repeat, 100,000 marks went to the German Nationalist People's Party and 100,000 to the others. In order to make up for that, in March, after this affair, we gave Bruening 30,000 marks as a compensation. There was no compulsion there—that was most certainly voluntary. That was the last payment we made.

PRESIDING JUDGE SEARS: I think the witness has made his position now very clear.

DR. DIX: I only want to mention in the historical development, that in February 1933 Hitler was already Reich Chancellor and Goering was Prussian Minister President. The real seizure of power took place on 30 January 1933, and that is important. Now, may I continue?

PRESIDING JUDGE SEARS: Certainly.

DR. DIX: With reference to the 50,000 marks which are entered under NSDAP, these are the small collected sums—could this include the payments with which the prosecution is also charging you—the payments to the SS, the SS companies, and so on? Is it possible that these are included in that total?

DEFENDANT FLICK: I presume so. If smaller sums were given, I had no disposition over them. It is a rough estimate of all these small sums which accumulated, no doubt, with maybe a small difference upward or downward; I cannot say any more about that.

Q. The Party therefore, the SA and the SS.

A. That is my estimate of the total sums. Individual SS people may also have gotten something, I don't know. I repeat, they were not instigated by me but I knew something general about them.

* * * * *

Q. Now we are in the middle of 1932, a highly political year. Everything is at stake. You yourself have said that now you abandoned your political reserve, and I would like to ask you, did you, in 1932, do anything in order to obtain information about the purpose and nature of the Party or the character of the leaders?

A. In 1932, I once met Hitler personally. I met Hitler himself. Up to that point, I did not know him. I met him through the later Reich Minister of Economics, Funk.

Q. Excuse me, would you tell the Tribunal what Funk's office was at that time?

A. Later, he was Reich Minister of Economics. At that time, he was an editor of a big Berlin newspaper. He was responsible for the commercial part. In 1932, he joined the Nazi movement. I had known him for many years because of his activities as head of the commercial section of the Berliner Boersenkurier. Through Funk I once met Hitler in February 1932. It had nothing to do with the industrialists' conference in February 1933 after the seizure of power. At this first meeting with Hitler, we talked to him quite alone for one hour. It was not at all uninteresting for me to get to know the man who was only beginning to play the leading part in Germany. Hitler talked to me for about an hour.

Q. Were you alone with him?

A. Yes. I did not get a chance to speak myself. It was always like that with Hitler. He tried to get my support for his political ideas, in particular, for the very imminent election of the Reich President. I listened to all this for an hour, then I went home. I did not promise him any support. I did not join the Party. After that I made big payments for the Hindenburg election—950,000 marks. I did not give it to Hitler, but to his political opponent. After the one-sided conversation I was able to get some idea of him. I had some impression of the person he was. I went to my colleague, Steinbrinck, and confirmed that. I said to him,

"I have just talked to Hitler, I did not give him any money." I finished my report of the story with some very derogatory remarks which Steinbrinck can confirm. That was my only discussion with Hitler before the seizure of power. I never saw him again after that.

* * * * *

Q. Have you any cause to suppose that Hitler, after having as you might say flirted with you in 1932, learned that you gave almost a million marks for the election of his opponent, Hindenburg?

A. I think that he did not find out, or otherwise, everything would have gone rather badly for me. I am absolutely convinced that he did not know it. You must imagine that if it had become known that Hitler in February 1932 had sat and talked with Flick for an hour and asked him to join his movement and give him money; and that Flick not only did not give him anything, but gave Hindenburg a million marks; if it were established that this payment of mine made me the main financier of the Hindenburg election—I would probably have landed in a different place. That was before the seizure of power. Under no circumstances, whatsoever, after the seizure of power, would I be able to refuse completely, because this matter hung over my head like the sword of Damocles. After the seizure of power, every industrialist in the long run had to get into some sort of relationship with the new holders of power. This motive was especially strong and important in my case, due to my political standing [politische Vorbelastung] during the year 1932. In this connection I was in a quite different situation from the other industrialists.

Q. Let us stay on the subject of the big shots, the Nazis. First of all, you have Hitler. What about Goering?

A. Goering I first met by accident, when I sat in a restaurant with Schacht. I think it must have been in 1932. Then Goering visited my office in 1932 to examine the entire mining business done with the German Reich, an occurrence which was mentioned in one of the document books submitted here.

* * * * *

Q. And what about other big shots and your personal relations with them?

A. I knew Schacht. I have known him since 1920. I was a friend of his. Funk, of course, I had certain contacts with him in his capacity as Reich Economics Minister, but I had known him long before the Nazi time. And the other big shots, Goebbels, Ley, and so on, with them I had no contact at all. Nor did I have any with the Gauleiter with one exception: the exception was

the Gauleiter of Saxony, Mutschmann. I must explain it in this way. Mittelstahl was the biggest plant in his Gau. In the Ruhr, Mittelstahl wouldn't have been very noticeable, but in Saxony there was only one big plant, and that was Mittelstahl; and he took great interest in it and often came to visit the works, and that is how I got to know him. That was no relationship of a special nature. But in general, he came perhaps twice a year to visit the plant. And at the occasion when Goering appeared, the Gauleiter, of course, came too. When Ley came to Mittelstahl I did not go, because there was a particularly bad relationship between him and me. I did not visit the works then. In the case of the Gauleiters for the remaining enterprises, of the districts where I had enterprises, I had no contact. I personally knew Gauleiter, and later Price Control Commissioner, Wagner. With him I discussed questions of economic policy on a big scale. He was Price Control Commissioner for the whole of Germany. Later he fell into disgrace. The Gauleiter of Brandenburg accused me—had me accused—that I did not have enough contacts with the Party. He informed me that it was not sufficient to produce a lot of steel, that it was also necessary to keep up contacts with the Party and Party offices. And as far as Gauleiter are concerned, if General von Hanneken¹ says in the Luebeck case,² that the Gauleiter of Luebeck met at Funk's with Flick, then I can only say General von Hanneken made a mistake. I never met the Gauleiter of Luebeck, either at Funk's or any place else. He is a man I just didn't know. I want to mention that here.

* * * * *

Q. We stopped when we discussed your personal connections with the big shots of the regime. I would now like to ask you about Himmler, concerning your personal relations with Himmler, and I would like to discuss that more precisely in connection with the Circle of Friends. And there I want to ask you, first of all, this: In 1933 Hitler instituted a General Council of Economics [Generalrat der Wirtschaft] in which prominent businessmen became members of the presidial council and were appointed by Hitler. Were you a member or even a presiding member of this General Council of Economics?

¹ Lieutenant General Hermann von Hanneken was Plenipotentiary General for Iron and Steel Production and Allocation [Generalbevollmaechtigter fuer die Eisen- und Stahlbewirtschaftung] until he was appointed military commander in German-occupied Denmark. He appeared as a prosecution witness. His testimony is recorded in the mimeographed transcript, 21-23 July 1947, pages 4053-4226.

² The "Luebeck case" refers to the organization of the Hoehofenwerk Luebeck A.G. in which the Flick concern received 74 percent of the capital stock. For further reference see von Hanneken's affidavit, Document NI-6019, Prosecution Exhibit 389, not reproduced herein.

A. No. The General Council of Economics was instituted in 1933 by Hitler and included about 20 members. I was not called as a member in this council.

Q. Did you have a leading position in the Reich Group Industry which, as it is known, was the successor of the Reich Association of German Industry?

A. I was a member of the Praesidium of the Reich Association of German Industry, and after 1933, everybody knows that every organization had to be changed, or at least had to get another name. The former Reich Association of German Industry then was transformed in 1933 or 1934 to the Reich Group Industry, and during the period of the Third Reich, I was not called to the Praesidium of this group, while before that, that is, while it was still the Reich Association of German Industry, I had been the presiding member for years; but in the new organization I had not been taken over and I hadn't even been asked to join it.

Q. Under Hitler were you a member of the Armament Advisory Council?

A. I was not a member of the Armament Advisory Council. When in 1944 a large meeting of German armament industrialists was called, presided over by Hitler and guided by Speer,* I was not invited, and of course, I didn't take part either. Altogether I did not even once see Todt, and I didn't see Speer at all. To that large meeting, which lasted several days, the meeting of the German armament industry in the summer of 1944, I was not invited.

Q. Well, were you ever in Speer's office?

A. No. I never was in his office.

Q. Did you ever hear anything how Speer's reactions were to you, who, after all, was later on the leader of the armament industry?

A. Well, I had the impression that personally he was neutral or even benevolent toward me. I have only met him about twice during social meetings, but I happened to gain knowledge of the fact that in 1943 when I had my sixtieth birthday he refused to send me his congratulations. When his adviser told him Flick has his sixtieth birthday and maybe he should send his congratulations, I know that Speer then answered, "Well, if anybody does as little as Flick, then I refuse to send him my congratulations." I happen to know that, but maybe somebody else can tell you more about it.

* Albert Speer was Reich Minister for Armament and War Production. He was a defendant before the International Military Tribunal. See *Trial of the Major War Criminals*, op. cit. volumes I-XLII.

DR. DIX: [to the interpreter]: Did you get that last sentence?
INTERPRETER TREIDELL: Yes.

* * * * *

DR. DIX: Well, let's go back a little bit to politics, and there I want to ask you whether in the meeting of the industrialists at Duesseldorf, which we have already mentioned quite often, that is in February 1932, whether you attended that meeting?

DEFENDANT FLICK: No.

Q. Well, Mr. Kirdorf and Mr. Thyssen at that time formed a closer or a smaller circle—it is a pity there are so many circles—well, they formed that circle at least and they talked with National Socialists, and especially with Hitler and they called up people for that—did you ever attend this circle with Kirdorf or Thyssen?

A. No, never.

Q. Well, one must admit that after all you were one of the leading industrialists, and you certainly knew the industrialists of the Ruhr personally. Are you in a position to tell the Tribunal the matter I have mentioned this morning in my opening statement,* that is, what, according to your opinion, were the political conceptions and opinions of the average industrialists in general? The majority of the industrialists from the political viewpoint from the year 1932 until the seizure of power, were they pro-Hitler or anti-Hitler, or whatever were they? Just a minute; hold it. Well, all right, you can start. Please go ahead.

A. During these years, apart from what dealings I had with the Ruhr industrialists economically speaking, I had not too much contact with them. The reason was mainly that my residence was not in the Ruhr, but in Berlin. But if you ask me for my general view on that matter, well, if I should mention a general average of the political attitude of the industry in general at that time, well, then, I would like to say then the average would be Deutsche Volkspartei—the German People's Party. That was about the party of industry. Only a very few were on the right wing—there were few of them with Hugenberg. And those who were real outspoken National Socialists, well, I think those were very, very rare. I should say that Stresemann's party, that is the Volkspartei, in general would be considered the industrial party; but politically speaking, after that, they didn't have the voters and masses behind them, and therefore practically lost their importance, because they had no mandate, no seats in the Reichstag. The masses were no longer behind them.

* Reproduced earlier in section III B.

Q. Thank you. That is sufficient. But in February 1932 industry was still in the fortunate position of inviting Adolf Hitler. After 1933 there were other great industrial meetings, but there Hitler was the man who ordered the industrialists to come, and therefore I would like to ask you, because one of these meetings—or this special meeting—is of importance: Did you in December 1936, attend a meeting which was called by Hitler or one of his deputies, a meeting of all the industrialists, that is, in December 1936?

A. Not to a meeting of industrialists called by Hitler, but to a big gathering in the rooms of the former German House of Lords [Herrenhaus]¹ that was the upper chamber. I estimate that perhaps 80 to 100 persons were invited by Goering to a meeting at which Goering made a speech. In the course of this meeting Hitler, who had not been announced before, also appeared before this group of 80 to 100 persons and also spoke after Goering had finished his speech.²

Q. Yes, but what did Hitler speak about?

A. Well, what Hitler said in detail I really couldn't tell you, after 11 years. All I can recall of the whole meeting is that the leitmotif was lack of foreign currency on one side and efforts for self-sufficiency on the other hand. And I was specially impressed by the fact that during this meeting Hitler made the following remark: If the German industry and the German mining industry with the ore deposits given to them by the State, do not do what is considered right by the State, then the State, which has given the ore deposits to the private industry, must reconsider the question which side it ought to support, that is to say, privately or nationally owned mining property. This meeting therefore was largely influenced by the matters which half a year later brought about the foundation of the Reich Works Hermann Goering.³

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¹ After 1918, this building was called the "Preussenhaus" or Prussia House.

² The report of Goering's speech was introduced in evidence as Document NI-051, Prosecution Exhibit 509, extracts of which are reproduced in C above. Goering called several meetings attended by a considerable number of German industrialists in 1936, the year which marked the establishment of the Four Year Plan. The first meeting was with the Advisory Committee on Raw Material Questions on 26 May 1936, a conference which Flick attended and during the course of which Flick spoke. The lengthy report of this meeting was introduced in evidence as Document NI-5380. Prosecution Exhibit 778. It is not reproduced herein. This document was also introduced in the Ministries case as Prosecution Exhibit 945, and parts of it are reproduced in Volume XII, this series, under section VI B, "Military Economy—The Four Year Plan—The Financing of Armament."

³ Concerning the establishment of the Hermann Goering Works, see also the Ministries case, section VI B, Volume XII, this series.

Q. Dr. Flick, you have heard that the prosecution is of the opinion that you were famous as a good National Socialist and were known as such to Hitler and also to Himmler. Is this assumption of the prosecution in agreement with your observations and the events and happenings in the Third Reich?

A. Well, I talked about it yesterday to a certain extent when I described my attitude to and connection with Hitler. But if you ask about the general state of things, I should like to say that when the Nazis came to power, I was held to be politically untrustworthy; and this distrust was political and *was maintained* throughout the whole Nazi regime. This may seem a little unlikely, in view of the fact that I was commissioned by the government to deal with certain matters. Well, these were political and police and economic fields of government work, but in regard to the political part of the work, for instance, the police looked upon me with distrust. I could almost say that I was persecuted. I can remember that during the first years when I wanted to travel to a foreign country I did not get my passport. During the whole time I was under police observation. I only found out about that later through one of my colleagues who had connections with the police precinct Grunewald. He said the police precinct Grunewald, where I lived, had been ordered to observe and had to report about me constantly. This went on the whole time. Later I found out that my mail was watched. It wasn't only that it was watched, as it was in many other cases, but it was actually opened, perhaps not all letters. It depended on who sent the letters. These letters were opened and they were closed again in a way which could only be found out with an X-ray apparatus. Only with such an apparatus could it be found out that they had been opened. And I once found out by way of an old friend of mine, a very important man in the Vereinigte Stahlwerke, Dr. Voegler, who found out in this way that my letters to him were always opened in a way that could not be recognized by a layman at all.

PRESIDING JUDGE SEARS: Can you give us the names of any persons who were involved in this spying upon you, except the name of the friend that you have mentioned whose letters were opened?

DEFENDANT FLICK: Yes, I can, Your Honor. I can name my secretary, and the police official. I can give you the name now. His name is Wendt. You can examine him. He was ordered to supervise Flick constantly and to report about him to the Gestapo. And in this connection I would like to mention an event, something which happened to me once which throws light on the situation in a very good way. Himmler had a doc-

tor, his personal doctor, who was of Finnish nationality. His name was Kersten. This man was an international authority. He's known in the most prominent circles at home and abroad, and his parents include even the Royal House of the Netherlands. He treated me before he became Himmler's doctor. And a short while ago I read that he is publishing a series of articles in "Figaro"—a man who is known all over the world. Apparently he is living in Stockholm now, and is a Finnish citizen. This man, Kersten, visited me one day in my office and when our conversation turned to political matters, he wrote on a slip of paper which he thrust at me over the the desk, "please do not go on. I know that you are being watched." I told him that I knew about this listening in over the telephone, and we have protected ourselves as far as possible. "You can see," I told him, "I have a sort of cap which I can throw over the telephone." And we had all kinds of technical devices which rendered this system ineffective. His answer was "this is not what I mean. I do not want to talk in this office at this point. Please come to my estate and we will go for a walk in the woods and I will open your eyes." I did that. And he told me "please believe me that I am aware that in your office there is an apparatus to listen in on your conversation, in your own office, microphones—in your walls. There are only a few in Germany, but there are such. And you are among the numbers 1 to 20. You are one of these numbers 1 to 20. And if I refused to talk politics in your own office, you will surely realize that I, who am in constant touch with Himmler, had a good reason for it." * What we did after that, all my colleagues can testify to. I went to the AEG [General Electricity Company]—the large electricity company; the general manager was a friend of mine. He was in my Aufsichtsrat, and I was in the Aufsichtsrat of his company. I said "Mr. Buecher, what can you do?" He said "you can do only one thing. You tear off the covering of the walls and eliminate all possible spots where such a microphone can be installed. These microphones are as small as walnuts." My room was similar to this courtroom. It was just as high. There was wood paneling and green velvet on top of it. On a Sunday morning, so that nobody would notice, we started to examine the whole room, but in my room which, as I say, was similar to this room, we couldn't tear off the whole covering. That would have been noticed and we would have had to expect an immediate report to Himmler, because one had to count on spies within the office and within the staff. Here again I could quote a very interesting ex-

* See the affidavit of Felix Kersten, Document Flick 17, Flick Defense Exhibit 17, reproduced in E 2 above.

ample. Just on the day I went to the AEG it had happened that at night the Gestapo arrived. They threatened the hall porter with a pistol and one said to him, "open the room of the general manager immediately; secondly, open the room in which there are the paintings of former non-Aryan members of the administration of the AEG." Everybody who had a leading position in the AEG had been put on the wall, as it were, in the shape of a painting. The AEG had taken these pictures away and put them in a separate room. The hall porter was told, "please open this room immediately. Show us the pictures and show us the room of the general manager. Now we are leaving. If anything is found out about this affair, you will be shot and your family will be shot." I can produce witnesses for this.

I also talked about this matter with the firm of Siemens, and I asked Dr. Bing, "what can we do about it?" He said the same thing, "smooth walls. What more can I tell you?" This, however, was practically impossible, and we helped ourselves in the following way. At discussions in my room we were most careful, and apart from that we put a radio on my table, and when we discussed important matters, we switched the radio on so that the discussion could only be transmitted by these microphones with plenty of noise. As witnesses of this, you can examine all the codefendants and also my secretary.

Q. Have you heard anything about the fact that you were to be put into a concentration camp?

A. Yes, that, too. I know it.

Q. But this question we want to mention at a later stage, and we want to close this chapter now.

* * * * *

Q. Now we come to the war in 1939. You know that the opinion of the prosecution is that war meant that you industrialists went arm in arm with Hitler to power and to conquest.

A. I did not quite understand.

Q. Yes. I shall repeat that in a moment. I will repeat because the defendant Flick did not understand me correctly. I say, Mr. Flick, you know the opinion or the charge on the part of the prosecution is that you are an industrialist, and as such, you went to power, arm in arm with Hitler; and after the seizure of power, to a war of conquest. I should therefore like to ask you what your attitude was towards war, not theoretically speaking, but towards this particular war.

A. Perhaps there were not many people who hated war more than I did. It is perhaps almost a grotesque charge that I who was so successful, whose career was perhaps singular, should want

war. I was a happy family man. I had three sons of military age. It is a terrible accusation to say that I wanted war. I said, and it can be proved, that I was prepared every day to sacrifice my entire property, all I own, and I said this not only to one but to quite a number, that I would sacrifice 95 percent of my possessions and property if this terrible misery could be avoided. How I tried to avert it may become evident through the witness Gritzbach,* partly but perhaps not wholly. Because this question is important, I would like to relate this event, this meeting between Gritzbach and me. In 1938, in September, danger of war appeared on the horizon for the first time. I asked Gritzbach for a meeting. I asked Gritzbach to do me a favor. I asked him to please try to influence his chief to avert war. In Munich, Goering played a much larger part in 1938 to maintain peace than the world knows. This was the source of Hitler's distrust, but most people do not know that. That time danger was averted.

In August 1939, acute danger of war appeared again. I asked Gritzbach to come to see me in my garden. I talked to him for hours. I begged him to go to Goering again. I told him it [the war], could not be done. He told me that he would do so. He promised he would and kept that promise. He may not remember the exact day. We came to an agreement that if matters of war can be averted, he would send me a postcard which would say "with hearty greetings." If things were bad, he would say "with friendly greetings." And unfortunately this postcard I lost when my house burnt down. Otherwise I could show you this postcard now. It arrived "with friendly greetings." I also tried to influence Himmler. I went to SS Lieutenant General Wolff in 1938 and I said, "Wolff, please talk to your chief so that the danger can be averted." And SS Lieutenant General Wolff conveyed that message to him, and because of my happiness that a peaceful solution was still found in September 1938, I presented him with a shotgun. Within the means at my disposal and within my power I did everything possible in order to avert this misfortune from Germany and from the whole world.

Q. Why did you become a member of the NSDAP just shortly before the war?

A. Well, in 1938 I joined the NSDAP when masses of people joined. I was an ordinary member, without any office or function. My general position asked for it and I could not avoid it. For instance, when I went to Saxony and I went to see Mut-

* Erich Gritzbach, Ministerial Director in the Prussian State Ministry, testified as a prosecution witness. Extracts from his testimony are reproduced later in section VI C.

schmann there was a form which I had to fill in, and I had to fill in my Party number, and matters became somewhat difficult at that time. And I think I have number six million or something, as a Party member.

* * * * *

Q. Mr. Flick, will you enlighten us about Keppler's life before he became Hitler's adviser? What was his position before that?

A. Well, I myself only met Keppler, not counting a hasty introduction in a hotel corridor, when we were introduced after the seizure of power. What I know of his former activity is not very much. I believe that he was active in some chemical enterprises, but I don't think with very much success. I don't think he was a very big man.

Q. Well, he came into prominence first when he had a connection with Hitler in the economic field?

A. After the so-called seizure of power he became the economic adviser to Hitler, and he was sitting in the Reich Chancellery where he had his office. The position itself and the possibilities were enormous, but his personality was not so tremendous, to make the best of these possibilities.

PRESIDING JUDGE SEARS: Well, perhaps that is the reason he didn't last.

DEFENDANT FLICK: That is true, there is no doubt, and when Schacht became Minister of Economics, he could only sort of follow in Schacht's shadow, as Schacht was a very powerful and authoritative personality who managed to curtail the activity of Keppler. Keppler, as Hitler's economic adviser, then received this new beautiful task as President of the Reich Institute for Soil Research, and now he could dedicate himself to the subject of research of ore deposits where you can develop your imagination because nobody knows what the earth looks like under the ground, and here one can accomplish things with imagination.¹

* * * * *

DR. DIX: I shall now deal with the last count in the indictment, the so-called Circle of Friends, the Keppler Circle. Mr. Flick, the statement of the witness Lindemann you have heard.² Were you in agreement with the contents of his statement and its various details?

DEFENDANT FLICK: Yes.

¹ Concerning Keppler's tasks, see the Ministries case, *United States vs Ernst von Weizsaecker, et al.*, Volumes XII-XIV, this series, in which Keppler was a defendant.

² Karl Lindemann testified as a prosecution witness. Extracts from his testimony are reproduced in D 4 above.

Q. Now, would you tell the Tribunal when you became acquainted with the Circle and joined it, and for what reasons you did so?

A. The Keppler Circle, that was the name of it when I joined it. At that time, it wasn't called the Circle of Friends. It existed even before the seizure of power by Hitler. In another connection, I have already described my relations with Keppler, as it becomes clear from his position as Hitler's economic adviser. I have already told the Tribunal about that, that Keppler within this general sphere dealt with the disclosure and consequent extraction of inferior German iron ore fields as a special subject. This sphere became his main subject after his dismissal from the position as the economical adviser to Hitler. Since the Maxhuetten, which was part of our groups, was one of the few German enterprises which had such iron ore deposits—I think there must have been three or four on the whole—it was for this reason alone natural and a matter of course for me to get in touch with Keppler about this particular series of questions. Even before the foundation of the Reichswerke [Hermann Goering Works], this subject cropped up again and again for discussion, and again and again the demand was made to open up and smelt this kind of ore which we called Dogger ore. Even when the foundation of the Reichswerke had not come up at all yet, as a consequence of the discussions with Keppler, measures had been started by us to start these mines for the smelting of these iron ores. One day Keppler asked me whether he could inspect the plant installations in the Maxhuetten. He wanted to have a look at them. The importance of his person made it necessary for me to accompany him at this inspection tour of our plants, and I did accompany him. First we went to Thuringia, then we went to southern Germany and Nuernberg. And Keppler went also to parts of Maxhuetten which are quite near Nuernberg on this tour of inspection, and at the same time he wanted to visit the Reich Party rally. In this connection, I came to the Reich Party rally and I was taken into the Keppler Circle. And from that time on I received the invitations regularly to this Reich Party rally. I was asked to join as a member, which I did. According to my memory, that must have been in 1935, as far as I remember now. I could add, of course, that at that time—the time of my joining the Keppler Circle—this circle consisted mainly of German businessmen. As Lindemann has explained here as a witness, I don't think I have to repeat it, but it was a reflection [Spiegelbild], I would like to say, of men of the whole German business world. Within this circle, there were representatives of the heavy industry, the potash industry, electricity, shipping, and

banks. In short, everything of any importance in the German economy. Shall we say a cross section and reflection of German economy. And as a political circle? SS circles were at that time not the predominant part of the so-called Keppler Circle. When I joined, Keppler was maybe the only political figure, if one can call him a political figure at all, and there was a certain connection to the SS, mainly in the person of SS Lieutenant General Wolff.

Q. Keppler also had a high rank in the SS, didn't he?

A. Keppler?

Q. Yes.

A. Yes, certainly. I would like to say that at that time there were no contributions and no regular meetings, but that came about later, with a monthly dinner in the Haus der Flieger. The whole situation was entirely different, and the structure was different. It differed mainly from what happened during the next year when Himmler became interested in the Circle. This came about as far as I remember in 1936.

Q. Just a moment, Mr. Flick. We don't want to deal with this new phase of this Circle now, we want to come back to it later. In order to remain at this particular subject, your joining the Circle and the reasons which caused you to join it, a person who is not acquainted with the affair would draw the conclusion from your testimony just now that in 1935 when you joined the Circle—perhaps joining is not the right word because it wasn't a closed organization, as it were—when you became acquainted with this Circle of men and took part in meetings, at that time, you say, your reasons were not mainly of a political nature or even political insurance for your own person. Not at that time, but at that time you joined for the reasons which you have just explained to us. In short, you said: All my colleagues are members, all prominent businessmen, and furthermore, Keppler personally is, for me at least because of his particular office for the opening up of iron ore deposits, of special interest to me. Is this conclusion correct?

A. That was the situation when I was asked to join, and I did so. Another reason for me, apart from the reasons I have already mentioned, is that I was of the opinion that in view of my political activity during the year 1932, which has been mentioned here during these proceedings, such as the contribution to the Hindenburg election, and so forth, I was of the opinion necessarily that a political insurance would not do me any harm. But this would not in itself have been a reason to try to become a member of this Circle. But when I was asked, apart from these reasons I have mentioned, it was an additional reason for me to accept this invitation which I had received.

PRESIDING JUDGE SEARS: Was the invitation from Koerner himself—Keppler, I mean?

DEFENDANT FLICK: As far as I remember, it was Keppler who sent me this invitation via Steinbrinck. I heard later on there had been a discussion about this. I know for certain that the remark had been made by someone: "Well, actually, of course he could not really be a very good member, but it would be useful if we asked him, at least." I remember that quite correctly.

Q. About how many men were invited, and in a sense were members of this circle when you went in? About how many?

A. I should like to estimate it—perhaps 20 or 25 people.

DR. DIX: Now you started to speak about the second stage, a new stage in the character and composition of this Circle, and I would like to ask you to inform the Tribunal how, when and where Himmler cropped up and when the contributions started, how these contributions were introduced, who wished them, and who demanded them, and where and when that was. This is all one set of questions.

DEFENDANT FLICK: The picture changed completely when Himmler became acquainted and interested in this Circle. I think that that was in 1936. I cannot say now, because I do not know whether the promoter of this affair was actually Himmler, or whether Keppler and Kranefuss were the originators. I assume that they met half way because the matter of Keppler was that he had lost importance through the fact that, first, he did not, as one had expected, and as the witness Lindemann has certified, receive the expected position of the Reich Economics Minister. That's the first point. The second point is that his activity as an economic adviser to Hitler became weaker and weaker through the authoritative personality of Schacht, who dealt with questions of economics in broad outline. He took them into his own hands, and in his shadow Keppler could only just vegetate, while he lost his importance more and more. And, therefore, I assume that it was Keppler and also Kranefuss who influenced matters extensively, and it seemed appropriate that since he lost importance with Hitler, he approached Himmler, whose power was rising. The reasons for Himmler's approach to the so-called Keppler Circle became obvious shortly afterward.

Q. You mean by these contributions?

A. Very soon afterward the question of donations came up for the first time. When I entered, this did not exist.

Q. A short question: It would perhaps be adequate to inform the Tribunal shortly about this person, Kranefuss, whose name has cropped up on various occasions now.

A. Well, Kranefuss in this particular Circle played the part of the secretary, a managing member, as it were. He was the so-called "maitre de plaisir." Later on he became the director of the Brabag, but otherwise he played a certain part, a part which was not recognized by most people and certainly not recognized by myself. But the position of Kranefuss was illustrated by the witness Gritzbach, who said that Kranefuss was in charge of the secret card index on business leaders. He carried out some sort of secret bookkeeping on individuals.

Q. You mean—

PRESIDING JUDGE SEARS: How many—excuse me. I didn't mean to interrupt. How many meetings did you attend before Himmler became prominent in the Circle? That is, from 1935 when you were first invited to these meetings until in 1936 Himmler became prominent, how many meetings did they have that you attended? About?

DEFENDANT FLICK: Generally it was so that meetings took place on occasions of the Reich Party rally when the whole Circle was invited, and then they were invited again 9 November to Munich. In between these dates I do not remember any meetings or invitations of the Circle. That was our fixed program.

DR. DIX: Well, now, I want to remain with Kranefuss for just one moment. What do you mean by a secret card index about the business leaders? According to what point of view did he file these cards, from an economic or political view, or was it initiated by the Gestapo?

A. Well, I never had the occasion to look into these matters either, but I assume that the political point was the main one; the general political attitude I think was the important thing.

Q. Did you—

PRESIDING JUDGE SEARS: Just a moment, Dr. Dix. Was it generally known about these cards in the Circle, or did you otherwise find out about it?

DEFENDANT FLICK: No, it was not generally known. I did not know it myself, but I found out about this very much later, about 1943. Just a little I did know, just a suspicion, perhaps, but that it went as far as that I did not know. These are matters which are only found confirmed by the witness, Gritzbach, about this card index; and about the activities of Kranefuss in these fields I found out concretely in 1943, and I shall report about this at a later stage.

DR. DIX: May I just ask whether you have found out about that by Kersten, by a report from Kersten?

DEFENDANT FLICK: Yes. That is what I mean.

DR. DIX: This affidavit by Kersten * about the intention of Himmler to put Flick into a concentration camp and possibly even to liquidate him, I shall submit in my document book—Would you like to say anything yourself on this particular subject? Would you like to say something to the Tribunal, or would you like to wait for the submission of this affidavit?

A. Well, I don't know what you mean.

Q. Well, I mean we have spoken about the contents of this affidavit and about the information which Kersten gave you. We have introduced it, at least, and actually this is a part about the political persecution of your person; it is not accounted in the indictment, but it is the last opportunity for you to say something which you might want to say. That is why I wanted to ask you whether you would like to say something to this particular point apart from the submission of the affidavit, which I shall do.

A. I don't think I have anything to say.

Q. Now how did these contributions come about?

A. I beg your pardon?

Q. The contributions?

A. After the approach of Himmler to this Circle had taken place, which, of course, did not come about in a way that the members were asked whether they agreed to it—no, that was quite out of the question—after, as I say, this happened, Himmler invited the Circle for a number of inspections which took place near Munich. He showed the Circle a number of things including large SS barracks with all installations, and he showed the Circle a porcelain factory near Allach which is in the neighborhood of Munich, and also the [concentration] camp Dachau.

Also on another occasion he actually showed us the camp Dachau, and I took part in this inspection myself. I had the impression that his purpose was to give the members of the Circle a favorable impression, or shall we say, at least a different impression than which had been existing generally among the German people about Himmler. The purpose obviously was to show that here for once the opportunity was given to convince oneself through inspection and looking for oneself, that that which perhaps in many circles had been reported about concentration camps was not true. For this purpose the inspection went on, and I myself had the impression, in fact, that what had been reported about concentration camps was not really true because what we actually saw was far from what at a later time, especially during the war, was reported about concentration camps. There was not a trace of similarity between what I actually saw and what was said

* Document Flick 17, Flick Defense Exhibit 17, reproduced in E 2 above.

about concentration camps later on during the war. I could go into details about this if it is at all required. I could give you short details. People worked in large airy rooms. They did carpentry work, or at least what we saw was carpentry work. Cabinets were made for the barracks. The canteen was shown to us. In the canteen one could buy practically everything except alcohol. We were told that the inmates received a monthly wage which, of course, was not very high, but something like 40 marks which they could spend by buying cigarets or additional things in this canteen, this store which we actually saw.

Then the kitchen was shown to us, and the kitchen was like a kitchen in a large hotel with all installations, with large cooking installations, pots and pans, and it was about lunch time when we came and we were told, "here is the food, the lunch. You can see what it is like. You can try it. You can taste it." And most of us made use of this invitation. We actually tasted it, and we saw that this was the food which these people received. That was our impression of what was shown to us.

The purpose of this inspection I did not know at that time, and especially on that day when the inspection took place, but that became clear to me when on the same evening, for the first time, the question of contributions was discussed. Then I, like Lindemann, although I was perhaps not as suspicious, thought that perhaps there was a subtle connection between what we saw that day and what was asked of the members of this inspection group.

Q. Speaking about connection, you think that these contributions were meant for the upkeep and maintenance of concentration camps?

A. The purpose of these contributions was explained to us by Himmler soon afterward quite explicitly. That was at a meeting in Berlin, and I can remember it quite well. I remember that he said that his activity was of a negative nature, generally, and that here for once the opportunity had come up for him to deal with a hobby, a personal hobby, to indulge in a kind of personal hobby, and the purpose of the contribution, and the use, was explained to us to the effect that it was for the care and maintenance of matters of a cultural nature, excavations, for instance: in the Lueneburger Heide, mentioned as an example here, as the place where the fights between Charlemagne and the Saxons took place; the building up of the Quedlinburg Cathedral; excavations of the Extern stones, to preserve all these cultural historical places for the German people and to care for them, and the use of the contributions for this purpose was demonstrated to us constantly.

We were invited to the Lueneburger Heide. We could convince ourselves of these excavations. We could see for ourselves that large buildings were erected where these things were put. I think the name was Sachsenhain. We had the opportunity ourselves to inspect the work on the Quedlinburg Cathedral and other matters as, for instance, the large Tibet expedition. It was demonstrated to us by a lecturer, the man in charge of this expedition. A film was shown to us about it and other matters. I could tell you quite a lot about this.

Q. Now, the witness Lindemann stated that he personally had no mistrust as to Himmler in the beginning. Shall we say mistrust of these contributions? As a matter of fact, he never mistrusted the contributions but only through his son, who was an officer in a regular cavalry regiment, who told him they were most indignant about some activities of some of Himmler's forces within this cavalry regiment; and through this son he found out about this changing character of Himmler's. We talked further to the witness, Lindemann, and he acknowledged that Himmler was two-faced, his charm and his benevolence on the one side, and his terrible cruelty on the other side. I believe it is necessary that you also, Mr. Flick, tell the Tribunal about your opinion of Himmler at that time.

A. I can only confirm what Lindemann said about this. Himmler was not objectionable personally, for everybody who met him in the way we did within this Circle would feel it was unbelievable and unimaginable that he, on the other side, did those things that became known later on, and I can only confirm that this is consistent with my impression today and with my later impression which I received during the last phase of the war, in 1943 and 1944, if one speaks as Lindemann and also others. I remember something that the Foreign Minister, von Neurath, said, "He is two-faced." Only we at that time when he approached the Circle did not recognize it.

Q. Now did you have confidence that these contributions were actually used for the announced purpose?

A. I never mistrusted the purpose of these contributions.

Q. Do you doubt it today?

A. Not even today. I don't doubt it today at all because these matters which were constantly shown to us made it clear to everybody who was able to calculate that they required extensive financial means for the covering of which these contributions, according to my conviction, were entirely used. For expeditions and excavations at the Wewelsburg, for instance, expenditures amounting to a million were estimated, but this is only

an impression and a rough estimate about this affair. One couldn't go there oneself and say: "Let me have a look into your accounts, show me how the money was used!" I assume something quite disagreeable would have resulted from such a desire.

Q. Did the character of the Circle not change somewhat by Himmler's personality who, of course, was a political personality? Then the influx of the SS people, and you yourself have said just now that you were not completely aware perhaps of Himmler's character at the end of the war, but you doubted the character. Now, one could say, "Well, if matters become unpleasant, was there no possibility to stop contributing and to refuse to contribute any further and to keep away from the Circle?" I would like to ask you this question.

A. This possibility for me at least would not have existed in any way. In my case, considering my bad political record from the time before 1933, in my case, as I say, it would have been very difficult to refuse to contribute for Himmler's alleged purposes, since before 1933 and also after 1933 I had put at the disposal of the former State Secretary Popitz, later Prussian Minister of Finance, large sums for excavation amounting to hundreds of thousands. I did not doubt that this was known to Himmler. These contributions had taken place before 1933 and went on after 1933.

Q. You are speaking of Popitz?

A. Yes. He had a special association for this purpose with the name of "Pellicius", or something like that, and for me it would have been absolutely out of the question to refuse something to Himmler for the same purposes in fact, for which I had contributed to somebody else; before 1933 and after. Popitz, incidentally, was hanged as a consequence of the affair of 20 July 1944. This was a further reason for me to say that it wasn't possible to refuse Himmler his demand or to leave the Circle. That would have been unthinkable. I could do so less than many others.

Q. Now, the purpose of these contributions remained, as you say, for cultural affairs, and if you would like to say so, special hobbies of Himmler, there was no politically tainted use of these contributions. But there was a letter which has been submitted by the prosecution, a letter * by the banker Schroeder of Cologne to Himmler on the occasion of his appointment as Reich Minister of the Interior, and this letter expresses the joy of Schroeder to find a strong man in this office, especially Himmler, and he wishes him the best, and he says that he is glad, or his words are to that effect, that he is glad of this occasion and he speaks about

* Document EC-454, Prosecution Exhibit 681, reproduced in C above.

Reich Minister of the Interior Himmler's personal use, but there is no cultural purpose mentioned, at least one must understand the letter to that effect. He is glad to be able to tell him that the members of this Circle, who are well-known to him, use this occasion to be able to contribute a sum of so and so many thousand Reichsmarks. One could gain the impression from this letter, therefore, that the members of this Circle on the occasion of the appointment of Himmler as Minister of the Interior, the political key position of the Third Reich after all, that they had collected a sum of money and contributed it to him. Do you know this letter? Is this correct? Did these members of the Circle actually participate at a collection on the occasion of the appointment of Himmler as the Reich Minister of the Interior?

A. I only found out about that letter here. I do not know anything of a collection within the Circle on the occasion of the appointment of Himmler as the Reich Minister of Interior. I assume, and I have heard nothing about this from others here, and I say that I assume that Schroeder used the occasion of the appointment of Himmler as Minister of the Interior and connected this letter of congratulation with a report to Himmler and announced the contribution, that is the annual contribution which was due anyway. As I told you I do not know anything of a collection or special contribution to Himmler on this occasion.

Q. Did you ever in the year of 1943 go to the eastern headquarters of Himmler? ¹

A. I followed Himmler's invitation to his headquarters in December 1943, on which Lindemann has already testified. This becomes evident from the letter of Kranefuss, which also has been submitted, ² that Himmler, too, had not seen the Circle for the preceding 2 years, and now in the third year he wanted to invite members to his headquarters. He approached them via Kranefuss. Apart from this one meeting in December of 1943, Himmler, in my opinion, only appeared once within this Circle. It may have been twice, but I only remember once. At least when I participated, it was once. Nothing took place, no meeting took place in 1944 and in the years of 1941 and 1942, according to the letter which Kranefuss wrote to Himmler, which I did not know before, but was shown to me here; it is stated that no meeting with Himmler took place, and it expressly states that Himmler had not been in a meeting for 2 years.

¹ The program for the meeting of the Circle of Friends at Himmler's eastern headquarters is contained in Document NI-8497, Prosecution Exhibit 725, reproduced in C above.

² Letter from Kranefuss to Himmler, 21 April 1943, Document NI-8106, Prosecution Exhibit 722, reproduced in C above.

Q. Did Himmler address the Circle at that time?

A. Yes, he did.

Q. Can you remember the contents of his speech?

A. No. I cannot tell you in detail, it was a speech on general matters, as it was usually made. I remember but one sentence, "either a whole Reich to the Urals or doom," that I remember.

Q. I understand that you would remember that.

JUDGE RICHMAN: I did not get the translation.

THE INTERPRETER: "Either a whole Reich to the Urals, or doom."

DR. DIX: If you do not remember anything else from that particular speech, perhaps you have heard from somebody else, for instance during such a meeting or on another occasion during the war, who might have found out that Himmler on that occasion spoke about the justification of so many cruelties; that it was true that many cruelties had taken place and that he had to commit many cruelties and was suffering from it himself, but that it was a necessity or something to that effect?

DEFENDANT FLICK: I cannot say that, I cannot remember. It is quite possible that he said so, but I cannot remember it.

Q. The prosecution is of the opinion that it is obvious that if so many SS people were in the Circle that they would have at least given you confidential reports about the well-known cruelties in the eastern theater. Is that the case?

A. Confidential discussions between SS people and myself rarely took place. The atmosphere was different, it had a completely different character, as I already mentioned, from the character at the beginning when we entered the Circle and the whole position of its composition changed essentially during the war. In about 1940 more and more SS people joined the Circle, not by any means because they were called in by businessmen or were elected by them. They just appeared one day, people like Ohlendorf, Fischer, Schieber, Kehrl, for instance. All of these are personalities; also Pohl, who from 1940 to 1943 entered the Circle and changed the picture of its composition. Completely confidential discussions in the way that Dr. Dix means never took place. At dinners one had a special seat, which was given to one, which was allotted by Kranefuss, and after dinner one talked to that person one liked and with whom one had something to discuss. In my case, it was generally my friends from the business field. If Ohlendorf now appears with an affidavit,* I can only say that I did not say ten sentences to Ohlendorf in my whole life, not even five I should think.

* Document NI-8510, Prosecution Exhibit 715, reproduced in D 8 above.

(Recess)

Q. I have only two more questions. The prosecution is of the opinion that you, Mr. Flick, did not only in 1935, but already earlier, join the Circle, because Mr. Steinbrinck, as your representative, became a member of this Circle, before 1935. In order to clarify this rather legal question I would like to put this question to you—Did Mr. Steinbrinck resign from the Circle when you personally joined it?

A. No.

Q. Did Mr. Steinbrinck resign when he separated from you?

A. No.

DR. DIX: Your Honor, this concludes my case-in-chief—that is, my case-in-chief as far as the interrogation of Mr. Flick is concerned, if Your Honor please.

* * * * *

CROSS-EXAMINATION

* * * * *

MR. ERVIN: Now you have told us that 1932 was the high point of your political contributions, and, as the record shows, you made contributions of some amount to practically every party, something that, I believe you told us, had never happened before 1932. You further testified that these payments were a very great sacrifice to you. What was the financial position of your concern in early 1932?

DEFENDANT FLICK: The last part of the question is not altogether clear to me. How was that?

(Question repeated by interpreter.)

A. In the beginning of 1932 the financial situation of our concern, as well as the situation of the whole German heavy industry, was not favorable.

Q. Well, you were bordering on insolvency, weren't you?

A. I said the situation was not favorable but that does not mean that I was near insolvency. There is an enormous difference, at least, for me.

Q. Well, let me read your statement from the Reich budget for the fiscal year 1932. It is an excerpt from section 17 of the budget, pages 529 and 530. I ask that it be marked as Prosecution Exhibit 769,* for identification.

This is a footnote on a page just tying in an expenditure of nearly 37 million Reichsmarks, a paragraph of explanation. It

* Document NI-7589, Prosecution Exhibit 769, is reproduced earlier in section IV B.

says: "Acquisition of shares of Gelsenkirchener Bergwerks A.G. The amount of 37,968, 295.91 RM represents the expenses resulting from the acquisition of Gelsenkirchener Bergwerks A.G. shares at a face value of 110,000,000 RM. The basis for this transaction was the contract between the firm of Hardy and Company, G.m.b.H. and Charlottenhuetten A.G. of 31 May - 1 June 1932 which was drawn up in execution of a preliminary contract of March 1932. The firm of Hardy and Company, G.m.b.H. concluded the contract by order of and for account of the Reich. Acquisition of the shares seemed necessary for the following reasons: The financial situation of Charlottenhuetten, which together with her daughter companies owned most of the Gelsenkirchener Bergwerks A.G. shares, which had been bought for account of the Reich, caused great anxiety early in 1932. Due to the close interrelation of Charlottenhuetten with Gelsenkirchener Bergwerks A.G. and Vereinigte Stahlwerke, a serious threat to the bank obligations of these firms had to be expected in case one of these companies had incurred financial difficulties. A weakening of the Stahlverein Konzern could not fail to affect other mining industries. The effects of such developments upon the German banks, which had just been reorganized, could not be gauged, but in view of the close relationship of banks and Reich, there would have been serious consequences for the German Treasury. Added to this was the concern that if the Reich did not intercede, the Stahlverein Konzern would be dominated by outsiders. To avert this danger was imperative for the national interest." Defendant, would you say that the sentences in this report are a fair statement of the financial condition?

A. First of all I have to look at the document. This document has never been submitted to me so far, and I can't see anything from a few sentences read to me like that. (Defendant reads the document). The document up to now was unknown to me. It is not from our firm. It comes from the Reich budget for 1932, and how the amount of 37 million is being arrived at cannot be derived from this document.

Q. Well, for the moment I'm only interested in the statement the Reich Finance Minister made in his budget about the financial condition of Charlottenhuetten. Is it a fair statement?

A. This statement by the Reich Finance Ministry concerning the condition of Charlottenhuetten has never been discussed with me and is not in agreement with what I thought of that situation. I cannot tell you why and for what reason the author of it reached this opinion. But I want to explain to the Tribunal a point which perhaps could throw light on matters. The man in the Reich Finance Ministry discussed here in a roundabout way—I mean

we have to call things as they are—is the then Reich Minister of Finance and Vice Chancellor [Hermann] Dietrich, under the Bruening government. At the present time he is Commissioner for Food and Agriculture in the American zone,* and this former Minister of Finance and former Vice Chancellor Dietrich in the summer of last year made a radio address in Germany concerning this transaction. And this radio speech has been published in the entire German press, and certainly it is very easy for the Tribunal to make this speech available. The title is "Radio Speech by the Former Reich Minister of Finance, Dietrich, a Contribution to the Clarification of the Rhine and Ruhr Problems." And in this public speech Dr. Dietrich, last summer, described the transaction and gave the reasons which led to the transaction, and he stated: "Today I can speak without restrictions concerning this matter. At that time I couldn't do it. Today I can state what were the aims for this big transaction and what I intended to achieve by it. I wanted to use Gelsenkirchen, being the key position in the Ruhr at that time." He said literally that by that transaction all positions in the Ruhr would be occupied, and that through Gelsenkirchen he wanted to create an economic and political connection with the French. I have already mentioned this briefly. The French would have become interested in the Ruhr coal which they needed. They would have had part of it, and the Germans should have had the possibility of participating in the French (formerly Lorraine) minette. Dietrich went on to say in his broadcast, "If the Bruening government had continued to be in office and if I had succeeded in carrying out these plans of mine, the war could probably have been avoided and would have been avoided."

* * * * *

Q. Do you remember the date that this contract was finally signed, this Gelsenkirchen deal with the Reich?

A. Well, I couldn't give you the date from my memory.

Q. If you look at the first paragraph of the document which we are discussing you will find a sentence, "The basis for this transaction was the contract * * *" and then it names the firms, "of 31 May-1 June 1932, which was drawn up in execution of a preliminary contract of March 1932."

Do you know what the significance of that double date is, 31 May-1 June? Does that mean it took 2 days to complete the contract?

A. I couldn't tell you that. I am not the man who compiled that document.

* Hermann Dietrich was chairman of the Bizonal Committee for Food and Agriculture from 1946 to 1947.

Q. Well, I also have a copy of the contract which is dated the same day. Do you have any recollection of that?

A. Well, I can remember what I see here on the document. I know it was 31 May-1 June, preliminary contract of March. All that would be correct, I think.

Q. And do you remember it independently of the document?

A. The date you mean, or what do you mean?

Q. Yes, the date, the fact that there is a double date mentioned. Is that a common thing in transactions? Does it have any particular meaning?

A. Well, I couldn't tell you the date from my memory. I mean after all, it's 15 years back. That's impossible.

Q. Now, the Bruening government fell on 30 May. Von Papen was appointed Chancellor on 1 June. Is that just a coincidence or does that have some relation to the signing of this contract over a 2 day period, or perhaps in a night?

A. I couldn't tell you that. I can only say here that in March already a preliminary contract had been concluded, and therefore I assume that basically an agreement had been reached concerning that transaction in March already, because otherwise no preliminary contract would have been concluded. My view of the matter is that at the end of May the final agreement was concluded in supplementation of the preliminary contract which already existed.

Q. You don't recall any particular rush to get the final contract concluded before the Bruening government fell?

A. I couldn't tell you that. I don't know, but I assume that as a matter of course if a government falls that in the last minute it has to fulfill its engagements and its obligations and to sign a final contract concerning matters which had already been concluded in a preliminary contract. At least that would be my conception of a decent government.

Q. Now, you have already told us that this transaction at the time caused somewhat of a sensation in the press, and that almost every political party in Germany looked into it at the time. They are the same political parties that you contributed all this money to in 1932, aren't they?

A. The political parties to which we gave the contributions in 1932, according to my compilation which I have here, are basically the Bruening government, the Democrats, that is, as far as the Hindenburg election is concerned one cannot speak of the Bruening government alone because this involved a multitude of parties which were for the election of Hindenburg against Hitler. That is not a political payment to one party. You have to conceive that as a political support for the election of Hindenburg. After

all, it wasn't the Catholic Center Party or the Democrats either who received that money; it was the campaign fund for Hindenburg. That is the largest part of the payments of the year 1932.

* * * * *

Q. Now as to the payments to these other political parties, would it have been an improper inference to say that they were to some degree influenced by the sensation which resulted after this Gelsenkirchen deal?

A. I have to deny that because the payments were made for the purpose of the election. They were made to Schleicher and to Hugenberg during the days of the election. I think that I gave you sufficient details already this morning in this connection, and the payment to Papen was made, as can be seen from documents, in October, and there was no longer a stir concerning this transaction and no discussions about it.

Q. Well, Defendant, let me read you a paragraph from the statement, an affidavit by the defendant Steinbrinck, which is sworn to 28 January 1947. I ask that this Document NI-3508 be marked as Prosecution Exhibit 770 * for identification. That was the excerpt. The affidavit reads:

"In the middle of 1932 I entered into the well-known connections with Keppler-Kranefuss within the Schacht Circle. Some time later I met Reich Leader SS Himmler through Count Helldorf, the SA Leader of Berlin. These connections also were of a purely defensive character at first, in order to protect us from unfriendly actions by all these offices, because the publicity of the Gelsen transactions with the State in April 1932 caused a great stir. There were many inquiries, investigations by most of the parties (in south Germany demonstrations against Flick took place), which on their part used the opportunity to manifest their own desire for donations and support. After having just overcome a crisis of existence, we were not in a position to avoid such demands. In this period of economic and political ferment a calming of the atmosphere which threateningly surrounded us was essential to the Konzern at any cost. We were in need of an objective middle class government in order to insure that the whole transaction was smoothly carried to its conclusion and to maintain the established connections with the middle class parties. It was due to this attitude that we made donations to all groups which asked for them, from the Independents and Social Democrats to the right wing parties, and especially also to the left wing newspapers. During the years 1931-32 we naturally made donations also to the Party, SA, SS, and NSDAP newspapers."

* Reproduced in B above.

Q. You don't agree with that opinion of the defendant Steinbrinck, I take it?

A. Well, I think Mr. Steinbrinck himself should rather explain that. I mean I can say that—

Q. I just asked you if you agreed with it, not to try to explain it.

A. I can't answer that question by "yes" or "no". I have to explain my position.

PRESIDING JUDGE SEARS: Well, then that answers it.

MR. ERVIN: Now let's talk about your contributions to the Nazi Party organizations in this year. Your estimate of them has it 50,000 Reichsmarks.* Do you have any records or receipts to show?

DEFENDANT FLICK: It is written here "estimated". Well, that shows already that I have no documents and no receipts.

DR DIX: If Your Honor please, I am very sorry that I have to object to this way of treating the matter, the question put by Mr. Ervin. If counsel for the prosecution puts a question and the defendant answers that he cannot answer the question simply by "yes" or "no", but "I have to explain it", if then counsel for the prosecution answers, "Well, then don't answer it", and passes on to the next question; well, then the Tribunal retains an impression as if the defendant had not wanted to answer the question which was put to him.

PRESIDING JUDGE SEARS: No. There is no such feeling on the part of the Tribunal. The question was in relation to a long statement by the defendant Steinbrinck, with numerous separate matters in it, and when the witness says that he can't answer it simply "yes" or "no", and would like to explain, that answers the question for the time being. When you have the witness on redirect, if you deem it important, you may ask him to explain the statement. For the present, the Tribunal rules that Mr. Ervin is within his rights in proceeding as he does; but you will have every opportunity.

DR. DIX: Very well, Your Honor.

MR. ERVIN: Well, does the estimate of 50,000 Reichsmarks include payments to the SS?

DEFENDANT FLICK: I assume that these 50,000 marks as I have estimated—which I haven't paid myself and the payment of which I haven't even initiated, include certain payments, smaller payments, to SS members. I did not cause them, and I didn't pay the money.

Q. Does it include a payment of 35,000 Reichsmarks paid in one sum to the SS through the suggestion of Schacht?

* Reference is made to Flick's affidavit, Document Flick 1, Flick Defense Exhibit 1, reproduced above in this section.

A. I couldn't tell you. I do remember that Schacht after the well-known meeting of February 1933, sent Himmler to us, to the Charlottenhuetten, to Mittelstahl, in order to cash some money. At that occasion I met Himmler for the first time. I met him quite by accident in our offices. But as far as I remember, that was part of the money which was granted on the strength of the previous general meeting of the industrialists, because otherwise Schacht wouldn't have known about it either.

Q. I am talking about a payment in 1932 before the February 1933 meeting. Do you remember a payment of 35,000 in one sum to the SS in 1932?

A. No. I don't remember that. I do remember a payment made in February 1933. That's all I remember. That's all I can tell you. In my opinion, that had been caused by Schacht.

Q. Now weren't the contributions to the SS getting so numerous in 1932 that an agreement was made to centralize it in Berlin for your entire concern in agreement with the Reich Leader?

A. With the Reich Bank?

Q. With the Reich Leader SS.

A. I never made any agreement with Himmler concerning this matter, and I cannot testify in that respect.

Q. Did Steinbrinck make the agreement?

A. I don't know, and I think he is the best man to testify about that. I couldn't tell you. I didn't make any agreement and I didn't negotiate any agreement either.

Q. Well, now Document NI-3454, Prosecution Exhibit 694 * which is in prosecution book 14-A. There was a letter of Steinbrinck in 1937 referring to this agreement made in 1932, and he also tells us about it in the affidavit from which I have just been reading to you. You say that you didn't know about that agreement at all?

A. The letter of the year 1937 or 1938, I think it was, I think that was a letter written by Steinbrinck to Raabe. It was not a letter addressed to me.

Q. That's true, I understand that, but was that the first knowledge you had of that agreement when you saw that document in this courtroom?

A. I don't remember it. It is possible that Steinbrinck quite incidentally talked to me about it, but I couldn't tell you. I hadn't talked the matter over with Himmler, and that that was really a very concrete agreement, that was unknown to me.

Q. Did Steinbrinck have authority to make such an agreement for the concern without informing you about it?

* Reproduced earlier in this section.

A. Steinbrinck had authority to negotiate matters of payments and contributions without consulting me.

(Recess)

Q. Did defendant Steinbrinck also make contributions of funds for the SS in 1932 without your approval?

A. Within certain sums, he had the opportunity of so doing.

Q. What was the limit of his authority?

A. The limit was not fixed. We did not have anything like that in Berlin or in the plants either. I can give you an example. I once came to Mittelstahl in Riesa. I think I already mentioned that. At lunch the Vorstand told me, we have given Gruppenfuehrer so-and-so 5,000 marks. That was a remark made by the way. I had not been consulted beforehand. I would not have heard about it at all if I had not happened to be in Riesa for lunch. It is possible that the managing boards [Vorstaende] in Dortmund or Riesa, or wherever they happened to be, gave a sum or sums of money. I even assume that information for certain. And as certainly as I assume it, I can say that I never heard anything about that. It is quite unimaginable that companies with 50 Vorstand members and 75 plants scattered all over Germany should, if they gave some contributions of a few thousand marks, have to ask Flick in Berlin about that. You cannot run any enterprise on those terms. It would have been improper if one had expected the Vorstand to ask for my approval in advance.

Q. Would you say that roughly 5,000 or 10,000 marks was about the limit of these expenditures? And above that, you would be informed; asked ahead of time?

A. There was no limit. I have already explained that, but I assume that sums of 20,000 marks, sums of that size, would have required inquiry in Berlin. I do not know whether Harpener or Essener Steinkohle or Linke-Hofmann Works, all of these works ever gave a penny or not.

Q. Well, in 1932, would Steinbrinck's authority have been roughly the same, that is, if it had been 20,000, you probably would have been asked?

A. I cannot say that today. I assume that if it had been 20,000 marks, he would have asked. I believe so. I assume that.

Q. Ten thousand?

A. That I cannot say.

Q. Do you recall Funk making a trip through the Ruhr in 1932 to make a general collection from industry for the Nazi Party?

A. No. I cannot recall that.

Q. You do not recall that your share of that contribution was at least 30,000 marks in 1932?

A. I cannot recall Funk's trip to the Ruhr. I do not know anything about that. At least I do not remember it.

Q. It wouldn't surprise you though that there had been such a contribution? It could have been possible?

A. It could have been possible. This surely could have been possible. If he made a trip to the Ruhr and a company associated with me wanted to contribute, I think that is possible, but I do not recall this trip at all.

Q. You did not include any such 30,000 marks payment in your 50,000 marks estimate that you got in your affidavit?

A. Of what sums this sum of 50,000 marks is made up—that is an estimated sum, estimated in 1947. I have expressly contrasted it with the payments where I have receipts to prove the amounts. It may have been 50,000 marks, it may have been 60,000 or 70,000, I can't say. It is imaginable that if such a payment had been made it is contained in this estimate so that, just like the 100,000 marks under number 8, it is an estimated figure, and the 50,000 marks under number 9, too. Those are estimated figures, whereas numbers 1 to 6 are covered by receipts. It is quite impossible for me to explain this down to the last penny today. The 100,000 marks, too, may have been 120,000 or it may have been 80,000—no one can remember that exactly today, after 15 years.

JUDGE RICHMAN: Who made the estimates?

DEFENDANT FLICK: The estimates of numbers 7 to 9 I made myself. Occasionally I have discussed this with my former collaborators, but these are the figures I more or less worked out and estimated for myself.

Q. Which of your former colleagues?

A. Steinbrinck and Kaletsch.

Q. Anybody else?

A. I don't know of anybody else.

MR. ERVIN: Well, now, Steinbrinck has told us on interrogation of these two specific payments I have mentioned, one 30,000 and one 35,000; that comes up to 65,000 already in 1932, without including any additional payments. As I understand your testimony, that could be right. Your 50,000 figure is pulled out of the air, so to speak, a vague recollection?

A. Well, I don't say that, 50,000 is my estimate—estimated in general. I have no evidence about it. The same as with the other sums, I have said it could be 50,000, or 60,000, or 70,000, perhaps even only 40,000 I do not know.

Q. You did talk to Steinbrinck about it?

A. I have in general discussed these figures with him, only generally, and of course we haven't the same recollections. One of us estimates it at 50,000 and the other at 70,000 or 80,000; but we did not discuss specific matters. We only discussed general figures, quite briefly. It was important to us, in this connection, to establish the amount of the Hindenburg payments, and we were of the general opinion that it was more than the 450,000 which for that time was the only sum we could prove by actual receipts.

Q. Well, now, for the period after 1932, concerning which you make some interesting comparisons in your affidavit, you list a total of 230,000 Reichsmarks for major political purposes for the entire period from 1933 to 1945; 30,000 of that was paid to Bruening and the other 200,000 was paid as a result of the February 1933 meeting. Were there any national elections in Germany after that meeting, that is, apart from the one in March 1933, concerning which the meeting was held? Were there any after the election in March 1933?

A. I don't remember any further elections. I think that was the last election.

Q. Do you remember Goering's promise at that meeting that it would be the last election?

A. I cannot say whether I remember that but I think it was the last.

Q. You did hear his speech?

A. The speech of February 1933?

Q. Yes.

A. Yes. I heard that. But I don't remember that he said that, Goering has—

Q. You don't remember that he didn't say it?

A. No. I cannot remember either in the negative or in the positive sense.

Q. Well, now, despite the fact that there weren't any national elections after that meeting there were opportunities to donate money to the Party and Party organizations, weren't there?

A. Certainly.

Q. Quite apart from the Keppler Circle contributions, which we will treat separately, there were regular contributions to the Adolf Hitler Fund [Spende], weren't there?

A. Yes. That was a levy. It was not a voluntary matter. Everyone had to pay that, according to a definite key, every manufacturer in Germany. The word fund here has no connection whatsoever with free will.

Q. Well, do I take it that the payments that you have listed in your affidavit are voluntary payments after 1933, and that is why you excluded the Adolf Hitler Fund, because it was involuntary?

A. The Adolf Hitler donation I did not consider as a donation in the sense at all. As I said, it was a levy on German business. It was rather in the nature of a tax than in the nature of a voluntary donation.

Q. And your 200,000 contribution in February 1933 was more in the nature of a voluntary donation?

A. The payments of February 1933, of 100,000 marks each to the NSDAP and the German Nationalist People's Party, I did not describe as being voluntary in contrast to the donation I made later, in March 1933, to Bruening. In that case no big shots had come to me beforehand to ask for money as happened in February 1933. I already stated that here and I repeat—German business had been asked to contribute, after the seizure of power and I, least of all, I think, was in a position to refuse because my previous political history was one to be frowned upon because in 1932 I had personally refused to give Hitler money or to support him when he asked personally for my support for his ideas and for the election campaign.

Q. Can you give us any general estimate, without details at all, as to what the amounts might be of your contributions to the Adolf Hitler Fund in any one year?

A. With the best will in the world I could not do that, but I think from the documents of the plants this can be easily arrived at. I am sure they were quite considerable sums, which I estimate at several hundred thousand a year. I cannot say it, but it will be shown by the documents. Anyway, they were fairly large sums.

Q. Did you make any contributions to major political personalities after 1933, directly to the persons concerned?

A. No.

Q. Did you ever make any contributions to Goering?

A. Not to Goering himself.

Q. Did you ever make them to anybody on behalf of Goering?

A. A fund for the benefit of Goering was created—put at Goering's disposal but not for him personally.

Q. How much did you contribute to that fund?

A. As far as I remember, two funds were created, one in 1940, that was a sum of, I can't say for certain only from memory, but I think it was about 400,000 or 500,000 marks; and in 1943, on the occasion of my sixtieth birthday, I gave donations to the amount of 4,000,000 marks, which I have already mentioned, and a part of this 4,000,000 was a fund for welfare purposes, at the disposal of the Reich Marshal [Goering], amounting to several hundred thousand marks, I think it was 300,000 or 400,000.

Q. You remember two payments which total 900,000 marks, roughly. Were there some others as well?

A. I can't remember any others.

Q. Do you remember any contributions to any other personalities, other than Goering, or for their benefit, that is, excluding the Keppler Circle?

A. I can't remember.

* * * * *

Q. Coming now to your trip to Dachau, you testified on direct examination, "I had the impression that he"—if Your Honor please, that's referring to Himmler—"pursued the purpose to give the members of the Circle a favorable impression, or shall we say at least a different impression than which had been existing generally among the German people about Himmler." What was that impression existing generally among the German people that you were referring to in that answer?

A. I don't know whether I said a general impression. I don't believe I did say that, but as far as I remember, I said, "In some circles of the German people," and in some circles of the German people obviously the opinion held of Himmler was not the same as the one which he would have described as his own characterization. He was considered a very severe person in many circles, a person who took very severe measures, and my impression was, and the witness Lindemann had the same impression, that he wanted to show us in particular, that rumors about concentration camps and bad treatment of the people were not true.

Q. What were the rumors about the concentration camps?

A. The general view—well, I can't mention specific rumors, but the general view was that it wasn't a pleasure to be in a concentration camp. There was no idea of the concentration camp as it grew up in the war and after the war. That did not exist at the time.

Q. Well now, this impression of Himmler as a severe man, which you say was held in some circles in Germany, how far back did that reputation go? Was he always known in that capacity?

A. I can't say how many people considered him in this light. I really can't say. Naturally I am not in a position to say so. I did not concern myself with Himmler's person to this extent.

JUDGE RICHMAN: Well, how long had you known about this, his reputation for severity? How long had you known it prior to this trip to Dachau?

DEFENDANT FLICK: I can't say exactly but he was regarded as a ruthless person. That was an opinion extensively held. It was the general opinion of many people, and it was an idea that

I had too, but I can't say more than that today. I did not have concrete proof or knowledge to form such a judgment.

Q. You had had this opinion at least from 1934?

A. I can't say whether it was 1934 or 1935. I believe in 1934 Himmler did not have such great powers. He got those later. I believe that in 1934 the police functions were still exercised by Goering, but I don't know that for certain. At first, police functions were in the hands of Goering, but perhaps at about this time they passed to Himmler.

(Recess)

MR. ERVIN: Defendant, we were talking about Himmler, the fact that in some circles he was considered very ruthless and severe; and I was trying to find out from you about what time you knew of this opinion? Would it help you any if I remind you that he became head of the Gestapo in April 1934?

DEFENDANT FLICK: Well, it's quite impossible for me to tell you that quite exactly because, after all, such an opinion does not come into life just on one day. I told you already myself that according to my recollection he took over the office as highest police chief in 1934, as I recall and as I said. Well, with my best effort I couldn't give you any details when I first reached the opinion and when I held the opinion; I couldn't tell you that. It's quite impossible.

PRESIDING JUDGE SEARS: Mr. Ervin, will you recall to the Tribunal's memory what Himmler's position was before he became head of the police? I think it was shown.

MR. ERVIN: He was commander of all the political police units outside of Prussia from 1933 on. Of course, he had been associated with Hitler before that. Dr. Dix can tell us about that.

DR. DIX: If Your Honor please, may I perhaps help the prosecution? Of course, we, ourselves, know that very well, because we lived through the whole time with a feeling of horror. Himmler before the famous or infamous 30 June 1934 * was of course, the Reich Leader SS, and apart from that he was Chief of the Bavarian Gestapo. There, if you talk about Bavaria, it could comprise all of southern Germany, but I couldn't tell you exactly what area it was. But he only took over the police in the whole Reich after 30 June 1934. For us northern Germans he wasn't competent and he wasn't very well known on the political scene for us before 30 June 1934.

PRESIDING JUDGE SEARS: Dr. Dix, Judge Richman has a question.

* This refers to Hitler's purge of the SA, the so-called Roehm purge or Roehm affair.

JUDGE RICHMAN: Was he one of the early associates of Hitler?

DR. DIX: Yes, of course, he was. For instance, he took part in this famous Putsch of November 1923 together with Hitler. That is, Hitler didn't fight, but Himmler actually fought there. Thanks to my colleague von Papen, I can give you some more clarification. Himmler—may I have my spectacles, please?

PRESIDING JUDGE SEARS: We don't want to deprive you of those.

DR. DIX: Himmler wasn't only Chief of the Bavarian Gestapo but also Chief of the Bavarian Police until 1934 because, after all, the Gestapo is only part of the police, namely, if you want to call it that, the political police. And in April 1934 he was appointed the Chief of the Gestapo also in Prussia, and after 30 June 1934 he eventually became Chief of all the Police in the Reich. I think that clarifies matters entirely. Well, of course, 30 June 1934 was the famous Roehm purge.

PRESIDING JUDGE SEARS: I really asked those questions, Mr. Ervin, merely that we might see the person he is talking of in his general environment.

MR. ERVIN: Yes, Your Honor. Well, after these so-called—after these events of 30 June and this purge, did you have any personal opinion about Himmler at all?

DEFENDANT FLICK: No, I didn't. I said that already, that I had no special connection with Himmler. I mean that I had no actual talks with him and that I actually met him only in social gatherings. However, I made his acquaintance before 30 June 1934. That is, before the Roehm Putsch, probably in February or March 1933.

Q. In any event, due to a series of incidents at some time during this period, there was a reputation generally held that Himmler was a very severe and ruthless man. Did you share that view?

A. I couldn't tell you that exactly. I knew that he wasn't exactly a soft man but after all, it was a general opinion. You can't give more details. I couldn't have such a clear picture of Himmler myself, because if before the inspection in Dachau I saw him three or four times in a social gathering, then that is the limit, that is the most, but I do not know if it was even that much, and I never had any meetings with him alone. You can only form a general judgment, as you can form a judgment concerning any person, as you formed an opinion concerning Hitler, as you would concerning Goering and every leading member and figure of the new regime. That's all I can tell you about it. In his personality he didn't give you that impression at all when you talked to him. I can repeat that and stress in particular and refer to what the witness Lindemann has testified, namely, and

that is quite in line with my own impression, namely, that in regard to personal relationship one could only say he was a charming person and not a severe guy, a tough guy [ein scharfer Hund].

Q. Just one more question on that: This impression of yours that he was a charming man, can you recall whether or not you had been so informed by the time you visited Dachau?

A. That was the opinion one would have when one talked with him for the first time. I mean personally, as Lindemann for instance said, he was a man you could talk to. You could associate with him. He made a very nice and agreeable impression. Everybody who met him like that will testify the same way. Anyone who met him during a talk or an official conversation or at a dinner table said that.

Q. Defendant, my only question was that you had sufficient contact with him prior to this trip to have already arrived at that impression. As to—

A. Concerning the degree of connections and relations I have had, I already testified and I have nothing to add.

Q. Very well.

A. I said that I saw him perhaps three or four times within such social gatherings. And I also talked with him on those occasions. That is all I can say. I cannot add anything.

PRESIDING JUDGE SEARS: I think we understand that position.

MR. ERVIN: Now, as to the statement we were discussing before lunch on concentration camps and the rumors in Germany about them, did you change your own impression of concentration camps as a result of this inspection visit of Dachau?

DEFENDANT FLICK: Concerning my impression from the Dachau inspection tour, I have already testified during the direct examination by Dr. Dix, where I gave all the details necessary. But if you want me to, I can repeat all that.

Q. No. I do not want any of the details. You told us that you were surprised at what you found there, that it differed somewhat from rumors. My question to you is this—Did you thereafter entertain a different conception of what a concentration camp was?

A. Well, I do not know whether I said I was surprised. I am not sure about that. I testified I did not find the rumors confirmed. I found no confirmation of the rumors which circulated in some circles concerning these concentration camps, namely, that people were treated particularly badly in these camps. One could not gain any such impression at all. I have already given you detailed testimony as to what was shown to us. And from that you could not derive bad treatment or anything of the kind.

Q. Let us go on to the later meetings of the Circle of Friends in Berlin. I think you told us that you saw the Tibet movie at one of these meetings, and that you learned from an exhibit—here is, Your Honor, Document NI-8108, Prosecution Exhibit 738* in document book 14-D, on page 1—that that meeting was held the day after the funeral of Heydrich. Do you recall any mention of Heydrich at that meeting?

A. I could not tell you that. I do not remember it. It is possible. I did not attend all the meetings, but it is quite possible and even probable that Heydrich was referred to during one of these meetings, but I could not tell you.

Q. You did attend this meeting where the Tibet film was shown?

A. I think I was attending that meeting. I think so.

Q. At that particular meeting, according to this exhibit, Krane-fuss introduced the lecturer who I believe was a man named Schaefer, and in the course of his introduction, he delivered a speech on Heydrich. Do you recall that?

A. That I cannot recall, but, as I said, I think it is possible. Certainly, it was not so important for me. The Tibet expedition, which I think I can remember, was not so important. I do not know whether the Tibet film was shown during one of the meetings only, or whether it was split up in several meetings. I could not tell you that.

Q. Coming now to the trip to Hitler's headquarters in 1943. Did you talk to him at all on that occasion?

A. With Himmler? Yes, yes.

Q. Was it just a social conversation?

A. That was a conversation at a meeting which according to my estimate was attended by about 40 persons. There might even have been more. On this occasion, Himmler talked once with various people just in private conversations. But they did not have very much time for it because the agenda was submitted here, and this program was very extensive. I could not give you the whole program. I do not remember it very well. There was a speech by Himmler and all sorts of things which had been provided, for instance, a choir recital, coffee, and at least four or five different items were on the agenda. Thus the available hours were very quickly filled. Himmler's speech after all took quite a time, too.

Q. Yes. I think you told your recollections of that speech. Had you, by that time, that is in 1943, already learned that your own office was under supervision, ostensibly, by Himmler, and that you had been informed?

* Reproduced in C above.

A. Whether at that time I was informed so exactly, as I was informed about it later, that I could not tell you today. But I do think that we received certain information already at that period. I could not tell you exactly whether that was in 1943 or whether it was only in 1944. When we took the necessary measures to defend ourselves against this constant observation, my collaborators will be able to testify to it. I could not tell you whether it was in the summer of 1943 or only in 1944. I could not say that from my memory.

Q. Well, now, did you at any time, ever try to exercise any influence over Himmler?

A. I never tried to exercise any influence over Himmler with one exception. That was when I tried to get SS Lieutenant General Wolff to influence Himmler to maintain peace when peace was endangered and seemed to be imperiled in September 1938. There I made efforts to use my contact with his adjutant in order to have a certain influence exerted on him.

Q. The adjutant was Wolff?

A. Yes. It was Wolff.

Q. I think you told us you gave him a shotgun? Is that right?

A. Yes.

Q. It was in the nature of a wager, was it? You bet that a war would begin and Wolff bet that it would not.

A. In discussing this situation, we made a wager. I hoped I would lose that wager because there are certain kinds of wagers you would rather lose because if you lose it, a wish comes true.

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H. Testimony of Defendant Burkart

EXTRACTS FROM THE TESTIMONY OF DEFENDANT BURKART *

DIRECT EXAMINATION

DR. KRANZBUEHLER (counsel for defendant Burkart): Dr. Burkart, please give the Tribunal your full name.

DEFENDANT BURKART: My name is Odilo Burkart.

Q. When and where were you born?

A. I was born on 29 August 1898 in Riedlingen on the Danube in the State of Wuerttemberg.

Q. Mr. Burkart, I suppose I hardly need tell you anything about the technical aspect of questioning witnesses, because you have seen it long enough. I only ask you to bear it in mind. Please give the Tribunal a short outline of your career.

A. In my home town, I first visited the elementary school, then the grammar school, and in 1917 after attending high school [Gymnasium], I took the graduate examination. Then, I studied law and political science at the Universities of Tuebingen, Munich, Berlin, and Wuerzburg. I got my degree in 1921, the degree of doctor of political science; and in August 1922 I got the degree of doctor of law. On the first of October 1922, I began my career in Upper-Silesia.

Q. Just a moment, Dr. Burkart, before you come to your professional activities, I would like to hear something about your political development which, after all, may play a certain part in these proceedings.

A. I come from a family which for many years belonged to the [Catholic] Center [Party], that is a Christian democratic party. My father was an old adherent of the Center Party, and an uncle of mine, who was my godfather, was the founder of the Center Party in Wuerttemberg. For more than 30 years he was delegate of the Center Party in the Reichstag, and for the last years, he was chairman of the party representatives in the Reichstag. My legal thesis I wrote on a subject which has some connection with this attitude. It was the "Development of Parliamentarianism in Wuerttemberg." So, in the elections, as soon as I had reached voting age, it was almost a matter of course for me to vote for the Center Party.

In 1932, at that time I was working in Upper-Silesia, at the time when the Hindenburg-Hitler election was being prepared,

* Complete testimony is recorded in mimeographed transcript, 29 August, 2-5 September 1947 pages 6423-6805. Further extracts from the testimony of defendant Burkart are reproduced later in section VIII E.

the Reich presidential election, I officially joined the Center Party in Gleiwitz, where I was working and living at the time.

Q. Dr. Burkart, you have mentioned the 1932 elections as being the Hitler-Hindenburg election. To be more accurate, it was an alternative—Hindenburg or Hitler election. They were competitors?

A. Yes. That is correct. In 1933 I did not join the Nazi Party. First, because of my political past, second, above all because the new big shots who had taken the wheel in Silesia and Upper-Silesia were by no means attractive people. I am now thinking of Gauleiter Brueckner, and Police President Heiders in Breslau, and Police President Remshorn in Gleiwitz. I was strengthened in this view by the events of 30 June 1934 when people such as Schleicher and a certain ministerial director in the Ministry of Transportation were shot. The latter was the head of the Catholic Party in Berlin.

In 1937 my friend Moeller asked me whether I wouldn't like to join the [Nazi] Party after all. I laughed at him and told him that it was like trying to make a square peg fit into a round hole. I must add that in 1933 when the parties were dissolved, my friends and the people who shared my view in Upper-Silesia, and myself, considered what we would do. At that time we agreed that we would join the Stahlhelm because we thought that that was a movement on a bourgeois basis and of a bourgeois character, an organization which represented a certain counterbalance to national socialism. This idea was a mistake. In the years 1934 to 1935, the Stahlhelm in Silesia was transferred to the SA in body, so that suddenly I landed there where I had not the slightest intention of going. A good friend of mine was one of the leaders of the Stahlhelm in Gleiwitz and he also worked in my department. Partly on this account and partly because of the regrouping and the incorporation of the Stahlhelm in the SA, he had for the same reasons suddenly become an SA man. Through him, I was able to get out of doing any actual duty, nor did I have to take any oath.

In 1935 to 1936, I succeeded in leaving the SA officially, so that I no longer had any formal ties with any organization of the Third Reich. After the collapse in the summer of 1945 in Saxony, where I was working at that time, I joined the CDU (Christian Democratic Union). In other words, the party with which I had started as a young man.

* * * * *

I. Testimony of Defendant Weiss

EXTRACTS FROM TESTIMONY OF DEFENDANT WEISS *

DIRECT EXAMINATION

DR. SIEMERS: (counsel for defendant Weiss): Mr. Weiss, when were you born?

DEFENDANT WEISS: On 26 March 1904.

[Here follows detailed testimony concerning the personal history of defendant Weiss. For a more brief description of defendant Weiss' personal history, see section IV F, above.]

Q. Mr. Weiss, now before we discuss Berlin and your activities I would like to clarify a topic of more general nature with you in order to complete a certain picture of your personality. I ask you, in not too many words to explain to us your basic attitude as far as politics and national socialism were concerned.

A. I have already explained to the Court that when I was only 24 years old I was entrusted with my responsible task. At that time I took over the management of the Eiserfelder plant which employed at the time 250 to 300 workers. This task absorbed me completely and I had neither time nor too much interest in political affairs. This, my attitude, was reinforced by my father's influence, who told me again and again that our task was in the field of economics and not in the field of politics. At no time did I belong to a political party, and my own attitude would have been in line with the program of what was called the German People's Party [Deutsche Volkspartei]. I also voted for this party until it was dissolved. When in 1933 Hitler became Reich Chancellor, I was not exactly delighted, because the radical and extreme attitude of the National Socialist Party was not in line with my liking. On the other hand, however, I understood that it was a case of a coalition government, a coalition of the three right wing parties, backed at that time by the majority of the German people, and it was a matter of course for me that in accordance with democratic principles a government backed by the majority of the people could claim and can claim, therefore, a chance to show what it is capable of doing. Even if during the first period of government of the Nazis some of their measures were not to my liking and gave me cause to certain fears, one could still hope that the government, or what we termed the better representatives of the Party, once they really had the responsi-

* Complete testimony is recorded in mimeographed transcript, 16, 17, 20, and 21 October 1947, pages 8885-9125. Further extracts from the testimony of defendant Weiss are reproduced later in section VII F.

bility, would gradually become more moderate and would steer a more reasonable course. Thus my opinion was strengthened by the slow and moderate political development in my own home town here, where the NSDAP had also put representatives in the most responsible offices, and these representatives seemed very moderate and intelligent. Added to that was that the achievements in the economic and social fields during the first years doubtlessly had to be recognized, particularly the solution found to the unemployment problem was an achievement which at that time had to impress every businessman and for which one or the other mistake of the government in one field or another could be forgiven. We have never found a government with which we would be 100 percent satisfied, at least not in Germany. What I did not like was the complete penetration by the Party into all phases of life, all branches of the political and economic life, the so-called synchronization of all units and organizations [Gleichschaltung aller Verbaende, aller Organisationen], and a certain coercion which in some respect could be noted from the beginning. The SA ruled the streets, there were too many uniforms altogether. But at that time I traveled abroad quite a bit. My firm at certain times exported 60 to 70 percent of their total production and I visited roughly 20 countries during the years when I worked with my firm. During these trips abroad I could also see that the opinion in foreign countries was divided with respect to the new government. In many respects Germany had even gained in reputation. Successes in the field of foreign policy were added, which had been achieved with the constant emphasis by Hitler that he, as an old combat soldier had learned to know what war was and dreaded it, and that his only aim was to get Germany on equal footing with other countries again. One saw that many foreign statesmen came to Germany, from France, and from England, and that they had friendly negotiations with the German Government. In the Saar an overwhelming majority voted for the reattachment to Germany. The proclamation of the rearmament and remilitarization of the Rhineland was accepted by the foreign powers, in England partly even with friendly commentaries; and the successful conclusion of the German-English Naval Treaty made a great impression, too. Then the international events in Germany—the Olympics in 1936, for instance, showed the German people that the government was well-considered abroad, and doubtlessly that led to the taking up of many personal contacts in foreign countries. At the beginning of 1938 followed the annexation [Anschluss] of Austria amidst the great joy and jubilation of the Austrian population. In autumn 1938 the Munich Agreement found the solution to a problem—a

solution which I would never have dreamed possible. And then when, even after this Munich Agreement, the English Prime Minister Chamberlain spoke with Hitler and they both signed the same document that at no time would there be war between Germany and England, then once in a while I even reproached myself with having underestimated Adolf Hitler. At the time I experienced that even among the Jews the situation was not judged as pessimistically as was justified at a later date. I was very good friends with two Jewish owners of a certain firm, Bergmann, in Berlin. For many years they had represented our firm in dealings and business with Soviet Russia. The two brothers Bergmann very often discussed with me the question of whether they should remain in Germany or emigrate, and again and again all of us came to the conclusion that probably they could stay and that things would calm down. Also in the Ruhr area I employed, as my representative, a Jewish Bergassessor, and until 1937 he continued his activity in the Ruhr area and sold our machinery. Very often I even had the impression that if not in all pits, but in some of the pits they liked him especially well.

Q. What was his name?

A. His name was Bergassessor Golzen. Then, when in November 1938, the Jewish pogroms started and the synagogues were burned, then even the Bergmanns decided to emigrate, and I helped them to liquidate their affairs in Germany at greater speed and to leave the country. When the German troops marched into the rest of Czechoslovakia in the spring of 1939, I considered that a great injustice. These occurrences strengthened me in my decision not to join the NSDAP. Of course I want to stress that at that period, at the beginning of 1939, I did not have the insight into the general circumstances and the general conditions which had led to the occupation of Czechoslovakia—not the insight I have today—but in spite of that I considered it an injustice.

* * * * *

Q. I may only request you, Mr. Weiss, to ask how your attitude developed when the war started against the Soviet Union and then against the United States of America?

A. Well, you see, when in 1939 the war broke out, of course I had no conception of the real situation, of who was right and who was wrong. It was a matter of course for me that during the war one has to do his duty, and that it is the duty of every citizen to back up his government, and that all questions of inner politics have to be given second priority during the war. Therefore, in this war, too, I did my duty on the spot where I

was responsible, always hoping that a situation would arise where some kind of a reasonable arrangement between the fighting parties would be possible. After the Soviet Union and America had started to participate in the war also, I was quite convinced that now it was a matter of life or death for Germany, of "to be or not to be," but I still hoped that the fight could be terminated by some sort of negotiations. But at the beginning of 1944, from conversations with my friends who had a certain insight into matters, it became clear to me that to continue the war would be nothing but a crime and a guilt incurred towards the German people.

* * * * *

JUDGE RICHMAN: Just a minute. Did you ever become a member of the Party?

DEFENDANT WEISS: No, Your Honor.

* * * * *

VI. ARYANIZATION OF PROPERTY—COUNT THREE

A. Introduction

Count three of the indictment charged the defendants Flick, Steinbrinck, and Kaletsch with the commission of crimes against humanity by criminal participation in persecutions on racial, religious, and political groups, including particularly the "Aryanization" of properties belonging in whole or in part to Jews. The criminal conduct was alleged to have taken place between January 1936 and the downfall of the Third Reich. The Tribunal dismissed this count of the indictment with the following conclusion (*Tr. p. 11013*): "Whether we hold that we have not jurisdiction or whether we assume jurisdiction and hold that no crime against humanity has been proved, the result so far as these defendants are concerned is the same. They cannot be convicted on the fact that the evidence submitted on this count relates to subject matter not within its jurisdiction. Accordingly, count three is dismissed."

Concerning the evidence brought forward in the case, the Tribunal stated (*Tr. p. 11008*): "The evidence deals exclusively with four separate transactions by which the Flick interests acquired industrial property formerly owned or controlled by Jews. Three were outright sales of controlling shares in manufacturing and mining corporations. In the fourth, involving the Ignaz Petschek brown coal mines in central Germany, there was an expropriation by the Third Reich, from which afterward the Flick interests and others ultimately acquired the substance of the properties."

The evidence included herein deals principally with the acquisition of the Ignaz Petschek brown coal properties. However, some of the evidence dealing with the Julius Petschek transaction has been included in cases where the two Petschek transactions became interrelated and the evidence dealt with both transactions at the same time.

B. Contemporaneous Documents

PARTIAL TRANSLATION OF DOCUMENT NI-10125
PROSECUTION EXHIBIT 793

EXTRACTS FROM A MEMORANDUM BY DEFENDANT STEINBRINCK, 30
DECEMBER 1937, CONCERNING THE "PETSCHKEK PROBLEM",
GOERING'S VIEW THAT A SOLUTION MUST QUICKLY BE
FOUND, AND THE NEED FOR EXERCISING PRESSURE
IF RAPID PROGRESS IS TO BE MADE

St./Ga.¹

30 December 1937

Memorandum [Notiz]

Subject: P.—Problem [Petschek-Problem]—Result of the conference held on 30 December with State Counselor Reinhart.²

1. State Counselor Reinhart was informed that more severe regulations concerning non-Aryans [Nichtarier] are to be expected, at least in the industrial field whenever essential plants are involved. Concerning the P. [Petschek] group, the General [Hermann Goering]³ expressed unequivocally that a solution of that problem must be found within the shortest possible time. If it could not be solved in any other way, one must proceed to expropriation methods. Reinhart took notice of these various announcements, stating that they were not new to him. He stressed, however, that the main thing was to make Karl P.⁴ realize the seriousness of the situation. Today, contrary to the situation in Ignaz Petschek's lifetime, there is no longer a uniform management and it is, therefore, very difficult to make decisions. He recommended that not only he himself should announce the contemplated measures to Karl P. as representative of the group, but that Karl P. in person be informed officially, possibly by a deputy of the General. (Plans were made to have Herbert Goering⁵ report to State Counselor Reinhart as well as to Karl P. the opinion of the General and the measures contemplated.)

¹ "St/Ga." is a frequent dictation symbol on correspondence dictated by defendant Steinbrinck. In this case the document was also initialed at the end with "St" for Steinbrinck. However, many of the documents found in Flick files were copies of various correspondence and did not contain handwritten initials or signatures.

² Fritz Reinhart was State Secretary in the Ministry of Finance. His name was often misspelled and should read "Reinhardt."

³ Goering, the Plenipotentiary for the Four Year Plan, is frequently referred to in contemporaneous documents from the Flick files merely by his military title. At that time Goering held the rank of Generaloberst (general). The next and highest rank was field marshal. However, Goering later was given the title "Reich Marshal," a title bestowed on him alone.

⁴ Karl Petschek's name is frequently incorrectly spelled "Carl" throughout this volume.

⁵ Herbert Goering was a cousin of Hermann Goering. He was an official in the Ministry of Economics.

2. As to the importance of the various properties, Reinhart stated, that I. ¹ was by far the most valuable item. The coal resources of I. will last almost forever. I. East pit is opened in an excellent way. The deliveries to the V. ² group are being made by the E. [Eintracht] mine. The P. group did not participate in I. on their own volition. On the contrary, it was forced to do it, only after the former director general assumed friendly relations with Dr. Bue.,³ which made a change in the majority within the syndicate possible. Only then did he give orders to buy the shares at any price and acquire the I. shares at a tremendously high price. The I. property is undoubtedly the most valuable one, but not the dearest to him. Reinhart remarked that the Leonhard pit is a very valuable object.

3. The parties agreed that there was no chance for compensating the Petschek group with foreign currency. Reinhart emphasized that if foreign currency could be procured at all, it would never be allotted for such a purpose. It was understood that in case payment were made it would have to be made in Reichsmarks or other German values. In this connection, Mr. Flick indicated that he thought of a partial payment in preferred stock without voting right—these preferred stocks would participate to the same extent as the original shares in the substance but not in the control. Reinhart did not state his opinion as to this proposition.

4. The discussion between Reinhart and Karl P. will presumably take place in the first week of January. It does not seem very likely that Reinhart will take a very active part in it; he probably will merely ask Karl P. what he intends to do in view of the growing seriousness of the situation. If one wants to make rapid progress, the pressure upon the P. group must, by all means, be intensified.

5. Following this conference, Herbert Goering was asked to speak to State Counselor Reinhart and to make an appointment for an interview with Karl P. in order to communicate to him the clear order of the General. Herbert Goering consented immediately. As a matter of fact, he considers it in accordance with the wishes of the General to make known "the latter's wishes and decision with fullest brutality" [ihm dessen Auffassung und Entschluss in vollster Brutalitaet mitteilt].

[initial] ST. [STEINBRINCK]

¹ Ise, a coal property in which the Petscheks had substantial interests.

² Viag, Vereinigte Industrieunternehmen A.G., a State-owned concern.

³ Dr. Bueren, general director of Bubiag, the Braunkohlen und Brikett Industrie A.G., a brown coal and briquette enterprise.

TRANSLATION OF DOCUMENT NI-3252
PROSECUTION EXHIBIT 404

FILE NOTE BY DEFENDANT STEINBRINCK, 5 JANUARY 1938, CONCERNING
HERBERT GOERING'S REPORT ON HIS DISCUSSION WITH HERMANN
GOERING, AND HERMANN GOERING'S DECISION TO DEAL CEN-
TRALLY WITH THE PETSCHKE PROBLEM AND TO ESTABLISH
A COMMISSION INCLUDING DEFENDANT FLICK IN ITS
MEMBERSHIP, AND RELATED MATTERS

St/Ga.

5 January 1938

File Note [Aktenvermerk]

Strictly Confidential! [Streng vertraulich!]

Subject: Petschek corporation.

Information [Mitteilung] from Herbert Goering on 5 January

On the afternoon of 4 January, Herbert G. made a detailed report to the General [Hermann Goering] on the Petschek question. The General had received a proposal from the Secret State Police [Gestapo], signed by Gauleiter Sauckel,¹ to the effect that new appointments within the administration be arranged on account of "the clumsily attempted swindle [plumper Taeschungsversuch] of the Phoenix Munsdorf,² which belongs to the Ignaz Petschek group." At Posse's suggestion the General decided that no special action should be taken in this particular case, but that the whole question should be centralized and dealt with by him (Goering personally). He sent a telegram to Gauleiter Sauckel with approximately the following text:

"The Petschek problem will be centralized and dealt with by me in January. I shall include you in our discussions."

In this connection the General will set up a commission to make proposals for the solution of the P. problem. This commission will consist of:

Posse³ (or the authorized State Secretary of the Reich Ministry of Economics),

Keppler,⁴ as the man empowered to initiate the negotiations,

Pleiger,⁵ as the man empowered by Goering to deal with questions of raw materials and coal,

¹ Sauckel, at this time Gauleiter of Thuringia, later became Plenipotentiary General for Labor Allocation. See section VII, below, dealing with the slave labor program.

² A coal mine in central Germany.

³ Dr. Hans Posse was State Secretary for Special Tasks in the Ministry of Economics and a deputy to Goering as Plenipotentiary for the Four Year Plan.

⁴ Wilhelm Keppler, early economic adviser to Hitler and the founder of the "Circle of Friends" of Himmler. See section V, above.

⁵ Paul Pleiger was later chairman of the Reich Association Coal and Plenipotentiary General for Coal.

Flick, in his capacity as industrial expert,
Gauleiter Sauckel will also be consulted.

Herbert G. is counting on a meeting of this commission not later than 15 January. In his verbal reports he also pointed out that—

a. The General will centralize the whole affair and deal with it himself, thus excluding the possibility of individual action, and very likely suspend the authority hitherto intended for Keppler.

b. Both groups therefore will be started simultaneously. Herbert G. will again inform State Counselor Reinhardt in order to ask for proposals at the earliest possible date.

c. Goering has categorically refused to allow the surrender of foreign exchange for the compensation of the groups.

I have come to an agreement with Herbert G. according to which we shall make our own study of the P. problem so that we shall perhaps be able to make concrete proposals.

TRANSLATION OF DOCUMENT NI-3251
PROSECUTION EXHIBIT 407

MEMORANDUM OF DEFENDANT STEINBRINCK, 10 JANUARY 1938,
ANALYZING THE "PETSCHKEK PROJECT" IN DETAIL AND NOTING THE
NATURE OF THE PETSCHKEK HOLDINGS, COAL PROPERTIES
INVOLVED, ALTERNATIVE METHODS TO OBTAIN THE SHARES,
AND RELATED MATTERS

St/Ga.

10 January 1938

P. Project [P. Projekt]

1

According to the recently made decision of the General [Goering]:¹

a. The problem must be dealt with in a centralized and uniform way;

b. Compensation in foreign exchange can no longer be considered;

c. A constructive plan for the further procedure should be worked out by a commission.

This plan should contain not only the question of compensation but also a proposal for the distribution of the property among the various parties interested.

This new development has rendered invalid all former considerations based on the central German sector alone. We can therefore adopt the viewpoint that our loose ties with Wintershall [Wh] and I.G. Farben [I.G.] have been broken by the force of circumstances.

First we must realize the magnitude of our task. For this purpose, certain data has been collected in *enclosure I* which would probably also be suitable for a report to be submitted to the General to give him a general idea of the importance of the P. groups in the German coal mining industry.

2

After a study of the points mentioned in enclosure I, we must now consider exactly what is covered by the shares to be obtained. Enclosures II and III serve this purpose.² They contain statements on—

a. The total invested capital of the companies concerned,

¹ Here the abbreviation "G.O." for "Generaloberst" was used.

² None of the three enclosures referred to were a part of the document offered in evidence.

b. The approximate proportion of capital owned by the P. groups, and with it the probable face value of the shares to be purchased,

c. The latest stock quotations,

d. The estimated purchase price; this is estimated—to give a rough idea of the expenditure to be incurred—by adding 20 percent to the latest quotations.

Therefore, if the entire P. property in lignite [Braunkohle] is to be obtained, the following would have to be purchased:

from the Ignaz P. group	nom. RM 77,500,000
from the Julius P. group	nom. RM 30,000,000
Shares amounting to the face value of	<hr/> RM 107,500,000

At stock market rates, including 20 percent increase, this would mean an expenditure of roughly RM 192,000,000; with a face value of RM 107,500,000, this would mean an average purchase exchange rate of 180 percent.

3

If—

a. The purchase of these shares is to be carried out on a voluntary basis,

b. Foreign exchange cannot be paid,

c. All the shares are to be purchased,
then the P. groups must be allowed to invest their fortune in other enterprises as they would be unable to do anything with such a large amount of almost RM 200,000,000.

It must now be assumed that the equivalent payment can be affected—

a. According to our former plan, by partial surrender of *preferential shares* without voting rights,

b. By handing over other *first-rate securities*, which, however, must not enable influence to be exerted on other economic enterprises in Germany,

c. With only the *remainder payable in RM*.

The number of original *preferential shares without voting rights* which can be made available to the groups in question is limited; first because of the preferential stock already issued by Ilse, and second because of the low nominal capital of the rest of the companies. It is well known that according to the new corporation law not more than 50 percent of the nominal value of the original shares may be issued as preferential shares without voting rights. Starting from this, let us assume that the

purchase price for the nominal RM 107,500,000 P. shares must be covered as follows:

- 40 percent—equivalent value for nom. RM 43,500,000 by issuance of securities,
- 35 percent—equivalent value for nom. RM 37,000,000 by preferential shares without voting rights,
- 25 percent—equivalent value for nom. RM 27,000,000 in cash.

The *procuring of shares*—As a number of very powerful groups, including the Viag [Vereinigte Industrieunternehmen A.G.]¹ and the Hermann Goering works, are concerned in the division of the P. property, it can be expected that these groups can supply considerable parcels of shares which on general grounds can remain in the ownership of the P. groups without objection. In general, the following companies are considered: I.G. Farben, Stahlverein,² Hermann Goering works [RWE],³ and other good electricity enterprises which are not nationalized; Dresdner Bank shares; and possibly steamship shares. Under these conditions the necessary equivalent of nom. RM 43,000,000 lignite shares with a stock exchange value of roughly RM 77,000,000 might be covered as follows:

RM 15,000,000	I.G. Farben	=	RM 24,000,000
RM 15,000,000	Stahlverein	=	RM 16,000,000
RM 15,000,000	RWE	=	RM 19,000,000
RM 10,000,000	Dresdner Bank	=	RM 11,000,000

The remainder could be covered by steamship line stocks or other stock still available at the Gold Discount Bank or other collection points.

By *converting original shares* from the P. property into *preferential shares* the following results should be achieved:

with Eintracht	RM 8,000,000
Niederlaus. Kohlen-Werke	RM 8,000,000
Anhalt. Kohlen-Werke	RM 7,500,000
Werschen-Weissenfels	RM 6,000,000
Borna	RM 2,500,000
Leonhardt	RM 2,500,000
Phoenix	RM 2,500,000
	RM 37,000,000

¹ A government-owned holding and operating company, with interests in public utilities, mines, and factories. Viag was one of the companies which eventually received parts of the Petschek properties.

² Common name for the Vereinigte Stahlwerke.

³ "RWE" sometimes was used as an abbreviation for Reichswerke fuer Eisen und Stahlindustrie "Hermann Goering." More commonly, however, this concern was referred to as the "Reichswerke" or as the "HGW" [Hermann Goering works].

The capital stock and the amount of original shares retained by the new buyers in the different companies would amount to—

	<i>Founders shares</i> [Stammaktien] <i>in Circulation.</i>	<i>Participation</i> [Anteil] of the <i>Purchasers.</i>	<i>Percent</i>
Eintracht	RM 16,000,000	11,200,000	70
Niederlaus. Kohlen-Werke	RM 16,000,000	11,000,000	69
Anhalt. Kohlen-Werke	RM 15,500,000	7,500,000	48
Werschen-Weissenfels	RM 11,500,000	9,200,000	80
Borna	RM 5,500,000	3,100,000	56
Leonhardt	RM 5,500,000	3,100,000	56
Phoenix	RM 6,200,000	3,600,000	58

A majority would thus be assured in all companies. As Anhaltische Kohlenwerke [A.K.W.] and Werschen-Weissenfels [W.W.] may be regarded in practice as being one enterprise, and as regrouping would in any case be necessary for the sake of decentralization, the fact that the remaining holdings only amount to 48 percent of the invested capital, is of no further significance.

Through this arrangement the P. groups would still receive RM 40,000,000 *in cash*.

In the preceding calculation it is assumed that the Ignaz P. group retains all its soft coal [Steinkohle] property. If there are no objections to this arrangement the following solutions present themselves:

1. The Pless property of the P. group could be transferred to the P. group as part of the cash payment to be received.

2. The P. group could be induced (under favorable conditions if necessary) to install on their soft coal property plants for hydration, sulphuration, and other processes for the manufacture of synthetic materials, and to use for this purpose the large amounts received.

But these are only suppositions and attempts to reach a solution, and are based on the assumption that the P. groups will withdraw voluntarily.

4

As according to our latest information, it seems unlikely that the shares of the P. group property will be surrendered voluntarily, one must contemplate forcible measures or State intervention [muss man gegebenenfalls Gewaltmassnahmen oder staatliche Eingriffe ins Auge fassen]. The promulgation of a decree has already been considered which would prohibit foreigners or other non-German citizens from exploiting or profiting

from German mineral resources. This decree has weak foundations and may lead to consequences, the effect of which cannot yet be assessed. The question of whether force should be used at all against the P. groups is a purely political one and solely dependent on political factors. If such an action is decided on, it must be borne in mind that the most rigorous means may have to be employed. It is clear from the attitude of the Ignaz P. group towards the Viag that such means would be justified. The great disputes between Petschek and Viag over the Ilse began at the general stockholders' meeting for the fiscal year 1929-30, held on 27 March 1931.

Viag opened legal proceedings a year later, but no agreement was reached until 1934. In April 1934 Privy Councillor Lenzmann and Dr. Landauer were elected to the supervisory board. We are probably right in assuming that under a weaker government the Petscheks would not have hesitated to exclude the Viag group completely from representation on the supervisory board, although they have a minority sufficient to block decisions [Sperrminoritaet]. Enclosure IV* contains some further notes for the information to be given the General [Goering] in connection with enclosure I.

* This enclosure, Document NI-3254, Prosecution Exhibit 406, is reproduced immediately below.

TRANSLATION OF DOCUMENT NI-3254
PROSECUTION EXHIBIT 406

ENCLOSURE IV TO DEFENDANT STEINBRINCK'S MEMORANDUM OF 10
JANUARY 1938*, DISCUSSING POSSIBILITIES FOR BREAKING UP THE
PETSCHKE'S INFLUENCE, THE ATTITUDE OF THE TWO PETSCHKE
GROUPS AND DEFENSIVE MEASURES TAKEN BY THEM, INTER-
NATIONAL COMPLICATIONS, AND RELATED MATTERS

Enclosure IV

If it is now the aim to break up thoroughly the overwhelming influence of the P. [Petschek] group, one must first of all design a war plan [Kriegsplan] as to how one wants to attack the enemy who is in a very strongly entrenched position. There are two possibilities—

1. The course of straight negotiations.
2. The exercise of strong pressure in order to make the group pliable.

In view of the grave anxiety felt by all non-Aryans in Germany, with regard to their future, we should first try to induce the P. groups to sell through direct negotiations. The *Julius P.* group seems perfectly *willing to sell*, but wants to dissolve all its interests in Germany, and therefore wants genuine foreign exchange in payment for its plants. The Ignaz P. group, however, as far as we know, rejects a voluntary solution. They want the past to be forgotten and emphasize the point that their enterprises were always operated in the German way. They point out that many Reich Germans hold leading positions in their plants in Bohemia. As two members of the family are said to have changed their domicile from Aussig to Berlin, at the special request of the Prussian Ministry of Finance (the Social Democratic Minister of Finance, Sydikum, was for many years on the supervisory board of the P. holding companies) we think it is no use negotiating without government pressure, at least in the case of the Ignaz P. group.

For years both groups have made efforts to take up positions strengthened by international ramifications against an attack by the State. Only a small part of the shares of the lignite mining enterprises is inside Germany; by far the greater part is outside the country; and here again only a small percentage is owned by members of the family themselves. The controlling

* Document NI-3251, Prosecution Exhibit 407, reproduced immediately above.

influence of the companies is exercised partly through German holding companies; in the case of the Julius P. group through Thueringer Kohle, and in the case of the Ignaz P. group mainly through the Deutsche Kohlen G.m.b.H. The shares of these holding companies are outside the country—not in Czechoslovakia.

In the case of Julius P. they are held by an English concern, the shares of which are largely in American hands. In the case of Ignaz P. the property is divided, as far as we know, between two foreign holding companies: a Swiss company in Glarus, called "Helimond," and a Dutch company.

We understand that the shares of these two continental holding companies are held partly in England and partly in America. In the case of Julius P. *American and English groups are known to hold shares, whether formally or de facto is not known.* In any case, 2 years ago, when proceedings were started against the Jewish General Manager Pulvermann, the British Ambassador intervened at the Ministry of Economics, while other authoritative British circles tried to influence Dr. Schacht in favor of Pulvermann.

From the fact that matters are thus involved, it must be expected that any measures taken against the Petschek brown coal enterprises will not only bring a protest from the Czechoslovak Government, but will also cause British and American circles to assert that their interests have been damaged and to induce their governments to intervene. In my opinion it is *only a political question depending on the over-all foreign policy situation whether one should be bluffed by these considerations.*

I would like to quote from my own experience to prove that the whole thing is bluff or camouflage [Bluff oder Tarnung] on the part of the P. enterprises—

The shares of the Kattowitz A.G. and the Bismarckhuetten in eastern Upper-Silesia were—even before the separation in 1920—transferred to a Dutch company by their German owners in agreement with the Reich Bank and the economic authorities. The Poles were not deceived, and have always regarded these plants as German property. For this reason, in 1926, when Laurahuetten was transferred from Czechoslovak to German ownership, a Swiss company was used and—to camouflage the real owner still further—another Swiss company, and in addition a large American company, were created. This American company, the Consolidated Silesian Steel Corporation, was founded by Harriman, the American bankers who had enjoyed *great prestige* in Poland. The German owners now deliberately withdrew entirely into the background, in order to emphasize still further the American character of the enterprises. Apart from

the *brothers Harriman*, the supervisory board consisted of a number of directors of large American banks, a *Rockefeller*, and other very *prominent Americans*.

[Marginal note] Americans hold only about 10 percent of the shares.

American influence

succeeded in inducing leading Polish personalities, such as the well-known Prince Janusz Radziwill, Count Potocki, President Zychlinski, and other illustrious people, to become members of the supervisory board. Although this was very well organized, the Poles began violent de-Germanization proceedings against the enterprise 6 months later. In spite of the protests of the United States Ambassador and of British circles, they carried on with these violent measures. These measures against the Kattowitz/Laura group were supervised by a fanatical Germanophobe, Colonel Rejchmann. The method he employed at first was to impose a tax so high that it exceeded the amount of the capital stock. Arbitrary fines up to 25 times the amount of the disputed tax were imposed. By means of these artificially created debts the plants were rendered insolvent and bankrupt. Rejchmann's aim was to get the plants into his hands in this way "free of charge." As he had the authority of the Polish State behind him, he was entirely successful. Thus, he managed to obtain for the Polish State an enterprise the value of which in 1929 *Mr. Brassert*, who entered our service at that time, estimated at *66,000,000 gold dollars*.

[Handwritten: excluding real estate value]

It did not cost Poland one zloty. The purchase price paid to the shareholders, as well as the debts payable to the German banks, was borne by the plants themselves.

[Handwritten] Dangerous

TRANSLATION OF DOCUMENT NI-784
PROSECUTION EXHIBIT 397

MEMORANDUM OF DEFENDANT FLICK, 19 JANUARY 1938, MADE IN
PREPARATION FOR AN IMMINENT CONFERENCE WITH HERMANN
GOERING, OUTLINING WHAT FLICK INTENDED TO TELL GOERING
ABOUT THE PETSCHKEK QUESTION AND RELATED MATTERS ¹

F1 [Flick]/KL

19 January 1938

First of all, a few words as to the significance of German brown coal in general, and about the importance of the Petschek groups in German brown coal circles (see enclosure I).

In enclosures II and III ² there are recapitulated—

- a. Capital of the companies concerned;
- b. The estimated participation of the Petschek groups in the capital and thus the presumable face value of the shares to be acquired;
- c. The latest quotations for the shares;
- d. The estimated purchase price;

The latter so calculated that 20 percent is added to the stock exchange rates.

The result is that for an immediate acquisition of the Petschek holding in brown coal the purchase would be—

out of Group Ignaz P.	nom. RM 77,5 million
out of Group Julius P.	nom. RM 30,0 million

Face value of shares	RM 107,5 million
----------------------	------------------

Calculated at stock exchange prices, including 20 per cent increase, there would be required—*an outlay of money amounting to about RM 192 million*; calculated at nom. RM 107,5 million face value, that would mean an average *buying quotation of 180 per cent*.

¹ This document and its purpose are discussed in the extracts from the testimony of defendant Flick reproduced below in section VI D. This document was the first exhibit offered by the prosecution dealing directly with the Petschek charges and was one of the numerous documents discovered in files of the Flick Concern. In offering the document in evidence, prosecution counsel stated: "I might say that the activities of the defendants Flick, Steinbrinck, and Kaletsch, to which we shall make reference, extended continuously over the years 1938 to 1939 and to some extent in later years, and the source of evidence consists of almost daily records of these activities which are contained in some dozen files, in the most part labeled Ignaz Petschek, or Julius Petschek, or in some cases Ignaz Petschek Aryanization. These files have been set aside in a room upstairs and have been made available to the defense for examination and we would, of course, be glad to bring them into Court if the Tribunal would like to see the exact nature of the source of this evidence." (*Tr. p. 1611*).

² Of these three enclosures, only enclosure I was a part of the document offered in evidence.

I have been informed that on the basis of the decisions you have made—

a. The problem is to be dealt with centrally from a homogeneous point of view;

b. That no compensation for the purchase in foreign currency is to be considered;

c. Constructive plan for further procedure is to be worked out by a commission.

The position as regards the Ignaz and Julius groups in question is now as follows:

Old Ignaz died a few years ago; he had four sons, two of whom live in Berlin. One of the four sons is said to be of British nationality. Of the two, the Ignaz group is, as regards their German property, by far the more important; it also exerts more influence, which became apparent in the *syndicate negotiations*. (For instance, take Viag-Ilse: It was only in 1934 that the Viag (the German Reich) was conceded a seat on the supervisory board). Many Jews have wondered how it was that, in view of the influence and property owned by this group, no change has been made.

As a result of approaches that have already been made (of an official and private kind) it might be said that the Ignaz group is *not prepared* to abandon its property and its influence. It obviously feels itself very powerful and there is no doubt that it has so drawn up the legal organization of its property that if a serious conflict arose, a considerable number of Englishmen and Americans would appear as parties interested in the concern. They have, no doubt, *a long while ago taken their precautions* against feared action from the German side [befuerchteten Zugriff von deutscher Seite] and made corresponding arrangements abroad, particularly in Great Britain and America. I *personally do not believe* that these British and American interlocking holdings are based to any great extent on *actual ownership*. But it might be difficult to *prove these facts*. I can imagine that they may have *actually granted* Englishmen and Americans an interest in the concern, with a deferred payment for the purchase, but above all, with a return-option to Czechs, i.e., the possibility of regaining at any time possession of what they had ceded.

Whatever the position is, they are apparently not prepared to do anything *of their own free will* and have made very thorough arrangements for a possible war [allenfalsigen Krieg]. *It should not be forgotten that should we begin to confiscate the property legally or by decree, a thing like that would not be so easy to do and the consequences, from an international point of view, cannot be overlooked.* But I feel that possibly they may have to be

taken seriously into consideration when negotiating. I should like to make a proviso that I can refer to the matter of the Ignaz group later.

The case is different, however, where the so-called "*Prague Petscheks*," the "*Julius Petschek group*," is concerned. This group's share of German brown coal is—as has been mentioned before—considerably smaller than that of the Ignaz Group, which is located in Aussig in Bohemia. The "*Julius Petschek group*" controls the majority of Anhaltische Kohlenwerke and Werschen-Weissenfels. *These are two companies, which together own 40 million RM capital stock.*—"Group Julius was formerly represented in Germany by one person, named Paul Petschek. Paul Petschek left Germany in 1932-33. The Petscheks, though not represented on the company's administration board, exercise nevertheless far-reaching influence through intermediate persons.

The Julius Petschek group agrees, in principle, to sell their property. Their motives are, I think, fear of an imminent catastrophe, war or similar events with uncertain results which make them deem it advisable to quit voluntarily but—and I must lay special emphasis on this—under certain conditions and suppositions. They are willing to negotiate but expect the Germans to recognize that they are the legal owners and that their allegedly justified views be taken into consideration. Their principle is to sell only against foreign currency; they would make concessions for foreign currency calculated at the normal rate of exchange.

In view of our situation, however, the payment in foreign currency is out of the question, and I understand the point of view that for the acquisition of *German land and German coal* no foreign currency can be spared. Without abandoning this point of view, the question might arise *whether a compromising attitude would be advisable for the settlement of a real dollar claim* by the American parent-company against the German Petschek companies. If that would be done I think it possible to come to a voluntary agreement with these people. It would indeed be extremely important to come to an understanding with the smaller group, which—as mentioned before—is ready, in principle, to sell. This would strengthen the tactical position against the important Ignaz group. Tactically, the German position would be stronger still, if one of them had sold voluntarily. But—as I mentioned already—it will be necessary to make certain concessions to "Group Julius" since they have formally pointed out their views and added that "their share of German brown coal represents only a small fraction of their fortune and they would prefer to have their hand forced if they could not get relatively acceptable conditions."

The Julius Petschek group made contact with me through an intermediary. It has come to my knowledge that the heads of the Petschek family as well as the main English and American brown coal mine representatives will come to Berlin in the next few days, and that they are prepared to enter into negotiations with us.

I would recommend that you authorize me to conduct these preliminary and nonbinding negotiations. In this conversation the air could be sufficiently cleared to judge whether the matter will be concluded voluntarily or not. I would then report to you at the earliest moment and be at your disposal to submit a report to the commission you have appointed, and then, if necessary, submit concrete proposals.

I could in the ordinary course, without any particular authorization, start private negotiations for a private purchase of shares in the Petschek group. But a number of persons might also do that at the same time and it is to be feared that a whole row of parties interested might crop up as potential buyers. That would automatically bring about a mutual bidding-up of the price. And finally the State officials would have no insight into the actual situation. (And that is the reason why I should be empowered to negotiate *alone* for the time being.)

[Handwritten] What I should consider important is that, for the time being, my office should act because otherwise there will be confusion and the Czechs may get the feeling that it is a case of amateurish attempts.

There are two alternatives: (1) to inform the P. group officially that they must sell, if they have not already done so; (2) to authorize a person to conduct the negotiations for the German side.

Further information about the Petschek group.

- a. Coal deliveries and briquettes made in recent years (encl. IV).
- b. Comparative figures from balance sheets (encl. V).
- c. Profits in AKW and WW (encl. VI).

Enclosure I

*Importance of the P. [Petschek] groups in German
brown coal circles*

According to statistics of geological institutes, the German reserves of brown coal amount to roughly 56,76 billion tons; of this

Approx. 18 billion tons=35 per cent in open pit mining terrain,
Approx. 39 billion tons=65 percent in shaft mining terrain.

In the enclosed *Map 1* the principal *brown coal districts* are shown, according to their rough size.

According to that, there are four large brown coal areas which include some 90 percent of the total German reserves, and numerous smaller districts. The four large areas are—

a. Lower Rhine district.—Total contents 17.8 billion tons (= 31.5 percent of which only 2.3 billion tons = about 15 percent open pit mining),

b. Thuringia-Saxony district.—(Halle, Bitterfeld, Leipzig) Total contents 9.5 billion tons = 16.8 percent of which $\frac{3}{4}$ = 7 billion tons open pit mining,

c. Lausitz district.—Total contents 16.4 billion tons = 28.8 percent of which half open pit and half underground mining,

d. East German district.—(Fuerstenwalde, Frankfurt/Oder Schwiebus) Total contents 8.5 billion tons = 14.7 percent which is almost all underground mining.

The remainder covers the Brunswick, Magdeburg, and Silesian districts, with a few scattered deposits.

As the map shows, roughly 65 percent of the total reserves are massed in central Germany, viz., within the—

Central German Brown Coal Syndicate	Approx. 20 percent
Eastern Elbe Brown Coal Syndicate	Approx. 45 percent

In 1937 the estimated *raw coal* [Rohkohle] extracted in Germany amounted to 183,200,000 t = 100 percent, of which—

Lower Rhine area supplied	55,300,000 tons = 30 percent
Central German Brown Coal Syndicate supplied	78,500,000 tons = 43 percent
Eastern Elbe Brown Coal Syndicate supplied	46,600,000 tons = 25 percent
Sundry supplied	2,800,000 tons = 2 percent

The *output of briquettes* in 1937 amounted to—41,961,000 tons and was spread over the various districts as follows:

Lower Rhine area	11,787,000 tons = 28 percent
Central German area	18,415,000 tons = 43.9 percent
Eastern Elbe area	11,605,000 tons = 27.7 percent
Sundry areas	154,000 tons = 0.4 percent

In the foregoing case the conditions are particularly interesting in the Central and Eastern German Brown Coal Syndicate.

The P. groups, which came from Bohemia, made their influence felt many years ago upon the central and east German brown coal and they strengthened this influence as the years went by. Both groups control together of the raw coal supplied in central and east Germany—

	33,144,000 tons = 30 percent
Briquettes produced	10,410,000 tons = 40.1 percent

As the consumption [Eigenverbrauch] of chemical works, electro works, steelworks, etc., is not included according to syndicates, the raw coal production—Map 2—does not give a proper picture of the predominating influence of the P. groups upon the German brown coal trade. For this purpose one should use the production of briquettes or more correctly the *briquette sales*, as is seen on Map 3.

The concerns controlled by the P.'s are interested in—
the Central German Brown Coal Syndicate to the extent of [sic]
the Eastern Elbe Brown Coal Syndicate to the extent of 59.14 per cent.

The P. groups ruthlessly used their extraordinary power within the Eastern Elbe Syndicate from time to time. They succeeded in appointing a business manager to specially look after the P. interests. Through their influence and the nomination for running the business they are able to practically run things in the Eastern Elbe Syndicate. The comprehensive property of both groups can be expressed in figures as follows :

	<i>Output in 1936-37</i>	<i>corresponding to a share in the total German output</i>
Raw coal [Rohkohle]	33,144,000 tons	18.09 percent
Briquettes	10,410,000 tons	24.81 percent

As regards the *resources of coal*, the P. groups are easily at the top of the list in Germany. There is no precise record of that. It is likely that they control one-third of the German brown coal supplies.

The organization of the P. groups can be summed up in a few figures.

The *Julius P.* group includes the following plants :

Werschen-Weissenfels [WW],
Anhaltische Kohlen-Werke [AKW],

having an

output of coal of 7,715,000 tons
output of briquettes of 2,372,000 tons

Their *interests* amount to—

in the Werschen-Weissenfels about 90 percent
in the Anhaltische Kohlen-Werke about 65 percent

But, as regards management, both companies are run as one unit and should be regarded as one concern.

The Werschen-Weissenfels own high-bituminous coal, which forced them at an early date to use it for high-temperature purposes for the manufacture of chemicals, candles, etc. The re-

serves of this group alone are estimated to be 2 billion tons. Part of the property lies in the Niederlausitz (Greifenhain), where large open pit mining is being started with all modern improvements.

The *Ignaz P.* group includes the following plants:

Ilse,	}	situated in the Lausitz
Niederlausitzer Kohlen-Werke,		
Eintracht,		

as well as:

Phoenix,	}	in central Germany
Leonhardt,		
Borna,		
Bleichert Kohlen-Werke		

The total output of this group is—

Raw coal	25,429,000 tons
Briquettes	8,078,000 tons

Viag participates in the Ilse to the extent of a little more than a quarter. In spite of that the Reich has not succeeded in exerting any influence at all on the management.

The considerable expansion of the *P.* groups in the principal area, the Niederlausitz, is seen in a bird's-eye view from the enclosed *Map 4*. It will be seen from that how intertwined is the property of the two brothers, who for years carried on a feud. After they both died peace reigned in the family again, and thus they may be rightly regarded as an economic unit. Everything that is marked in yellow on the map belongs either to the *Ignaz P.* or the *Julius P.* group. As the Lausitz and eastern German area contains 43.5 percent of the German brown coal deposits, it is not saying too much if we presume that the *P. groups* together control roughly *one-third of German brown coal deposits*.

TRANSLATION OF DOCUMENT NI-3249
PROSECUTION EXHIBIT 410

FILE NOTES OF DEFENDANT STEINBRINCK, 19 AND 20 JANUARY 1938,
CONCERNING CONVERSATIONS HELD WITH STATE SECRETARY POSSE,
STATE COUNSELOR REINHARDT AND HERBERT GOERING ON
DEVELOPMENTS OF THE PETSCHKE MATTER

St/Ga.

19 January 1938

File Note

Subject: Negotiations with the P. [Petschek] Group

Conversation with State Secretary Posse on 19 January, morning

I informed Posse briefly about the forthcoming conference with the General and outlined to him our ideas about the program of the report. According to our point of view, we could only present the case from an economic angle and, as far as we are concerned, also strive for a solution, only by way of negotiations. We know that the Julius P. group is willing to sell, while the Ignaz P. group offers resistance, according to our information. Should therefore political measures [politische Massnahmen] be contemplated against these groups, our mission may then be considered as fulfilled. We thought that we could only present the economic consequences of the entire complex and the possible political measures to the General confidentially, and therefore made use of the opportunity to report. Posse was informed about the fact that British and American interests were involved in both groups. I remarked that nothing definite had been ascertained about the attitude of Carl P. as Reinhardt had given us no information. Posse's reply was roughly this—

“The Petscheks absolutely refuse. Mr. Reinhardt has spoken with Carl P. The conference took place here in this room.” Petschek finally remarked: “You want war, Gentlemen; I am prepared” and thereby very definitely showed that he was opposed. From this I had gained the impression that the conference Posse/Carl P./Reinhardt, had taken place at the Ministry of Economics.

To get some more information I paid a visit to State Counselor Reinhardt around noon, and he told me the following:

After breakfast Posse invited him to a conference which took place either on the same or the next day at the Ministry of Economics. Posse had very emphatically explained to him the general measures against the Jews which were about to take

place in Germany and that, after finding Julius P. willing to act accordingly, one could in any case expect the Ignaz P. group to accede to the requests. He had given Reinhardt the *order* to inform Carl P. of this in order to ascertain whether he was willing to sell.

A few days later the conference between Reinhardt and Carl P. had taken place. At first it had moved along general lines. Then suddenly Herbert Goering had called up and informed him that he had something very important to say in the P. matter. Therefore Reinhardt did not continue negotiations with Carl P. on this day regarding the point in question. Next day he was informed by Herbert G. [Goering] that a political action was imminent and that a special commission had been appointed to investigate this question. A few days later, another conference took place—Posse, Goering, Reinhardt, at the office of the State Secretary. A large number of documents were lying on the table concerning the P. matter. The P. case was then discussed very thoroughly, and Posse referred to the preceding events in the matter concerning Julius P. Reinhardt also informed them that apparently prominent foreigners were also interested in Ignaz P.; this had made a deep impression on both Posse and Herbert G. Furthermore, Posse had stated that he had been charged with drafting an expropriation law [Enteignungsgesetz], but had refused to do so. Both gentlemen had described the matter as exceedingly difficult and delicate. Finally he had inquired whether they also wanted him to negotiate with Carl P., whereupon Posse had said: "No, he had better keep out of this." From this day on, Reinhardt did not negotiate any more.

I then asked Reinhardt whether he knew anything of the sharp statement: "You want war, we are prepared." Reinhardt said that someone else seemed to have negotiated with P., that this remark was unknown to him. However, he then disclosed that Carl P. had once said—

"These people want to slaughter me, apparently; well, they will not succeed; for that you must bring other people to the fore."

The remark, "You must bring other people to the fore," should indicate that possibly foreigners are behind it. Regarding the willingness to sell, Reinhardt has—as he said—also told them, that Flick seems to be interested; whereupon P. replied that he was surprised that in that case he negotiated through Reinhardt; as he was very well acquainted with Flick.

20 January 1938

In the evening of the 19th, I had a conference with Herbert G., who gave me a detailed description of the course of the nego-

tiations between Reinhardt/Posse, Reinhardt/Herbert G., Reinhardt/Herbert G./Posse. In this detailed description it became evident, that, especially during the final joint conference between Reinhardt/Posse/Goering, a very indifferent attitude was taken—on the part of the group Posse/Goering, because during the preceding conference between Posse and the General no new and, anyhow, no stricter order was issued to the Ministry of Economics for settlement of the P. problem; and on the part of Posse/Goering there were further important political considerations, which arose in view of the British-American influence. In any case, Herbert G. confirmed that, in answer to Reinhardt's question whether he should continue to negotiate with Carl Petschek, he was told: "No, for the time being keep out of this, until a new decision has been brought about by the General."

Besides, Herbert G. confirmed that Reinhardt had expressed himself very vaguely and not clearly about his negotiations with P. He neither informed the gentlemen that during his conference with P. he had also mentioned the name of Flick, nor that sales negotiations had been discussed. Herbert G. was of the same opinion as we, that Reinhardt had acted very carefully with P., first of all because he allegedly did not consider himself a trusted person [Vertrauensperson] and second, because P. himself apparently declined vigorously. Possibly—as Herbert G. surmises—he might even have been backed up by the Czech Government.

TRANSLATION OF DOCUMENT NI-900¹
PROSECUTION EXHIBIT 411

LETTER FROM HERMANN GOERING TO DEFENDANT FLICK, 21 JANUARY
1938, EMPOWERING FLICK TO CONDUCT ALONE NEGOTIATIONS
WITH REPRESENTATIVES OF THE PETSCHKE GROUPS
CONCERNING THE POSSIBILITIES OF ACQUIRING
THE ENTIRE PETSCHKE PROPERTIES²

Berlin, 21 January 1938

Dr. Friedrich Flick

Berlin

For the preliminary solution of the Petschek problem, I herewith empower you to take up negotiations with the responsible persons of the Ignaz Petschek and Julius Petschek groups for the purpose of ascertaining the possibilities of acquisition and the groups terms of acquisition for the whole property. I authorize you to carry on the negotiations alone, but you are also entitled to act on behalf of a group [Konsortium].

Before the conclusion of the negotiations I have to be approached for a decision.

[Handwritten] The right of distribution of the property I reserve for myself

[Signed] GOERING

¹ Photographic reproduction of this document appears in appendix A.

² On the date this letter was written, 21 January 1938, defendant Flick had a conference with Goering. See extracts from the testimony of defendant Flick reproduced in D below, concerning Document NI-784, Prosecution Exhibit 397, Flick's memorandum outlining what he intended to say to Goering at this conference.

PARTIAL TRANSLATION OF DOCUMENT NI-3675
PROSECUTION EXHIBIT 405

EXTRACTS FROM HANDWRITTEN NOTES OF DEFENDANT FLICK, UNDATED,
CONCERNING PROCUREMENT OF FUNDS FOR PURCHASING PETSCHKEK
PROPERTIES, INTERESTING THE PETSCHKEKS IN "OUR PLAN,"
REASONS FOR GIVING FLICK'S MITTELSTAHL SPECIAL
CLAIMS, DRAFT OF A LAW FOR EXERTING PRESSURE,
PLEIGER'S INTEREST, AND RELATED MATTERS

First question: What financial possibilities does a sale of MH [Maxhuette] entail? When making this transfer, one must take into consideration that the security required for a loan would necessitate a mortgage on HB [Harpener Bergbau A.G.] If MH is sold, the loan, either in its entirety or in part, would have to be transferred to HB.

[Here follows a table containing various entries of figures on possible loans, proceeds of possible sales, transfer of existing loans, and similar matters.]

* * * * *

For financial reasons the capital realized by the sale of MH would not be sufficiently large to make up for the unpleasantness which such a sale would entail. A different question is whether we have to do it so that the V. [Viag] or the D.R. [Deutsches Reich] respectively, become sufficiently interested in our plan and/or consider us to such an extent.

Present capital of N. [Niederlausitz mines of Petscheks] and E. [Ein- tracht mines of Petscheks]	48.00	
Possible future preferred stock and common stock	16.00 32.00	
P. [Petscheks] holds 80 percent of 48 =	38.8 [sic]	
minus V. [Viag] shares	16.00	
	22.8 for cash	
	× 2	
	44.00	
minus company's liquid assets	16.00	
	28.00	
At the rate of exchange (?)	13.00	
Allianz	10.00	
(Partial) Profit 1937-1938	5.00	28.00

If one adds to this 6.75 for the procurement of dollars, then this amount would have to be amortized from current profits.

Mittelstahl would participate in the future common stock of N. [Niederlausitz] and E. [Eintracht] as follows:

Total original capital stock	32.00 of which
Mittelstahl would hold 22.00 22:32 =	70 percent

[Here follow further notes and entries on settlement of accounts, redemption of shares, amortization, Petschek interests in other mines, alternate plans of financing, and related matters.]

* * * * *

The reasons why the Mittelstahl group can make special claims are—

1. It is the oldest enterprise of the Lausitz [region].
2. It is the largest potash enterprise of central Germany, of particular importance for armament.
3. The only raw material it has is brown coal.
4. It is the only brown coal enterprise of Eastern Elbe Syndicate producing largely for its own use (for steel plants and extensive electricity production) (electric power is supplied to many communities).

As result of Jewish intrigues (Friedlaender) [juedische Machinationen] it has been deprived of its natural brown coal basis. (Moeller perhaps may have more detailed information.) It is only a matter of course that this condition must be remedied in case Jewish holdings will be distributed. [Wenn juedischer Besitz aufgeteilt wird, wieder gut gemacht werden muss].

Since a committee has been appointed in which Sauckel, who is on friendly terms with Goetz, ¹ is represented, the question arises whether D. B. [Dresdner Bank] alone should be entrusted with the financial leadership (previously promised to Ki. [Kimmich] ² before a committee was established).

Program of Execution

Important matters must be carried out within the shortest time, without interruption, and in rapid succession. Delay in the execution of a plan increases the already existing difficulties to a degree which jeopardizes the final success.

The P. group must not be allowed too much time; they will make only more difficulties the more time they have.

The whole plan must be executed in a simple uncomplicated manner; that means that only a restricted number of firms should

¹ Dr. Carl Goetz, chairman of the supervisory board of the "Dresdner Bank."

² Dr. Karl Kimmich, chairman of the managing board of the "Deutsche Bank."

be allowed to participate, only firms whose interest, from a national-economic [national wirtschaftlich] point of view, is well-founded.

On principle an expropriation should be avoided and should be considered only as a measure in extreme emergency in case of an absolute refusal on their part.

Since we have to expect with considerable certainty such refusal from at least the Petschek group, it will be necessary to work out a draft for a law with all possible speed, which, considering the above, at first is to be used as a means of pressure.

Considering the foreign currency situation of the German Reich on the one hand, and the importance of the transactions on the other, a payment in foreign exchange cannot, on principle, be taken into consideration.

* * * * *

If Pl. [Pleiger] intends to get something from MH [Maxhütte] under any circumstances, then the delivery of HB [Harpen Bergbau A.G.] for the sum of 20-25 mill. should be considered, 20,000 tons of steel times 12-240,000 is more than one-quarter of the steel production of the H.G. [Hermann Goering] works of the first category. His interest, however, will not be as great as it is in the case of Bavaria. Nevertheless, his holdings—viewed from the production and not profit side of the question—would be considerably strengthened, he would be enabled also to supply coke for Salzgitter.

In this event we would not touch the holdings of the MH. Also in this case an option of 50 percent of Doehlen.

This matter must, if possible, be decided in January.

H. should keep his mandate in this matter even after his resignation.

Should we have to give up South Germany,—if no other possibilities exist—then the entire IP. [Ignaz Petschek] holdings in the Lausitz should be left to our discretion. S. [Salzdethfurt] should then receive Borna (etc).

TRANSLATION OF DOCUMENT NI-899
PROSECUTION EXHIBIT 416

LETTER FROM GOERING TO DEFENDANT FLICK, 1 FEBRUARY 1938, ORDER-
ING FLICK TO MAKE KNOWN FLICK'S EXCLUSIVE RIGHT TO NEGOTI-
ATE THE ACQUISITION OF PETSCHKEK PROPERTIES, AND
CANCELING ALL OTHER NEGOTIATIONS

[Initial] St. [STEINBRINCK]
Berlin W 8, 1 February 1938
Leipzigerstrasse 3

Minister President General Goering, Plenipotentiary for the
Four Year Plan

[Initials] B [Burkart]
K [Kaletsch]

St. M. Dev. 696g.

[Stamp]
Secret

[Stamp]
Arrived
4 February 1938
J. No. 9341

Referring to your conference of today with State Counselor
Neumann, I herewith confirm that on 21 January 1938 I author-
ized you to initiate negotiations with the Ignaz Petschek and Julius
Petschek groups with the purpose of ascertaining possibilities and
conditions of acquiring the entire property of these groups. *

I hereby order you to make this authorization known to all those
groups and enterprises who likewise have contacted Ignaz Pet-
schek, Julius Petschek, and their representatives, and to inform
them that I have given you the exclusive right to negotiate. All
conferences initiated without my authorization are to be called
off immediately and all offers to negotiate are to be canceled.

[Signed] GOERING

[Seal] The Prussian Ministry of State

Certified. [Signed] KRUEGER

To: Dr. Friedrich Flick
Att. Lt (s.g.) (Ret.)
Otto Steinbrinck
Berlin W8
Bellevuestr. 12a

* Goering's original authorization of 21 January 1938, Document NI-900, Prosecution
Exhibit 411, is reproduced earlier in this section.

TRANSLATION OF DOCUMENT NI-3241
PROSECUTION EXHIBIT 421

MEMORANDUM OF DEFENDANT STEINBRINCK, 17 FEBRUARY 1938, CONCERNING THE ATTITUDE OF THE PETSCHKE GROUPS TOWARD ATTEMPTS TO ACQUIRE THEIR PROPERTIES, VARIOUS PLANS UNDER CONSIDERATION TO FACILITATE ACQUISITION, AND STEINBRINCK'S RECOMMENDATIONS

St/Ga.

17 February 1938

Memorandum

Subject: Petschek Affair.

The present situation is as follows:

1. Both Petschek groups apparently maintain a passive attitude. They believe that they have protected themselves well and are waiting to see whether the Germans will resort to measures of force. The near future will show whether the change in the Austrian situation will make any impression on the Petscheks.

2. As far as the tactical treatment of the Petscheks is concerned, it is advocated by Messrs. Keppler, Pleiger, and presumably also State Secretary Koerner * and the Field Marshal [Goering] that action be taken and no further negotiations be conducted for the present. This action could take the form of starting a press campaign, as well as of investigation of some incidents. One plan is to expose publicly the conduct of the Petscheks during the time of inflation; action is intended against the group Ignaz Petschek (Phoenix/Mundsdorf) for giving false information, and it is also intended to revive the Hohenlohe affair. These suggestions are strongly sponsored by Sauckel, who has great influence and who will be able to point to success in the Simson/Suhl case. Keppler concurs; Koerner and Pleiger should agree unreservedly. Political developments during the past few days give support to those suggestions. In Austria a new wave of Jewish escapes is said to be starting, and the Czechs will certainly consider Germany's strong influence on Austria's internal affairs a certain menace. There are persons who believe that acquisition of the Petschek plants would not even be necessary any more, due to the political developments which are expected to create a *fait accompli* in a com-

* Paul Koerner, State Secretary of the Four Year Plan and Goering's permanent deputy for the execution of the Four Year Plan, was a defendant in the Ministries Case. See Volumes XII-XIV this series.

paratively short time. Since we must be of the opinion that only through arrangements based on the rules of private enterprise will we be able to gain influence in the firms, and that for that reason we must not actively participate in a political action, we are interested in having the negotiations continued. The following plan should be pursued in this respect:

1. Permission to negotiate on foreign currency.
2. Prevention of attacks against the Julius Petschek group and possible promotion of attacks against Ignaz Petschek.
3. Resumption of negotiations with Julius Petschek after the press campaign has been in effect for some time.
4. In order to gain financial relief the attempt should be made to cancel construction of the Profen carbonizing plant, which according to the latest decisions is under construction for a capacity output of 90,000 tons, and to grant the Ignaz Petschek group the right to construct this carbonizing plant. This would lead to a relief of at least RM 25,000,000 and would result in making bearable the commitments of the AKW/WW. [Anhaltische Kohlenwerke/Werschen-Weissenfelser Braunkohlen A.G.]
5. Settlement of the Wintershall claims by granting a cheap coal contract. Wetzell confirms that the production cost for 1 ton of coal amounts to only little more than 70 pfennig, so that a reduction of 20 percent of the present price of RM 1.72 will be readily feasible.

TRANSLATION OF DOCUMENT STEINBRINCK 366
STEINBRINCK DEFENSE EXHIBIT 64

LETTER FROM DEFENDANT STEINBRINCK TO NEUMANN, 22 FEBRUARY
1938, TRANSMITTING A REPORT OF A MEETING ON THE PETSCHKE
MATTER AND PLACING HIMSELF AT NEUMANN'S DISPOSITION

Ga. 22 Febuary 1938

To Counselor of State/Neumann
Berlin W 8
Leipziger Strasse 3.

Dear Mr. Neumann,

I had expected that you, too, would participate in yesterday's discussion with the State Secretary. For your information I enclose the report ¹ which I gave to State Secretary Koerner. The State Secretary decided that you and Ministerial Director Wohlthat,² together with the Reich Bank and other agencies, should try to obtain appropriate positions. I gladly put myself at your disposition and would appreciate if I could talk to you again either today or tomorrow.

With Heil Hitler!

Yours,

[Stamp] Signed: STEINBRINCK

¹ Reproduced immediately below as Document Steinbrinck 366a, Steinbrinck Defense Exhibit 65.

² Wohlthat was Ministerial Director in the Reich Ministry of Economics and attached to the Office of the Four Year Plan.

TRANSLATION OF DOCUMENT STEINBRINCK 366a
STEINBRINCK DEFENSE EXHIBIT 65

REPORT OF DEFENDANT STEINBRINCK ON "FURTHER HANDLING OF THE
PETSCHKEK PROBLEM," 21 FEBRUARY 1938

21 February 1938

Further handling of the Petschek problem

Starting point—

If, for state-political considerations [staatspolitischen Ueberlegungen], a political action against the Petschek groups is not considered expedient, while on the other hand, for tactical reasons, the position of the powerful Ignaz Petschek group is to be weakened, a resumption of the negotiations with Julius Petschek would best serve this purpose. The assets of the Julius Petschek group are made up of shares with a face value of 30 million of the mining corporations and a claim of approximately 7 million dollars against the German holding company or the enterprises themselves. At present, the only prospects to acquire the above-mentioned property of the Julius Petschek group on a commercial basis lie in offering the group *foreign exchange*.

Provided the State Ministry decides in favor of this procedure, the following *line* could be followed:

It is assumed that the Reich Bank is willing to redeem the debt of the German enterprises amounting to 7 million dollars if this could be effected after making allowance for the customary reduction, by a payment of roughly 2.5 million dollars.

It is assumed that the Americans will surrender their shares of 30 million, if the credit of 7 million dollars could be repaid without reduction. In other words, there seems to be a likelihood that the Americans will surrender the entire shares free of charge if they can be certain of having their dollar claims repaid without loss whatsoever, partly immediately, partly by long-term installments. It goes without saying that the amount of foreign exchange which exceeds the sum of 2.5 million dollars must have no adverse effect upon the German foreign exchange balance. Steps should be taken in an endeavor to find, in cooperation with the Reich Bank, foreign securities for the Ministry of Economics or the State Ministry, which cannot be redeemed in the near future but in which the Americans might be interested.

Flick requests a definite authorization by Goering or his deputy to handle the matter in this way before he enters into any negotiations with the respective agencies. This request does not effect the authorizations dated 21 January and 1 February 1938.

TRANSLATION OF DOCUMENT 1406—PS
PROSECUTION EXHIBIT 334

DECREE CONCERNING THE REGISTRATION OF JEWISH-OWNED PROPERTY
26 APRIL 1938

Decree Concerning the Registration [Anmeldung] of Jewish Owned Property, 26 April 1938, 1938 Reichsgesetzblatt, part I, page 414

On the basis of the Decree for the Execution of the Four Year Plan of 18 October 1936 (RGB1 I, page 887) the following is hereby decreed:

Article 1

1. Every Jew (Art. 5 of the First Regulation under the Reich Citizenship Law of 14 Nov. 1935, RGB1, I, page 1333) shall register and evaluate in accord with the following instructions his entire domestic and foreign property and estate on the day when this decree goes into force. Jews of foreign citizenship shall register and evaluate only their domestic property.

2. The duty to register holds likewise for the non-Jewish marital partner of a Jew.

3. Every registering person's property must be given separately.

Article 2

1. Property in the sense of this law includes the total property of the person required to register, irrespective of whether it is exempt from any form of taxation or not.

2. It does not include movable objects used by the individual or house furnishings as far as the latter are not classed as luxury objects.

Article 3

1. Every part of the property shall be valued according to the usual value it has on the effective date of this regulation.

2. No registration is necessary when the total worth of the property to be reported does not exceed 5,000 marks.

Article 4

The registration is to be presented on an official form by 30 June 1938, to the administrative official responsible at the place of residence of the registering individual. When such a registration is not possible by this date the responsible office can extend the period. In such case, however, an estimate is to be presented by 30 June 1938, together with a statement of the grounds of delay.

Article 5

1. The registering individual must register, after this decree goes into force, to the responsible office, every change of said individual's total property as far as it exceeds a proper standard of living or normal business transaction.

2. The registering requirement applies also to those Jews who were not required to register on the effective date of this regulation, but who have acquired property exceeding 5,000 Reichsmarks in value, after this date. Article 1, paragraph 1, clause 2, shall apply respectively.

Article 6

1. The administrative offices responsible under this regulation are in—

Prussia—Highest Administrative Officer [Regierungspraesident] (in Berlin the Police President).

Bavaria—Highest Administrative Officer.

Saxony—The District Head [Kreishauptmann].

Wuerttemberg—The Minister of the Interior.

Baden—The Minister of the Interior.

Thuringia—Reich Governor [Reichsstatthalter], Ministry of the Interior.

Hessen—Reich Governor (Land Government).

Hamburg—Reich Governor.

Mecklenburg—Ministry of the State, Interior Department.

Oldenburg—Minister of the Interior.

Brunswick—Ministry of the Interior

Bremen—Senator for Administration of Interior.

Anhalt—Ministry of State, Interior Department.

Lippe—Reich Governor (Land Government).

Schaumburg-Lippe—Land Government.

Saarland—The Reich Commissioner for the Saar.

2. Austria—The Reich Governor has jurisdiction. He may transfer his authority to another board.

Article 7

The Deputy for the Four Year Plan is empowered to take such necessary measures as may be necessary to guarantee the use of the registered property in accordance with the necessities of German economy.

Article 8

1. Whoever wilfully or negligently fails to comply with this registration requirement, either by omitting it, or making it in-

correctly, or not within the time specified, or whoever acts contrary to any instruction issued pursuant to Article 7 by the Deputy of the Four Year Plan, shall be punishable by imprisonment and by a fine, or by both of these penalties; in particularly flagrant cases of willful violation the offender may be condemned to hard labor up to 10 years. The offender is punishable notwithstanding that the action was in a foreign country.

2. Any attempt to commit such actions is punishable.

3. In addition to the imposition of the penalties under 1 and 2 above, the property may be confiscated, insofar as it was involved in the criminal action. In addition to hard labor, confiscation may be made. Where no specific individual can be prosecuted or convicted, confiscation may be decreed independently, where the prerequisites for confiscation warrant it.

Berlin, 26 April 1938

The Deputy for the Four Year Plan

GOERING

Field Marshal

The Reich Minister of the Interior

FRICK

TRANSLATION OF DOCUMENT NI-5524
PROSECUTION EXHIBIT 436

FILE NOTE FROM THE FLICK FILES, 24 MAY 1938, INTENDED FOR A DISCUSSION WITH STATE SECRETARY KOERNER, CONCERNING APPROVAL OF ARRANGEMENTS MADE TO PURCHASE THE JULIUS PETSCHKE PROPERTIES, TACTICAL CONSIDERATIONS INVOLVING BOTH THE JULIUS AND IGNAZ PETSCHKE PROPERTIES, AND RELATED MATTERS *

24 May 1938

Foreign exchange to the amount of \$4,750,000 will be obtained by foreign subsidiary companies and friendly enterprises providing long-term loans, partly from their own funds and partly by way of a credit. (So far as money from the funds of subsidiary companies is concerned, there will be no reimbursement; possible financings by means of a credit would be refunded on a very long-term basis from special export surplus, so that they would not, under normal conditions and within a predictable space of time, become a burden to the German reserve of foreign exchange.)

The aim was to buy the smaller group (Julius) in order to isolate the large group (Ignaz), and to have a better basis of actions toward the latter. The large group Ignaz is now as before very unbending, despite the fact that it has made a small gesture by allowing another two representatives of the Reich a seat in the Aufsichtsrat of the Ilse.

As already stated, the suggestion was to buy the small group on the basis of private agreements, because it is obvious that the larger group would not be willing to do so voluntarily. At the present moment, however, the smaller group is of special importance in view of the Four Year Plan and the development of tar distilleries; it was planned to produce an additional amount of 75,000 t of tar, i.e., this amount is to be produced in addi-

* Defendant Flick, in testifying about this file note, stated: "I assume that it is a collective document which was partly written by my associates and partly by myself, and it was supposed to serve as a guide for the ensuing discussion with Koerner. The note bears no signature and I assume, as I have said, that it must be a collective document." See extracts from the testimony of defendant Flick, reproduced in D below. This document was found in a folder in the offices of the Anhaltische Kohlenwerke, labeled "S-14, AKW-WW, 1938-40, Finances, Anhaltische Kohlenwerke." On 25 May 1938, the day following the date of this file note, Flick had a conference with State Secretary Koerner, and Koerner on the same day gave his agreement in writing to the agreement between Flick and the Julius Petschek group. See Document NI-8320, Prosecution Exhibit 432, reproduced immediately below.

tion to the present production of 50,000 t. The Ignaz group's requirements for investment purposes are very considerable (about 90 million RM), so that for this reason also it would be useful to gain control of the mines with briquette factories and tar distilleries for the purpose of ensuring the execution of an important part of the Four Year Plan, (tar supply to the Bra-bag).

Incidentally, the large group Ignaz has not made special contribution toward the Four Year Plan, i.e., in regard to the construction of tar distilleries, etc.

The smaller group has a genuine claim amounting to \$7 millions. This is an authentic claim, and concerns cash which has been received here.

We have now so far agreed, that for the total expenditures, which we incur by the acquisition of the capital stock of these two companies—and this concerns RM 30 millions worth in shares of Anhaltische Kohlenwerke and Werschen-Weissenfels equal to 67 percent of the capital belonging to one company and 87 percent of the capital belonging to the other company—including the repayment of the American claim amounting to \$7 millions—we pay less than the American claim for cash payment, and this in such a manner, that \$4,750,000 are paid in cash. We then decided that, in the first place, half of the credit of \$7 millions, will be given to us which in fact means that it will be annulled; and that for the remainder of \$3.5 millions the Americans will declare themselves satisfied if they receive payments in Reichsmarks or in other securities which total 45 percent of this dollar amount.

This would show a sum of	\$4,750,000
in addition to a value equivalent to	
45 percent of \$3.5 millions	1,575,000
	<hr/>
	\$6,325,000

(On the other hand it must be remembered that there are still considerable investments amounting to RM 90 millions to be effected.)

A further important point is that the political development of the last months (I am here referring to the incorporation of Austria and the possible intentions [allenfalsigen Absichten] with regard to Czechoslovakia) have not changed the Julius P. problem at all. The people concerned are living at Prague, and some of them may already have acquired dual citizenship; they are buyers at any time, although possibly at lower prices. They are in a position to sell their shares legally to British or American no longer connected with any administration and are not represented in either the Vorstand or in the Aufsichtsrat. Incidentally

the sellers and shareholders are exclusively Americans, who are represented by the president of a well-known large American bank (Lee, Higginson). It cannot be ascertained how far all this is genuine. I personally do not believe that it is, but it might not be easy to prove a camouflage.

Be that as it may, I should advise you to adopt the proposed method in this case, because this would at last be a great step forward, and would mean that an important advance in the program of bringing back the Petschek property into the German national economy, would thereby have been achieved.

I discussed the whole plan with the State Secretary Brinkmann at the beginning of last week. After certain preliminary negotiations I then had the representatives of the selling group here for 3 days, and after long discussions we came to the above result, which Herr Steinbrinck then discussed with State Secretary Brinkmann last night. Herr Brinkmann expressed 100 percent approval of this plan, provided that you sanction it.

TRANSLATION OF DOCUMENT NI-3320
PROSECUTION EXHIBIT 432

LETTER FROM KOERNER, DEPUTY TO GOERING AS PLENIPOTENTIARY FOR
THE FOUR YEAR PLAN, TO DEFENDANT FLICK, 25 MAY 1938, APPROV-
ING AGREEMENT CONCLUDED BETWEEN FLICK AND JULIUS
PETSCHKE GROUP, COMMENTING UPON DISTRIBUTION OF
PROPERTIES ACQUIRED, AND REQUESTING PROPOSALS
CONCERNING THE IGNAZ PETSCHKE PROBLEM

Field Marshal Minister President Goering
Plenipotentiary for the Four Year Plan

Berlin W 8, 25 May 1938
Leipziger Str. 3
Telephone A 2 Flora 6341, 7071
[Initial] K [Kaletsch]
[Stamp]
Received 27 May 1938
J. No.

The State Secretary
St. M. Dev. 3524

To Generaldirektor Dr. Fr. Flick,
Berlin W 9

You have reported to me today that pursuant to my two orders of 21 January and 1 February you have come to a written agreement with group Julius Petschek, according to which all the shares of the brown coal enterprises and coal trading companies will be transferred to your group for payment of \$4,750,000. By payment of this purchase price, half of the credit of about \$7,000,000 granted by the American holding company to the German holding company will be transferred to you. The remainder of about \$3,500,000 will be left as is for the time being, and can be covered by you against payment in Reichsmarks or by any other assets, provided that the proceeds will bring 45 percent of this dollar amount.

On the strength of your report today, I give my consent to the agreement concluded between you and the group Julius Petschek, in as far as it will be possible for the Reich Ministry of Economics to regulate the handling of foreign currency.

In consideration of the extremely short coal supply of the Mitteldeutsche Stahlwerke I agree also that the total property of acquired shares be taken over by your company or jointly by your company and other associated enterprises. Here I have in

mind that justified claims of other companies should, as far as possible, be considered for adequate compensation. Thus an advantageous coal supply could be achieved for the hydrogenation plant of the Wintershall A.G. in the Geisel Valley, and by giving up some parts of the coal fields not immediately necessary for your undertakings, you would make possible an increase of reserve fields for the I.G. Farben Industry and the smoothing of the chemical interests of the I.G. in the lignite coal area.

The final regulation is left to the Reich Ministry of Economics.

The problem Julius Petschek having thus been solved, I am awaiting your proposals for the further handling of the problem Ignaz Petschek. However, I call your attention to the fact that, by acquiring interests of Ignaz Petschek, important interests of Reich companies will be affected, and I reserve the right to protect these.

[Signed] KOERNER

Certified.

[Signed] VOIGT

Government Inspector

[Stamp] The Prussian Ministry of State

TRANSLATION OF DOCUMENT 1404—PS
PROSECUTION EXHIBIT 335

THIRD REGULATION UNDER THE REICH CITIZENSHIP LAW, 14 JUNE 1938,
STATING THE CONDITIONS UNDER WHICH INDUSTRIAL ENTERPRISES
ARE CONSIDERED JEWISH, THE REGISTRATION OF JEWISH
ENTERPRISES, AND RELATED MATTERS

Third Regulation under the Reich Citizenship Law, 14 June 1938,
1938 Reichsgesetzblatt, Part I, Page 627

On the basis of section 3 of the Reich Citizenship Law of 15
September 1935 * (Reichsgesetzblatt, p. I, p. 1146), the following
is decreed:

Article I

Section 1

(1) An industrial enterprise is deemed to be Jewish if the
owner is a Jew (sec. 5 of the Reich Citizenship Law of 14 Nov.
1935, Reichsgesetzblatt, pt. I, p. 1333).

(2) The industrial enterprise of a private partnership or a
limited partnership is considered to be Jewish if one or more of
the personally liable partners are Jews.

(3) The industrial enterprise of a legal person is considered
as Jewish—

(a) if one or more of the persons appointed as legal repre-
sentatives or one or more of the members of the supervisory
board of directors are Jews;

(b) if Jews have a decisive interest in the concern by capital
or by votes. Decisive interest by capital is obtained if more than
one-fourth of the capital belongs to Jews; decisive interest by
votes is obtained if the votes of Jews attain one-half of all votes.

(4) The provisions of (3) apply equally to companies oper-
ating under the mining laws but having no legal personality.

Section 2

If, in the case of a limited liability company or a joint stock
company in which at least one holder is personally liable, no Jew
was a member of the Vorstand or of the Aufsichtsrat on 1 Janu-
ary 1938, it is assumed that Jews are not decisively interested
by capital or votes (sec. 1, 3b). The opposite is assumed if

* The Reich Citizenship Law and the Law for the Protection of German Blood and Honor, both announced and signed at Nuernberg on 15 September 1935, were the original so-called Nuernberg Laws. Various aspects of the history, development and application of these laws were of particular importance in the "Justice Case" and the "Ministros case," and the volumes of this series devoted to those two trials contain considerable materials on this subject. See, in Volume III, section V D, "The Making and Application of Special Measures concerning Nationals of Occupied Territories, Minority Groups and Races, and Alleged 'Asocials'." and in Volume XIII, section IX B, "Treatment of Nationals of Various Countries. Racial Policy. 'The Final Solution of the Jewish Question'."

on the date mentioned above one or more of the members of the Vorstand or of the Aufsichtsrat were Jews.

Section 3

An industrial enterprise is also considered as Jewish if it is under the dominant influence of Jews.

Section 4

(1) A branch of a Jewish industrial enterprise is considered a Jewish industrial enterprise.

(2) A branch of a non-Jewish industrial enterprise is considered a Jewish industrial enterprise if the manager or one of several managers of the branch is a Jew.

Section 5

The Reich Minister of Economics may allow exceptions to the provision in section 1 (3) (a) up to 1 April 1940.

Section 6

The provisions in sections 1, 3, and 4 apply equally to societies, foundations, institutions and other enterprises which are not industrial undertakings.

Article II

Section 7

(1) Jewish industrial enterprises shall be entered into a register. The Reich Minister of the Interior designates the authorities where the register shall be kept.

(2) Registration of industrial enterprise in which Jews of foreign nationality are interested requires the approval of the Reich Minister of Economics.

Section 8

(1) Entry in the register is decided by the authorities (sec. 7).

(2) The decision must be delivered to the owner of the industrial enterprise. Within a time limit of 2 weeks of delivery he may lodge a protest.

Section 9

(1) The deciding authority (sec. 8) can remedy the protest; if it refuses to do so, it must submit the case to the superior administrative authority for decision.

(2) The superior administrative authority also decides in other cases of doubt.

(3) Within 2 weeks of notification, the owner of the industrial enterprise is entitled to lodge a further protest with the Reich Minister of Economics against the decision of the superior administrative authority.

Section 10

(1) The protest (sec. 8 (2), sec. 9 (3)) must be submitted in writing to the authority whose decision is being contested and must be substantiated.

(2) In case of blameless failure to observe the time limit for lodging a protest, protest may be lodged subsequently.

Section 11

Entry of an industrial enterprise in the register will be effected when the decision to enter the industrial enterprise has become incontestable.

Section 12

If the conditions leading to registration cease to exist, the industrial enterprise is canceled in the register. If the owner of the industrial enterprise claims that the conditions have ceased to exist and if his application for cancellation is rejected, the provisions governing protestation (sec. 8 (2), sec. 9, sec. 10) apply.

Section 13

In the Province of Austria the foregoing administrative provisions are replaced by the provisions of the General Administrative Procedure Law (OeBGB1. No. 274-1925). Protests are under section 8 (2), section 9 and section 12 are deemed to be appeals.

Section 14

A decision of the superior administrative authority or of the Reich Minister of Economics may also be applied for by the competent Gauleiter of the National Socialist Party.

Section 15

Inspection of the register is open to everyone.

Section 16

Lists or compilations of Jewish or non-Jewish industrial enterprises may only be made according to the official list.

Article III

Section 17

The Reich Minister of Economics is empowered, in agreement with the Reich Minister of the Interior and the Deputy of the Fuehrer to decree that industrial enterprises entered in the register of Jewish industrial enterprises must bear a distinguishing mark after a date still to be fixed.

Berlin, 14 June 1938

Reich Minister of the Interior	FRICK
Deputy of the Fuehrer	R. HESS
Reich Minister of Economics	WALTHER FUNK
Reich Minister of Justice	DR. GUERTNER

TRANSLATION OF DOCUMENT NI-898
PROSECUTION EXHIBIT 437

LETTER FROM HUGO DIETRICH TO DEFENDANT STEINBRINCK, 20 JUNE
1938, TRANSMITTING AN ANALYSIS OF PRESENT AND PROPOSED
GERMAN LAWS UNDER WHICH THE IGNAZ PETSCHKEK PROP-
ERTIES MIGHT BE TRANSFERRED TO GERMAN HANDS

Berlin-Friedenau
Ortrudstrasse 2
20 June 1938
[Initial] F [FLICK]

Dr. Hugo Dietrich
Attorney admitted to the Kammergericht,
and Notary Public

[Initial] K [KALETSCH]

To Director Steinbrinck
Mitteldeutsche Stahlwerke A.G.
Berlin W.9
Bellevuestr. 12a

Dear Mr. Steinbrinck:

Referring to our discussion of Saturday concerning the
Ignaz Petschek problem, I enclose the exposé we discussed,
along with two carbon copies, which you might transmit to
Ministerial Director Wohlthat.

With best regards and Heil Hitler!

Yours very respectfully,
[Signed] DIETRICH

3 Enclosures

Problem
Ignaz Petschek

As reported by State Counselor Reinhardt, the Group Ignaz
Petschek is not willing to take into account the changed condi-
tions and transfer its property into German hands.

According to Article 1, Section 3 of the Third Decree to the
Reich Citizenship Law of 14 June 1938,* Reichgesetzblatt Part I,
page 627, the business enterprise of a person is to be considered
Jewish:

a. if one or several of the legally appointed representatives
of the firm, or one or several members of the supervisory board
of directors are Jews;

* Document 1404-PS, Prosecution Exhibit 335, reproduced above in this section.

b. if Jews participate decisively by capital or vote. A decisive participation by capital is given if more than one-fourth of the capital belongs to Jews; a decisive participation by vote is given if the Jewish votes exceed half of the total votes.

According to Article 3 of this decree a business must also be considered Jewish if it is actually under the dominating influence of Jews.

It is in the interest of the enterprise itself, of its employees, and of its stockholders—outside of the Petschek group—and especially, in their interest within the national-economic frame that the transfer of the Jewish property to Aryans be required, against the will of the present owners, if necessary.

The material which I could gather concerning the laws existing in foreign countries for the nationalization of the rights held by companies to acquire real estate and exploit mineral deposits may be taken from my letters to Director Steinbrinck dated 17 March 1938, and 28 March 1938, attached as enclosures 1 and 2.¹ Enclosure 3 contains the tabular excerpt from my letters of 17 March and 28 March 1938, made upon his request. Like any survey of this kind it presents only the outline of the foreign laws concerned. These enclosures were sent to Amtsgerichtsrat Herbig of the Reich Ministry of Justice on 31 March—enclosure 3, on 4 May 1938—with the reference that p. 24 ff., of the attached letter of 17 March 1938, also contains my proposals for a German law aiming at the nationalization of the land or the exploitation thereof.

According to German laws, there is as yet no legal provision which permits the sale of an enterprise or holdings in Jewish hands against the will of the Jewish owner, not even in the case of the most essential enterprises. However, according to Article 7 of the decree, [decree of 26 April 1938 concerning the registration of Jewish-owned property] section b, the Plenipotentiary for the Four Year Plan has been authorized to take all measures necessary to guarantee the utilization of (Jewish) property subject to registration in accordance with the requirements of German economy. In this connection one should, according to the "V.B." [Voelkischer Beobachter] ² of 28 April 1938, referring to the purpose of the decree, keep in mind the fact that "the Jews must be prevented from harvesting the

¹ The enclosures referred to were not a part of the document introduced in evidence.

² Official newspaper of the Nazi Party.

fruit of the National Socialist constructive work" which has been accomplished in spite of strongest opposition at home and abroad.

By virtue of the authorization of the Plenipotentiary of the Four Year Plan (Art. 7 of the decree, sec. b) it might, for instance, be possible to appoint a trustee in order to carry through the necessary tasks for the Four Year Plan in plants owned or controlled by Jews. The economic profit of this measure would, however, be to the advantage of the Jewish owners of the works or its stockholders. This situation could neither be changed against the will of the Jewish owners by placing the trustee on an equal basis with a member of the managing board nor by making use of the corporation law regarding authorized capital, preferred stock, and obligations; for even the member of the Vorstand who has sole signatory rights cannot dispose of the shares of the Jewish partners, and the creation through preferred stock of authorized capital or obligations requires the resolution of the qualified majority of the general assembly (c.f. Articles 169, 174 of the corporation law, minimum three-fourths majority), thus the approval of the Jewish shareholders.

Only if, in pursuance of Article 7 of the decree, section b, by virtue of a legal provision still to be made for property, subject to registration, a trustee can be appointed who is authorized to dispose of this property against a fair consideration if German economy so requires, the transfer in favor of or against the Jewish enterprises and shares would also be possible against the will of their owners.

An additional decree would therefore be required which might have the following wording and which would sufficiently guarantee the interests of the Jewish owners of the property:

By virtue of the Decree of 18 October 1936 for the Implementation of the Four Year Plan (Reich Law Gazette I, p. 887) and in pursuance of Article 7 of the Decree concerning the Registration of Jewish Property dated 26 April 1938, the following is decreed:

Article 1

The Plenipotentiary for the Four Year Plan can appoint a trustee for any property which, according to the Decree of 26 April 1938 Concerning the Registration of Jewish Property is subject to registration. The prerogatives of the trustees are laid down by the Plenipotentiary for the Four Year Plan in the document of appointment. Particularly the trustee can be authorized to dispose of the property in favor of and against the owner of the property for an adequate compensation.

Article 2

The owners of the property concerned are entitled to have the adequacy of the compensation assessed in formal proceedings [Spruchverfahren]. The legality of the dispositions made by the trustee within the framework of his prerogatives is not affected thereby.

The provisions of Articles 10, 11, 15, 16, 17, section 1, sentence 1, sections 2 and 3, Article 18, section 2, first half sentence, sections 3–5 of the Third Decree for the Implementation of the Law on Conversion of Joint Stock Companies dated 2 December 1936 (Reich Law Gazette I, p. 1003) are to be applied to the formal proceedings accordingly. The application is to refer to those persons who have acquired the property or respective shares thereof by virtue of dispositions of the trustee.

As to Article 2, section 2, last sentence, may I add—In place of the above proposals it could be considered that the application is to be directed against the trustee. To be sure this would sometimes slightly simplify the process of administrative proceedings. However, such a regulation would neither be in keeping with the position of the trustee nor be practical, as the debtor of a higher compensation possibly allotted by the board in question [Spruchstelle] is not the trustee but the acquirer of the property, or part of it, under whose name the instrument of indebtedness must be made out. To file the application against the trustee would, besides, be burdensome and impractical in all cases in which only one or some of the many dispositions of the trustee are disputed as to the adequacy of the compensation.

According to the statements made by Mr. Carl Petschek in a recent discussion, his father sold his property in Germany to various people, gave shares to trustees, holding companies, and prominent private persons, and he only appears as representative of these groups.

In order to reach such cases, in which the factual owner is subject to registration while formally a third person appears as owner, etc., of the property, who up to the present is not subject to registration, it will be necessary to issue a supplementary decree by which the obligation to register is extended to those persons who are trustees or by virtue of a trustee-like relationship act in behalf of persons who are subject to registration. Such a supplementary decree might have the following wording:

By virtue of the Decree for the Implementation of the Four Year Plan (Reich Law Gazette I, p. 887) dated 18 October 1936, and of Article 7 of the Decree of 26 April 1938 concerning the

Registration of Property of Jews (Reich Law Gazette I, p. 414)
the following is decreed:

The obligation to register and assess refers also to all those persons who, on behalf of or by virtue of a trusteeship agreement or similar legal status, possess or manage property which by reason of the Decree of 26 April 1938 concerning the Registration of Property of Jews is to be registered.

Such a decree would be in accordance with the above-mentioned Article 3 of the Decree to the Reich Citizenship Law dated 14 June 1938, Reich Law Gazette, p. 627 et seq.

Berlin, 20 June 1938

[Signed] DIETRICH *
Attorney and Notary

* Dietrich gave an affidavit on his expert opinion and related matters, Document Steinbrinck 347, Steinbrinck Defense Exhibit 73, which is reproduced in F below.

TRANSLATION OF DOCUMENT NI-897
PROSECUTION EXHIBIT 438

LETTER FROM DEFENDANT STEINBRINCK TO NEUMANN, 22 JUNE 1938,
CONCERNING THE INDIFFERENT ATTITUDE OF THE IGNAZ PETSCHKEK
GROUP, THE EXPEDIENCY OF LEGAL MEASURES TO ACHIEVE
ARYANIZATION, AND RELATED MATTERS

Ga.

22 June 1938

To State Counselor E. Neumann,
Berlin W 8 Leipziger Str. 3

Confidential!

Subject: Ignaz Petschek.
Dear Mr. Neumann!

As I already informed you on the occasion of our last conversation, the Ignaz Petschek group will have to be treated differently from Julius Petschek. From all we have heard so far, their attitude is completely indifferent. They smoke screen [Man nebelt sich immer mehr ein] themselves more and more, and we have no doubt that, at the decisive moment, according to investigations made recently, English, American, and other interests will suddenly make their appearance. We consider a previous information that J. P. Morgan is behind the Ignaz Petschek group improbable. Morgan has always been an anti-Semite, and even tempted by excellent business, will hardly be prepared to camouflage Jews.

Enclosed please find a summary of our considerations and discussions held with the Ministry of Justice and other circles during the last months.* These dealt with the expediency of legal measures, especially with reference to the regulations already issued abroad, to safeguard the domestic ores. Moreover we come to the conclusion that still other measures must be adopted (put in a trustee), if in the case of Petschek good results are to be accomplished in the interest of the Four Year Plan and the efforts to Aryanize.

* The enclosed summary was Dietrich's expert opinion of 20 June 1948, reproduced immediately above as a part of Document NI-898, Prosecution Exhibit 437. See the statement of Flick's defense counsel concerning Document NI-897, Prosecution Exhibit 438, which statement is reproduced in the extracts from the testimony of defendant Flick in D below.

Whether such a step is politically expedient and advisable is not for me to judge. The decision rests with higher authorities, while the material which we have collected should serve as suggestions but not be considered concrete proposals.

I am at your disposal for a personal conversation and remain,

With German greetings,

Yours very truly,

[Handwritten] Signed: STEINBRINCK.*

* On 14 July 1938, several weeks after this letter was written, defendant Steinbrinck wrote a letter identical in text with this letter to Ministerial Director Wohlthat of the Reich Ministry of Economics. The second letter, Document NI-896, Prosecution Exhibit 439, is not reproduced herein.

TRANSLATION OF DOCUMENT FLICK 55
FLICK DEFENSE EXHIBIT 55

FILE NOTE OF DEFENDANT FLICK, 5 JULY 1938, CONCERNING A CON-
VERSATION WITH DR. BUEREN ¹ ON THE PETSCHKE QUESTION, CLAIMS
TO PETSCHKE PROPERTIES, A LARGE TAX CLAIM AGAINST IGNAZ
PETSCHKE TO MAKE THE PETSCHKEs "READY FOR NEGOTIA-
TION", AND FLICK'S BELIEF THAT HIS TASK WAS TO
AVOID EXPROPRIATION

5 July 1938

File Note

Dr. Bueren visited me today, in order to discuss the P. problem with me. I asked him if he was interested, and he said yes. I answered that some time earlier I had been informed that he was not interested in it (I had actually been informed of this by some source or other—I no longer remember by whom). In the meantime, Mr. Bueren affirmed his interest in the Lausitz and said that he was not interested in the central German property.

I then asked Mr. Bueren about the coal supplies, and he thereupon gave me the following figures:

The Ilse,² he said, had a 300-year coal supply. Bubiag [Braunkohlen und Brikett Industrie A.G.] had a coal supply resource in the Lausitz that would last the same length of time without the addition of the Rhenish property. The difference between Ilse and Bubiag was that Ilse had better fields. He estimated the property of the NKW [Niederlausitzer Kohlenwerke]³ as very poor, 35 years, perhaps; and he was of the opinion that the central German property of NKW would also not last much longer.

He was reckoning with the fact that the State would lay claim to a considerable portion for itself, especially Ilse. When I asked him in what he was interested, he replied the Eintracht [mine], and added that in view of our geographical position, the most advantageously located for us was the NKW. He also wanted to talk things over with Funk, when the occasion presented itself.

I answered B. that the order for the Ignaz group was, as before still in my hands, but that for the present I saw no way to solve

¹ Director General of "Bubiag", a brown coal and briquette enterprise.

² The Ilse mines were one of the lignite properties of the Ignaz Petschek group.

³ Another of the enterprises of the Ignaz Petschek group.

the problem. B. then informed me of the confidential news that at the moment a large-scale tax operation was in progress against Ignaz—not against the company, that is, but against the Petscheks personally. He added that the only way was that the Petscheks would have to be made ready for negotiation, in this or in some similar manner. I especially brought to his attention the fact that I considered that my task consisted in avoiding an expropriation move, and that my plan was aimed at retaining Petschek's property for them in Germany, but in another form and without any influence on the companies. B. agreed to this entirely, but repeated that in order to carry out this correct plan, the authorities would first have to be brought into a different mood. Moreover, he believed that it was entirely possible to accomplish this.

In the end, I promised him that we would remain in touch with one another. I did not express any opinion on the idea which he had mentioned previously, namely of going to Funk. I do not know whether he will go there or not.

[Signed] FLICK

TRANSLATION OF DOCUMENT NI—3225
PROSECUTION EXHIBIT 441

FILE NOTE OF DEFENDANT STEINBRINCK, 6 AUGUST 1938, CONCERNING
HIS CONVERSATION WITH HAHN OF THE PRUSSIAN STATE MINISTRY
ON THE IGNAZ PETSCHKEK QUESTION, INTERESTED GERMAN
ENTERPRISES, TAXATION, ARYANIZATION, AND
RELATED MATTERS

St/Ko.

6 August 1938

File Note

[Initial] F [FLICK]

Subject: Problem Ignaz Petschek.

Talk with Assessor Hahn¹ in the Prussian State Ministry

Assessor Hahn, by order of Wohlthat, wanted to give me some information about the most recent developments, or rather considerations, in the affair Ignaz P. In front of him was a large file with numerous tables and diagrams. From his information, which on the whole did not contain anything new, the following can be retained:

1. As interested parties have come forward—the Preussag for Oehringen Bergbau, the Viag for Ilse, the Michel-Concern for central German fields (the latter with the argument that it possessed deposits of lignite of comparatively bad quality), and the Hermann Goering Works have not yet come forward officially.

2. Taxation questions.—The central fiscal office has been working for months examining the estate left by Ignaz P. from the point of view of taxes and duties. The tax claims amount to 30 million R.M. Although they are contested, the officials in the Ministry of Finance anticipate a considerable burden to be imposed on the property in order to compel the heirs to sell parts of their shares.

3. The Aryan Problem [Arierfrage].—The Deutsch-Kohle Handels-Gesellschaft² so far has failed in its attempts to be recognized as an Aryan firm. This very morning a conference took place in the Coal Commissioner's office in which representatives of the Swiss company, Helimont, tried to prove that the majority of the Deutsch-Kohle was in their hands. In spite of that the Coal Commissioner decided against Petschek with

¹ Hahn was a member of Wohlthat's staff, chiefly concerned with legal questions in connection with the Aryanization of property.

² A trading company connected with the Ignaz Petschek group in Berlin.

the argument that it was quite evident from the structure of the Deutsch-Kohle, from the personal influence exercised by Messrs. Petschek for a period of years, and from other reasons, that this was in fact a Petschek enterprise.

4. East Elbe Syndicate.—In order to break the influence of Petschek in the East Elbe Syndicate it is contemplated that notice be given on 30 September either by government action or through a minority group for the termination of the contract by 1 April 1939. But in the Ministry of Economics they have not yet quite made up their minds about how the syndicate shall be reconstituted in a new form and who shall act as the future partner. (Therefore it is necessary that Mittelstahl-AKW/WW should very soon realize the consequences of giving notice of termination of contract.) A merger of the East Elbe Syndicate with the Central German Syndicate does not seem to be planned at the moment; it is intended to cut down more drastically the profits of the dealer in the East Elbe Syndicate, similar to what was done in the Central German Syndicate.

5. Inter-Ministerial conference.—Since from all possible sides, authorized and unauthorized, an intervention against Ignaz P. is demanded (for instance the Sudeten German groups want to have a share in the German property of Ignaz P.) a discussion by the various departments took place on 22 July. The following persons took part: On the part of the Ministry of Economics a representative of the coal department, and Dr. Gotthardt of the Aryanization Department. During this discussion all possible plans were considered. *Negatively*—no appointment of commissioners, no potential expropriation, no measures which might appear violent.

Positively.—*a.* The attempt to appoint personalities, acceptable to the State, as chairmen of the various managing boards of directors, who could, as it were, be regarded as trustees for the Reich. In pursuance of our ideas as stated above it will be attempted, by appointment of such a trustee, to give the firm the character of an Aryan enterprise.

b. Imposing of special burdens in the interest of the Four Year Plan.

c. Considerations about Ilse—How can the P. majority at the Ilse be broken? Can the existing pool contract concerning preferential shares be terminated by notice through the Reich? By whom are the preferential shares of the Compri-Bank¹ and of the Dedi-Bank² really owned? Could a better grouping of

¹ Commerz und Privat Bank.

² Deutsche Bank und Disconto Gesellschaft.

the original Ilse shares be achieved with the help of the Viag and of shareholders outside any group?

d. Voluntary withdrawal of the Petschek representatives from the supervisory board of directors, in order to make a gesture toward the public.

To points *c* and *d* I expressed my views in detail. I informed Hahn about our discussions with Reinhardt and Wohlthat, and I repeated the proposals I had made before. In my opinion we shall make no progress in the Aryan question as long as the Ministry of Economics or another higher authority is not in the position to give a clear ruling as to whether an enterprise could be regarded as Jewish even if foreign Jews were represented on the supervisory board. I added, that I knew that the Chamber of Industry and Commerce in Berlin had directed an inquiry to the Ministry of Economics some months ago and to which no reply was given. In my opinion the greatest difficulties are to be found here. I said that I knew that Petschek had of his own accord offered to withdraw from the supervisory board and even to leave Germany if the government wished so. In my opinion this means that he would demand a statement from a high authority. In this I see the greatest difficulties especially with regard to the fact that as far as I know there are some prominent foreign Jews in the supervisory board of the Bekula, perhaps also in that of the AEG and other large enterprises. In spite of all that, Dr. Hahn asked us to get in touch with Mr. Petschek to find out whether he was prepared to withdraw voluntarily from the supervisory board for the sake of his enterprises. I made no comment on this point but I said I would speak to people closely connected with Petschek, in particular to state Counselor Reinert [sic] and Mosler.

As far as the trusteeship is concerned, I told Mr. Hahn that we had forwarded a similar proposition to Mr. Petschek 6 weeks ago. Petschek's reaction is said to have been quite unresponsive. He only asked how much foreign currency he could be given, then he would say what part of his estate he would sell. In this connection Dr. Hahn replied that the Michel concern was allegedly negotiating with Petschek for the acquisition of lignite fields in central Germany, as the Michel concern believed it was able to raise foreign currency through its Dutch partners.

As for the rest it resulted that many internal connections were disclosed by the tax authorities, but that they were still in the dark about the last owners beyond the Swiss and Dutch borders. It was also known that during the last half year numerous accounts in the books of the Petschek companies had been transferred to foreign institutions and banks. Furthermore that

also the figure of the shares represented in the company meetings had decreased considerably. I promised to draw up a statement about this development for the Ministry of State.

Total result—

1. The material in the hands of the Ministry of State is rather poor; apart from pressure through taxation there is not very much to expect from there. Last, but not least, they are, for fear of an exaggerated State capitalism reluctant to take any measures that might lead to a strengthening of the tendency towards a State-controlled economy.

2. We were requested to make more definite arrangements, as to the pool contract with regard to the preferential shares Ilse and to make proposals to render this pool contract more flexible if possible.

3. We want to get in touch with the Petscheks through Reinhardt and Mosler in order to suggest to these gentlemen a withdrawal from the supervisory boards of their German corporations. I could not get a definite promise that these enterprises would then be regarded as Aryan; on the contrary, Dr. Hahn emphasized that this suggestion should come solely from us without any reference being made to the authorities.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-3314
PROSECUTION EXHIBIT 442

FILE NOTE OF DEFENDANT STEINBRINCK, 5 OCTOBER 1938, CONCERNING HIS CONVERSATION WITH MINISTERIAL DIRECTOR WOHLTHAT ON STATE DIRECTIVES TO CONTROL THE MOVEMENT OF ALL MONEYS OF PETSCHKEK ENTERPRISES OR OF CLOSELY ASSOCIATED ENTERPRISES, AND OTHER MEASURES TAKEN OR CONTEMPLATED WITH RESPECT TO PETSCHKEK PROPERTIES

St/Ga

5 October 1938

File Note

Subject: Ignaz Petschek—Discussion with Ministerial Director Wohlthat on 4 October.

Within the past weeks nothing new has been done in connection with the Petschek group. Wohlthat gives the following account:

Tax assessments amount to approximately 30 million Reichsmarks. In order to raise this sum, on the one hand, and to obtain a clear insight into conditions of the Petschek organization, on the other, all banks, foreign exchange departments, control authorities, etc., have received an internal order calculated to permit current control of all movements of money that are executed by companies belonging to the Petschek concern and which accrue to the advantage either of the Petscheks themselves, or to that of those companies closely associated with them. It is compulsory to report to the State Ministry all credits, sales of securities, payments, shifting of credits. Wohlthat has worked out a detailed plan and issued extensive instructions to the competent authorities and offices. He hoped, by these means, to prevent money passing from German enterprises into the hands of the Petscheks. In addition, a thorough study of the movement of money, he hoped, would also make it easier to discover the connections of the combine. At the same time, Wohlthat has pushed forward the reorganization of the East Elbe Syndicate for the purpose of weakening the influence of the Petscheks and, particularly, in order to slowly strangle [langsam abzuwürgen] the Petschek companies.

In connection with the incorporation of the Sudetenland into the Reich, Herr Wohlthat intends to send an expert to Aussig at the earliest possible date, to undertake a study of the organization and connections of the concern from the documents to be found there in the Petschek administration. He expects that the most important records have already been sent abroad by the Petscheks.

The absence of important documents would then furnish him with an additional reason for appointing a commissioner from whom he then hopes to obtain all the information he desires. Wohlthat plans to link this commissioner with the Ministry of State and thereby to retain complete control. He had also heard that Pleiger had negotiated with the P. Group about the acquisition of enterprises located in Germany. Besides, he believes that the sale of the P. properties to other German interests, at this stage of affairs, is out of the question. He expects that the property will remain frozen. When I asked him if it was planned, perhaps, to use the P. properties as a compensation for the damages done to the Sudeten Germans, Wohlthat did not answer me. When I told Wohlthat that the Bank of the Germans [Bank der Deutschen] took a lively interest in the Czechoslovakian lignite possessions, he confirmed that interpretation. He would not say, however, who was behind the bank, nor if its plans would be sanctioned by the highest authorities.

I thought of State Counselor Eberhardt as a suitable commissioner. He used to be connected with lignite and to my knowledge, had also been temporarily active for Petschek. Since he was engaged in a similar sphere in Austria, he would probably qualify. Wohlthat took down his name. He seemed more interested, however, in appointing an expert accountant, and for that reason will probably request someone from the German Auditing Company [Reichstreuhand].

Wohlthat already had in mind a certain Mr. Freudenmann for that type of work. Freudenmann was supposedly for years the head of the trade group for wholesale coal business.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-895
PROSECUTION EXHIBIT 443

FILE NOTE OF DEFENDANT STEINBRINCK, 7 OCTOBER 1938, CONCERNING
THE APPOINTMENT OF A COMMISSIONER FOR THE IGNAZ PETSCHKE
FIRM IN AUSSIG, THE TRANSFER OF FIRMS IN THE SUDETENLAND
TO THE HERMANN GOERING WORKS, AND RELATED MATTERS

St/Ga.

File: Ignaz P. [Petschek] 7 October 1938

File Note

Subject: Hermann Goering Works.

1. Mr. Keppler will see to it that as soon as Aussig¹ is occupied a commissioner will be appointed for the firm Ignaz Petschek, and at the same time expert accountants of the Deutsche Revisions- und Treuhand Gessellschaft [German Auditing and Trustee Company] will begin to investigate the question of ownership of German companies.

2. Keppler informed us today that the Field Marshal has promised Mr. Pleiger,² in connection with the solving of the Sudeten German problem, that if any further coal enterprises should be transferred to the Reich at all, they would go to the Hermann Goering Works.

3. In regard to Witkowitz,³ it is to be expected with certainty that the plant will be incorporated into the Hermann Goering Works, of course only in case the plebiscite should turn out in favor of Germany.

¹ Aussig was a town in the Sudetenland of Czechoslovakia, an area which was occupied by Germany pursuant to the Munich Pact of 29 September 1938.

² Paul Pleiger was chairman of the managing board of the Hermann Goering Works.

³ The Witkowitz Steel Works [Witkowitz Eisenwerke] was acquired by the Hermann Goering Works after the occupation of Czechoslovakia by Germany in March 1939. See section X B, Volume XIII, this series.

TRANSLATION OF DOCUMENT NI-894
PROSECUTION EXHIBIT 444

FILE NOTE BY DEFENDANT STEINBRINCK, 13 OCTOBER 1938, CONCERNING
MEASURES TAKEN WITH RESPECT TO THE IGNAZ PETSCHKEK ENTER-
PRISE IN AUSSIG AFTER GERMANY OCCUPIED THE SUDETENLAND,
THE REPORT THAT THE PETSCHKEKS WERE NOW PREPARED TO
SELL, FLICK'S CONTINUING AUTHORITY TO NEGOTIATE,
AND RELATED MATTERS

St/U.

13 October 1938

File Note

Subject: Ignaz Petschek.

The day German troops marched into Aussig the administration office of the Ignaz Petschek group was immediately occupied. According to Wohlthat, the most efficient expert in Germany for Petschek's tax affairs was sent to Aussig in order to study the files there. The blocking of all credits and the control of the entire financial affairs of all Petschek companies was automatically extended to the Sudeten German property, and the Aussig administration was included in the proceedings dealing with taxation. The Petschek administration maintained that the Petscheks themselves are not owners of the shares, but had acted only as trustees of a widely ramified British-American and some other foreign combine. A statement to that effect was made before the presidents of two Petschek companies. Here the board of assessment must intervene to investigate. Up to now no foreign group has claimed ownership. Already last summer, the main files were transferred from Aussig to Brno.

Today I informed Mr. Wohlthat, who has taken these measures following a special order of the Field Marshal [Goering] (the order says to take all measures required to bring the Petschek enterprises into German hands and to secure Aryanization), that already some results had been achieved. Last night Gauleiter Wagner told me that some high officials known to him, of a Petschek branch establishment, declared that the Petscheks were now prepared to sell. They are trying to take up negotiations, but they would like to negotiate with one single person having full powers and under no circumstances with a number of people. Wagner asked whether we still had the mandate. Koerner assured him that we did. Wagner will advise his confidential informant to call on us in Berlin immediately.

The following has been agreed with Wohlthat :

The tax and control measures as well as the supervision of the examination of documents remain in Wohlthat's hands. As soon as the Petscheks are prepared to negotiate we shall intervene * to take up negotiations according to the order of the Field Marshal. Wohlthat did not know that Mr. Flick was also authorized for the Ignaz Petschek affair, but he is entirely of the opinion that the negotiations should be conducted by us since he agrees that this part should be settled rather by private industry than by officials of the State. For the rest, close cooperation and mutual information was promised.

In regard to the supply of foreign currency, Wohlthat was very satisfied to hear that we will soon supply approximately 3 million dollars. He considers it in everybody's interest, including the interest of the Field Marshal and the State Ministry, that these additional foreign currencies should be delivered, and he fully agreed with our well-known calculation, according to which we have, in the course of the whole transaction, recovered those foreign currencies which were used in purchasing the shares. He proposed that on this subject we draft a common note which will be signed by all parties, so that we would be protected against any possible attacks.

[Signed] STEINBRINCK

* The translation "we shall intervene" for the German words "werden wir eingeschaltet" is not a literal translation, since the future tense and passive voice is used in the German. An accurate translation is "we shall be called in" or "we shall be interposed." The translation as originally made has been retained here since the translation was discussed during the cross-examination of defendant Steinbrinck. (See E below.)

DECREE CONCERNING THE UTILIZATION OF JEWISH PROPERTY, 3 DECEMBER 1938, REGARDING COMPULSORY SALE OR LIQUIDATION AND APPOINTMENT OF TRUSTEES, LIMITATIONS UPON ECONOMIC ACTIVITIES OF JEWS, COMPULSORY DEPOSIT OF SECURITIES OWNED BY JEWS, AND RELATED MATTERS

Decree concerning the Utilization of Jewish Property, 3 December 1938, 1938 Reichsgesetzblatt, Part I, Page 1709

On the basis of section 1 of the Second Regulation of the Plenipotentiary of the Four Year Plan on the basis of the Decree for the Registration of Jewish Property of 24 November 1938 (Reichsgesetzblatt, pt. I, p. 1668), the following is decreed in agreement with the competent Reich Ministers:

Article I

Industrial Enterprises

Section 1

The owner of a Jewish industrial enterprise (Third Regulation under the Reich Citizenship Law of 14 June 1938, RGBl I, p. 627) * may be ordered to sell or liquidate the enterprise within a definite time. Certain conditions may be stipulated in the order.

Section 2

1. A trustee may be appointed for Jewish industrial enterprises, the owners of which have been ordered to sell or liquidate (sec. 1), for the temporary continuation of the enterprise and for the completion of the sale or liquidation, especially if the owner of the enterprise has not complied with the order within the definite period and his application for an extension of time has been rejected.

2. The trustee is empowered to undertake all judicial and extra-judicial actions and legal measures, which the business of the enterprise, its liquidation or sale, require. His authority replaces any legally required power of attorney.

3. The trustee must exercise the care of a responsible businessman and is subject to State control.

4. The owner of the enterprise is to pay the expenses of the trusteeship.

Section 3

1. The owner of the Jewish industrial enterprise is to be notified of the instructions specified in sections 1 and 2.

* Document 1404—PS, Prosecution Exhibit 335, reproduced earlier in this section.

2. In case of absence of the person affected, notification may take place through publication in the *Deutsche Reichsanzeiger* and *Preussische Staatsanzeiger*. In these cases the day of publication is to be considered the day of notification.

Section 4

As soon as the owner of the enterprise is notified of the order through which a trustee is appointed according to section 2, he loses the right to dispose of the property for the administration of which the trustee has been appointed. He regains this right only when the appointment of the trustee expires.

Section 5

The consent for the sale according to Article 1 of the Decree based on the Decree of 26 April 1938, for the Registration of Jewish-Owned Property (RGBl I, p. 415) is necessary also in such cases in which the sale has been ordered; this also applies to the sale by a trustee.

Article II

Land and Forest Enterprises, Real Estate and other Property

Section 6

A Jew (Sec. 5 of the First Regulation under the Reich Citizenship Law of 14 November 1935-RGBl I, p. 1333), may be ordered to sell wholly or partly his land or forest enterprise, his other land or forest properties, his other real estate or other properties within a definite time. Certain conditions may be stipulated in the order. The regulations of Article 2 to 4 are to be applied accordingly.

Section 7

1. Jews cannot legally acquire real estate and mortgages.
2. The regulations of sections 2, 4, 5 and 6 of the Decree based on the Decree of 26 April 1938, for the Registration of Jewish-Owned Property (RGBl I, p. 415) are to be applied accordingly.
3. At the foreclosure of real estate, the court ordering such sale must reject bids if there is reason to suspect that the bidder is a Jew.
4. The rejection, according to paragraph 3, loses its force if the bidder protests against it immediately (sec. 72, par. 2 of the Law Regarding Foreclosure) and if he proves that he is not a Jew.
5. If, as is provided in 4 above, the bidder protests the rejection of an offer, the decision on the public adjudication must not be made before 2 weeks after the conclusion of the auction.

Section 8

1. Jews require authorization to dispose of real estate and mortgages. They require authorization to dispose of other property if the sale has been ordered according to section 6 of this decree.

This also applies in the case of a trustee disposing of said property.

2. The regulations of 1 also apply to contracts in which an obligation to sell is assumed.

3. The regulations of section 1 paragraph 2, and section 2 of the Regulation under the Decree of 26 April 1938 for the Registration of Jewish-Owned Property (RGBl I, p. 415) are to be applied accordingly. In disposing of immovable property, the regulations of Articles 4, 5 and 6 of said Decree are also to be applied accordingly.

4. In case of foreclosure of a piece of land, the bidder requires authorization for his bid; a bid for which the necessary authorization is not proven immediately is to be rejected. Where the Reich Law regarding Foreclosure and Forced Administration is in force, in cases of section 81, (2) and (3) of said law, public adjudication to a person other than the highest bidder is permissible only if the person can prove that consent was given for this deal.

Section 9

1. The authorization according to section 8 replaces those authorizations required according to the Regulation Regarding Traffic in Real Estate of 26 January 1937 (RGBl I, p. 35), Law for the Opening of Settlements (RGBl I, p. 659), the First Decree for the Execution of the Law of 17 August 1937, Regarding the Protection of the Reich Frontiers and Reprisals (RGBl I, p. 905) as well as according to price-fixing regulations.

2. At the sale of land or forest enterprises or the granting of usufruct in such enterprises, the authorization according to section 8 replaces the authorization according to section 1 of the Decree based on the Decree of 26 April 1938 for the Registration of Jewish-Owned Property (RGBl I, p. 415).

Section 10

1. If a Jew sells a piece of land which is situated within the confines of the Reich Capital Berlin, the Reich Capital Berlin has a right of pre-emption for the purpose of carrying out the measures of the General Building Inspector for the rebuilding of the city.

2. Sections 12 and 13 of the Decree of 5 November 1937 Regarding the Reconstruction of the Reich Capital Berlin (RGBl I, p. 1162) are to be applied accordingly.

3. The right of pre-emption does not exist if the Reich, one of the German States, or the National Socialist Party is involved in the legal transaction as a buyer.

Article III

Compulsory Deposit of Securities

Section 11

1. Within a week after this decree goes into effect, Jews must deposit all their stocks, shares in mines, bonds, and similar securities at a foreign exchange bank. New securities must be deposited within a week after their acquisition. The holder of securities belonging to a Jew may not deliver them to anyone but a foreign exchange bank for the account of the Jew.

2. Insofar as securities are already deposited at a foreign exchange bank on behalf of Jews or titles registered or coupons deposited with an administrative authority for which preferred annuities will be granted, the Jews must immediately notify the said bank, the Administration of Public Loans or the administrative authority by a written declaration of the fact that they are Jews. In case of paragraph 1 sentence 3, this declaration must be made to the said holder.

3. The deposits and the registered titles are to be marked as Jewish.

Section 12

The disposing of securities deposited as Jewish, as well as the release of such securities require the consent of the Reich Minister of Economics or an authority named by him.

Section 13

The provisions of sections 11 and 12 do not apply to foreign Jews.

Article IV

Jewels, Gems, and Objects of Art

Section 14

1. Jews are forbidden to acquire, pawn or sell objects of gold, platinum, or silver, as well as precious stones and pearls. Such objects, except in the case of existence of attachments on behalf of a non-Jewish creditor at the time when this decree goes into effect, may only be acquired by public purchasing offices, established by the Reich. The same applies to other jewels and objects of art insofar as the price of the individual objects exceeds one thousand Reichsmarks.

2. The provision of 1 above does not apply to foreign Jews.

Article V

General Regulations

Section 15

1. The authorization for the sale of Jewish enterprises, Jewish real estate, or other Jewish property can be given under condi-

tions that may consist in the payment of money by the buyer on behalf of the Reich.

2. Authorizations of the kind mentioned in paragraph 1 may also be granted with the proviso that the Jewish seller is to receive obligations of the German Reich or registered titles against the German Reich instead of the total or partial consideration as provided for in the sales contract.

Section 16

The regulations specified for Jews in Article II also apply to industrial enterprises as well as organizations, foundations, institutions, and other enterprises which are not industrial, insofar as they are to be considered Jewish according to the Third Regulation under the Reich Citizenship Law of 14 June 1938 (RGBl I, p. 627).

Section 17

1. The higher administrative authorities are qualified to issue instructions based on the regulations of Articles I and II insofar as the special provisions of paragraphs 3 and 4 are not to be applied. The higher administrative authorities are also to supervise the appointed trustees.

2. Section 6 of the Decree of 26 April 1938, determines which authorities are higher administrative authorities within the meaning of this Decree Regarding the Registration of Jewish Property (Reichsgesetzblatt I, p. 414) with the proviso that the following authorities are qualified:

In Anhalt—the Anhalt State Ministry, Department of Economics.

In Baden—the Baden Minister of Finance and Economics.

In Wuerttemberg—the Wuerttemberg Minister of Economics.

In Austria—the Reich Commissioner for the Reunion of Austria with the German Reich or the authorities named by him.

In the Sudeten German territories—the Regierungspräsidenten.

3. Insofar as it is a question of agricultural property, the Oberpraesident in Prussia (Agricultural Department) and the Higher Settlement Authorities in the non-Prussian States take the place of the higher administrative authorities. Insofar as it is a question of forest property, the higher forest authorities take the place of the higher administrative authorities.

Section 18

The competent local authorities are—

1. If the decree applies to an enterprise or real estate property right, that authority in whose district the enterprise or real estate is located.

2. If the decree applies to other properties, that authority in whose district the Jewish owner or the person entitled to dispose of the property has his residence or regular domicile.

Section 19

The person against whom orders are issued pursuant to this Decree is entitled to appeal to the Reich Minister of Economics within 2 weeks after notification of such orders.

Decisions of the Reich Minister of Economics may not be contested.

Section 20

Insofar as section 18, paragraph 2 and section 19 apply to agricultural property, the Reich Minister of Food and Agriculture replaces the Reich Minister of Economics and if forestry is involved the Reich Forestry Master decides. (2d par., of section 20 names various offices exercising the right to decide appeals.)

Section 21

Orders of the higher administrative authority applicable to a Jew of foreign nationality may be issued only by approval of the Reich Minister of Economics.

The same applies to orders issued by authorities named in Section 17, paragraph 3, and applicable to Jews of foreign nationality. In such cases the Reich Minister of Food and Agriculture or the Reich Forestry Master grants the approval in the agreement with the Reich Minister of Economics.

Section 22

Insofar as the provisions of this Decree cannot be applied directly in the Sudetenland they are to be applied by analogy.

Section 23

Anyone violating the provisions of sections 4, 6 (sentence 3) 8, 11, paragraphs 1 and 2, sections 12 and 14 will be punished according to section 8 of the Decree of 26 April 1938 Regarding the Registration of Jewish property. (RGBl I, p. 414).

In accordance with this provision, those persons will also be punished who acquire properties which are disposed of in violation of orders issued pursuant to sections 4 or 6, sentence 3.

Section 24

This Decree will go into effect as of the day of promulgation.
Berlin, 3 December 1938

The Reich Minister of Economics
WALTHER FUNK
The Reich Minister of the Interior
FRICK

TRANSLATION OF DOCUMENT NI-3290
PROSECUTION EXHIBIT 449

FILE NOTE OF DEFENDANT STEINBRINCK ON A CONVERSATION WITH
MINING COUNSELOR GABEL, 14 JANUARY 1939, CONCERNING
CLAIMS TO IGNAZ PETSCHKE BROWN COAL PROPERTIES, POS-
SIBLE EXCHANGE OF LAUSITZ SOFT COAL FOR BROWN COAL
IN CENTRAL GERMANY, POSITION OF THE HERMANN
GOERING WORKS, PAUL PLEIGER, THE IMPENDING
APPOINTMENT OF A TRUSTEE FOR IGNAZ
PETSCHKE PROPERTIES, AND RELATED
MATTERS

St/Ga.

14 January 1939

[Initial] F [FLICK]

File Note

Subject: Ignaz Petschek—conversation with Mining Counselor
[Bergrat] Gabel¹ on 14 January.

At the beginning of December, I tried to contact Mining Counselor Gabel, in order to submit the draft of the final protocol to him. Mining Counselor Gabel couldn't see me so I spoke on the phone to his assistant, Mining Counselor Otto, and after that to Lt. Colonel Schricker. I used the final protocol to inform Gabel again briefly, by use of the maps, about the distribution, and then I gave him the following information:

The mandate concerning Ignaz Petschek, given to Mr. Flick in January and February 1938, still exists.² This fact was again established at the recent meetings on 13 December. In agreement with Wohlthat we would administer this mandate as trustees in such a way that we could benefit from Mr. Flick's wide experience in constructive regroupings and in international negotiations. There was also an existing agreement between ourselves and Wohlthat to the effect that we were not to take action as long as coercive measures were taken by the State, unless the Petschek party itself asked for negotiations. I further informed Mr. Gabel that independently of the trusteeship we were also factually interested in the case of Ignaz P., inas-

¹ Oskar Gabel was in charge of the Mining Department of the Reich Ministry of Economics.

² The mandate refers to Goering's appointment of Flick as sole negotiator with the Petscheks. See Document NI-899, Prosecution Exhibit 416, and Document NI-900, Prosecution Exhibit 411, both reproduced earlier in this section.

much as the Field Marshal himself made the suggestion in February 1938 and now again on 13 December, during Flick's report, that in case of an acquisition of I.P. [Ignaz Petschek], an exchange should be made between the coal property in Lausitz and the coal property in central Germany.

Gabel was not informed of Mr. Flick's mandate and of these negotiations for exchange, and therefore wanted from us a written statement of our requests. He inquired about our claims and their justification. I pointed out that the group Mittelstahl and Kommanditgesellschaft produced about 900,000 tons of steel a year and that about two-thirds of this was produced on a brown coal basis. Our own Lauchhammer group would only last for some 20 years at the present rate of exploitation. For that reason the Minister of War and the Field Marshal had admitted several times that we ought under all circumstances to have an adequate brown coal basis of our own. In reply to his question regarding the amount we received through the purchase of the P. property,¹ I declared that we now had 350 million tons of coal. That was as much as we could possibly use; but, for general reasons of national economy and for other reasons it seemed to me advisable to clear up the whole affair thoroughly when the I.P. problem was solved and make a fair division of the property. First we had to eliminate the multiple ownership of the coal property in the Lausitz; and for that reason in particular we would be ready to participate in such a clearing-up operation by opening negotiations, at the Field Marshal's suggestion, for an exchange of part of the property in central Germany for Lausitz coal if necessary.

Gabel mentioned that numerous interested parties have approached him and that Wohlthat and the Reich Minister of Economics have asked him to consider these requests and suggestions and to propose a division. In doing so, he would look at the matter, first, from the angle of general national economy, i.e., to clear up the division of the property in a reasonable manner; and second, from the point of view of private economy in securing an increased coal base for enterprises which did not own sufficient coal. To his question, as to how I thought the coal distribution should be handled, I replied that I could imagine only a few technically justified interests, aside from coal exchange transactions.

The Brabag would probably have to be considered first; then perhaps the exchange operation between Deutsche Erdoel, ASW²

¹ The "P. property" here refers to coal properties obtained from the Julius Petschek group in December 1938.

² Aktien Gesellschaft Saechsische Werke, which held a large majority in Deutsche Erdoel.

and the Sudeten sector, so that the navy's quota of fuel oil would at last be secured. In any case, I thought it superfluous to discuss this division, because, as far as I knew, the Field Marshal would ask for the whole brown coal production for the Reich works. Mining Counselor Gabel assumed an air of consternation and replied that he had also heard of it and wanted to know what I thought of it. I said that I thought it was possible that Ilse would go to the Reichs-Elektrowerke,* but that all the other property would probably go to the Reichswerke. Pleiger had already made these claims a long time ago and he would certainly renew them. Gabel replied that he had repeatedly asked Pleiger to have Salzgitter supplied with carbonized coke made from brown coal. The experiments made by Clausthal in this field

[Handwritten note] Carl Raabe: We are still in touch with Petschek were satisfactory. For that reason he thought that Pleiger would secure for himself large brown coal fields. Otherwise, however, he seemed to have the intention of exchanging brown coal for soft coal. I informed Gabel that this proposition had been made to us by Pleiger almost 2 years ago. Pleiger was asking for a soft coal base of his own to secure his coal supply. He was thinking of taking over coal fields from our property and compensating us with brown coal. Gabel's opinion was that if this was Pleiger's intention and if the proposal was supported by the Field Marshal, scarcely enough coal would remain for private use. He asked us to keep in touch with him and to consider whether we would formulate in writing our claims to part of the Petschek property, as well as any further proposals we cared to make. I told him that this required very careful consideration, as Pleiger, with whom we were carrying on negotiations, would regard such a proposal as running counter to his plan. Gabel thought that if there was a possibility of exchanging hard coal, we had a good chance of receiving a share of the Petschek coal and urged us to discuss matters with Pleiger as soon as possible and draw up a common plan. That would be much easier if we came to an understanding with Pleiger, inviting him if necessary, and then proposing a general scheme. I said that negotiations on the possibility of exchange had been resumed only a few days ago and that we would go on with these discussions as soon as possible. In any case we would then—assuming that Pleiger agreed—keep him informed. With regard to the distribution of the coal fields, I also explained that an exchange of fields, which was in the interests of rational economic management and absolutely necessary for reasons of national economy in general, resulted—as experience had shown

* One of the numerous holdings of the Reich-owned Viag.

us—in enormous taxes. These taxes would have to be decreased if any large-scale settlement of the Lausitz and central German coal deposits was to be attempted. Gabel was well informed on this matter and made a further special note of it.

We went on to discuss the *Hotze-Herbst-Tobies* affair.* I remarked that these gentlemen worked together in such close harmony that it looked as if they meant to continue the former policy of the Petschek group. I said that Herbst had gone over to the idea of sale from the mines [Werkshandel]. Hotze had obtained his present post through Tobies and was expressing his gratitude by closely collaborating with Tobies. Tobies' suggestion that Herbst should take part in the negotiations of the syndicate as a dealer had been rejected by us. It was an impossible request and one which was quite inadmissible. Gabel confirmed this and seemed to have heard a similar opinion from other sources. On the question of sale he takes the same line as we do; influential free dealers should receive consideration; but sales from the mine must go on; although, of course, an overgrown sales organization like that of "Deutschkohle" should be avoided. The best solution would seem to be the division of "Deutschkohle" into various independent companies, also from the external point of view.

Gabel also asked for an immediate report of any difficulties which we might encounter on the part of the former Petschek group. Gabel agreed to my suggestion that we should elect an honorary, impartial trustee in order to prevent possible independent action by Messrs. Hotze, Herbst, and Tobies, as representing the best solution; and he said that such a trustee would be appointed in a few days. Eberhardt was not regarded as suitable for the post as he was unable to devote sufficient time to this task.

Finally, an interesting question came up when Gabel asked whether we also were interested in Sudeten coal mines. A number of shareholders had submitted claims there, too; but he intended first of all to purchase the whole property for the State, remap the coal deposits, and redistribute them if necessary.

[Signed] STEINBRINCK

Bergassessor Leising is under consideration—the deputy of Mine Director [Bergwerksdirector] Palm from Gleiwitz.

[Handwritten note] Which group

[Handwritten] Berve—So [SOGEMEIER]

* Hotze, Herbst, and Tobies were engaged in producing and selling coal.

TRANSLATION OF DOCUMENT NI-892
PROSECUTION EXHIBIT 450

COPY OF LETTER FROM THE REICH MINISTRY OF ECONOMICS TO AN
UNNAMED ADDRESSEE, 19 JANUARY 1939, DIRECTING SALE OF AN
INDUSTRIAL ENTERPRISE, APPOINTING DR. LEISING AS TRUSTEE
OF THE ENTERPRISE, AND RELATED MATTERS *

The Reich Minister of Economics
III Jd. 2/988/39

Berlin, 19 January 1939
Behrenstrasse 43

Subject: Sale of the industrial enterprise and appointment of a
trustee.

Pursuant to Article 1 of the Decree Concerning the Utiliza-
tion [Einsatz] of Jewish Property, dated 3 December 1938,
(RGBl I, p. 1709) I instruct you to sell your industrial enterprise
[Gewerbebetrieb] by 28 February 1939.

In accordance with paragraph 2 of this decree, I appoint Ober-
bergwerksdirektor Bergassessor a.D. Dr. Leising of the Preuss.
Bergwerks-und Huetten A.G., branch concern Hindenburg, as
trustee for the temporary management of the industrial enter-
prise. The trustee will be under my supervision.

The trustee is authorized to conduct all business and legal trans-
actions in and out of court required for the management of the
industrial enterprise. In this connection, his authorization will
replace any power of attorney required by the law. In particular,
the trustee is authorized to recall the persons appointed as legal
representatives, to appoint them and to give them instructions.
The trustee is *not* authorized to sell the enterprise or to liquidate
it; however, all the measures undertaken for sale or liquidation
of the industrial enterprise require his consent.

BY ORDER:

Signed: SCHMEER

Certified.

(Seal) Signed: RITTER
Office clerk

* This document, clipped together with the next document reproduced below, Document
NI-891, Prosecution Exhibit 451, was found in a folder in the files of the Neiderlausitzer
Kohlenwerke (NKW).

TRANSLATION OF DOCUMENT NI-891
PROSECUTION EXHIBIT 451

COPY OF A LETTER FROM DR. LEISING, TRUSTEE FOR THE IGNAZ PETSCHKE
PRODUCTION COMPANIES, TO AN UNNAMED ADDRESSEE, 27
JANUARY 1939, REQUESTING PROPOSALS FOR THE SALE OF
"YOUR INDUSTRIAL ENTERPRISE" BY 28 FEBRUARY 1939,
AND RELATED MATTERS ¹

Berlin W 9,
Potsdamer Str. 31
27 January 1939

The Trustee of the
Reich Minister of Economics for the Ignaz Petschek Production
Companies [Productionsgesellschaften]

In answer to the questions put to me in yesterday's conference I
inform you of the following:

1. The directive in the decree of the Reich Minister of Eco-
nomics of 19 January 1939, according to which you are to sell
your industrial enterprise [Gewerbebetrieb] by 28 February
1939 ² is mainly of formal importance. Again I ask you to submit
to me proposals for the sale of your enterprise by the date men-
tioned above. These proposals should not refer only to the sale
of certain parcels of stocks which are in your possession, but
on the contrary, they have to apply to the sale of the enterprise it-
self; that is the mines, the briquette plants, and all accessories.
I want to stress once more that my consent is required to initiate
negotiations for the sale or liquidation of the enterprise.

2. It will be superfluous to call a general meeting.

3. As to the problem of acquiring the real estate, I expect a
settlement which will serve the operational interests of the com-
panies. It is acknowledged by a representative of the Reich Min-
istry of Economics that an exception will have to be made for the
period of trusteeship. The exact form of this exception will be
specified later.

Heil Hitler!
The Trustee
[Signed] LEISING

¹ When this document was offered in evidence, prosecution counsel stated the conditions under which it had been found, saying among other things: "It is a carbon copy of a letter written by the trustee and it was found clipped together with the preceding document" [Tr. p. 1811]. It was also stated that the file in which the document was found was available for inspection by the defense [Tr. p. 1808].

² A copy of the text of this directive, Document NI-892, Prosecution Exhibit 450, is re-
produced immediately above.

TRANSLATION OF DOCUMENT NI-3286
PROSECUTION EXHIBIT 452

MEMORANDUM OF DEFENDANT STEINBRINCK FOR DEFENDANT FLICK,
28 JANUARY 1939, CONCERNING THE ATTITUDE OF CARL PETSCHKE,
LEADING MEMBER OF THE IGNAZ PETSCHKE GROUP, TO NEGOTIATIONS,
AND THE PROBABLE CONSEQUENCES

St/Ga.

28 January 1939

Memo for Mr. Flick

[Initial] F [FLICK]

Subject: I.P. [Ignaz Petschek].

Wo. [Wohlthat] has no particular news. I have an appointment with him on Monday afternoon.

From other quarters I hear that C.P. [Carl Petschek] is said to have turned down, in the most brusque manner, any sort of negotiations. Therefore, the measures that Wo. has initiated will probably have to be pursued more energetically.

On the other hand, C.P. is said to have been very soft in a recent conference in Zuerich with the attorney Li., without, however, stating any concrete plans.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-889
PROSECUTION EXHIBIT 453

FILE NOTE OF DEFENDANT STEINBRINCK ON CONVERSATIONS WITH
VOSS OF THE HERMANN GOERING WORKS ON THE PETSCHKEQ QUES-
TION, 2 FEBRUARY 1939, CONCERNING POSSIBILITIES OF EX-
CHANGE OF COAL WITH THE HERMANN GOERING WORKS,
VARIOUS CLAIMS TO PETSCHKEQ BROWN COAL,
AND RELATED MATTERS

St/Ga.

2 February 1939

File Note

Subject: [Petschek] Problem—conversation with Dr. Voss¹ on
2 February.

[Initial] F [FLICK]

At the Reich Leader's dinner,² Dr. Voss made some indica-
tions to Mr. Fl. [Flick] that he would like to negotiate with him
about the exchange of coal. Fl. had the impression that V.
[Voss] wished to conduct these negotiations himself, not through
Pleiger. I therefore called on V., to inform him first of the
negotiations with Pl. [Pleiger]. Pl. had given V. an outline of
the latest events in connection with Pl., especially of the trustee's
activities. First of all, I explained to V. the present stage of the
measures taken by the trustee on one hand and efforts made by
the Reich Ministry of Economics on the other hand. V. already
knew of the existing two different tendencies and that numerous
interested parties, making all kinds of projects, are always in
and out of the Reich Ministry of Economics. I told V. that
my impression so far was that the Reich Ministry of Economics
had not yet come to the conviction that the main part of the
brown coal property should go to P.P. [Paul Pleiger]. V. nodded
and remarked that considerable influence has been brought into
play in the Reich Ministry of Economics and other offices to pre-
vent Pl. from receiving brown coal at all. People in the Reich
Ministry of Economics deny that there is an economic necessity
for it. He did not need brown coal for supplying the Saltzgitter
works directly and it was superfluous to exchange brown coal
for soft coal, since it would be far more advantageous for Pl. to
supply himself with coking coal from the syndicate. V. remarked
confidentially that Pl's reference to his works being supplied
with brown coal might be a tactical measure to show that he

¹ Wilhelm Voss was one of Paul Pleiger's leading associates in the Hermann Goering Works.

² It is not known whether or not this dinner was held in connection with a meeting of the Himmler Circle of Friends. (See sec. V, above.)

absolutely needed brown coal for his Salzgitter plant. V. then added that strong forces were at work to prevent Pl. from acquiring soft coal fields of his own. Wilhelm Tengelmann especially had insisted that it would be better for Pl. to purchase coking coal from the

[Handwritten] That is correct on the whole.

syndicate than to operate a mine of his own. The influence of W. T. should not be underestimated. I called V.'s attention to the fact that in my opinion, too, it was nonsense to get the whole quantity of coking coal needed for the H.G. works—which Pl. estimated at 9 million tons—from his own mines, since that would mean acquiring and operating mines of the extent of the Ha. and E.St. and Hibernia enterprises added together. On the other hand, however, no foundry could be prevented from incorporating a mine in order to cover at least part of its requirements. V. replied that this opinion was hotly disputed and that it was pointed out in particular that Pl. could achieve the influence which he wanted to obtain over the syndicate through the medium of Tengelmann, Preussag and other firms to get possession of a mine.

I then asked V. whether his firm had already decided on the extent of the mines to be acquired. V. shrugged his shoulders and remarked that Pl. had repeatedly negotiated with Fl. and obviously was on the way to induce Harpen to supply coking coal outside the syndicate.

I remarked that,

[Handwritten] In connection with the question of building a coke furnace Nbg 50:50 we, some time ago, contemplated supplying the coke furnace Nbg for our own consumption.

as far as I knew, no negotiations had ever taken place about this matter, since there is no possibility for the syndicate doing so from the legal point of view. In my opinion, Pl. must make up his mind to what extent he wants to produce his own coal. However, as he will want to get coking coal, and not coke, there is very little point in acquiring a mine with a big coke furnace, but it would be best to build a pit without a coke furnace, which would send the whole output of fine coal to Salzgitter.

[Handwritten] Correct [Illegible handwriting]

I could understand that he wanted to participate in the sales in any event; an exception would be made in that he could participate to a much greater extent in the consumption than in the sales. The extent of the coal property desired by Pl. and the means at his disposal were the decisive factors for the exchange; V. confirmed this and said Pl. had actually not yet decided what soft coal fields and mines he could in fact exchange. I mentioned that

there were probably two companies which could be taken into consideration for an exchange: the I.G. and the Mittelstahl/Harpen group. V. confirmed this and, in reply to my question, said that the DEA did not possess coking coal and therefore could not be taken into consideration for an exchange.

We then came to speak of the brown coal matter and stated at first that the I.G. [Farben] had no interests in the Lausitz but wanted to take over a large part of I.P.'s [Ignaz Petschek] brown coal possessions in central Germany, especially the Phoenix/Leonhard group. V. knew that the Brabag also was interested in it. Brabag will be interested in NKW, Kraft I, II, and III, if it cannot obtain fields from the ASW.

[Handwritten] The I.G. probably might not be willing to give away one of their good coking coal mines for these comparatively small objects.

V. further confirmed that Ilse was reserved for the "Elektrowerke" and that some obligations had already been entered into. I declared to V. that the Eintracht alone was left for us as a result of this distribution and that it would be in our opinion the object suitable for our purposes. I showed to him on the map the close geographical interlocking of AKW and Eintracht and called his attention especially to the fact that the Klara III/Werninghof group must remain with us at any rate as the keystone of the enterprise. (Bue. [Bueren] already made at the Ministry of Economics strenuous efforts to acquire all of Eintracht or, if this should not be feasible, to obtain Klara III and Werninghof).

I discussed with Dr. V. the possibility of carrying out that project. V. was fully acquainted with the legal provisions and with the purposes aimed at with the trustee; he realized that in carrying out these provisions, the works could only be acquired against Reichsmarks. I remarked that by this fact one could estimate the approximate value of the Eintracht which was approximately 136 million RM according to today's stock exchange price. This figure must be considered the limit for the coal to be acquired by him. Pl. must now decide whether and to what extent he wishes fields or a mine. As we knew, the value of one ton of coal produced is estimated at RM 20, if it is an average mine and the field of average size. The prices of unexploited coal fields are comparatively high. We could, however, give him such unexploited coal fields, too, if he preferred to construct his own pits.

Dr. V., who had obviously not yet gone into this problem very deeply, realized that a concrete plan to effect the exchange must be established as soon as possible, and that the problems to be solved were—

a. to fix the object of exchange to be proposed for the Eintracht;

b. to establish the tactical procedure to secure the Eintracht for ourselves.

[Handwritten] correct.

V. declared that his firm had contemplated first to acquire the entire brown coal for the Hermann Goering Works and then to exchange it. However, there were many objections to this, and so they had thought of effecting the exchange through other agencies. We discussed the possibility of inserting the Reichs-Kredit or another trust company. V.'s own opinion was that if the mines were bought with R.M, the outside shareholders (not the Petschek stockholders) should be given special consideration, i.e., they were to receive a share in the new company or in the buyer's company.

Since Pl. and V., according to the latter's confirmation, agree on the necessity to declare their specified claims as soon as possible; the following agreement was made:

Dr. V. will discuss the matter with Pl. today or tomorrow, and will arrange—

[Handwritten] Was this done?

1. That the Hermann Goering Works decide what quantities of coal can be acquired by both ourselves and the I.G. within the scope of this exchange transaction and how much can be utilized by the Hermann Goering Works.

2. To ascertain what steps will have to be taken to secure the fulfillment of the claims of the Hermann Goering Works.

(Pl. told me that he has already initiated steps with Schmeer to stop the numerous individual actions of other interested parties and that besides he was to talk with Koe. [Koerner] and the Field Marshal himself.)

As soon as the Hermann Goering Works will know the exact amount of soft coal they require, Pl. will contact us to discuss how their wishes could be realized and to set up together with us a concrete plan. V. himself will be back in Berlin only around 14 February.

From V.'s statements I received the impression that in this case our interests did not interfere with those of the I.G. and that besides, P. and V. are determined to carry out the exchange operation with us, in case the means for the acquisition of the brown coal are put at their disposal.

[Note in defendant Flick's handwriting] Otherwise Eintracht will be acquired for AKW,—it is not our interest to bring down the rate of exchange—and possible participation of the outside E. stockholders in AKW. We must take over new AKW shares to maintain the same percentage.

Old possession	AKW	22	
	for Eintr.	8	
[some illegible figures]	for Mittelst.	10	40

TRANSLATION OF DOCUMENT NI-3277
PROSECUTION EXHIBIT 455

FILE NOTE OF DEFENDANT STEINBRINCK, 10 FEBRUARY 1939, WITH HANDWRITTEN NOTES AND UNDERLINING BY DEFENDANT FLICK, CONCERNING VARIOUS CONFERENCES ON THE PETSCHKE QUESTION, ADDITIONAL PERSONS AND AGENCIES INTERESTED IN PETSCHKE PROPERTIES, AND RELATED MATTERS

St/Ga.

[Note in defendant Flick's handwriting] What supervisory board positions does the Dresdner Bank hold in the Zivno Concern which could induce it to form an alliance with H.P. [Herr Pleiger] in the sale of the Lausitz and adjacent coal mines without contacting us? On the other hand, Goetz and Rasche have offered us the Sudeten coal! How far did Rasche make these statements himself?

File Note

10 February 1939

Subject: Ignaz Petschek.

The following points emerging from conversations with Mr. *Rasche* alone, and with Ministerial Director *Wohlthat* and Ministerial Counselor *Gebhardt* * (Reich Finance Ministry, tax expert) and *Dr. Hahn*, deserve special attention:

1. The *Dresdner Bank* first of all bought the Zivno property and part of Julius P.'s property in the Sudetenland. In addition, it also purchased, through negotiations *with Franz P.*, several remaining shares of the Brix and Dux coal mines, as well as the Britannia company, from the ownership of Carl P. and his associates. Payment will be made as follows:

[Handwritten]
Must supplement

one-third in Czech crowns
two-thirds in deliveries of
coal to Czechoslovakia

(This amounts to payment in Czech crowns, too.) However, there is supposed to be a possibility of converting these deliveries into foreign exchange, *possibly through Poldihuetten and Skoda.*

In the course of these conversations Franz P. mentioned to Mr. Rasche the difficulties he encounters in connection with his German property. Rasche deduced from this that it might be possible to establish *some sort of contact with Carl via Franz P.* Franz declared that he did not own any of the German shares; *only Carl and his western European syndicate [Konsortium] had interests there.* In connection with the Sudetenland lignite operations, the Dresdner Bank bought *through Franz P. from Carl P.*

* Joseph Gebhardt was chief of Tax Control in the Reich Ministry of Finance.

and his associates approximately 25,000 Duxer Kohlenwerke shares, approximately 15,000 Briker Kohlenwerke shares. It is a remarkable fact that the purchase price for these shares was only one-fifth of the price which had to be paid to Zivno for the purchase of a majority.

[Handwritten] Referring to the same nominal amount.

2. The discussions revealed that *Mr. Busch* had a 2½ hour conversation with *Carl P.* in Zurich, in which he told him of his troubles, and from which Busch understood that Carl P. was gradually becoming willing to sell. The *Dresdner Bank* is trying to get some sort of *authorization through these two contacts.* During the *joint discussion with Wohlthat*, Rasche asked Wo. [Wohlthat] for an authorization to *negotiate with Franz.* Wo. very adroitly refused and referred to the other banks and to the fact that the sole authorization had already been given to Mr. Flick; all things considered, it was up to the *Dresdner Bank* to settle the point with Mr. Flick.

3. After Rasche had left, we were able to extract the following information from Wo., *in confidence:* The *Deutsche Bank* has also asked for an authorization, basing its claim on the contact established between *Ullner and Carl P.* *Dr. Mosler* discussed this with Wo. It would therefore be in our interest either to negotiate with Mosler himself, in order to get the *Deutsche Bank* on our side, and also to push along Ullner's *well-known plan for division* to some extent through conversations with Brabag and the *I.G.*

[Handwritten] What are the prospects?

It is also important—a fact which was revealed in confidence at this meeting—that Rasche had already been at another ministry with *Stinnes* * (I assume at the Ministry of Economics) in order to get some kind of mandate to negotiate. But this was refused there.

Finally, *an attorney authorized by the Petscheks* came today and made an offer to purchase the German property. Wo. had no time to give the details, but he described it as "*absolutely grotesque.*"

4. In this situation it follows that in the first place we must prevent headlong competition from arising among all kinds of go-betweens, banks, or other agents. Therefore, I argued that in my opinion one should make the *Petscheks* fidget, particularly if the tax situation is favorable. Ministerial Counselor *Gebhardt* stated that the tax position was extremely strong, that the amounts might have to be reduced to some extent, but that com-

* Hugo Stinnes, German industrialist with various interests in Ruhr industry.

plete success was assured under all circumstances. *This success was all the more certain since the new Czech Government had agreed to continue dealing with tax affairs in conjunction with the German Government, in order to exchange the material.*

[Handwritten] How far does that affect the P. [Petschek's] nationality?

Wo.'s point of view is still that our group is entitled to conduct the negotiations, and that in any case, no other authorizations may be granted without the special consent of the Field Marshal and the approval of Flick.

[Handwritten] Which nationality?

5. It is interesting that attorney *Felder*, who represents Sir Oliver Duncan, let it be known today that he was willing to pay an additional 6,200,000 Swiss francs on the purchase price for the Helimond shares. He is in a position to prove that this money derives from his own fortune. This proof is important, because the first payment of 2,800,000 Swiss francs was made through the Schweizer Bank, by means of a credit which the Schweizer Bank itself granted Oliver Duncan.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-6013
PROSECUTION EXHIBIT 456

MEMORANDUM BY DEFENDANT FLICK ON CONVERSATIONS WITH PLEIGER,
14 FEBRUARY 1939, CONCERNING THE PETSCHKE MATTER, PLEIGER'S
DEMANDS FOR COAL FOR THE HERMANN GOERING WORKS
AND THE POSSIBLE EXCHANGE OF FLICK SOFT COAL
AGAINST BROWN COAL IN THE IGNAZ PETSCHKE
FIELDS, TAX CLAIMS AGAINST THE PETSCHKE,
AND RELATED MATTERS

F1/K1.

14 February 1939

Memorandum

Today Pleiger informed me that the contemplated conversation with the Gf. [Field Marshal Goering] took place last week. However, the time was so short that he did not have a chance to bring up the brown coal affair. It seems another meeting with the Field Marshal will take place next week. He will give me further information afterwards.

We then discussed the matter in general (the conversation was very amicable and ended by taking lunch at Reich's where Keppler and Meinberg happened to be present). Pl. [Pleiger] told me that Funk's decision, according to which the Reich Ministry of Economics will take over the whole complex, was taken on the basis of this (Pleiger's) report. The report apparently was made last week following our conversation. The same big folder also contained the entire material on soft coal and brown coal, the map of the Ruhr area and also a map of the Lausitz brown coal property, which map, I think, belonged to us. By the way this map does not show the northern part of Eintracht and AKW bordering, in contrast to the map we looked at together with Hellberg recently.

Pl. said that the Reich Ministry of Economics planned a settlement of the fields and a fusion and will make suggestions for the distribution. The final approval, however, will be given by the Field Marshal. My impression is that the influence of the Reich Ministry of Economics in this affair is quite important.

Upon my inquiry who, under Funk, was working on the case in the Reich Ministry of Economics, in particular whether it was Schmeer or not, Pl. answered, that Mr. Schmeer would be considered for the trade corporations [Handelsgesellschaften]. Hanneken was the competent man in his opinion.

Having then asked him how he actually imagined the exchange deal and what in particular he was trying to achieve, Pl. took out the well-known map of the Ruhr area and marked—as expected—our entire eastern property of the Maximilian mine, everything including Viktoria, Gneisenau, and Monopol. I laughed at him and said at first, that he could not do very much with operating mines all of which were connected with coking plants. For his purposes it would be best to get a certain number of fields, and we might even consider giving him an active mining enterprise; in my opinion the de Wendel mine was best suited since the property of this mine cuts into our fields like an arrow into the flesh. I carefully indicated that we had already once before negotiated about that in order to probe the ground. We then came to speak about the Maximilian mines and the causes which had led to the flooding. Pl. asked why we had not drained the pit again. I replied that work had been started to sink the pit and to restore the mine; however during the war * Roechling had bought the majority of the shares of Mont Cenis and soon afterward he became interested in Maxhuette and we then had incorporated Mont Cenis into Maxhuette and then had stopped the work in the Maximilian mine. The present property consists of 8 fields with considerable real estate and includes 1,000 apartments. At first Pleiger assumed that the pit was still open; I said that this was not the case. There was room for the mines and everything else necessary. However, it would be necessary to again sink the pit. Thereupon Pl. said: "Give me the fields of the Maximilian mine. You can dispose of those immediately." I answered that we could discuss that and that I might give him the fields at a bargain price. Upon his question as to what we wanted I said that we would be primarily interested in Eintracht. I explained to him on his map exactly where the property was located and how the property of AKW was interwoven with the northern part of Eintracht. I added that we would give him the fields of the Maximilian mine at a special bargain price and that we only wanted the promise to get Eintracht for a normal price in return.

When I asked him, then, how much tonnage he expected, the picture suddenly changed and Pl. said: "I need 10 million tons." I answered: "10 million tons in active mines does not give you very much coking coal for your use, besides you will still be able to always get coking coal from the syndicate at a special price which is lower than the cost price of the mines." Pl. then said: "10 million tons of production are equal to 5 million tons of coking coal. I calculate that 2 million tons thereof will go to the coking

* This refers to World War I.

plants and 3 million tons of coking coal would still be left for me." Of interest was the further remark, that the opening of fields at a yield of 3 million tons of coal a year would cost him 115 million marks.

Thereupon we had detailed discussions on the size of our soft coal possessions and on the fact that they were not an organic part of our possession, contrary to brown coal which belonged to us. I replied that from general viewpoints it might appear desirable to reduce our soft coal possessions and to exchange some of them for brown coal. In spite of these fundamentally correct ideas you probably understand that I am extremely reluctant. This extreme reluctance exists independently from the material aspect, it exists even if the exchange for brown coal should clearly and definitely be advantageous for us. For one thing we had, in connection with the incorporation of Mont Cenis into Maxhuetten, obligated ourselves to keep the Harpener property until the end of 1943, and then there were, no doubt, the greatest difficulties, of a general and personal nature, which seem to me to be insurmountable. Pl. thought that in connection with the Hermann Goering Works they would not be insurmountable. He made further statements that developments in the future would be unfavorable for soft coal while they would be comparatively favorable for brown coal. In particular he pointed to the labor problem and the fact that in order to produce the same amount of thermo-electrical units [Waerme Elektrizitaets Einheiten] ten times as many workers were required for soft coal than for brown coal. Petschek did a great job, and the great profits made by the trade companies are not to be overlooked either. Thereupon I pointed out that in regard to this last point that one could notice a continuous retrogression which had not yet reached its end. He then remarked that the aspects of soft coal industry, for instance, in the chemical-technical development, were exceedingly bad.

I answered that at present all the I.P. brown coal companies had only a yearly production at most of 10 million tons of briquettes. If 1 million tons of soft coal are considered equal to 1 million tons of briquettes—which as far as thermo-electrical units are concerned would be of disadvantage for soft coal—we would have to use the entire I.P. property for soft coal in order to achieve the desired production of 10 million tons of soft coal. That could not be done if only in view of the fact that Viag wanted to get Ilse. It would have to be considered, too, that part of the I.P. [Ignaz Petschek] property, namely NKW, had only coal supplies for 20 to 25 years. The soft coal supply of Harpen and Essen soft coal mines [Essener Steinkohle] together may be higher in tonnage than the entire supplies of mineral

coal of the Petschek enterprises. He should tell me truly exactly how much soft coal he wanted to mine. If we were to reduce the 10 million tons he had demanded by 50 percent then I would think of a way to get hold of that amount, though it would be difficult to take it from us alone.

Altogether our conversation can be summarized as follows: Though it would be of disadvantage from the commercial point of view he has to have soft coal and he would not mind if we were making a good deal with brown coal. He repeatedly asked about Concordia, which I suppose was offered to him. He does not think much of it.

In looking at the map of the Ruhr coal mines we came to speak of the I.G. property. Pl. knows that good coking coal can be hauled in the Arenberg pits only, which are the pride of Rheinstahl. In my opinion we have no serious competitor as far as the exchange of good Ruhr coal is concerned. Repeatedly he came to speak of Thyssen's Walsum and the neighboring fields. He still is very much concerned with this deal.

Supplement.

I had another conversation with Pl. on the question of further actions in this matter, for instance whether—

1. one should decide upon a voluntary purchase which as such would be desirable, or
2. whether the tax affair had developed so far that it could not be called off any more.

Pl. was of the opinion that the latter was the case. He tried to call up Wo. [Wohlthat] in my presence. Wo. was out of town and he talked to his deputy Dr. Hahn (?). Dr. Hahn stated that the tax affair could not be called off and it was indicated that as a result of the high multiplier the amount would come to approximately 90. A final decision could be expected in from 9 to 12 months. Then the question was brought up whether the sale of property should be held in suspense or whether the sale should be carried out and the amounts in question blocked until the tax problem finally was decided. Finally I pointed out the difficulties which may arise with the free German shareholders.

[Signed] FLICK

TRANSLATION OF DOCUMENT NI-3272
PROSECUTION EXHIBIT 457

LETTER FROM DEFENDANT STEINBRINCK TO THE REICH MINISTRY OF ECONOMICS, 22 FEBRUARY 1939, SUMMARIZING THE PARCELING OUT TO GERMAN CONCERNS OF JULIUS PETSCHKEK PROPERTIES, NOTING GOERING'S APPROVAL FOR INCREASING BROWN COAL BASIS OF FLICK'S MITTELSTAHL FIRM, AND APPLYING FOR SPECIFIC ALLOCATIONS OF BROWN COAL FROM IGNAZ PETSCHKEK GROUP

U. 22 February 1939

To Reich Ministry of Economics, Attention of Ministerial Councilor Gabel

Berlin
Taubenstr. 16/18

Subject: Return [Rueckfuehrung] of the brown coal property of Ignaz Petschek to German ownership.

When the brown coal property of the former Julius Petschek group was parceled out, a great part of the coal property situated in the Geiseltal was, in the first place, cut out for the benefit of the I.G. Farbenindustrie, the Wintershall Company and the Salzdettfurth-Konzern and the majority of shares of the remainder of the Anhaltische Kohlenwerke and the Werschen-Weissenfels Braunkohlen A. G. was then allotted to our company. This order of the Plenipotentiary for the Four Year Plan aimed at securing an adequate fuel supply, for a long period, for the economically most important steel mills of central Germany, to secure them against crisis and make them more independent, through affiliation with a big brown coal enterprise. Already when the Field Marshal [Goering] commissioned the chairman of the supervisory board of our company, Dr. Flick, with the reacquisition of the entire Petschek property, he recognized the necessity of strengthening the brown coal basis of the Mitteldeutsche Stahlwerke, but at the same time he pointed out that no final solution would be attained by the allotment of brown coal property mainly situated west of the Elbe. When the agreement on the distribution of the Petschek property was signed on 16 December 1938 it was therefore again proposed, with the approval of the Field Marshal, for the Mitteldeutsche Stahlwerke

to acquire geographically more favorable brown coal deposits from this group in the ensuing solution of the Ignaz Petschek problem, in order to connect them organically with the steel mills.

For the companies of the Ignaz Petschek group that come into consideration and are located in the Lausitz, a collaboration of the Mitteldeutsche Stahlwerke and the Anhaltische Kohlenwerke with the Eintracht Company would be the most expedient connection from a national economic and business point of view, and would therefore be the natural and right solution.

In the enclosed letter * from the Anhaltische Kohlenwerke the advantage of close business collaboration between the Eintracht and the Anhaltische Kohlenwerke is impressively indicated by means of maps.

To effect the acquisition of the Eintracht shares or the whole property of the Eintracht Company we have in mind certain plans about which we are quite prepared to report verbally.

If it should be necessary for general national-economic reasons, a part exchange of coal mines from the property of our group for the benefit of other enterprises of military economic importance [wehrwirtschaftlich bedeutungsvoll] could also be taken into consideration.

As we know that the Reich Ministry of Economics is dealing, at present, with the appropriate distribution of the brown coal property of the Ignaz Petschek group, we consider it due time to inform you of the above-mentioned conferences with the Field Marshal, and to apply for provisions to be made for the Eintracht to be allotted to group Mitteldeutsche Stahlwerke / Anhaltische Kohlenwerke, when the plan of distribution of the Ignaz Petschek brown coal group is drawn up.

We are at your disposal, for verbal explanations, at any time,
With the German greeting,

Heil Hitler!

[Stamp] Mitteldeutsche Stahlwerke A. G.

[Signed] STEINBRINCK

[Initial] K [KALETSCHEK]

* The enclosure was not a part of the document introduced in evidence.

TRANSLATION OF DOCUMENT NI-929
PROSECUTION EXHIBIT 458

MEMORANDUM OF DEFENDANT STEINBRINCK FOR DEFENDANT FLICK,
24 FEBRUARY 1939, CONCERNING THE FORTHCOMING PLAN OF
THE REICH MINISTRY OF ECONOMICS FOR DISTRIBUTING IGNAZ
PETSCHKE PROPERTIES, PROPOSED STRATEGY FOR MEETING
ASSOCIATED PROBLEMS, AND RELATED MATTERS

St/Ga.

24 February 1939

Memorandum for Mr. Flick

Subject: Further treatment of the Petschek question.

We must consider the following points, if it is true that Leising, the appointed trustee, is given full or partial authority to sell the industrial enterprises, as of 1 March.

The Reich Ministry of Economics will have to draw up a distribution plan very shortly, since its willingness to act was proved by the appointment of a trustee for the sale. This distribution plan, if it is carried out without Pleiger, will probably provide for an extensive distribution of the property and, at the same time, a redistribution of the fields according to Gabel's propositions. It is perhaps possible that Werhahn has expressed wishes which can be complied with in the course of this general settlement. I think it not impossible that the Reich Ministry of Economics, for instance Werhahn, will obtain the Sauo field or a similar field, according to the distribution plan, for enlarging its coal basis; while on the other hand, Salzdetfurth, which has also expressed its wishes to Wohlthat as well as to the Ministry, will also perhaps be granted certain supplementary fields near Muckrow/Wadelsdorf or Marienstern. I therefore do not believe that the whole Eintracht will be assigned to us if,

a. from the start we do not get active support from the competent authorities, or if,

b. we do not emphasize more energetically the intended exchange of fields against soft coal or the exchange in central Germany.

The following means could therefore be chosen for further elucidation of the question:

1. *Discussion with Minister Funk.*—Motives: Since Brinkmann is on leave and since the trustee for the sale has been appointed, it appears necessary to inform Mr. Funk of the authority

given by the Field Marshal to Mr. Flick in order to guarantee a uniform procedure. On this occasion it must be pointed out that we are willing to give soft coal or brown coal in central Germany—mainly Lausitz—for all of Eintracht.

2. *Discussion with Pleiger.*—While referring to the appointment of a trustee, it must be explained to Pleiger that a fundamental decision must be made as to the extent of the property he wants. If appointing a trustee should be an effective threat [wirksame Drohung] he must act within a relatively short period. Pleiger therefore must soon settle the question as to the quantities of brown coal he wants for exchange or for his own definitive possession.

3. *Getting in touch with Reinhardt,* president of the Eintracht, to obtain a concrete proposal for the Eintracht coal. The purchase price, among other things, naturally depends upon Pleiger's wishes (preferred shares of the Anhaltische Kohlenwerke, which may be exchanged for soft coal if required).

4. *Discussion with Hugo Stinnes.*—It must be decided whether a direct discussion with him is desirable; if so it must be explained to him that he cannot be given any authorization to negotiate without the consent of Mr. Flick.

TRANSLATION OF DOCUMENT NI-6007
PROSECUTION EXHIBIT 460

FILE NOTE, 28 FEBRUARY 1939, DEFENDANT STEINBRINCK ON CONFER-
ENCES OF DEFENDANT FLICK WITH PLEIGER OF THE HERMANN
GOERING WORKS AND GRITZBACH OF GOERING'S PERSONAL
STAFF, CONCERNING DISPOSITION OF SUDETENLAND COAL,
THE POSITION OF PLEIGER AND GOERING AS TO THE
EXCHANGE OF SOFT COAL FOR BROWN COAL,
AND RELATED MATTERS

St/Ga.

28 February 1939

File Note

[Initial] F. [FLICK]

Concerning: Pleiger.

In the evening of February 25 Flick had a conference of several hours with Pl. [Pleiger], which brought to the open the following concerning the Ignaz Petschek problem:

1. Pl. is negotiating for the acquisition of Witkowitz. No details were revealed.

2. Coal in the Sudeten territory had already been incorporated in a special holding company, because all coal holdings are intended to be acquired by the Hermann Goering Works.

Mr. Flick later was informed by Gritzbach* that Pleiger briefly reported to the Field Marshal [Goering] about Sudeten coal and that at this occasion he submitted a map which showed the Komotau coal fields. Pl. is said to have remarked that he had secured the acquisition of these fields for himself.

3. Pleiger initially demanded that all brown coal should be allotted to the Hermann Goering Works. However, he claimed to be willing to hand over all brown coal to Flick, in case the latter should give him his soft coal property. Flick pointed out that, apart from the material impossibility of such an unprofitable exchange, it was politically intolerable for him to acquire the heritage of Ignaz Petschek. Flick further remarked that the Ilse mines would almost certainly be given to Viag. Pl. contradicted this and emphasized that he could additionally procure the entire Ilse enterprise in case this should be wanted. Besides

* Erich Gritzbach testified as a prosecution witness. Extracts from his testimony are reproduced in C below.

the Ilse would be split up and the Erika pit would be equipped with a coal deposit guaranteeing 100 years of exploitation. The Reichselektrowerke would have to be satisfied with this new arrangement.

4. After long discussions Pleiger probably realized that an exchange of all deposits could not be carried through and that he would have to be satisfied with less soft coal. He proposed to Flick to divide at the rate of 50/50 but did not advance concrete propositions in this respect. Flick had the impression that Pleiger was not yet definite about his latest plans.

5. The conversation further revealed that Pleiger does not intend to acquire the brown coal mines solely for purposes of exchange but wants to keep some of the fields. He remarked that recently very successful attempts had been made to manufacture brown coal coke, which was made from a mixture of low-grade soft coal, brown coal, and an addition of tar. This mixture supplied a high-grade brown coal coke which can be used for refining ore in blast furnaces.

The profitableness of such a mixture for coke production seems extremely doubtful. Previous experiments in the Jakob pit have revealed that an addition of 8 to 12 percent of tar was necessary to manufacture a high-grade coke. At the previous low price of RM 3.50 per 100 kg of tar, an addition of 10 percent of the latter substance would increase the price by RM 3.50, thus making briquettes much too expensive to be produced at a profit. The freight from Woehnitz/Profen to Salzgitter for briquettes or natural coal costs RM 4.95 at the special tariff 6 B 1 after a deduction of 30 percent. To Unterwellenborn RM 3.35.

6. No definite proposals resulted from the long discussions. A provisional agreement was reached that Pleiger and Flick would report together to the Field Marshal, submit to him a plan for the division of the brown coal property, and inform him of the possibilities of soft coal exchanges.

Pleiger insisted several times that the Field Marshal had agreed that the entire brown coal property of Ignaz Petschek should first be incorporated into the Hermann Goering Works and then should be exchanged for soft coal either in its entirety or in part. It followed that Gritzbach who participated in the conferences, should be approached for further details. On 27 February Flick paid a visit to Gritzbach. The following is to be noted from this conference:

1. It is correct that Pleiger spoke about the exchange of brown coal against soft coal and of Flick's consent. However, Gritzbach gained the impression that only a relatively small release

of soft coal by Flick had been considered, and that this should amount to nothing but a friendly gesture, and in no case to the large scale exchange transaction which Pleiger had in mind.

2. Gritzbach confidentially remarked that in his estimation the Hermann Goering Works would do better to purchase coal for the manufacture of coke from the syndicate or from other sources, rather than to produce it themselves. Flick emphasized this point and added that he was willing to release coal fields to Pleiger at an especially cheap price so that the latter would have a participation at the Ruhr. The release of soft coal fields was to be undertaken in gratitude and recognition of the apportionment of further brown coal fields to the Mittelstahl group from the property of Ignaz Petschek.

3. The following is also important: Gritzbach again certified that Goering promised Flick, in the conference of 13 December, that he would agree to it if the Mittelstahl group should acquire further coal properties in Niederlausitz, when a solution of the Ignaz Petschek problem had been arrived at. Gritzbach intended to prepare the minutes of the meeting of 13 December 1938, but has not done so as yet.

4. Gritzbach related the following in confidence:

A secret agreement exists between the Hermann Goering Works and the Prussian State, according to which the present mining property of the Prussian State including Hibernia, is to be handed over to the Hermann Goering Works when the property of the Prussian State will be transferred to the Reich.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-3267
PROSECUTION EXHIBIT 459

LETTER FROM DEFENDANT FLICK TO GRITZBACH, CHIEF OF GOERING'S
PERSONAL STAFF, 1 MARCH 1939, CONCERNING FLICK'S MANDATE
TO NEGOTIATE WITH THE IGNAZ PETSCHKE GROUP, REQUESTING
GRITZBACH TO MENTION TO GOERING THE INTENTION TO
FAVOR FLICK'S LAUSITZ GROUP IN THE FORTHCOMING
DISTRIBUTION OF COAL PROPERTIES, AND RELATED
MATTERS

Ga. 1 March 1939
To Ministerial Counselor, State Counselor Dr. Gritzbach
Berlin W. 8, Leipziger Str. 3

Dear Mr. Gritzbach,

Last night I had a chance to talk to Mr. Wohlthat. He also confirmed that the Field Marshal [Goering] on 13 December 1938 again authorized me alone to negotiate with the Ignaz Petschek group. Under these circumstances the authorization letter which was to be written by the Field Marshal to me and which we had both discussed (Mr. Steinbrinck sent you a draft yesterday) no longer seems necessary. Perhaps you will still have a chance to discuss the Petschek problem with the Field Marshal and on that occasion you could once more get verbal confirmation of the mandate given to me. I would be especially grateful to you if, while discussing the forthcoming distribution, you would call attention to the fact that it had been intended to favor my group in the Lausitz.

As I am informed by Mr. Wohlthat, you had intended to lay down the result of the conference of 13 December 1938 in a memorandum. Could you let me have a copy of it?

Thank you for your kind support and with best wishes for pleasant days,

I remain, with "Heil Hitler"

Yours very truly

[Signed] FLICK

TRANSLATION OF DOCUMENT NI-3258
PROSECUTION EXHIBIT 462

LETTER FROM GENERAL HANNEKEN OF THE REICH MINISTRY OF ECONOMICS TO FLICK'S MITTELSTAHL PLANT, 30 MARCH 1939, CONCERNING FLICK'S READINESS TO EXCHANGE RUHR SOFT COAL FOR BROWN COAL PROPERTY FROM THE IGNAZ PETSCHKE GROUP, AND RELATED MATTERS

The Reich Minister of Economics
II Bg 20896/39 I, Ang.

[Initial] F [FLICK]

[Initial] ST [STEINBRINCK]

Berlin W 8, 30 March 1939
Behrenstrasse 43
Telephone—No. 16 43 51

[Initial] B [BURKART]

[Initial] K [KALETSCH]

To Mitteldeutsche Stahlwerke A.G.,
Berlin W 9, Bellevuestr. 12a
In answer to letter of 17 March 1939

Subject: Ignaz Petschek.

I have taken notice that you are ready to acquire brown coal property from the Ignaz Petschek group and in exchange to give up soft coal property in the Ruhr area. The trustee, Dr. Leising, has been ordered, in agreement with Ministerial Director Wohlthat, to comply with your wish to inspect the enterprises of Eintracht and Niederlausitzer Kohlenwerke and to examine the plant installations. I reserve myself the right to make a final decision.

Please contact him as soon as possible.

BY ORDER:

[Signed] GENERAL HANNEKEN

PARTIAL TRANSLATION OF DOCUMENT STEINBRINCK 333
STEINBRINCK DEFENSE EXHIBIT 75

EXTRACT FROM A FILE NOTE OF DEFENDANT STEINBRINCK, 6 APRIL 1939,
CONCERNING THE UNDESIRABILITY OF GERMAN INDUSTRIAL CIRCLES
ENCOURAGING THE EXPROPRIATION OF A FOREIGNER, POS-
SIBLE AGREEMENT OF GERMAN SOFT COAL OWNERS TO AN
EXCHANGE OF SOFT COAL FOR COAL DEPOSITS OB-
TAINED FROM THE PETSCHOKS BY THE HERMANN
GOERING WORKS, AND RELATED MATTERS

St/Ga.

6 April 1939

*Exchange of Soft Coal for Brown Coal—Some
Fundamental Considerations*

I. General character of the exchange

Viewed from the standpoint of private enterprise, it is hardly desirable if German industrial circles help to introduce measures leading practically to the expropriation of a foreign private individual. In like manner, from the point of view of private enterprise, it would be considered a furtherance of State economy if the Hermann Goering Works were put in possession of a soft coal base without the strongest pressure having been brought to bear on private interests for the purpose of ceding the soft coal fields. In consequence of the letter from the Reich Ministry of Economics, the interested parties are now to declare whether they are prepared to exchange soft coal for brown coal, and our group is to submit a definite proposal to accomplish this exchange. In my opinion, such a proposition can refer only to purely internal measures, such as establishing a basis of evaluation and determining the fields to be exchanged. The actual execution of the plan would have to be done in another way, perhaps as follows: Whenever the State considers the moment opportune for asserting its claims on Petschek, it should acquire the coal fields from the Petschek concern for the explicit purpose of procuring a soft coal base for the Hermann Goering Works. At the same time there would have to be a kind of sequestration of the coal deposits under consideration for an exchange and, to the owners, an injunction to cede these soft coal properties to the Hermann Goering Works, similarly as was done previously with the ore

deposits.* However, compensation for the cession of the soft coal deposits would in this case not be given by the State, that is to say by the Hermann Goering Works, in the form of Hermann Goering Works shares but in the form of actual brown coal deposits. By acting in this or a similar manner, it would certainly be easier to keep up appearances [das Gesicht besser gewahrt werden].

II. The Consequences for Harpen

* * * * *

* Reference is made to the acquisition of the Salzgitter ore mines on behalf of the Hermann Goering Works in the first half of 1937. See Document NI-3488, Prosecution Exhibit 472, reproduced above in section V C.

PARTIAL TRANSLATION OF DOCUMENT NI-3364
PROSECUTION EXHIBIT 463

EXTRACTS FROM A FILE NOTE OF DEFENDANT STEINBRINCK ON A DISCUSSION WITH DR. HAHN OF THE REICH MINISTRY OF ECONOMICS, 12 JUNE 1939, CONCERNING PLEIGER'S CLAIMS FOR COAL, TAX CLAIMS AGAINST THE PETSCHKEKS, NECESSITY OF FREEING THE FLICK GROUP FROM ALL THIRD PARTY RIGHTS IN THE ACQUISITION OF PETSCHKEK PROPERTIES, AND RELATED MATTERS

St/Ga.

12 June 1939

File Note

[Initial] F [FLICK]

Subject: I.P. Problem—Discussion with Dr. Hahn.

As Ministerial Director Wohlthat has gone away till the end of June, I had a conversation with Dr. Hahn today in order to be informed of the most recent developments of the Petschek affair. The following points are of special interest:

1. Hubertus.

* * * * *

2. Stinnes.

* * * * *

3. I then informed Dr. Hahn briefly of the state of the *negotiations with Pleiger* and of the turn which they had taken a few days ago, as a result of which it would be a matter for us or for the Reich Ministry of Economics to compensate the outside stockholders. I inquired about Pleiger's claims. Dr. Hahn declared that as far as he knew, no written agreements of any sort existed so far. He urgently recommended us to discuss the matter very frankly with Ministerial Counselor Dr. Gebhardt, the commissioner appointed by the Ministry of Finance, and to ask him if and which of Pleiger's claims for the assignment of the works have been fixed already.

With regard to the amount of the claims of the Ministry of Finance, Hahn stated that as the amount of evidence against Petschek has increased they could also be fixed at 300 million

RM, i.e., the whole Petschek property in Germany would not be sufficient to pay taxes claimed by the treasury. He then expressed his own view that a surrender of the claims of the Hermann Goering Works on the treasury to us to balance the coal capital to be created would probably not be an appropriate offer. This would probably be in complete contrast to our intentions up to now, since we could only do business privately if we were completely freed of all third party rights (i.e., Petschek and the Board of Taxes). He shared my opinion that the brown coal properties should be transferred first to the Reich, and afterward the Reich should sell the industrial enterprises to us. With regard to the outside stockholders, Dr. Hahn was previously of the opinion that the compensation of the stockholders should be the problem of the buyers. As, however, property was to be bartered for property he thought also that another way would have to be found. In his opinion, this way also would have to be discussed in detail with the Ministry of Finance. Dr. Hahn will not, however, undertake anything without our consent.

[Initial] ST [STEINBRINCK]

TRANSLATION OF DOCUMENT NI-10139
PROSECUTION EXHIBIT 860

FILE NOTE BY DEFENDANT STEINBRINCK ON A CONFERENCE WITH
COMMISSIONER GEBHARDT, 26 JUNE 1939, CONCERNING THE
POSITION OF THE REICH FINANCE MINISTRY IN PETSCHKE
QUESTIONS, STATUS OF TAX PROCEEDINGS AGAINST
PETSCHKEs, THE POSITION OF STATE AGENCIES AND
SOFT COAL GROUP TOWARD ACQUISITION, AND
RELATED MATTERS

St/Ga.

26 June 1939

File Note

Subject: Ignaz Petschek Problem.

Conversation with Ministerial Councilor Gebhardt* on 24 June

[Initial] F [FLICK]

From the discussion held recently with Pleiger, Leising, and Dr. Hahn, it was not clearly understood whether the final decision to act was really made by the government. In addition, Pleiger stated that the Reich Ministry of Economics has recognized his claim for the Petschek mines. Then Leising reported that he would draw up the notarized sales contracts within 24 hours if there were an order of the Reich Minister of Economics to execute the sale. The conference with Gebhardt should provide more certainty on the aims of the authorities, the more so since the final decision is up to the RFM [Reich Finance Ministry]. The following is to be recorded from the conversation:

1. It is a fact that the last decision is with the RFM. As Wohlthat reported and Gebhardt confirmed, the RFM carries ultimate responsibility for the action against Petschek. (Wohlthat stated that the State Ministry as well as the Reich Ministry of Economics had been released by the Reich Finance Ministry of all damage claims.)

2. Gebhardt stated that the position of the RFM was stronger than ever. He would even call it unshakeable. While previously the Petscheks might have been able to raise some objections to the statement that the concern management had its seat in Berlin, far-going proof for that fact was at hand since the understanding [Verstaendigung] with Prague. For many years the

* Gebhardt's name was incorrectly spelled as "Gebhard" throughout the original document.

Petscheks had been cheating not only the German but also the Czech revenue authorities. The camouflage efforts became ineffective since particularly of late in Brno one had been able to make a list of the numbers of stocks belonging to the Petschek concern. Some months ago the Petscheks made efforts towards an understanding and made a proposal for a settlement. Mr. Gebhardt had immediately rejected this proposal and declared that one might perhaps speak to the RFM if the amount were multiplied tenfold. Nothing has been heard from the Petscheks since, and he was convinced that one will have to proceed energetically.

3. The progress of the general meeting of all the companies provided some clarity on the tactics of the foreigners. The mistakes which happened are not considered tragic by Gebhardt. We then spoke of the objections which might ensue if one would treat the German shareholders differently from the foreign shareholders. I suggested that a comparatively favorable rate of exchange be set for the sale which would also satisfy all the German outside shareholders and avoid any attacks from abroad. Mr. Gebhardt seemed to like my idea, after I had pointed out that the Reich, in acquiring the property, might neutralize an excessively favorable treatment of the outside shareholders by means of an appropriate regulation of tax claims. Moreover Gebhardt confirmed that, immediately after the sale, which was to be effected against Reichsmarks and to comprise the entire balance value, a liquidation of the companies was to take place in the course of which the liquidation share was to be put at the disposal of the various shareholders.

4. The tax investigations will be concluded shortly. It is intended on the basis of these investigations to levy additional taxes against the Petschek companies. (He remarked that the tax investigation had in part gone back as far as the past 15 years.) As a matter of course the additional tax claim may not be charged against the new acquirer; on the contrary, the debt must be deducted from the liquidation proceeds. I suggested that with the transfer of ownership into German hands the tax violations of the past must be erased and Gebhardt agreed.

5. We then came to speak of the plan to exchange soft coal for brown coal. I told Mr. Gebhardt that in general we had come to an agreement with Pleiger and we should like to hear in what manner things could be pursued. Gebhardt stated the following:

At first there was no information as to how the H.G. works [Hermann Goering Works] were to pay the Treasury for the

brown coal. The H.G. works did not have any funds available. Pl. had only asked to get a loan from the RFM [Reich Ministry of Finance] in the amount of the value of the Petschek enterprises, which loan later on would have to be stricken since it did not make any difference whether the enterprises were in Pleiger's hand or the Treasury's hand. This opinion was not shared by the RFM as a matter of course; for the RFM needed money, not property. To clear up this question a meeting would take place, as Gebhardt confidentially stated, on Wednesday, 28 June, in the Reich Ministry of Economics, which would be attended by all competent people concerned and to which Pleiger was also invited.

Gebhardt stated that after an agreement between Pleiger and Flick the proposition required a thorough investigation by experts, in particular the RFM has to study the propositions very intensively since it was the RFM which would carry the ultimate responsibility that the brown coal was not squandered. As soon as our application reached the Reich Ministry of Economics, the Mining Department together with a trustee company and the Reich Finance Ministry would start the examination. This, however, could not be initiated before August since Gebhardt himself and his assistants were on vacation in July.

Concerning the execution of the exchange, Gebhardt agreed with me that the soft coal group could purchase only from the H.G. works or from the Treasury. Gebhardt admitted that the tax problem played an important role in this exchange operation. He remarked that unfortunately he had not been able to take part in the Julius Petschek affair, because he had been too busy; otherwise things might have developed in a different way, he thought. He did not express himself further on this question. He only meant that the Julius Petschek group also had made big profits by irregular business transactions and that in prosecuting those cases in time one might have been able to raise considerable money for the Revenue Department.

Finally Gebhardt asked for confidential information on the content of our agreements with Pleiger, if possible before the meeting in the Reich Ministry of Economics. I said that I would have to discuss that point first with Messrs. Delius and Bruch. I would, however, contact him again before or after the meeting.

[Signed] STEINBRINCK

FILE NOTE OF DEFENDANT STEINBRINCK ON A CONFERENCE WITH
LEISING, TRUSTEE FOR THE IGNAZ PETSCHKEK PROPERTIES, 3 AUGUST
1939, CONCERNING DEVELOPMENTS IN THE PETSCHKEK QUES-
TION, FLICK'S UNWILLINGNESS TO BECOME THE DIRECT
SUCCESSOR OF THE PETSCHKEKS BY RECEIVING SHARES
CALLED UP BY THE STATE, AND RELATED MATTERS

ST/WO

3 August 1939

File Note

Subject: Exchange of brown coal for soft coal. Conference with
Dr. Leising held on 3 August 1939, 10 a.m.

Dr. Leising returned from his vacation and was not informed of the present state of the negotiations. He told me that a big meeting will take place this afternoon in the Reich Ministry of Economics with State Secretary Landfried presiding, the result of which he would communicate to me. I then informed Mr. Leising of the last conferences held with Mr. Pleiger, Mr. Gabel, and Dr. Hahn with reference in particular to the following points:

a. Mr. Pleiger's wish to take over the first mines as of 1 September of this year. In this connection I pointed out anew that tax exemption was *conditio sine qua non* for the exchange transaction.

b. Acquisition of Petschek shares.—The Reich Ministry of Economics would like to call up Petschek shares and then turn them over to us. I stressed that such a proposition was entirely unacceptable to us. We were giving up real property and we would not be satisfied with a majority of shares. Moreover it would be unbearable for us thus to become the direct successors of the Petscheks and to have to expect their recovery claims [deren Regressansprueche].

Leising replied the following:

It was intended to call up not only Petschek shares but all the shares and to turn them over to us 100 percent. He inquired whether under these circumstances we would no longer have any doubts and hesitations. I said that we would reconsider the matter under the following conditions:

- (1) A special law will be issued to call up the shares.

(2) The State or a State institution will do the calling up.

(3) The delivery of shares in exchange for soft coal will be effected pursuant to a special decree, by no means as a private transaction.

Leising had considerable scruples against calling up shares because this method in reality means expropriation and might find too many followers. He, himself, would be inclined to transfer assets and liabilities to a holding company [Auffanggesellschaft] which as compensation would issue shares to be turned over immediately to the rightful owners. Then it would be up to the Department for Revenue to intervene and to assume the right to seize, safeguard, or to confiscate the shares of the Petschek group. I also said that I liked this proposal best of all.

c. The wishes of ASW [Aktiengesellschaft Saechsische Werke]. —Herr Leising told me that the Reich Ministry of Economics had asked him to persuade the Vorstand of Borna and NKW [Niederlausitzer Kohlenwerke A.G.] to waive their option for the Gross-Hermsdorff mine. I replied that in my opinion the Vorstand could not make such a sacrifice without receiving compensation. Leising agreed to this. In this connection I informed him of the content of the correspondence with Minister Lenk and the claims made by ASW on Petschek property in central Germany.

d. Our negotiations with Eintracht on drawing up joint plans in connection with the questions of electric power and coal supply for Greifenhain, Werminghoff, and Welzow.

Leising immediately approved of these conferences. He will inform us of any new developments in the Petschek affair.

[Signed] STEINBRINCK

TRANSLATION OF DOCUMENT NI-3371
PROSECUTION EXHIBIT 672

NOTE OF DEFENDANT STEINBRINCK, 3 AUGUST 1939, CONCERNING
QUESTIONS OF LIABILITY UNDER INTERNATIONAL LAW IN CONNEC-
TION WITH THE PROPOSED CALLING UP OF BROWN COAL
SHARES BY THE STATE, THE TURNING OVER BY THE STATE
OF SUBSTITUTE SHARES TO THE FLICK CONCERN,
AND RELATED MATTERS

St/Wo

3 August 1939

Note

[Initial] F [FLICK]

Concerning a letter of Dr. Hugo Dietrich of 1 August 1939

The letter is a summary of discussions which I had with Dr. Hugo Dietrich several days ago concerning the Petschek problem. It contains nothing new and no original ideas of Dietrich's. The main question which I put to Dietrich concerned the following problem:

In accordance with the present plan of the Reich Ministry of Economics it is intended to acquire not only the Petschek shares, but all shares of the brown coal enterprises, and to hand these over to us in exchange for soft coal assets. This suggestion, in my opinion, gives rise to considerable misgivings. If by means of an act of law the entire shares of a firm can be called in, then this law will possibly not be confined to the Petschek case. It can probably be extended so as to apply to all other companies, so that unforeseeable consequences may result. In addition to this, there are misgivings about taking over the substitute shares [Ersatz-Aktien] from Petschek direct, in view of the unforeseeable liabilities which could be established in accordance with international law. Dr. Dietrich should expound and support this instinctive attitude by legal arguments. The questions were—

1. Would the Petschek firm be entitled to file claims against the holder of the substitute shares?
2. Do we assume, along with these shares, special liability for risks connected with the enterprise?
3. Can the risks mentioned under 1 be modified or avoided if the shares which have been called in become the property of the State in the first instance, and are then transferred to us?

These three important questions have not been clarified sufficiently by Dietrich.¹ As in the next few days the competent departments will have decisive conferences as to the manner of acquiring the Petschek property, we should first await the result before examining the questions any further. According to a communication from Dr. Hahn, Mr. Landfried is said to have refused downright to adopt such a proposal, which would mean the calling-in of the entire shares of a company.

[Signed] STEINBRINCK

[Handwritten] Settled through Dr. Streese,² 4 August 1939. Wo

¹ An affidavit of Dietrich, Document Steinbrinck 347, Steinbrinck Defense Exhibit 78, concerning an earlier expert opinion entitled "Problem Ignaz Petschek," is reproduced in F below.

² A note by Dr. Streese, a Flick lawyer, on these same points is reproduced immediately below as Document NI-8387, Prosecution Exhibit 469.

TRANSLATION OF DOCUMENT NI-3337
PROSECUTION EXHIBIT 469

NOTE OF FLICK LAWYER, DR. STREESE, TO DEFENDANT STEINBRINCK,
5 AUGUST 1939, REPLYING TO QUESTIONS OF LIABILITY UNDER
INTERNATIONAL LAW RAISED BY STEINBRINCK AND RECOM-
MENDING AGAINST THE METHOD OF ACQUISITION IN
QUESTION BECAUSE OF PROBABLE ADVERSE RESULTS

F.

5 August 1939

Note for Mr. Steinbrinck

The questions 1 to 3 of the note of 3 August 1939 * cannot be answered with 100 percent certainty. It might be possible that P. [Petschek] would prevail before foreign courts on questions 1 and 2 with the following argument:

He was deprived of the old shares illegally, and this deprivation is therefore void. Consequently, the new owners of the shares should return the shares or substitute shares to P. who will, of course, not prosecute his claims for the return of the shares before foreign courts since these shares are deposited inside this country; but it might be possible that he have foreign courts seize some assets belonging to the present owner of the shares and deposited abroad, as for instance claims against foreigners, as a security for his claim for the return of the shares. He might also prosecute claims for damages against the present holder of the shares, who, according to the argument of P., holds them illegally. Such claims for indemnification might then also be made in connection with question 2, for example, with the argument that the now illegal owner of the shares had managed the company and as a result it had deteriorated. He would be responsible to the real owner for indemnifications for the resulting depreciation of the shares.

The above risks cannot, in my opinion, be avoided by question 3, but might be alleviated. This alleviation would, however, not consist in P. filing suit against the State. He would avoid this also before foreign courts. The foreign courts might only be more inclined, if the State were the original acquirer, to reject the claims against the present owner. I do not, however, consider this very probable, as P., of course, would only sue in

* Reference is made to Steinbrinck's note of 3 August 1939, Document NI-3371, Prosecution Exhibit 672, reproduced immediately above.

those foreign states, where, by reason of the general attitude of these states, he can count on his claims being adjudicated for him; in case of such an attitude the interposition [Zwischenschaltung] of the State as original acquirer would probably be of little use.

Whether P. will act as assumed above and whether he will succeed with this action before foreign courts naturally cannot be foretold exactly. In any case, I consider such results to be so probable that the method described in the note is, in my opinion, not to be recommended.

[Initial] S [STREESE]

FILE NOTE BY DEFENDANT STEINBRINCK, 5 AUGUST 1939, CONCERNING
DECISIONS AT THE REICH MINISTRY OF ECONOMICS ON METHODS
OF TRANSFERRING AND DISTRIBUTING PETSCHKE PROPERTIES,
AND THE QUESTION OF A STATE ORDER THAT SOFT COAL
BE EXCHANGED FOR BROWN COAL AFTER PETSCHKE
BROWN COAL IS ACQUIRED BY A STATE-OWNED
ENTERPRISE

St./U

5 August 1939

File Note

Subject: Exchange of soft coal against brown coal.

I. *Telephone conversation with Dr. Delius on 4 August*

Dr. Delius, who had returned from his vacation and had taken part in the last discussions held in the Reich Ministry of Economics, gave the following information when a telephone inquiry was made on 4 August:

On 3 August it had been definitely decided in the Reich Ministry of Economics not to call in the shares as proposed by Gabel and Kehrl, but to fall back upon our original plan, viz., to promote a holding company which would take over the assets and liabilities of the brown coal company against the issue of shares, then to liquidate the old companies, to distribute the shares, and finally to carry into effect the exchange of brown coal for soft coal.

Some questions, however, would still have to be solved beforehand. For this purpose Mr. Pleiger would like to have a discussion with us in Berlin on the 8th or 9th. Questioned whether the basis of the valuation had been approved, Dr. Delius explained that it had been agreed upon in principle; only a few questions still remained to be cleared up. On this subject, Mr. Pleiger would also like to have a talk with us.

II. *Discussion on the same subject with Dr. Hahn, held on 5 August in the State Ministry*

1. Dr. Hahn gave the following account of the session, which took place on 3 August:

Chairmanship: Landfried,

A large number of persons participated, among them:

Hanneken,

Pleiger,

Gotthard of the Jewish Department [Judendezernat],

Mining Department, and others.

In the first place General v. Hanneken complained that the negotiations with Petschek were proceeding far too slowly. Dr. Hahn had proved to him that only the Reich Ministry of Economics, and it alone, was to blame for this, as it could not make up its mind on the method of effecting the property transfer and the distribution of the estate.

As the result of an exhaustive discussion, the Kehrl-Gabel plan (to call in the shares) had been rejected. Agreement had then been reached on the following basis:

(a) The trustee is to receive instructions from the Reich Ministry of Economics to sell the assets and liabilities to a holding company formed by the Treasury. This company is to be one with a small capital. The sale will be effected against Reichsmarks. The question of valuation had led to a very lengthy discussion. Finally Pleiger had won the day. The selling price is to be based on the stock exchange price of the shares plus an additional amount calculated on the interest paid during recent years. As the holding company is unable to pay the purchase price, it should either obtain credit from the Reichswerke Hermann Goering, or it should continue to owe the old production companies a substantial part of the purchase price.

(b) The next step is to dissolve the brown coal companies and to place the cash amount at the disposal of the shareholder entitled thereto according to common practice.

(c) A private business agreement is then to be concluded between the holding company (represented by the Reich Ministry of Economics) and the soft coal group which provides for the acquisition of the brown coal companies by the soft coal group against payment to the Reichswerke Hermann Goering in the form of soft coal. (To balance this, the Reichswerke Hermann Goering would then renounce their claims against the holding company.)

In the course of this conversation Dr. Hahn had expressed the opinion that a private business transaction between the holding company and the soft coal group was not possible, but that in this case instructions would have to be given by the Plenipotentiary for the Four Year Plan. Hanneken raised objections; he wanted to effect this transaction alone. Dr. Hahn, however, gained the impression that Hanneken was not well informed.

2. I agreed with Dr. Hahn that this procedure cannot be adopted and does not serve our interests. It seemed right that the Reichswerke Hermann Goering should buy the brown coal companies from the holding company, and that the exchange should then take place on the strength of an order.

Dr. Hahn then also expressed the following interesting considerations:

On the question of the sale of the brown coal for Reichsmarks or shares: a sale against shares would, in itself, have suited the purpose; the portion of shares which the Petschek group would have received after the production companies had been liquidated, could then have been secured, i.e., the right to vote would have been secured without owning the property. This would then have allowed sufficient time for negotiations with the Petschek group. However, if, contrary to expectations, the negotiations with the Petschek group should take an unfavorable turn, then the Petschek group, as owner of the shares, would hold a majority in the holding company and the Reichswerke Hermann Goering would be the losers. In the case of a sale against Reichsmarks, the Petscheks, provided they gained the upper hand, would receive blocked marks which they could invest in other shares. It is thought unlikely that much objection could be raised against the sale of the substance at an adequate price.

We agreed upon my contacting General v. Hanneken and Dr. Gotthard, who is in charge of the matter, as soon as possible in order to gain more detailed information about the mode of procedure.

Landfried is expected to fix a date for about the middle of next week.

3. With regard to the Ilse, Pleiger has lodged his direct claims. No decision has so far been reached. According to Dr. Hahn's opinion it is presumed, however, that the Viag property of the Ilse will also pass into the hands of the holding company.

The matter Deutschkohle* is not yet clarified. In this case Pleiger intends to negotiate with us apparently in the hope of securing some special advantage. I told Mr. Hahn that we do not attach much value to the trading firms of the Deutschkohle, but that the trading rights of the production companies must at all events remain in the possession of the enterprises which are to pass into our hands. We were able to dispose of the briquette production of Eintracht and of NKW [Niederlausitzer Kohlenwerke] through the Thuringkohle/Saxony, and of the Phoenix/Leonhardt output through the Halloren-Handelsgesellschaft. Dr. Hahn, like Wohlthat, was of the opinion that the Deutschkohle should be liquidated as soon as possible, so as to enable her to repay the frozen claims of the works.

4. It is realized in the Reich Ministry of Economics that very many questions still remain to be solved and that this will lead to complicated controversies with the foreigners.

* Deutsche Kohlen Handelsgesellschaft, a Berlin trading company closely associated with the Ignaz Petschek group.

TRANSLATION OF DOCUMENT NI-3439
PROSECUTION EXHIBIT 673

AGREEMENT OF SALE OF THE ASSETS AND LIABILITIES OF PETSCHKE'S
NKW COMPANY, 8 SEPTEMBER 1939, BETWEEN THE NEWLY FOUNDED
DKG, AS PURCHASER, AND LEISING, STATE-APPOINTED TRUSTEE
FOR THE NKW COMPANY, AS SELLER

Certified Copy

For the original a document tax of 3 RM (three Reichsmark)
was paid.

(LS) Berlin, 5 August 1940

signed: Ackermann,

Notary

No. 663 of the Document Book of 1939

Proceedings

in Berlin, on 8 September 1939.

Before me the undersigned,
Justizrat Kurt Ackermann,
notary in the district of the Kammergericht [court] in Berlin,
the following persons appeared today in 10/11 Jaegerstrasse,
Berlin;

1. Director Dr. Fritz Rittstiegl, 10/11 Jaegerstrasse, Berlin
W 8.

2. Senior Mine Director (Oberbergwerksdirektor) Dr. Karl
Leising, 31 Potsdamerstrasse, Berlin.

The first-mentioned declared to make the following statements
in his capacity as director authorized to act as representative for
the Deutsche Kohlenbergbau-Gesellschaft mit beschaenkter
Haftung, 10/11 Jaegerstrasse, Berlin W 8, (hereafter referred
to as DKG).¹

Dr. Karl Leising declared that by decree of the Reich Minister
of Economics dated 1 March 1938, based on section 2 of the
Decree concerning the Utilization of Jewish Property, dated
3 December 1938²—he was appointed trustee of the Niederlau-
sitzer Kohlenwerke (A.G.),³ 31 Potsdamerstrasse, Berlin, W.9,

¹ The DKG was a newly formed company specifically and solely created for the purpose
of consummating the transaction here under consideration. See paragraph II-1 (a) of Docu-
ment NI-3373, Prosecution Exhibit 468, reproduced immediately above.

² Document 1409-PS, Prosecution Exhibit 348, reproduced earlier in this section.

³ Commonly referred to as the NKW. For an analysis of the position of the NKW and other
Petschek companies in Germany's brown coal industry, see defendant Flick's memorandum of
19 January 1938, prepared for Flick's later conference with Goering (Document NI-784,
Pros. Ex. 397, reproduced earlier in this section).

(hereafter referred to as selling company) and that in this capacity he makes the following statement for—

Niederlausitzer Kohlenwerke (A.G.)
31 Potsdamerstrasse, Berlin W.9

By looking into the General Commercial Register the notary has established today that Dr. Karl Leising is authorized to represent the first-mentioned company, and by checking with the original decree of the Reich Minister of Economics that Dr. Leising is authorized to act as trustee.

The persons present reached the following agreement:

Article 1

The selling company sells to DKG, effective immediately, its entire enterprise including all assets (that is including real estate, property rights, mobile goods, rights and titles, claims and stock of customers, and so forth) and all its liabilities. The afore-mentioned enterprise will be taken over by DKG as of 1 January 1939, with the understanding that the selling company is considered operated for the account of DKG as of 1 January 1939. All rights and titles effective on or originating after 1 January 1939 are transferred to DKG. On the other side, DKG assumes all obligations of the selling company effective on 1 January 1939 and those incurred since.

Obligations of the selling company resulting from accrued but not redeemed dividends are not taken over. On the other side the DKG engages to pay a cash amount required for the redemption of these accrued dividend certificates.

Article 2

Insofar as the afore-mentioned assets include land [Grundstuecke] their formal transfer to DKG will be effected immediately after the conclusion of this agreement. Insofar as mobile goods are concerned, the parties concluding the contract agree that these goods shall become property of DKG. The transfer will be effected in such a way that, beginning with the conclusion of the agreement, the selling company will hold and manage these goods for DKG.

The factual transfer of these goods to DKG will be effected immediately after the conclusion of this agreement. All claims and other rights of the selling company are herewith turned over to DKG. DKG accepts the assignation. Insofar as the transfer of the afore-mentioned assets has not been effected by the stipulations of this agreement, the selling company engages to make all declarations required for the assignation and to take all necessary actions.

Article 3

Insofar as the rights deriving from current contracts of the selling company are not transferable and the parties who have concluded the contracts with the selling company do not consent to the transfer of rights and obligations deriving from such current contracts to DKG, the selling company empowers DKG irrevocably to exercise rights and obligations deriving from these agreements for their own account. Upon request DKG will be given special authorizations to that end by the selling company

Article 4

The selling company engages itself to enable DKG taking over the plants and properties of the selling company immediately after conclusion of this agreement.

Article 5

The parties concluding the contract agree that all business files and documents of the selling company will become property of DKG. Instead of an actual transfer, the selling company will hold and administrate the books and files for DKG beginning with the conclusion of this agreement. The selling company is entitled to look into these books and files also in the future insofar as it can prove its interest because of legal conditions in the past. Within these limits the selling company can have copies made at its own expense.

Article 6

The purchase price for the transferred enterprise of the transferring company will be determined by the Reich Minister of Economics in accordance with the Decree of 3 December 1938 Concerning the Utilization of Jewish property. The purchase price will be paid at latest on 31 December 1940. The delayed payment will be effected on the basis of 4½ percent interest, the accrued interest is payable on 31 December 1939, 30 June 1940, and 31 December 1940. If the purchase price is paid before 31 December 1940, the interest accumulated is due on the day of the payment of the purchase price.

The payment of the purchase price can be made according to the choice of DKG in cash or in shares of an enterprise founded by the DKG, which has taken over properties and obligations acquired by DKG after the conclusion of this agreement.

Article 7

Insofar as according to Article 1 of this agreement the DKG is taking over obligations and risks of the selling company which were not at all or not sufficiently taken into consideration in its balance sheet of 1 January 1939, the purchase price to be paid

by the DKG will be reduced by the amount not previously considered of such obligations and risks insofar as the Reich Minister of Economics gives his assent hereto.

Article 8

The DKG is taking over all costs, stamps, and taxes pursuant to the conclusion of this agreement.

Article 9

As soon as the Reich Minister of Economics gives his assent, this agreement becomes effective according to the Decree of 3 December 1938 Concerning the Utilization of Jewish Property.

The notary has been informed that insofar as mobile property is involved in this agreement it is sold for the purpose of continued operation of the enterprise.

The parties present request that the records of these negotiations be issued in quadruplicate and that six copies be made, as well as a certified tax-free copy for the Berlin Reich Notary Chamber.

This protocol was read in the presence of the notary, approved by the parties concerned and signed by them as follows:

DR. FRITZ RITSTIEG

DR. KARL LEISING

L. S. ACKERMANN Notary

Bill of Costs:

Business value estimated according to paragraph 19(1) and 38(1) RKO according to the purchase price fixed by the Reich Minister of Economics:

48,400,000 RM

1. Fees.

a. Actual document fees according to paragraphs 26,29,(2), 38 (1) RKO	RM 116,240
Reduction according to resolution of the Reich Notary Chamber	RM 112,435
	<hr/>
	3,805
b. According to paragraphs 26, 52 (1) RKO	50.00
c. According to IV 16 d. V.O.z. RNO dated 26 June 1937	4.00
2. Taxes according to paragraph 20 (2) URkStG	3.00
3. Fees for 2 originals and 9 copies	19.25
4. Taxes for II—IV originals	9.00
	<hr/>
Total	3,890.25
ACKERMANN	Notary

Above copy is herewith certified for the Registry, 5 August 1940

Signed: ACKERMANN

Notary

TRANSLATION OF DOCUMENT NI-932
PROSECUTION EXHIBIT 471

FILE NOTE OF DEFENDANT STEINBRINCK, 8 NOVEMBER 1939, CONCERN-
ING DISCUSSIONS WITH HAHN AND STATE SECRETARY KOERNER
ON EXCHANGE NEGOTIATIONS BETWEEN REPRESENTATIVES OF
THE HERMANN GOERING WORKS AND FLICK, THE PLAN FOR
EXCHANGE PRESENTED BY STEINBRINCK TO KOERNER,
AND RELATED MATTERS

[Handwritten]

Value of Brabag shares 100 million capital,
130 million debts
St/Ga

8 November 1939
[Initial] F [FLICK]

Conversation with State Secretary Koerner on 6 November

On the morning of November 6, Wohlthat's representative, Dr. Hahn, asked me to inform him of the state of our exchange negotiations. He was quite well acquainted with the matter and expressed the opinion that very great difficulties had been made not only by Pleiger but also by ourselves. I explained to Dr. Hahn the most important points of the disputes; reminded him of the large-scale reorganization carried out in the case of Julius Petschek, and emphasized the fact that I myself could not participate, and that I considered that the State could not tolerate it either if it developed gradually into a jobbing affair. Since Flothow¹ had come in, inquiries were being made into every petty matter which could be given all sorts of meaning, but which are not at all a true indication of the general idea. Dr. Hahn also thought that these negotiations would not help us, but that the decision must be made by some higher authority.

I then discussed the matter thoroughly with State Secretary Koerner.² He laughed, was very well informed on the matter, and emphasized the fact that he spent nearly one-third of his working hours in attending to the interests of the H. G. Works [Hermann Goering Works]. According to the report which Pleiger made to him, Pleiger had submitted reasonable proposals. But Flothow's demands were exaggerated. Then Pleiger had

¹ Flothow was an official of the Hermann Goering Works.

² Paul Koerner, in addition to being Goering's Permanent Deputy for the Execution of the Four Year Plan, was chairman of the supervisory board of the Hermann Goering Works. Koerner was a defendant in the Ministries case, Volumes XII-XIV, this series.

retaliated by asking in his turn for more than he was entitled to. Extremely strong language was used on the occasion. I then gave Koerner a rough account of the absolute injustice of Pleiger's present deliberations (comparison of proceeds, reduction of Herne's briquette production to 75 percent, elimination of the Brabag shares, supplying additional suburban housing projects on the soft coal side, etc.).

I stated my opinion clearly immediately afterward, that he as State Secretary, could not take responsibility for such transactions any more than we could. Referring to the brown coal, I said that these property transactions might later on become the subject of inquiry by international courts. The attempts made by each side to obtain special advantages for itself were not in accordance with the spirit of the Field Marshal [Goering] and with our fundamental ideas. We had gone right off the track since July. In June we understood each other and got on well together; Pleiger had been in complete agreement with us; and then something must have gone wrong. I reminded Koerner of the great responsibility he too bore in connection with this business, because it was not intended to be a private transaction but an action taken by the State, just as was J. P. [Julius Petschek]. Koerner expressed his full approval and confirmed it with these words: "Of course this will be a State transaction and will be carried out by the State. For that very reason, however, it is necessary for both parties to find a reasonable solution." I told him that the inclusion of Flothow was causing us considerable difficulty and that our agreement would be changed systematically in favor of the H.G. Works as soon as we saw that the old agreements were proving useful to our group. Koerner said he too had the impression that we could not proceed any longer in this manner. He was willing to work intensively on that question. He remarked that the committee of the H. G. Works was to meet on Tuesday, and that he intended to call a new conference between Flothow and Pleiger under his own chairmanship as soon as he got the information.

I said that in my opinion it would not help much because both parties had reached a deadlock. I referred to our long friendship and remarked casually that I would be able to make entirely concrete, fair, and just proposals if he would appoint me as deputy. But naturally I could not be taken into consideration at the moment; and I had considered what other neutral person could be found. I mentioned Dr. Leising, former trustee for brown coal, because he was acquainted with both brown coal and soft coal.

Koerner asked me to let him know my point of view. I shortly outlined the following plan:

We give up Herne, Viktoria, and Viktoria-Continuation¹ with the extensive housing project property attached thereto, and the large fields; on the assumption that the balance of output is in our favor, we receive as compensation the whole NKW-Ost and Eintracht² situated in the Lausitz. To compensate us for our higher contribution in regard to output as well as the fields, we should be given Phoenix-Leonhard.³ In consideration of this, in the case of these brown coal enterprises, we would waive our claim to bank accounts, securities, and Brabag shares deposited there, and we would give our mining companies a bank account or a financial credit the amount of which must be negotiated; I estimate it at 6-8 million Reichsmarks. Koerner said that he also considered a general settlement of this kind to be the only possible solution. He said he would discuss the matter with the gentlemen in question on Tuesday and would then inform me of the result. On Tuesday, at 7:00 p.m. State Secretary Koerner rang me up. He informed me that he had drawn up a plan and asked me to discuss the matter with him privately on Wednesday, so that he might first hear my own private opinion on the proposal. I am waiting for a telephone call from him this morning.

P. S. I forgot to mention that I made the following declaration at the very beginning:

I had the impression that for a few days Pleiger's agents had deliberately been making difficulties and were perhaps no longer interested in acquiring Herne and Viktoria, except at an unusually low price, and that, instead, he was crazy about Ewald-Koenig-Ludwig. Koerner declared that no decision had been made yet on Ewald-Koenig-Ludwig, but according to the Field Marshal's wishes the mine was most unlikely to fall to the H. G. Works. He [Koerner] personally would desire to settle the question of exchanging Herne-Viktoria for the Lausitz with the least possible delay, in order to dispose of this unpleasant affair—profiteering in wartime [Geschaeftemachen in Kriege]—as quickly as possible.

[Signed] STEINBRINCK

¹ Three soft coal properties of Flick's Harpen company.

² NKW Ost (Niederlausitzer Kohlenwerke-Ost) and Eintracht were brown coal properties of the Ignaz Petschek group.

³ "Phoenix-Leonhard" was an abbreviation for two properties of the Ignaz Petschek group: the Phoenix Aktiengesellschaft fuer Braunkohlenverwertung and the Braunkohlenwerke Leonhard Aktiengesellschaft.

TRANSLATION OF DOCUMENT STEINBRINCK 336
STEINBRINCK DEFENSE EXHIBIT 78

FILE NOTE BY DEFENDANT STEINBRINCK, 1 DECEMBER 1939, CONCERNING
THE INTEREST OF VARIOUS REPRESENTATIVES OF THE STATE AND
THE HERMANN GOERING WORKS IN A SPEEDY SETTLEMENT OF
THE EXCHANGE OF SOFT COAL FOR BROWN COAL,
AND RELATED MATTERS

St/Ga.

1 December 1939

File Note

[Handwritten] Gabel Ewald Koenig Ludwig [further note, partly
in shorthand, illegible.]

[Initial] F [FLICK]

Subject: Exchange of soft coal for brown coal.

Mr. Marotzke has just telephoned the following: The question of the exchange of soft coal for brown coal was discussed in yesterday's conference with the Field Marshal [Goering]. The Hermann Goering Works, State Secretary Koerner in particular, are interested in a speedy settlement of matters. Pleiger has been told once more to communicate with Mr. Flick. Koerner also intends to intervene with the object of having the preliminary agreement settled by the end of next week, that is to say, by 9 December. Should a direct accord Flick/Pleiger not be achieved within a very short period of time, General von Hanneken has been charged to discuss the matters at the beginning of next week in conjunction with his mining expert at the Reich Ministry of Economics.

[Signed] STEINBRINCK

[Handwritten] Confirmation by letter by G., urging State political necessity.

PARTIAL TRANSLATION OF DOCUMENT NI-3338
PROSECUTION EXHIBIT 475

EXTRACTS FROM A MEMORANDUM OF DEFENDANT FLICK CONCERNING
THE EXCHANGE OF HARPEN SOFT COAL FOR BROWN COAL, DIC-
TATED ON 5 DECEMBER 1939 AND READ TO THE MANAGING
BOARD OF HARPEN ON 6 DECEMBER 1939

[Handwritten] Statements of Mr. Flick in the conference with
the Harpen Vorstand on 6 December 1939

F1/K1.

5 December 1939

Strictest secrecy obligatory to all concerned

All of you are probably acquainted with the events—even if perhaps not in detail—which had taken place before the founding of the Hermann Goering Works. You know that the owners of the ore mine fields had to decide within a few days either to offer their mines voluntarily or face a compulsory conveyance. Our group was interested in these events on account of the Maxhuetten, and after a day's negotiations in Munich it offered for disposal the largest and most valuable part of its entire property of Dogger ore mines.¹ Included was the plant, which had been built recently for the practical exploitation of Dogger in metallurgical form after a 10 year study. The price was low; a large part of our cost-price consisted of interest charges which were not paid for. I am not acquainted with all the details—and nor are you, probably—of the events leading up to the transfer of the big ore mines of the Stahlverein, the Ilseder Huette, etc. In any case, it is beyond doubt that in the summer of 1937 an Enabling Law for the Nationalization of the Ruhr district was seriously contemplated. You also know that in the spring of 1938, when Austria was incorporated with Germany, hardly 14 days after the occupation [Einmarsch] the Alpine,² which had been kept by the Stahlverein under the greatest sacrifices for 20 years, was summarily transferred to the sphere of interest of the Hermann Goering Works. (Thyssen in Italy.)

To the question of the transfer of our ore mines I deliberately took, at that time, a generous attitude, and received for it the thanks and a letter of appreciation from the Field Marshal

¹ Low-grade iron ore.

² Alpine Montan Company, an Austrian mining and steel company in which Germany's Vereinigte Stahlwerke (the Stahlverein) held a majority stock participation.

[Goering].¹ I mention this recognition because it played a considerable role in the subsequent negotiations concerning Harpen, which were initiated at the beginning of this year. For I want to tell you right now that Mr. Pleiger, who knows of this attitude and of the letter of appreciation from the Field Marshal, told me more than once in the course of the negotiations which lasted for months, during hours when a spirit of friendship prevailed, that due to our attitude on the occasion of the transfer of the ore mines when the Hermann Goering Works were founded, he was on principle committed to this spirit of friendship, and he alluded in addition to the fact that due to the letter of the Field Marshal to me, he could not order our group around as he would otherwise be inclined to do.

Having mentioned the above, I now want to report briefly the events which led up to the negotiations conducted by Mr. Buskuehl [chairman of the managing board of Harpen] and me. As far as I can remember the discussions commenced, after some skirmishes, in January of this year. Mr. Pleiger stated at the start that he needed coal supplies. That he actually needs a coal supply cannot objectively be contested. Hitherto the viewpoint had prevailed that every foundry with an annual production of 500,000 tons of steel required its own mines; and in fact every company of comparable size, as for instance the Ilseder Huette, Maxhuette, have their own soft coal supplies. Mr. Pleiger then added that, according to the prevailing situation, the Harpen group including Essener, Steinkohle, with a total participation of 22½ million tons [in the entire production of Germany], was in the best position to transfer mines. He pointed out that the other large producers of soft coal in the Ruhr were almost all large consumers themselves. (Stahlverein uses 10 million tons; Stahl, Hoesch, Kloeckner Chh., Krupp according to requirements, Mannesmann is poorly supplied, etc.) He always emphasized that the Harpen group (I understand by this Harpen plus Essener Steinkohle) had principally rich coal [Fettkohle],² and that some of the mines had water transportation facilities, and were also most suitable in view of their geographic proximity to the Hermann Goering Works. At our first discussion he told me clearly and plainly:

“Either we come to an agreement that the HGW will get an adequate participation in the Harpen mines, or, I shall submit within the next 8 days to the Field Marshal a map of the mines in the Ruhr district, and you will then be called and be told what has to be done.”

¹ This letter, Document NI-3488, Prosecution Exhibit 472, dated 13 August 1937, is reproduced above in section V C.

² A relatively high grade of bituminous coal.

I then took up negotiations, and on the whole I kept constant contact with Mr. Buskuehl about these matters.

On the whole, the viewpoint taken by Mr. Pleiger was not even unreasonable. You have to put up with the fact that Mr. Pleiger considers Harpen part of a big mixed concern, and this is a fact which you have to accept whether you like it or not; also the consequences, resulting from the fact that our group practically controls a three-quarter majority in a general shareholders' meeting at Harpen which—if it were necessary—could easily be brought to an actual 75 percent majority. Mr. Pleiger has now stated the following (always considered concern-wise [immer konzernmaessig betrachtet]):

“You control a black coal substance [schwarze Kohlensubstanz] and particularly you have possession of fields (special notice) which under no circumstances can be maintained while the Hermann Goering Works, which was founded because of State political necessities [staatspolitischen Notwendigkeiten], cannot provide itself with coke from its own coal supply. It would be easy to force you to transfer your coal properties just as other concerns had to give up their ore supplies. That means that it would be easily possible to compensate you with money and shares of HGW. I do not want to do that, but I want to compensate your group for the soft coal properties to be transferred with brown coal properties, which are in the Lausitz district before your door, and in acquiring these you will not even get a bad deal. If you, in control of more than a 22½ million ton participation in the coal syndicate, and in need of only 500,000 tons of coal for Maxhuetten, should refuse that exchange—which from the point of view of the Konzern is completely natural—by which you turn over some of your big coal mines in the West and receive for it brown coal in central Germany—then we would consider this attitude not only a complete lack of understanding of vital, State political matters, but also ill-will.”

I want to tell you now the following about this point: It surely is not unknown to you (and I have in such matters sufficient experience, and perhaps even understanding in this case) that in carrying out big transactions you will always find people who criticize, complain, people who are envious, and so on. Such gossip and criticism often occurs even in higher circles. Several months ago already I contacted a number of the most prominent men of industry and high finance to find out their general attitude toward this question. I want to mention here only one example—Mr. Knepper. Knepper stated to me:

“If through your negotiations you succeed in solving the problem of the coal supply for the Hermann Goering Works, I shall declare everywhere, wherever it may be, that you have saved the Rhenish-Westphalian coal mining industry from confiscation.”

Whoever has taken part in the negotiations to solve the coal problem of the HGW must adopt this viewpoint, if he is loyal. I have consulted Mr. Kimmich, who told me that under the circumstances there was absolutely no other alternative but to carry out the exchange transaction. Mr. Kimmich asked Mr. Stinnes, who for some time showed great interest in some of the brown coal plants, but who could not afford to pay the prices—“What would you do if you were in the place of Harpen or Flick?” And the answer was—“I would make an agreement.” This was also the opinion of Voegler, Kloeckner, and many others.

* * * * *

Now concerning the matter itself: the report of Mr. Buskuehl concerning the objects of the exchange.

Mr. Schmidt said recently that he could survey the future of soft coal, but not of brown coal, by which he probably wanted to say that the prospects for soft coal were considered more favorable than for brown coal. I must say that such a statement coming from a coal expert is unique up to the present! 70 percent of brown coal goes for household fuel, whereas with soft coal it is the other way around, 70 percent goes to industry, in addition to the 70 million tons of soft coal from Upper Silesia. The companies in question issued after the stabilization an average dividend of 9 percent. No loan. Not a cent of debts. Harpen at the same time, as far as I can remember, about 1¾ percent.

I also want to quote to you a remark made by Mr. Pleiger, which illustrates the situation and which is in my opinion completely to the point. He said—

“If somebody had come to old Petschek and had offered him Harpen for his brown coal, he would have thrown this person abruptly down the stairs.”

* * * * *

TRANSLATION OF DOCUMENT NI-936
PROSECUTION EXHIBIT 477

FILE NOTE BY DEFENDANT STEINBRINCK, 6 DECEMBER 1939, NOTING
MEASURES TAKEN TO OBTAIN A "DIRECTIVE FOR THE EXCHANGE OF
SOFT COAL FOR BROWN COAL"

St/Wo.

6 December 1939

File Note

Subject: Directive [Anordnung] for the exchange of soft coal
for brown coal.

On the basis of the draft of a letter discussed yesterday by Mr. Kaletsch and Mr. Gritzbach, I have sent the enclosed draft* of a letter to Mr. Gritzbach. At the same time I reminded Mr. Marotzke, since State Secretary Koerner was detained elsewhere, of the fact that we ought to have a directive. As already presumed, Mr. Koerner feels somewhat embarrassed to apply for such a directive from the Field Marshal [Goering] because, according to Marotzke, such a directive could be interpreted as exploitation [Ausnutzung] of the strong position of the Four Year Plan to the advantage of the Hermann Goering Works. Marotzke declared that General von Hanneken would in any case participate in the negotiations today, and that it should be possible to get Hanneken's approval to issue the desired directive. I replied to Mr. Marotzke that this did not seem sufficient to me. In principle we have always agreed that the agreement made between Harpen and the Hermann Goering Works, under the directives [Weisungen] of the Field Marshal, would come in force, after approval on the economic side by the Reich Ministry of Economics, by means of a directive [Anordnung] of the Four Year Plan. Meanwhile the Hermann Goering Works had become doubtful as to whether they should collaborate with such a directive. In the meantime the situation had again changed so far as an agreement was to be drawn up in alternative form until 9 December. The managing board of Harpen would find it extraordinarily difficult to accept the conditions of the Hermann Goering Works. One ought to support the board by procuring a certificate from the highest authority stating the State political necessity of the exchange. I read the contents of the letter to Mr. Marotzke and explained to him that if the Field Marshal would address such

* The draft referred to, Document NI-934, Prosecution Exhibit 478, is reproduced immediately below.

a letter to us we could probably content ourselves with a directive by the Ministry of Economics for the execution of the agreement.

The enclosed draft was then sent to Marotzke and Gritzbach. Gritzbach agreed to its wording. He was informed of the conversation with Marotzke, and he will try to obtain such a letter from the Field Marshal today or tomorrow. He will call us up as soon as a decision has been taken. We do not need to negotiate again with Koerner since Marotzke knows of the letter, but does not know that we have talked to Gritzbach and that Gritzbach will take it upon himself to talk to Koerner.

[Signed] STEINBRINCK

Mr. Flick

Mr. Buskuehl

Mr. Kaletsch

TRANSLATION OF DOCUMENT NI-934
PROSECUTION EXHIBIT 478

DRAFT OF A DIRECTIVE PROPOSED BY DEFENDANT STEINBRINCK FOR ISSU-
ANCE BY THE PLENIPOTENTIARY FOR THE FOUR YEAR PLAN, 6 DECEM-
BER 1939, AND TRANSMITTED TO THE CHIEF OF GOERING'S
PERSONAL STAFF, DR. GRITZBACH

Minister President
Field Marshal Goering

U.
Berlin, 6 December 1939

Plenipotentiary for the Four Year Plan

Draft

As I have been informed, the negotiations between Harpen Bergbau A.G. and the Hermann Goering Works on the exchange of soft coal for brown coal ordered by me, have brought about agreement on the fundamental points, but the conclusion of the agreement has not yet come about on account of differences of opinion on a series of details.

Since the transfer [Abgabe] of both groups of pits from the property of the Harpener Bergbau A.G. in order to furnish the required soft coal supply for the Hermann Goering Works is an indispensable state-political necessity [unumgaengliche staatspolitische Notwendigkeit], I consider it of importance—especially, to avoid a renewed directive in this respect—that the negotiations are, if possible, concluded this week.

I have issued identically worded instructions [Weisung] to the chairman of the managing board of the Hermann Goering Works [Paul Pleiger].

TRANSLATION OF DOCUMENT NI-935
PROSECUTION EXHIBIT 476

DIRECTIVE OF KOERNER, STATE SECRETARY AND GOERING'S PERMANENT
DEPUTY FOR THE EXECUTION OF THE FOUR YEAR PLAN, TO FLICK,
6 DECEMBER 1939, STATING THAT SPECIAL IMPORTANCE IS
ATTACHED TO THE RAPID CONCLUSION OF THE NEGOTIA-
TIONS ON THE EXCHANGE OF SOFT COAL
FOR BROWN COAL

Berlin W8, 6 December 1939
Leipziger Str. 3
Telephone 126341, 127071

Minister President Field Marshal Goering
Plenipotentiary for the Four Year Plan
The State Secretary

As I have been informed, the negotiations between the Harpen Bergbau A.G. and the Hermann Goering Works on the exchange of soft coal for brown coal ordered by me, still have led to no result, because the conclusion of the agreement has not come about on account of differences of opinion on a series of details.

Since the transfer of groups of pits from the property of the Harpen Bergbau A.G. is an indispensable State political necessity to supply the Hermann Goering Works with the required soft coal reserves, I consider it of special importance that the negotiations are concluded this week.

I have issued identically worded instructions to the chairman of the managing board of the Hermann Goering Works.

[Signed] KOERNER *

To the Chairman of the Supervisory Board of the Harpen Bergbau A.G., Dr. Friedrich Flick in Berlin W. 35.

* The proposed draft of this directive sent by defendant Steinbrinck to Gritzbach, Document NI-934, Prosecution Exhibit 478, reproduced immediately above, differs in several respects from the final order, one difference being that the draft was written for signature by Goering himself rather than by Koerner, the State Secretary of the Four Year Plan and Goering's permanent deputy for the execution of the Four Year Plan.

PRELIMINARY CONTRACT BETWEEN FLICK'S HARPEN COMPANY AND THE
HERMANN GOERING WORKS, 9 DECEMBER 1939, ON THE
"EXCHANGE OF SOFT COAL FOR BROWN COAL"

Exchange of soft coal for brown coal

An exchange between coal mining companies in the Ruhr and brown coal enterprises in Central and East Germany has been decreed by the Plenipotentiary for the Four Year Plan and the Reich Minister of Economics for the purpose of creating a sufficient soft coal supply for the Reichswerke Hermann Goering. In this connection the Harpener Bergbau A.G. shall transfer the mining groups Herne and Victoria and other mine fields to the Reichswerke for State political reasons.

Pursuant to this decree the undersigned have laid down the following principles for the exchange, in order to submit the same jointly to the decision of the Reich Minister of Economics. The deadline for the exchange will be January 1940; however, the administration of the exchanged enterprises shall pass into the hands of the new purchaser as trustees as soon as the directives for effecting the exchange will have been received from the Reich Minister of Economics and from the Plenipotentiary for the Four Year Plan.¹

Consequently, Harpen transfers to the Sachsen Mining Company² the works actually in operation of the mining groups Herne, as well as of the Victoria mine, and furthermore several

¹ The final acquisition of brown coal properties here involved by Flick's Harpen company was not contested during the trial, as shown by the extracts from the testimony of defendants Flick and Steinbrinck reproduced D and E below. The ultimate acquisition was accomplished by a series of complicated financial and contractual transactions over a considerable period of time during which period various agencies of the State were involved, and during which a number of questions still outstanding at the time of this preliminary agreement of 9 December 1939 were settled. For example, a lengthy written agreement of 6 March 1940, Document NI-3399, Prosecution Exhibit 675, not reproduced herein, illustrates the extent of these ramifications. This agreement provided, among other things, that the Hermann Goering Works was to acquire shares in the Anhaltische Kohlenwerke (a firm acquired by Flick during the solution of the Julius Petschek question) for the transfer to Anhaltische of brown coal properties of the Ignaz Petschek group which the Hermann Goering Works had meanwhile obtained; and that the Anhaltische shares thus to be acquired by the Hermann Goering Works were to be turned over to Flick's Harpen company as part payment for Harpen's transfer of soft coal to the Hermann Goering Works.

² This coal mining company was an enterprise owned by the German Reich. It owned mine fields near or adjacent to soft coal fields of Flick's Harpen company and apparently was therefore chosen as the transferee in this preliminary contract. However, a later contract of 6 March 1940 (NI-3399, Pros., Ex. 675) provided for the transfer of Harpen soft coal properties be made directly to the Hermann Goering Works and the "Steinkohlen Gewerkschaft der Reichswerke Hermann Goering", the latter company being a coal mining subsidiary of the Hermann Goering Works.

virgin coal fields; and receives in compensation from the Hermann Goering Works, the works actually in operation of Eintracht, as well as of that part of NKW (NKW-Lausitz) which is on the eastern side of the Elbe, as follows:

A

I. Harpen cedes to Sachsen:

1. The Herne mining group with the mines Recklinghausen I and II,
Julia and v.d. Heydt.
2. The mine Victoria-Luenen with the plants belonging to Herne and Victoria, including coal fields or mining rights, real estate, docks, buildings, machinery, etc.
3. The Preussen field forming the boundary of Victoria up to the deepest point of the Bochum valley with the real estate, buildings, etc., belonging to it.
4. The shares of the mining company Victoria-Continuation with all assets and liabilities and among other property, the non-combine field Victoria-Continuation.
5. The area belonging to Harpen, adjacent to, but beyond the boundary of Victoria-Continuation mine field.

The following plants are excepted from this transfer, as indispensable to Harpen or as not required for operating purposes by the mines which are transferred:

Buchenberg with recreation home for women.

Harbor area of the Preussen harbor.

Area required for the harbor railway connection between Gneisenau and Hafen Preussen.

Grounds of Preussen II, north of the deepest

point of the hollow [Mulde] and east of the railroad line.

Central laboratory on the Luenener Strasse.

including the 26 apartments for officials.

Sawmill Recklinghausen.

As far as the housing project situated in the Preussen field is concerned, the houses at Luenen-South and at Luenen-Gahmen will be transferred (with the exception of the above-mentioned 26 apartments for officials).

Harpen will not make any claims for mining compensation for the central laboratory and the apartments for officials belonging to it. For the rest, both parties abandon claims for mining compensation with regard to the housing project.

The agreed boundaries of the Preussen field are marked on a map which has been handed over to the Sachsen Mining Company.

The warehouse at Preussen I is placed at Harpen's disposal for 5 years without rent. In case the Sachsen Company should require the warehouse during this time, owing to its putting Preussen I into operation, new agreements will be made by the parties.

Those employees or workers belonging to other Harpen mines who are still living in the dwellings which are transferred to the Sachsen Company, will all receive a right to continue residence for 5 years at the hitherto existing conditions in each case. After the expiration of that period of time the dwellings must be gradually evacuated.

II. Furthermore, Harpen will place at the disposal of the Sachsen Company the coal fields Bayern, Maximilian, and Prinz Schoenaich as far as the west boundary of the de Wendel field with all buildings and real estate belonging to them, inasmuch as the seller owns these.

III. Harpen cedes 3.4 million tons from its sales quota in the Rhine-Westphalia Coal Syndicate [R.W.K.S.] to the Sachsen Company and a sales quota of coke amounting to 620,000 tons included in this quota of 3.4 million tons.

IV. In addition and corresponding to the above-mentioned quotas, Sachsen receives from Harpen of its rights of participation in the Rhine-Westphalia Coal Syndicate, Syndikats-Handelsgesellschaften [Associated Commercial Enterprises], the Ammoniak-Verkaufs-Vereinigung [Ammonia Sales Association], Benzolverband [Benzene Union]. As far as any assets under trust exist in these unions, they remain entirely with Harpen as arising out of former deliveries.

B

The Hermann Goering Works assign to Harpen

I. All the plants of the former corporation Eintracht, as well as the part east of the Elbe of the former corporation NKW,¹ such as privileges, exploitation-rights, real estate, buildings, machinery, and so on, including the quotas in the East Elbe Brown Coal Syndicate [Ostelbisches Braunkohlen Syndikat], as well as the trading rights.² Excluded from the transfer as unnecessary for Eintracht are only the rights together with the exploitation contract for part of a mine field at Laubst. The three briquette factories of the NKW (Victoria I, II, and Bertha) given in lease are likewise assigned to Harpen. Harpen assumes the

¹ Companies of the Ignaz Petschek group.

² Most of the documents dealing with the later stages of Harpen's acquisition of the brown coal properties here involved are not reproduced herein. The eventual acquisition was not contested at the trial. This preliminary agreement on the exchange was approved by the Reich Ministry of Economics, in agreement with the Reich Minister of Finance on 18 January 1940. See Document NI-3438, Prosecution Exhibit 488, reproduced later in this section.

rights and duties of the lease contract and will pay to the Sachsen Company RM 500,000 annually for 8 years. The HGW will take measures to have the sublease for Victoria II continued for the duration of the original contract.

The HGW will grant Harpen the option until 31 January 1940 to acquire the new, not yet quite completed, administration building of NKW in Berlin, together with the real property [Grundstueck] belonging to it, against reimbursement of the building costs as shown in the books.

II. The HGW assigns further to Harpen the operating interests of Eintracht and NKW East, e.g., the participations in the East Elbe Brown Coal Syndicate, inclusive of the Brabag shares held by Eintracht and NKW East.

C

The Sachsen Mining Company takes over the contracts of delivery, lease, etc., connected with the Herne and Victoria mines including the current orders of store materials and plant fittings. Harpen takes over the respective contracts of the brown coal pits.

The Sachsen Mining Company takes over the entire personnel of the Herne mine group and of the Victoria mine, as well as a corresponding share of the staff of the main administration of Harpen at Dortmund, under the existing employment or service contracts and pension regulations, whereas on the other hand Harpen likewise takes over the working staff of Eintracht and NKW East, including a corresponding share of the NKW main office in Berlin.

D

As far as current assets are concerned, both as regards soft coal and brown coal, the raw, auxiliary and operating materials (store materials) and semimanufactured and finished products existing at the date fixed for the transfer, pass into the hands of the respective purchasers without special valuation. However, stocks of timber at Herne and Victoria remain with Harpen.

The remaining current assets required for operating the mines, e.g., claims and debts owing to goods supplied and received, mortgages receivable and payable, will be settled between soft coal and brown coal, and the remainder is to be settled in cash.

The installments paid by Harpen, Eintracht, and NKW are considered as belonging to the fixed assets, as far as deliveries and services of the suppliers have already been made by the fixed date of transfer, and pass consequently into the hands of the purchaser without particular valuation. However, as far as deliveries and services have not yet been made against these installments on the part of the suppliers, they belong to the

current assets and consequently are placed into the particular valuation, as for instance claims arising out of the delivery of goods.

E

Harpen will settle for its account mining damages, the settlement of which Harpen has initiated up to 31 December 1939, as well as those about which a lawsuit has been carried on up to that date. Sachsen will assume the responsibility for all other claims on account of mining damages.

F

The real property and buildings of Herne and Victoria as well as the installations of the other Harpen mines form the real property security for the America and Allianz loan. If the Allianz agrees with the actual transfer of this debt to brown coal, Harpen pledges itself to execute this transfer; otherwise Harpen will also compensate internally [Innenverhaeltnis] the Sachsen Mining Company for the Allianz loan, and this will be a charge against both Harpen and the recently obtained brown coal.

G

The plants which are to be exchanged, will be mutually transferred free of taxes, i.e., the taxes concerning the period until the fixed date of transfer will be charged against, or in the case of refunds, credited to the account of the delivery group.

Just as for taxation, the date of transfer of 1 January 1940 is also to be considered the dividing line for the other working expenses, and proceeds received after the fixed date.

Closing Part

a. In reaching the above agreement, the undersigned have acted on the principle that the exchange of soft coal for brown coal is effected entirely free from taxes, without any prejudicial consequences arising from taxation. That is one of the conditions of the agreement.

b. Harpen, for which the cession of the coal mines concerned signifies a deep encroachment upon its whole structure and its position in the Ruhr mining district, confidently anticipates that its claim to reconstruction of the output-capacity it has ceded will be granted again, and that it will have no prejudicial consequences as long as it will not be able to perform its obligations to the syndicate by reason of having ceded the mines. Together with Harpen, the Reich Works [Hermann Goering] will do their best to fulfill these expectations at the competent quarters.

[Handwritten] It would do no harm if this would be expressly stated to Hanneken in a separate letter.

c. In previous negotiations concerning the intended exchange of soft coal for brown coal, the Harpen representatives suggested that the known coal reserve fields of Ilse be sold to Harpen. The H.G. Works supported this desire and accordingly will exert their influence at future negotiations regarding the Ilse fields with the Minister of Economics in order that these fields be transferred on the basis of the obligations assumed by the purchaser of the Ilse shares from the Petschek properties.

d. The acquisition of Phoenix/Leonhard for cash or shares has been refused by the Reich Works to the group Harpen with the explanation that only an interchange of these brown coal enterprises against a soft coal mine can be taken into consideration. In case the negotiations conducted at present by the Reichswerke do not lead to the desired result, the group Harpen claims the right of preemption with regard to the acquisition of Phoenix Leonhard for cash or shares.

Dortmund, 9 December 1939

Signed: BUSKUEHL

Signed: DELIUS

Signed: SCHMIDT

Signed: FLOTHOW

Note—Four copies were signed. Two are for Harpen, two are for the gentlemen of the HGW. Of these last two, one copy bearing the signature of Mr. Pleiger will be returned to us.

[Signed] WERNING

9 December 1939.

TRANSLATION OF DOCUMENT NI-931
PROSECUTION EXHIBIT 485

HANDWRITTEN LETTER FROM DEFENDANT STEINBRINCK TO DEFENDANT
FLICK, 29 DECEMBER 1939, NOTING THE EXTENSION OF FLICK'S
ENTERPRISES DURING THE LAST YEAR, STEINBRINCK'S SEPARA-
TION FROM THE FLICK CONCERN, AND OTHER MATTERS

Otto Steinbrinck

Berlin-Dahlem
29 December 1939

Dear Mr. Flick,

Often on New Year's Eve we looked back together on the past year. Sometimes they were troublesome years, mostly however the transactions we looked back on had been successful.

The year 1939, ending in a few days, has been a remarkably successful one for you. You have incorporated Luebeck,* got Doehlen, and achieved the desired transfer of soft coal for brown coal, thereby further extending the horizon of your enterprises.

For me the last year was not so lucky; it would have been better and more advisable for me, and perhaps also for you, if we would have separated half a year ago, as originally intended. The effort of a forced cooperation has destroyed in us more than the worth of the superficial profit achieved.

Several times you expressed the opinion that I did my work with too much ambition and personal zeal. Today I know that your criticism of my work, within your sphere of interests, is right.

I have remained in the first line a soldier and therefore I have not always been able to share the opinion of a merchant who merely calculates and risks much.

From this difference of opinion finally results the conflict which has grown between us to an increasing extent. I had hoped to succeed in overcoming this conflict as long as I could still find some sense in my cooperation with you, as the consolidation of the Konzern gave me pleasure and satisfaction and—maybe more than necessary—as I felt as a partner. The events of this last year and the developments since the outbreak of the war convinced me that I would have to sacrifice the best in me if I should remain with you and thus my inner conflict would be maintained.

* Flick's acquisition of Hochofenwerk Luebeck A.G. was one of the "Examples of Aryanization projects" specifically mentioned in I, Indictment, paragraph 15. Evidence concerning the transaction has not been included in this section.

Therefore it was necessary for me to make the separation. You will continue to follow your course of success, and I shall soon look for another position in which I shall work according to my aptitude and to my attitude as to the future.

I neither can nor shall forget the 15 years of close cooperation with you and your firm. It is impossible for me to erase you from my life; I shall always think of you with pleasure and remember with gratitude your friendship which my family and I myself always endeavored to reciprocate.

Today, at the end of the last year of our common work, it is therefore my desire to express once more my heartiest and sincerest wishes for you personally as well as for your family.

May you always be in good health and have the energy to lead your enterprises through the difficulties of time to prosperity. With the sincerest wishes for the New Year, I remain,

Yours,

[Signed] OTTO STEINBRINCK *

* Steinbrinck's positions after leaving the Flick Concern are noted in his affidavit reproduced in IV C, above.

TRANSLATION OF DOCUMENT NI-10142
PROSECUTION EXHIBIT 813

NOTE BY WERNING FOR DEFENDANT FLICK, 17 JANUARY 1940, CONCERNING VARIOUS ATTITUDES TO THE ISSUANCE OF A DECREE OR ORDER ON THE SOFT COAL-BROWN COAL EXCHANGE, THE REPORT THAT THE MINISTRIES CONCERNED CONSIDER THE EXCHANGE "AN EXCELLENT PRIVATE TRANSACTION" FOR FLICK, AND RELATED MATTERS

[Handwritten] Read to Mr. Flick.
Wg. 17 January 1940

Berlin, 17 January 1940
Dr. W./Mi

Note for Mr. Flick

Subject: Conference with Flothow this noon.

The planned report of Mr. Pleiger and others to the Field Marshal has taken place. Flothow himself did not participate. The purpose of achieving a speedy issuance of the decree [Erlaß] concerning the exchange of coal could not be effected because of lack of time.

I described to Flothow my personal opinion that all parties concerned would have to expect serious difficulties if the wording of the order [Anordnung] did not satisfy us. I could imagine that under certain circumstances we might even refuse to carry out the agreement if it were not the order expected by us, and I asked Flothow, who is at all prepared to act in the sense of an order.

According to Flothow, Mr. Pleiger is completely uninterested since he considers the coal exchange as good as effected and he regards Herne and Victoria as his property. Dr. Delius may very well have changed his mind so far as he would be satisfied with an approval for HGW. He is, however, doubtlessly prepared to work together with Flothow for an order. Both Ministries are opposed to the efforts for an order for the sole reason that they are of the opinion that it is for us an excellent private transaction, "which they do not want to decorate with an order."

Flothow denied promptly and decidedly my question whether both Ministries, or the Reich Ministry of Economics, as the competent Ministry, did not want to issue an order for the reason that their authority did not suffice.

I pointed out that an order once issued could hardly be changed at least not without grievance on the part of the authorities concerned—I asked Flothow to get the final text before the issuance. He promised to intervene with Mr. Gabel that before the order is issued the final text will be announced to HGW and, by way of Flothow, unofficially to us. We agreed that I would remind him again after his return from Hamm on Saturday.

According to the draft now submitted, one will “ask” us to carry out the preliminary contract. Flothow remarked to that, that one could not foresee how the draft will look when it gets back to the Reich Ministry of Economics.

It is interesting to know that no expressed approval of the contract of HGW with Mr. Stahl dated 26 October 1939 was given today by the Ministries. I pointed out expressly to Mr. Flothow that such a delay is unbearable in our case, and he agreed.

The problem of taxes concerning the exchange between Salzdettfurth and HGW was settled by the Finance Ministry in the meantime to the satisfaction of Mr. Stahl (according to Mr. Flothow) even though complete tax exemption was not achieved. In this connection Flothow stressed again the practicality of a joint action with HGW, also in the tax problem.

[Signed] WERNING *

Copies to

Messrs.:

Buskuehl

Kaletsch

Dr. Werning

* Werning, under the general supervision of defendant Kaletsch, was concerned with financial matters, price policy, and similar matters at the Berlin headquarters of the Flick Concern.

TRANSLATION OF DOCUMENT NI-3438
PROSECUTION EXHIBIT 486

LETTER FROM THE REICH MINISTRY OF ECONOMICS TO FLICK'S HARPEN
FIRM, 18 JANUARY 1940, APPROVING THE CONTRACT FOR THE
EXCHANGE OF SOFT COAL FOR BROWN COAL

The Reich Minister of Economics
II Bg 24936/39

Berlin W 8, 18 January 1940
[Stamp] Received: 19 January 1940
J.No. _____

Express Letter

Subject: Record concerning the exchange of soft coal for brown
coal between the Reichswerke "Hermann Goering"
and the "Harpener Bergbau A.G."

To—Harpener Bergbau A.G.
Attention Dr. Frederich Flick

Berlin W9
Bellevuestrasse 12 a

With reference to the conference at the Reich Ministry of
Economics on 15 December 1939, I consent, after agreement
with the Reich Minister of Finance, to the contract concerning
the exchange of soft coal for brown coal being concluded on
the basis of paragraphs A to G of the record dated 9 December
which has been submitted to me.* I have no objections to the
fixing of 1 January 1940 as a deadline date for the exchange
and that the enterprises which are to be exchanged be trans-
ferred to the new acquirer on a fiduciary basis with immediate
effect. I reserve the right to approve the final agreement.

AS DEPUTY:

[Signed] DR. LANDFRIED

[Stamp] The Reich Ministry of Economics

[Stamp] Certified.

[Signed] HUEHMER
Office Clerk

* Document NI-937, Prosecution Exhibit 480, reproduced earlier in this section.

PARTIAL TRANSLATION OF DOCUMENT NI-12296
PROSECUTION EXHIBIT 862

EXTRACTS FROM A PROCLAMATION, 3 MARCH 1943, CONCERNING THE
FORFEITURE OF THE PROPERTY OF 136 NAMED JEWS, AND NAMING
36 DIFFERENT PETSCHOKS INCLUDING KARL PETSCHOK

PROCLAMATION [Bekanntmachung]
[Published in the "Deutscher Reichsanzeiger und
Preussischer Staatsanzeiger"]

In accordance with section 6 of the Decree of 2 November 1942, concerning the Loss of Citizenship of the Protectorate, (Reichsgesetzblatt, I, p. 637), I hereby declare that the provisions for the forfeiture of property [Vermögensverfall] according to section 3 of this decree * apply to the following Jews:

1. Ascher, George, representative, born 18 November 1907 in Vienna, resided in Prague, Souenicka 28.

* * * * *

75. Petschek, Ernst, Dr., born 29 May 1887, in Teplitz-Schoenau, resided in Brno [Bruenn], Lehmstaette No. 120.

* * * * *

90. Petschek, Karl, born 13 November 1890, in Aussig, resided in Berlin, Graf-Spee-Str. 10.

* * * * *

95. Petschek, Paul, big industrialist, born 21 June 1886, in Prague, legal residence Prague, married, resided in Prague II, Carl-Maria-von-Weber-Str. 5.

* * * * *

107. Petschek, Wilhelm, born 13 February 1896, in Aussig, resided in Brno, Lehmstaette 120.

* * * * *

136. Zucker, Herbert, born 11 September 1922, in Prague, resided in Prague II, Havlicekplatz 21.

BY ORDER

(Signature) SS Colonel

* Section 3 of this decree provides—

"1. The property of a Jew who has lost his Protectorate citizenship, based on this decree, is forfeited to the Reich with the loss of his Protectorate citizenship. The property of those Jews also goes to the Reich who at the time of issuance of this decree are stateless and whose last citizenship was either that of the Protectorate or of Czechoslovakia before they established domicile abroad.

"2 The forfeited property shall be employed for all those causes that serve the solution of the Jewish question."

Section 6 of this decree provides—

"1. The decision whether requirements for the forfeiture of property exist, is made by the Reich Protector in Bohemia and Moravia (Commander of the Security Police and the Security Service).

"2. The administration and utilization of the forfeited property will be handled by the same agency which is competent for the acceptance of registrations."

C. Testimony of Prosecution Witness Gritzbach

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS
ERICH GRITZBACH *

DIRECT EXAMINATION

MR. LYON: Witness, will you please tell us your full name?

WITNESS GRITZBACH: Erich Gritzbach.

Q. And what is your age?

A. Ministerial Director.

Q. I am afraid you misunderstood my question. How old are you?

A. Fifty years.

Q. Now, Witness, will you tell us where you presently reside?

A. In Bad Pyrmont.

Q. In what zone is that? Is that the American or British Zone?

A. That is the British Zone.

Q. What is your present occupation?

A. I have no occupation at the moment.

Q. I would now like you to tell us something of your education, if you will.

A. I attended the secondary school, then matriculated, and then studied economics in Berlin, Breslau, and in Tuebingen. I took my doctor examinations in Tuebingen. In 1924, I entered the government service in the press department of the Foreign Office as an auxiliary official. In 1930, I became Regierungsrat; in 1932, I became Ministerialrat; in 1936, I became Ministerialdirigent; and in 1938, Ministerialdirektor.

Q. Witness, will you now please tell us something more of the details of your positions after 1933? Before doing that, what position did you hold immediately before 1933?

A. Until 1932, I was in the service of the Reich and then I was transferred to the Prussian State Service in spring, and I was appointed Chief of the Ministerial Office of the Reich Commissioner of the Prussian State Minister Bracht. On 30 January 1933 Bracht left and Papen took his place as Reich Commissioner for Prussia—that is in practice, as Minister President—and I retained my position on Papen's request until Goering became Minister President. When Goering became Prussian Minister President on 11 April and at the end of April he returned from a journey to Italy and had all the officials of this Ministry

* Complete testimony is recorded in mimeographed transcript, 3 and 4 June 1947, pages 2470-2579.

introduced to him, and asked me to keep this post and to remain the Chief of his Ministerial Office and personal adviser, a position which I had held before. I had previously acted in this capacity.

Q. Then do I understand correctly that after April 1933 when Goering became Minister President of Prussia that he was your immediate superior; in other words, that you reported directly to Goering?

A. I was subordinate only to Goering. That means Goering was my only chief.

Q. And will you tell us again the title that you then held?

A. In 1933, I was personal advisor to the Prussian Minister President, and Chief of the Ministerial Office. Later on the title was changed, and I became Chief of the State Office after General Bodenschatz acted as a major in this same staff and became Chief of the Ministerial Office of the Air Ministry. Therefore, these two offices were not the same any longer. I dealt with the civilian side, and Bodenschatz, under this new arrangement as Chief of the Ministerial Office in the Air Ministry, dealt with the Military branch, that is, all matters of aviation and of the Luftwaffe. And later on he became a liaison officer to the Fuehrer and Reich Chancellor.

Q. All these jobs or functions that you have just been describing were matters that were headed up by Goering, is that correct?

A. Yes, certainly.

* * * * *

Q. When did you first become acquainted with Flick?

A. I can't say the year exactly, but I think it was in 1934 that I met Flick.

Q. Do you recall anything of this occasion? Was it a social or business occasion?

A. No, I do not. I cannot remember, but I assume that it must have been a social occasion which took place in Goering's house. Goering used to invite a small circle of men of the German economy to his parties, and among these was Flick.

Q. And were these meetings with Goering something that happened frequently, or several times, or was this the only time?

A. I believe these meetings between Goering and Flick during the first years were almost exclusively devoted to more or less important social events. In this connection I met Flick at various occasions, at Goering's birthday and certain social entertainments of a representative nature, like the opera balls, hunting festivals, and the Olympic Games. Those were occasions of my seeing and witnessing the meetings of Goering and Flick.

Q. Now, Witness, were you familiar with the transactions that are frequently referred to as the Julius Petschek and the Ignaz Petschek matters?

A. Yes, I was acquainted with these matters to a certain extent, that is as far as the activity of the staff was necessary or the cooperation with Goering.

Q. Did Flick ever talk to you about the Julius Petschek matter?

A. In the Julius Petschek matter, Flick came to see me and also Steinbrinck at a time when the transaction was already going on. As far as I remember, Flick had a discussion with Goering in which Flick told him about the plan of the purchasing the Petschek group and asked for his support in these things.

Q. Did Flick talk to you before this conversation with Goering?

A. That I cannot state exactly. I assume, and I think that I can remember, that Flick, without my knowledge, and at the beginning of January 1938, if not earlier, had a discussion with Goering about the plan of acquisition of the Julius Petschek property.

Q. Did Flick ever in talking to you—did he indicate whether or not he was anxious to acquire the Julius Petschek properties?

A. Yes. Flick talked with me about these matters, and he told me it was his intention. He also informed me that he had already started negotiations with the competent authorities in the Economic Ministry and also those in the Four Year Plan, which is the office of Koerner.

Q. He had already talked to Koerner; is that correct?

A. That I assume, yes, and I am almost certain it must have been so, for Koerner was responsible for these matters and was the competent authority.

Q. And just what did you mean, Witness, when you said that Goering wanted the support—rather, Flick wanted the support of Goering and Koerner?

A. Such transactions had to come to the knowledge of State offices. Anyhow, it wasn't a purchase in which you just offered and paid, but after all, it was an action which concerned the economy, and there were other possible buyers who were interested in the same matter, and it wasn't only Flick. Such an action could not be carried out without the cooperation of State authorities. This already follows from the matter of foreign currency. It would have been impossible to carry this out without the support of the State.

PRESIDING JUDGE SEARS: Did the defendant Flick tell you why he wanted to acquire these properties or some of them?

WITNESS GRITZBACH: Of course, Flick gave the reasons for his application to Goering, and in discussion with me—

Q. What were the reasons?

A. The reasons were the following: Flick received orders from Goering as a steel industrialist in the industrial sector of central Germany. His tasks were comparatively, as far as Goering was concerned, on a large scale. Flick explained to Goering that these tasks could be more easily carried out if Mittelstahl would be extended, and especially the coal side had to be developed. Brown coal was immediately accessible if the Petschek property could be counted on, and, of course, Goering consequently was very interested in Flick carrying out this transaction. Goering told me that, and Goering said to Flick that he would support him in his task involving the execution of the Four Year Plan.

MR. LYON: Witness, you referred to other concerns that were interested in acquiring these properties. Did Flick ever talk to you about these other concerns?

WITNESS GRITZBACH: I can't remember the month in which Flick or Steinbrinck had discussions with me, or with Goering, respectively. Flick came to me in order to have the meeting with Goering arranged in which he wanted to tell him that the acquisition of the Julius Petschek group was endangered. There was competition. The I. G. Farben, and the Wintershall Concern, and to a certain extent, however small, also the Salzdettfurth Concern caused him troubles in carrying out the transaction. Flick had a meeting with Koerner or perhaps it was Steinbrinck, I don't know. I don't remember but I must assume this from the discussion I had with him later on—they had asked for a directive by Koerner, as deputy of Goering in his capacity as Plenipotentiary for the Four Year Plan in which it would be stipulated that they alone were entitled to carry out those transactions. Marotzke, Ministerialdirigent at that time, was also concerned in this matter, and he informed me about it later on. Koerner could not make up his mind, as Flick told me, to give this directive on his own part, and he explained to Flick or Steinbrinck—I don't know who it was—that he would ask for the permission of Minister President Goering. As far as I remember he told Flick to speak to Goering about that himself. I think Steinbrinck came to see me thereafter and asked for such directives from Goering. If I remember correctly, I arranged the discussion, and at this discussion, such a directive was signed by Goering. That was the activity of the Goering Office in the Petschek affair.

Q. Witness, what was the nature of this directive or order that you have just referred to? Do you recall?

A. As far as the content went, it said in this directive that Flick would be the only one who was authorized to carry out nego-

tiations for the acquisition of the Julius and also the Ignaz Petschek property.

Q. And this was the order that Flick obtained from Goering after he had been unable to get it from Koerner? Is that correct?

A. Yes, that is correct.

* * * * *

Q. Did Goering talk to you, or did you form an idea from various discussions with Goering as to why he favored Flick over these other concerns, such as I. G. Farben and Wintershall?

A. Yes, Goering did talk to me about this. I remember that I was present at a discussion of Flick with Goering in the villa in Leipzigerstrasse. As far as I remember I was present at the occasion when Goering also told Flick the reasons, why he favored him.

The main reason was the following: Goering, who at that time was very optimistic about the general political situation, had certain doubts that in case of war the industrial properties in the West and also the industrial properties in the East might be endangered. He was particularly interested in strengthening the central German industry, and since in the armament program Flick was entrusted with considerable orders, particularly in the anti-aircraft program, Goering was interested that Flick's coal sources should be extended, that is, Flick was given the possibility of expanding the basis for his steel and iron production.

Another reason why Flick was esteemed very highly by Goering was that he was a highly qualified steel expert. Goering knew that Flick could deal with all orders from the armament sector, and would carry them out to Goering's satisfaction. Goering further looked upon Flick as a good entrepreneur, in contrast to some, as it were, anonymous employers who were not closely acquainted with Goering and with whom he had no personal contact. Goering esteemed Flick as an expert, and Goering knew if he allotted a task to Flick, that this task would be carried out to his, Goering's, satisfaction. Perhaps there is another reason, that is, that Flick informed Goering at the time when the Hermann Goering Works were established that he would sacrifice his Salzgitter properties and transfer them to the Hermann Goering works, for the benefit of the State, that is for the establishment of a State combine.* I remember that Goering told me when I stayed with him at Obersalzberg that he was highly satisfied that Flick did not object to State interests, and that, in contrast

* This matter is dealt with in a letter from Goering to Flick, 13 August 1937, Document NI-3488, Prosecution Exhibit 472, reproduced in V C above.

to other industrialists, he gave an example by his attitude and readiness to sacrifice his own plants in favor of the Hermann Goering Works. But this I do not remember in detail. Perhaps it was a feeling of gratitude on the part of Goering, gratitude to Flick, which made him decide in this way. But a further reason was Goering's selfishness in economic considerations. He was of the opinion that Salzdettfurth and Wintershall were of no interest to him. I. G. Farben was also of little interest to him, since the gasoline supply was considered to be rather extensive at that time. His main interest was steel. It was most important for the building up of the Luftwaffe and particularly for the anti-aircraft program.

* * * * *

Q. You referred, Witness, to a status that was enjoyed by Flick on account of gratitude which Goering believed to owe him for what he had done at the time of the foundation of the Hermann Goering Works. Did Goering ever give you any instructions as to how Flick should be treated in a general way?

A. These instructions Goering had already given me when no matters of business were discussed with Flick at all. I can only repeat here that Flick was *persona grata* to Goering. He had a special prestige, as it were, because Goering liked him very much. He seemed to be a particularly active man to Goering, and very successful too. Goering was impressed by Flick and was impressed by the fact that Flick had started as a small man and had reached a high position through his initiative and had thus become a great man in Germany. It was really quite characteristic for Goering to recognize this. Another factor was that Flick, though an individual entrepreneur, showed a reticent and modest attitude and was thus appreciated by Goering. In discussions which Flick had with Goering, apart from business matters, Goering had gained the impression that Flick was a very good adviser in matters which touched the industrial side. Goering spoke to me about these matters and he told me, quite definitely, that Flick was in contrast to other anonymous industrialists, in fact, a most enterprising man, and that he would support him and help him whenever and wherever he could.

(Recess)

MR. LYON: Witness, you spoke earlier of a directive or order that was obtained by Flick from Goering with respect to the Julius Petschek matter. I would like to return to that. I would like to show you a document—I might say to the Court that this was Document NI-900, Prosecution Exhibit 411.*

* Letter from Goering to Flick, 21 January 1938, reproduced in B above.

PRESIDING JUDGE SEARS: What book is that in?

MR. LYON: In book 10-A, Your Honor, at page 43.

Witness, do you recognize the signature on that letter?

WITNESS GRITZBACH: Yes, I do.

Q. Could you tell us whose signature it is?

A. That is Goering's signature.

Q. And the handwritten portions on the letter itself, is that also in Goering's handwriting?

A. Yes, they are Goering's, too.

Q. Did you ever see this document at any time when it might have been prepared?

A. I didn't understand the question.

Q. Were you present at the time this document was written, or did Goering speak to you about it at that time, or show it to you after it was written?

A. The document was not written by Goering and did not come from his office either.

Q. But you do recognize the signature as being Goering's signature, is that correct?

A. Yes, the signature is Goering's and the additional handwritten notation is also Goering's.

Q. How do you account for the form of this letter? I take it from what you say, that it was not the usual form of a letter from Goering's office.

A. I assume that this letter was submitted to Koerner at first. And probably it contained a petition by Mr. Flick, requesting to sign such a letter. Then this letter was sent to my office, and I submitted this letter to Goering, whereupon Goering made this handwritten notation and also signed the letter.

Q. You say that you received this letter and turned it over to Goering, or did you say that you weren't certain? I didn't quite understand your answer.

A. I am quite sure that I did not write this letter. This letter had been submitted to me. I cannot tell exactly by whom, probably by Mr. Steinbrinck with a request to have such letter written which would be needed for the transaction and to have it signed by Goering.

* * * * *

Q. Now, Witness, I would like to turn to the Ignaz Petschek affair, and I would like to show you a copy of a letter addressed to you by Flick on 1 March 1939. This, Your Honor, was Document NI-3267, Prosecution Exhibit 459.* It appeared in Document book 10-B at page 67.

* Reproduced in B above.

Do you recall having received this letter or having been familiar with the matters discussed in this letter?

A. Yes, I do.

Q. Did Flick talk to you about the Ignaz Petschek matter at about this time, in January or February of 1939?

A. Yes.

Q. Did he indicate in these discussions with you that he was anxious to acquire some or all of the Ignaz Petschek properties?

A. Mr. Flick referred to Goering's directive on the transaction Julius Petschek, and simultaneously he expressed the point of view that he was supposed to take an active part or rather was to participate in the Ignaz Petschek transaction. Flick was very keen to extend his brown coal holdings also in the direction of Lausitz, and he was interested in the acquisition of Eintracht and also parts of Ilse, if I remember correctly.

In conversations which Flick had with Goering, Goering also agreed to these considerations. This letter addressed to me originated from a conversation which Steinbrinck had with me, which was to remind me of Goering's promise.

Q. Witness, were you familiar with the subsequent events in the Ignaz Petschek affair, at least in a general way?

A. I don't know about the Ignaz Petschek transactions so far as they refer to expropriation. I only know about matters from the time when the soft coal exchange against brown coal was supposed to take place. At that time—I think we are referring now to a date shortly before Christmas when transactions were at a deadlock again—Mr. Kaletsch came to see me and requested a letter which was to state that the Reich Marshal [Goering] was to take part in these transactions. From this point onward I am acquainted again with the Ignaz Petschek transactions; and we also discussed them in our office.

Q. You say that Kaletsch came to you with a draft of a letter. Is that correct?

A. I don't remember exactly whether Kaletsch actually had a draft of a letter with him. I assume that Kaletsch told me at that time that Mr. Flick was very interested that a directive of the Reich Marshal should be issued stating that the transaction was of great urgency and of State political necessity, whereupon I told Mr. Kaletsch that it would be best if Flick would draft such a statement, so that I, who didn't know the connections of the Ignaz Petschek transaction, would be able to discuss matters with Goering on the basis of such a draft. Then Mr. Kaletsch gave me such a draft, and as far as I can remember, I had a conversation with Goering on this matter, on either the same day or perhaps on the day after. But there was a prelude to this matter, so

far as Koerner, who already had been asked to issue such a directive from his office, refused to do so, and did not want to be responsible for this matter; and like in the case of Julius Petschek, again asked the Reich Marshal—then Field Marshal—for a signature.

Q. Now, Witness, I would like to show you two documents. These documents your Honor, are Document NI-935, Prosecution Exhibit 476,¹ and Document NI-934, Prosecution Exhibit 478,² and they appear in Document book 10-C, at pages 40 and 43, respectively.

Witness, will you first please look at the letter which is on black photostat paper and which bears a signature. Do you recognize the signature in that letter?

A. Yes, it is Koerner's signature.

Q. Your Honor, the document to which I referred was Exhibit 476.

Now, Witness, you stated that Koerner had been reluctant to give Kaletsch or Flick, whoever it was, the letter that they requested. How do you account in that case for this letter dated 6 December 1939, bearing Koerner's signature?

A. This letter which had been submitted to Koerner—the directive which was requested from Koerner, which then had been submitted to me, and which I subsequently submitted to the Reich Marshal, was approved by the Reich Marshal, but I cannot remember whether he personally signed it "Goering" in full, or whether he just countersigned it with "Gr." Then it was sent back to Koerner, as far as I can remember, together with a directive that Goering approved such an official statement of the Plenipotentiary for the Four Year Plan, and Koerner should take the necessary steps. Thereupon Koerner wrote this letter to Mr. Flick in his capacity as chairman of the Aufsichtsrat of the Harpener Bergbau A.G., and, as you can see from the last paragraph, he also simultaneously sent a letter to the chairman of the Vorstand of the Reichswerke Hermann Goering, Mr. Pleiger. After Goering had expressed his approval, the State Secretary Koerner, who originally did not want to sign such a letter, for which he had his reasons too, sent the letter through the Ministry to Mr. Flick on the one hand, and on the other hand to Mr. Pleiger. Thus approval was given by Goering or his deputy, State Secretary Koerner, stating that it was of State political necessity that Harpen now agreed to execute the exchange.

Q. Witness, you stated, I believe, that either at your suggestion or upon their own initiative Kaletsch or Flick—I think you said

¹ Directive from Koerner to Flick, 6 December 1939, reproduced in B above.

² Draft of a proposed order for Goering's signature, 6 December 1939, reproduced in B above.

Kaletsch—prepared a draft of a letter to be signed by Goering and that you then took it to Goering. Is this other document which you have in front of you the draft to which you referred?

A. I beg your pardon?

Q. Is the other document which you have before you, the document which is headed "Draft," is that the document to which you referred a short time ago when you said that you took a draft to Goering which had been prepared by Kaletsch?

A. The draft which Kaletsch made is the one of 6 December which I hold in my hand now.

Q. Is there an exhibit number on the outside of that folder which you are looking at?

A. 478.

Q. And if I understand you correctly, you took this draft to Goering, is that right?

A. As far as I can remember I passed this draft on to Goering, and I certainly can remember that Goering agreed to such a draft. I cannot tell exactly, however, whether he signed it. There is a possibility that Goering requested Koerner to come over to his office—it was only a few steps away—and told him that he should carry out this business as it had been requested.

There is also a possibility that Goering gave me the order to tell Koerner that he should now sign such a letter in order that Flick should receive it; else I cannot explain why Koerner signed this letter of 6 December himself. Usually the signature of Goering should appear on this letter, but it has been signed by Koerner. From this I can see that Goering ordered me to tell Koerner that he agreed, or Goering—I don't know exactly which it was—asked Koerner to come to his office to discuss this subject and told him that this letter was to be written.

Q. Did Goering make any changes in the draft after you presented it to him?

A. I beg your pardon?

Q. Did Goering make any changes in the draft after you presented it to him?

A. If I compare those two letters I can see that the draft is not the same as the original of 6 December. In the second paragraph a whole sentence has been omitted, and that is the sentence in the third line of the second paragraph: "Especially to avoid a new directive." It is possible that Goering—

Q. What did you say, Witness? I didn't understand you. You say it is possible that Goering did what?

A. It is possible that Goering, who did not like any ambiguities, crossed out this sentence.

Q. But you don't recall the precise circumstances; is that correct?

A. No, I don't recall the precise circumstances, unfortunately, but I can remember that Goering sent out a directive that this letter was to be sent out with utmost speed.

Q. Now, Witness, you told us that you had various conversations with Flick in connection with the Petschek matters, and various matters before that, and Flick also had conversations with Goering. Can you recall how many times you talked with Flick or Flick talked with Goering after the Petschek matter had been concluded, or rather, I should say after 1939?

A. There was a constant connection between Goering and Flick, so far as Flick went to Goering's birthday party every year, and beyond that there were certain occasions which induced Mr. Flick to request an interview with Goering and I assume, with the exception of the so-called social affairs—I mean parties and birthdays—that Mr. Flick went to see Goering perhaps only three or four times during the war. Altogether, from the time he first met Goering perhaps eight or ten times.

* * * * *

CROSS-EXAMINATION

DR. DIX: (counsel for defendant Flick) Witness, I have the privilege to have known you for a long time, and I should like to remind you of a conversation which we had shortly after the rise to power [of Hitler]. You told me then of your change from the Ministry of Papan, under Minister President Schleicher and Papan, to Goering, and furthermore you told me that some of your colleagues told you at that time, "You are mad. You are not a Nazi; you are not a Pg [Party member], and Goering will throw you out immediately," but he did not do that at all. Can you remember that conversation, or the subject of that conversation between us?

WITNESS GRITZBACH: I remember that conversation, yes. I don't know exactly where it took place, but I certainly know that the two of us talked on these matters, and it is interesting so far as I was right at the time, for Goering did not take on any new officials, but carried on with the old staff of officials of the State Ministry, the few that we were. He carried on for the first 2 years without any change and carried out his tasks in this manner, and Goering did not hold it against me—you remember we talked about this, too—that I, in a very responsible position as a State official was leading the Hindenburg Committee in the double election fights against Hitler. I myself also believed that my position wasn't tenable, but I was surprised at Goering's

attitude, who told me that he was only interested in the qualities of a man.

Q. Did I understand you correctly as a man who is an expert on Goering, that influence in Party circles did not carry much weight with Goering, but that he relied on his personal impression which he gained from people regardless of whether he was a Pg or Nazi, or anything else?

A. I can sign this statement and I can prove it. I have never been a Party member, but I have been asked by Goering to enter the Party in May, and when I told him that they would reproach me with my political past, he told me "I am your personal patron. This is no one else's business". And I would like to add that Goering did not concern himself at all with my State office. He left it to me completely, with the exception of a few people who enjoyed certain privileges. They were two or three or four people. I realized that in my office 85 percent of the officials and employees were not Party members.

Q. Therefore, I will tell you the following, and I would like you to disapprove or approve: The opinion was voiced here that Dr. Flick, since he was a member of the Keppler Circle, and also of the Himmler Circle, used these Party connections in order to influence Goering to such an extent that he also used Goering to make private business claims such as the Petschek transactions.

Can you agree to such an opinion from your personal experience with Goering?

A. No. Goering would have had no sympathy for such an attitude. Such an attitude would not have been necessary at all. And it would have been highly unwise for an educated man whom Goering knew. Everybody knew that to the outside the relationship between Himmler and Goering was formally bearable but on the inside it was not at all personal. I know that Flick, through Mr. Steinbrinck, entertained relations with the SS. I did not know, as I know it today, from conversations which I had meanwhile that Flick had a strong personal relationship with the SS. I know that Flick accepted invitations of the Reich Leader in the so-called SS camp in Nuernberg, where many industrialists were invited, especially the so-called participants of the Himmler Circle. Sometimes, I wondered why this apparently close relationship to the SS was cultivated by Steinbrinck. I saw only one reason for it. The industrialists in the Third Reich were not popular at all. They were used. People respected their achievements but not their personalities. Hitler did not have any relations to these two categories; first, to the officials, and second, to the industrialists. I know from many discussions and conferences with Goering, that Goering, on these matters, was not very

impressed, because he could not have a business talk with Hitler at all. He personally was suffering from the pressure of his own responsibility, which he liked to carry, but sometimes he felt he would like to have an opportunity to talk to Hitler about these matters. The industrialists were spied upon by the Gestapo.

* * * * *

Q. We shall have to finish very soon, and therefore, I do not want to go into details today with reference to the relationship between Goering and Flick and details of the Petschek transactions, but I would like to put one more question to you because this touches upon a subject which actually forms the basis of the indictment.

May I inform you that General Taylor, in his indictment, voiced the thesis that Hitler rose to power by his pact with heavy industry, of which Flick was a representative, and with militarism. He says literally: Hitler, [sic] Krupp, Flick on the one hand; and Hitler, Beck, [sic] Fritsch on the other, these were the powers which helped Hitler to seize power. Now, you know Hitler's attitude toward people of the heavy industry and in particular toward people like the late General Beck.

Can you imagine a pact, particularly between these personalities? Would such a pact be comprehensible to you, and did you think it existed at the time prior to Hitler's rise to power?

A. Hitler, as I already said, had no relations with industry and no relations with business. Hitler was, however, interested in it, in the time before 1933. He used certain circles for this purpose, circles who knew that there would be a political change.

* * * * *

Q. Herr Gritzbach, yesterday we discussed Goering's personality, and fundamental questions referring to the indictments. Today I would like to discuss the Petschek case with you. Do you remember the main influence the Petscheks exercised until they lost their German possessions in the area east of the Elbe and in the Central German Brown Coal Syndicate?

A. I was not acquainted with the business actions of the Petscheks in general or in particular. Of course, I know and did know that the influence was extremely important and I only got to know the details more closely when the case of a purchase of the Petschek properties started.

Q. Now, I would like to ask you to recall the political situation since the seizure of power, in particular the growing anti-Semitic tendencies beginning with the boycott of 1 April 1933 and up to and beyond the Nuernberg Laws of 1938. Your knowledge is no doubt very good. You are familiar with the political atmosphere of that time. On the basis of this knowledge, do you believe that

from the point of view of the actual political situation [realpolitisch] there was even the slightest and remotest possibility that the strong influence of the Petscheks in the East Elbe and Central German area, that is, the influence of foreign Jews, could have been maintained?

A. Of course I know that in connection with the Nazi ideology there was an aversion against the Jews from the very beginning. Within my sphere of activity with Goering, and in particular, through the personal attitude of Goering in these questions, which was completely tolerant, closer details of active aggression against the Jews became known to me only on a very small scale in my professional life at that time, and only so far as such efforts on the other side influenced, of course, Goering's official activity. Pressure was exercised on Goering by Hitler, the Reich Chancellor, and the Party to be more positive on the Jewish question than he had been up to then.

Q. Let us ignore Goering's character for the time being. You did not only know Goering; you knew the situation in the Reich. May I repeat my question? Do you believe that, at that time, from the point of view of the actual political situation, it was possible for a foreign Jew or two foreign Jewish families to maintain such dominating influences in Germany in respect to minerals, and especially coal?

A. It is no doubt correct that efforts were being made and that such efforts were also converted into measures on the part of the government agencies, especially the Party, to remove such influences as quickly as possible, but at that time in a very careful and slow manner.

Q. That is correct. May I, following your last remark, ask you if you remember the murder of vom Rath in Paris and the important conference with Goering which followed it when, in consequence of Hitler's order concerning the Jewish question, radical measures had to be taken and the final solution prepared where all this was discussed in detail, such as the collective fine of the Jews amounting to one billion marks? * If you visualize this historical development and are asked about it, as you are being asked now, do you believe under these circumstances, which had nothing to do with Goering's character, that it would have been possible for the Petscheks to retain their influence?

A. No.

Q. If they did decide to remove this influence and all doubts against such measures, in particular all doubts with regard to foreign policy were left aside; would the removal of this influence itself not be a matter of high politics?

* See section IX B 1, Volume XIII, this series.

A. The removal of an influence as represented by the Petscheks, in particular with regard to natural resources and the industrial capacity, was no doubt the intention of the supreme government agencies.

Q. Following your train of thought, I ask you, supposing it were the intention of the supreme government agencies, and I think you said it was, was it then not a matter of high politics?

A. That is no doubt the case.

Q. In your opinion, could such a matter of high politics actually have been carried out at all without the authority of the State?

A. No.

Q. Ignoring the official approval from the foreign currency office, for instance, and from the various other offices concerned with the changing of hands of real estate, quite apart from all that, and asking this question quite apart from such administrative regulations, from a purely political point of view: Did such a matter of high politics not demand the participation of the leader of the State? I am repeating the question I just put to you in a more concentrated form.

A. The leaders of the State probably didn't take part to the extent which you think, but certainly, State aid and direction was required. If I may make this distinction, we agree.

* * * * *

Q. Now yesterday, Mr. Lyon asked you about the drafts of the letters which Goering was to sign and which he did sign, but which were written, not by Goering or your office, but either by Koerner's office or perhaps by Flick's office. Administratively, you have extensive experience of routine work. In your opinion and experience, is it unusual, extraordinary, or even suspicious if somebody who is granted an order or who is promised an order, for this person to attach importance to the fact that the verbal order is laid down clearly in writing, and if he then himself formulates this order in writing as he received it, and then questions, "Is that right—is that what you meant?" and approaches the government office, in this case Goering, for examination and signature?

A. No, that is by no means unusual. It was like this that officials, in this case myself (and it was usual in other offices, too), told the person who made application to set down in detail the application in writing. Changes would have been quite possible if this application had not had the formulation which was decided upon afterward.

Q. Herr Gritzbach,—You quoted Bismarck when you said, "He worked with the lawmakers" [Er hat mit der Clique der Gesetzgebung gearbeitet]. The prosecution charges the de-

fendants, especially Flick, with having, for his own private economic and capitalistic interests, used a high State office—taken it in tow—and in this way followed and carried out his own egotistic economic aims by exploiting State offices, especially Goering's. This, briefly, is the charge of the prosecution. Now, I am asking you—you probably knew Goering better than anyone—can you imagine, under any circumstances, that Goering—Goering of all people—for purely private economic and capitalistic interests of a private businessman, however much he may have liked him, would have let himself be taken in tow by such a man; or did he in such cases, in your experience, remain the leader?

A. I did not catch your last words.

Q. The leader—the controlling person.

A. In my practice I know of no case in which Goering would have let himself be swayed by such arguments. In this case Goering had seen, from the point of view of defense economy, that the possession of Julius Petschek had to be acquired in a form which would not raise too much dust, but he was concerned with seeing that it was obtained.

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PRESIDING JUDGE SEARS: May I ask a question or two, because I may forget them if I do not interrupt?

Do you know of any other cases where an exclusive agency to negotiate was given to any private businessman? I mean to negotiate with foreign interests, or with Jewish interests?

WITNESS GRITZBACH: May I ask Your Honor for permission to think a moment?

Q. Certainly.

A. In answer to this question I would like to say that, without being more closely acquainted with things I know from Goering himself, commissions were given to only one office to negotiate with foreign interests; (a) to Herr August Dien of the Potash Syndicate and (b) to the firm of Otto Wolf in Cologne. In purchases concerned with China, Goering did not have anything to do with the details of these transactions. He only said that he was very satisfied about these transactions carried out by individuals because, in the reverse sense, needed foreign exchange had been brought into the Reich.

Q. Now, a question on a slightly different subject: We have heard the expression "Petschek problem" here. When did the Petschek interests and the Petschek property rights become a problem, or were treated as a problem?

A. That was about the turn of the year 1937-38. There was a period when these matters were brought to Goering's office and to the attention of Goering himself.

Q. Now, was it at about the same time or before or afterward that you first learned of the defendant Flick's interest in the matter?

A. Discussions about the acquisition of the Petschek interests by industrialists of the Reich started at the end of 1937, as far as I know.

Q. And when you speak of industrialists, of course, that includes the industrialist Flick, among others.

A. Yes.

DR. DIX: In supplement to the President's first question, may I give you a catchword? Shall we see if this cue perhaps opens a drawer in your memory—the Balkans; Reemtsma; shipping.

WITNESS GRITZBACH: Yes, indeed. Balkans in this case—I must ask for another cue; at the moment—

Q. If I gave you another cue I would answer the question myself, and I would not like to do that.

A. Then I will restrict myself to the Reemtsma case. In connection with the regulation of the shipping interests, Reemtsma was commissioned by Goering to undertake the reprivatization of the Hamburg shipping; Hapag [Hamburg–America Line], Norddeutscher Lloyd, the Africa Line, and a few others. He was commissioned to undertake this personally and to make suggestions to Goering on this subject, as to how the shares which had been freed in this manner could best be transferred to the economy or into the hands of the State.

Q. Now, another subject: In yesterday's direct examination by Mr. Lyon you were asked whether Steinbrinck always worked in Flick's behalf, or whether you had rightly always considered Steinbrinck as Flick's deputy. And you answered this question in the affirmative. I am not doubting this answer, but if Mr. Lyon won't take offense, I am not quite happy about the formulation of the question in connection with your perfectly correct answer. It could lead to misunderstandings. For that reason I may perhaps put the question more precisely and ask you what you thought the question meant and what you meant by your answer. Do you believe, as I do, that Mr. Steinbrinck naturally was the deputy of Flick, and over and beyond that, his delegate; but that if you said he always acted by order of Flick, that is not to be understood as meaning that Mr. Steinbrinck, as you might say, was only a messenger of some sort of statement from his lord and master, Flick—"His Master's Voice," as you might say, but that Mr. Steinbrinck after all, even if he was Flick's deputy, nevertheless was a leading personality in the group which we here call the Flick concern. May I ask you whether you meant the answer in this sense?

A. Yes, I can fully affirm my answer in this sense. Of course, Steinbrinck's position in every respect was known to me—

JUDGE RICHMAN: May I interrupt a moment, Dr. Dix? I would like to ask the witness about the purchase of the shipping interests that he referred to. Were those purchased by the State or were they purchased by private interests?

WITNESS GRITZBACH: Shipping was state-owned, and shipping was to be reprivatized, that is, the shares were to be distributed among private owners again. This did happen in part. But in part the shares were again transferred to offices which also belonged to the State.

Q. Was that done immediately, the retransfer to private interests?

A. No, it took some considerable time before these negotiations were concluded. Reemtsma carried out these negotiations in connection with Gauleiter Kaufmann, who at the time was Reich Governor in Hamburg and at the same time also Reich Defense Commissioner, and in this way was concerned with economic matters and with the direction of the economy; he had special interests even in these matters.

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DR. FLAECBSNER (counsel for defendant Steinbrinck) : Witness, you have already mentioned and you have given us in general, characteristics of the part my client, Dr. Steinbrinck, played in the negotiations about the Petschek property. May I ask you a few questions of the same general nature? When did you meet the defendant Steinbrinck?

WITNESS GRITZBACH: I cannot state the exact date, but I think I must have met Steinbrinck at the end of 1933.

Q. Did your relations go further than just merely within the frame of business, so that you established a personal relationship?

A. I did not exactly have a personal relationship with Steinbrinck, but I had some kind of relationship with him; Steinbrinck was a highly esteemed man, and you must admit, and the Tribunal also will admit, that it was not without importance for men who took part in the First World War as volunteers to be with a man, who, in the First World War, was decorated with the *Pour le Mérite* medal, and who rose from the mass of unemployed officers after the World War through his own efficiency, skill, and friendly behavior, with all these characteristics gaining him respect. If I may say so, I liked to talk to a man of this kind.

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Q. Now, the next question, which deals with the main case. Did Steinbrinck, after these negotiations with you and other offi-

cials of the Four Year Plan in the Petschek affair, emphasize the existence of State interests, and did he take them into consideration?

A. The existence of State interests, of course, was mentioned by all interested parties and emphasized by them and also by Steinbrinck.

Q. The prosecution attached great value to the fact that Steinbrinck, on various occasions of these negotiations with you or other gentlemen, brought along a draft for this decision desired from the Four Year Plan or State Ministry, or that he sent it in afterward. We have already talked about such a matter today, but I would like to repeat this question, in order to clarify it. In business relations with Ministries was it considered extraordinary to act in this manner?

A. If large and difficult projects were concerned, it was not unusual. On the other hand, of course, I would say that one couldn't say that the business interposed was always handled in this manner.

Q. That wasn't only so in your office, but also in other central departments, is that correct?

A. I cannot say that at all.

Q. As far as your department is concerned, were such drafts which had to be approved by Goering or Koerner and had to be signed by those two, were they submitted to the competent official who dealt with these affairs and examined them?

A. It is, of course, certain that if one had no clear picture of these questions, one had to discuss them with the competent official, at least one had to ring him up and one had to ask him about these projects. Never did we approve of such drafts on submission. Such plans we examined carefully and we sometimes changed them and we treated them as they were estimated by the competent official.

Q. The official you mentioned who had to report to Goering or Koerner or his superior, was he held responsible when he passed on such a draft for signature?

A. No, he was not. No.

Q. Could you tell me about the procedure?

A. I have already told you that on occasions it was handled in this manner, but that the proper business way generally remained the same. Sometimes as in this case, we had to deal with difficult matters—when I or the man who had to pass them on, had to have something in front of him, something in black and white. He passed it over to the competent official, who in this case was Koerner and his officials, and when everything was checked, only then it went to Goering and it was entirely left to

Goering himself to approve or change the draft, or to telephone his State Secretary and ask for additional information.

Q. Yes. We agree there, Mr. Gritzbach. That is what I wanted to know. My question was this: If Koerner received such a draft and passed it on to Goering with the remark that he thought it was in order, did he thus accept the responsibility that this was in order?

A. No, especially in this case, he did not sign the accompanying letter, because he did not want to bear the responsibility.

Q. For instance, in the Julius Petschek—

A. Yes, in the Julius Petschek case, maybe, but I mean generally there were other matters Goering wanted to do himself, where he himself wanted to play a part.

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Q. Herr Gritzbach yesterday the prosecution submitted to you Document Number NI-900, Prosecution Exhibit 411,* that is, of 21 January. May I give you this document? Would you read this document again?

I would like to ask you this: Was the defendant Flick, on the strength of the order which he received from Goering, responsible for all measures, and did he have to have the agreement of the Four Year Plan Office?

A. I am afraid I don't quite understand this question. Do you mean that Flick had to respect the measures of the Four Year Plan?

Q. No, I don't mean that. I mean that Flick could not issue and not obey directives if he had not made certain that these directives were also the intention of the Four Year Plan?

A. Of course Flick was allowed freedom of negotiation. This was curtailed insofar as he had, of course, to keep in touch with the men who were dealing with him, as, for instance, Ministerial Director Wohlthat. He had to be in contact with these men and had to come to agreements with them. It is also clearly written in the instruction, "Before the conclusion of the negotiations I have to be approached for a decision." For this reason Flick had to be certain whether the decision which he had to receive later on was approved by the competent authority, which, in this case was the Four Year Plan.

Q. Mr. Gritzbach, you talked about the probable origin of this document and you thought, because this document was not written on the usual stationery, that the document, or rather the

* Directive from Goering to Flick, 21 January 1938, reproduced in B above.

draft thereof, did not come from the governmental office. Is it not possible all the same that Goering drafted an order in his own office and had it typed as a draft? Did he not do so in other cases when there were more important issues at stake?

A. That is quite unusual.

Q. May I remind you then of just this case you mentioned this morning, about the case of the Reemtsma brothers. According to my information, that should have happened in the same way.

A. No, not quite in the same manner. Between Goering and Reemtsma there was a discussion, and this discussion resulted in an order.

Q. Well, the only thing that I am interested in here is how this document was made out and I understand that Goering, when he made a quick decision, dictated a document very quickly and signed it immediately without going the ordinary way through the office and the competent official. It was dictated by him spontaneously and also signed immediately.

A. I have to reply to this that this would have been a very unusual case.

* * * * *

Q. Then may I pass to another point in this matter? In 1937, that is, after the founding of the Hermann Goering Works, if you recall, was it considered necessary from the point of view of State policy to provide an ore basis in Salzgitter and Dogger for the Hermann Goering Works, and for this purpose were the ore fields expropriated for the benefit of the Hermann Goering Works?

A. That's correct.

Q. When in autumn 1939 the first stage of exploitation was reached and the first blast furnace was to be put into operation, how did Pleiger think to solve the coal question?

A. I don't know what Pleiger thought about the coal question, because as I already said before. I was not acquainted with the details of the expansion of the Hermann Goering Works. This was a matter exclusively for State Secretary Koerner or his deputy in these matters, Ministerialdirigent Marotzke.

Q. But in 1939, in June 1939, did you not accompany Goering to a meeting in Stuttgart? Do you remember anything of that?

A. Of course, I wanted to continue. That Pleiger had to settle his coal matters somehow there was no doubt. Pleiger, of course, was always trying to obtain the coal basis.

Q. Did Pleiger, in autumn of 1938, have the Sudeten lignite fields allotted to him by Goering?

A. As far as I remember, yes, but I must again say that I do not know the details.

Q. Did you learn anything to the effect that Pleiger in the Aufsichtsrat of the Hermann Goering Works in the winter of 1938-39, after his intentions of getting the Ibernia property (that is State property) proved to be impossible, declared, that he must now have mines from the Harpen property at all costs?

A. I was not present at this Aufsichtsrat session or at any of the other Hermann Goering Works, but I know that Pleiger attached greatest importance and always urged Goering in this matter, and Goering recognized the importance of this that the Hermann Goering Works must at all costs obtain the coal fields in the Ruhr.

Q. Did you, Mr. Gritzbach, learn anything to the effect that Pleiger said that he would submit a map of mine properties to Goering, and that if Flick in the long run refused to give up the Harpen property, Goering would make a decision?

A. Pleiger repeatedly made statements to this effect, but I don't know whether this referred exclusively to the Harpen property.

Q. In your opinion, was Flick worried that Goering, because of Pleiger's threats, would undertake the expropriation scheme of coal mines; did he have good reasons for this worry, and was it likely that an expropriation scheme would be carried through similar to that of 1937, which, as we know, was concerned with the expropriation of ore fields? * At that time the Hermann Goering Works got their ore fields by the means of expropriation of the former owners, but in your opinion—I repeat the question—was it Flick's worry that in case of his refusal the same procedure would be adopted? Was that at the same time well-founded, or at least not unfounded?

A. It was at least not quite unfounded, but in my view it did not come into debate because Goering did not believe that the industrialists in the Ruhr would seriously oppose these necessities.

Q. Yes. Surely it is correct, and I suppose I am formulating the facts correctly when I say that Goering, when it was a question of the needs of his Hermann Goering Works, could intervene fairly effectively?

A. Yes. I said that just now in my answer. If any serious refusal had taken place, Goering surely would have exerted strong pressure.

* * * * *

Q. Did Goering share Pleiger's view that a coal basis for the Hermann Goering Works must be acquired for the sake of State political interests?

A. Yes, of course.

* This refers to the low grade ores of the Salzgitter area.

Q. Do you know that in the spring of 1940 the majorities of the stock of the Ewald and Koenig Ludwig mines were for the same reason of State political necessity awarded to the Hermann Goering Works?

A. I cannot say that, because at that time, I was not in office.

Q. Could Flick, therefore, have in the long run successfully refused Pleiger's demand for the Harpen mines, in your opinion?

A. I do not think so, at least not to a certain extent. Somehow, Pleiger would have acquired the coal and would have had Goering's full support in this cause at that time. Goering, himself, had the greatest interest in the expansion of the works.

Q. May I ask you to supplement your answers by telling us the consequence of Flick's stubborn refusal, in your opinion?

A. That is a question which is very difficult to answer. I have already said that somehow, no doubt ways and means would have been found in order to supply the Hermann Goering Works with coal. But on Goering's part, apart from his own works, there was no particular interest in national economy. Goering intended to solve everything in a form which would be fair to all parties concerned.

Q. May I ask, was Mr. Pleiger in favor of rather stronger measures in principle?

A. That was generally known.

Q. Mr. Gritzbach you told me this morning that you only got more into the Petschek business and got more intimate with the details of it when the exchange of brown coal against soft coal came up. Did I understand you correctly?

A. Yes.

Q. Can you recall that shortly before 6 December 1939, may I add on 6 December 1939, this instruction from Mr. Koerner was issued which was submitted to you yesterday, and which I would like to have submitted to you again now. In brief, can you recall that shortly before this day, a meeting was held with Goering, in which Pleiger reported to Goering that the negotiations with Flick had come to a standstill?

A. Whether such a discussion took place shortly before, I cannot say, in view of the many discussions Pleiger had with Goering. I cannot remember it, but it is certain that Pleiger reported to Goering that the negotiations with Flick had come to a certain standstill and that difficulties remained to be overcome. Pleiger asked for Goering's express support, and the whole matter was reported as being especially important to State Secretary Koerner as chairman of the Aufsichtsrat of the Hermann Goering Works.

Q. Mr. Gritzbach, I would now like to put before you again the draft which preceded the document you now have before you.

Your Honor, that is Document NI-934, Prosecution Exhibit 478.* I insert this here so that you will find it quickly, I would like you to once again compare the draft with the final version which you already have.

Yesterday, earlier, you compared the wording of the two letters. I would like to draw your attention to the fact that yesterday you failed to note that in the Koerner version, the word "moeglich", [if possible] within a week or so, or something of that kind, was omitted; while in the draft, 478, it is included. Koerner thus fixed a definite time limit. Is it correct to say that Koerner's version was more severe than the draft which was submitted to him?

A. I have not exactly understood this question. Excuse me, Koerner's version is more severe.

Q. More severe.

A. More severe because it is more strictly defined.

Q. Yes, definitely more severe. Is it correct to say that in the case of the letter you have before you, it is practically an ultimatum?

A. Pleiger, no doubt, considered this letter as being a kind of ultimatum, but if you take into consideration the business correspondence with the Ministries and think of the way in which these matters were handled, the expression "ultimatum" is perhaps a little too strong and not quite the right word. It was not an ultimatum. No ultimatum was necessary in fact because the parties in the matter, on the basis of Pleiger's demands, were in agreement.

DR. FLAECBSNER: Very well, thank you.

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* Reproduced in B above.

D. Testimony of Defendant Flick

EXTRACTS FROM THE TESTIMONY OF DEFENDANT FLICK¹

DIRECT EXAMINATION

* * * * *

DR. DIX (counsel for defendant Flick): Now, the last: As a general introduction to the Petschek case, I must ask you to give the Tribunal an explanation about the happenings which are connected with the foundation of the Hermann Goering Works. I may say to the Tribunal that this is very important and relevant, because the knowledge and the connection in these events within the Petschek question, the exchange of soft coal for brown coal, were of considerable importance, because what happens now after this cannot be understood if one does not know this affair. And I should like to ask him to tell us what he remembers of it. And I should like to ask the Tribunal to allow me to ask him questions as to this affair.

DEFENDANT FLICK: The reasons which led to the foundation of the Hermann Goering Works I have already touched upon. I mentioned the large meeting of industrialists, in December 1936,² at which Hitler spoke, and at which all these matters were touched upon, self-sufficiency, especially in this case, and it was aimed that Germany should be made independent of the import of Swedish ore as far as possible. Parallel to this were the efforts of the economic adviser of Hitler—that was Keppler, who founded the Keppler Circle. Keppler was a specialist and expert on the question of the examination of German ore deposits, and when later he lost his office as economic adviser to Hitler he dedicated himself to this activity of the discovery of German ore deposits and their exploitation—he became the president of the Reich Institute for German Soil Research. And one has to know these matters in order to know how this came about. Keppler and his collaborators, to whom Pleiger belonged, maintained—Keppler was of the opinion, also Pleiger, that there was enough ore in Germany. It is not very rich ore, but it is just possible to make use of this ore economically, and they thought they found an example in an English company, Corby, in which by the process I have already mentioned, by the help of this man Brassert, a

¹ Complete testimony is recorded in mimeographed transcript, 2, 3, 7-11, 14, 17 July 1947; pages 3150-3915, 10329. Further extracts from the testimony of defendant Flick are reproduced above in sections IV H and V G and below in sections VII E and VIII D.

² Extracts from the report on this meeting of 17 December 1936, Document NI-051, Prosecution Exhibit 509, are reproduced above in section V C.

mining plant had been established. However, we—by “we” I mean the steel industry—we were very surprised when in the summer 1937 the whole question of the foundation of the Hermann Goering Works reached an acute stage so unexpectedly and soon. We were surprised by this.

PRESIDING JUDGE SEARS: Was this process developed solely under the company that you mentioned, or was there much research on it in all countries, about the use of brown coal, for example, in the manufacture of iron and steel? What was the process which they developed?

DEFENDANT FLICK: Those processes referred not to coal but to ore; but in Great Britain in the district around Corby there was iron ore which I may say was thought to have been rediscovered, an ore which contained 33 or 34 percent iron, and Brassert had invented a procedure together with the English, according to which ores which one had not made use of in foundries, could now be used, or at least one thought they could. And a new plant had been built in England by Brassert, blast furnaces, steel works, and rolling mills, and Pleiger had visited Corby together with Brassert, and he was most interested and enthusiastic about it when he came back. He said conditions are such and such in England, and he took Brassert with him. And Brassert designed all the technical equipment and installations for the Hermann Goering Works, modeled after a large American company.

Q. The development was therefore rather in the use of the ore than in any process in relation to the coal?

A. The base of this development was the making use by foundries of these iron ores. That was the basis. But, your Honor, there are two raw materials which are necessary—for the production of pig iron. One is the ore; the other is the coal. For a ton of pig iron one needs two tons of iron ore and one ton of coal in the case of good ore—I mean, for one ton of pig iron. One ton of coke is equal to one point three tons of coal. If a plant produces one million tons of pig iron, steel and so on, it needs 1.3 million tons of coal, at least; possibly even 1.5 million. Ore and pig iron are the two raw materials for the steel industry, if they produce Thomas iron, and not as the Martin Works, scrap. Brassert made all these plans with the program for foundries according to American style.

I might relate a small story here: When Goering once told me later on, “If we enlarged Salzgitter according to this plan, do I have the largest steel mill in the world, or do I not have the largest steel mill in the world”? I told him, “Field Marshal, there is the Gary steel works near Chicago which produces more

steel than you do. They produce four million tons." I disappointed him very much and his mood was spoiled for the whole day.

* * * * *

DR. DIX: Well, Dr. Flick, will you please describe the foundation of the Hermann Goering Works and the attitude the industry took toward the plans of the government.

DEFENDANT FLICK: I would like to supplement the information I have given a while ago concerning the use of coal, and the requirements of coal of the Hermann Goering Works. For a steel mill which produces pig iron, steel, and other products, one needs for the blast furnaces, as I mentioned already, about one ton of coke; for the Hermann Goering Works one uses 1.3 to 1.4 tons of coke for a ton of pig iron. In order to clarify, I want only to say that brown coal is not used for the production of pig iron, and cannot be used. Pig iron can only be produced from soft coal. It is produced by soft coal and coke, and this is used for the production of pig iron. Brown coal can at best be used in the production of briquettes, but for the blast furnaces, which are the basis—they were the basis of the Hermann Goering Works—one could not use brown coal. The foundation of the Hermann Goering Works took place in the summer of 1937, and as I said already, it was quite a surprise for us so far as we had not thought that the whole problem would be solved with such an intensity and with such a power used by the State. In an abrupt announcement we were told that the foundation of the Hermann Goering Works was intended. Thereupon, at Berlin at the office of my company, a meeting was held which was attended by a large part of the representatives of the German steel industry.

We were faced with the question whether we still could take a stand on that matter and how we could take that stand. We knew that the possibility for the industrialists to influence matters in this field was very limited in the Third Reich, if it existed at all. At this meeting, I declared that it was my belief that the government could not be swayed from its plan to smelt ores which were not rich in iron content—that is, inferior ores—and to produce iron from them. We had to face that fact and it would be best, for industry, to attempt at the last minute to take the smelting of these ores into their own hands in order to take the wind out of their sails.

I said quite clearly, "Gentlemen, we simply cannot let these matters be as they are. I suggest that we take them into our own hands. We should use those ores to make believe, at least, that something has happened. We should put up a show. We should also build three blast furnaces." I was convinced, or at

least I hoped, that thereby we would still be able to solve this problem and reverse the trends which were shown by the State, by Keppler, and by Pleiger for the foundation of the Hermann Goering Works.

It would have been a matter of considerable importance financially. That this question came up was understandable: Where do we get the money? We thought that there should be a fund, a common fund of the whole steel industry. I suggested that we should get in touch with Schacht, because I knew that Schacht in his capacity as Minister of Economics or as President of the Reich Bank had quite a different viewpoint from the viewpoint defended by Keppler, Pleiger, and Goering himself. Furthermore, I suggested that we should interrupt the meeting and that I would see Schacht and ask him whether he was ready to finance the German steel industry by a loan or a credit if by those means we could solve the problem which was brought up by the question of Reichswerke Hermann Goering or by smelting the inferior iron ores, and could we thus take it into private hands with the aim of reducing the size of the project.

Schacht, whom I went to see right away, was basically ready to give us the necessary financial means. Naturally, that agreement could only be one in principle because, after all, I could not give him the exact amount of the financial requirement. That would have been possible only after considerable study and consideration. But in principle, he agreed.

Then I came back to the meeting and asked that three other prominent representatives of the steel industry should meet in a separate meeting at lunch. They were: Kloeckner, Poensgen, Kritzbach of Krupp, and myself. To them I reported the result of my conference with Schacht. I asked the others if they were ready to use this method. One gentleman maintained a somewhat neutral position. He aired his doubts which I could not quite understand, but that was the situation. I noticed that there was not much enthusiasm for my plan. The next day there was a general assembly at Duesseldorf of the entire German steel industry in order to determine their stand in this question of the foundation of the Reich Works so far as it was of any use at all to take a stand. I did not attend this meeting myself, but one of my managers went.

The course of the meeting was quite surprising. It was obvious that the position taken by the chairman was not very firm. He treated this matter in a dilatory way. The meeting was closed without having reached any positive or negative result. The reasons were given later on. The chairman of the meeting had received a wire either from Goering himself or from State Secretary Koerner in which he had been warned that he should not

put up any opposition. I, myself, received a telegram too. It was signed by State Secretary Koerner. I was also warned to take care and to take no further action of the kind I had already taken, that is, trying to find a solution for this problem by means of private measures. Thus, the Hermann Goering Works was founded.

They [the problems] appeared after a few days. If I may express myself like that, it was first a foundation in a vacuum because nothing was actually there—no ore, no coal. There was only a plan. It was just a plan made by the persons involved, supported by Goering. Of what was planned, we very soon saw practical proof.

About a week later, I was called back from my holiday to a meeting at Munich which took place with the newly appointed general manager of the Hermann Goering Works. He requested that we turn over our ore property, I mean by that the ore property of the Maxhuetten which belonged to my group, so far as we owned this kind of ore.

Germany had three combines which possessed such kinds of ore which were to become the foundation of the Hermann Goering Works. They were the Ilse Huette, the Vereinigte Stahlwerke, and Maxhuetten. After a week Pleiger turned up in our offices. He told me the Ilse Huette had already turned over their ores, and so had the Vereinigte Stahlwerke, and that now he had come to see me, and he expected that I, too, would turn over our property. Only this one conference was necessary. We talked during the evening. We were rid of our ore fields. We turned them over to the Hermann Goering Works, on a (formally) voluntary basis. However the situation at that time was the following: We were in a period of strong tension against heavy industry. Discussions which already took place considered an expropriation law and an enabling act.

I want to say that you have to find out and see how the matter really was. The Maxhuetten had to turn over their reserves of iron ore. The result was that that reduced their length of life, which after all was dependent upon the amount of ore. What I mean is that no ore fields can go on forever and ever. They had to turn over their iron ore reserves to the Hermann Goering Works. The program of the Hermann Goering Works was, on the strength of the ore deposits of the Maxhuetten, to put up a competitive enterprise right under our nose. That was the funny part of it; because Maxhuetten was the only plant in Bavaria. They had to turn over their ores. On the strength of their ores, the Hermann Goering Works says, we build a new factory, a new furnace, right in front of your door. And if that did not actually happen, then the reason is that only half a year later, Austria was annexed.

In Austria, there were many mining companies. There was the Alpine-Montangesellschaft which owned the largest continental ore property outside Sweden.

* * * * *

Q. Now, let's go over to Petschek. Well, all this is only to give you examples of how in the Third Reich, as we say in Germany, the former powerful people were done away with.

Mr. Flick, toward the end of the thirties, did you have a private economic interest in the purchase of brown coal?

A. Yes.

Q. And why?

A. The Mitteldeutsche Stahlwerke, which did not possess any blast furnaces and which therefore were quite different in their structure from the Hermann Goering Works because they based their production on the open hearth procedure, used in their open hearth furnaces brown coal briquettes, while the Mitteldeutsche Stahlwerke apart from that had a considerable power plant, and this power plant needed brown coal for its production, for its production of electricity, and brown coal is very adequate for that purpose, and this power plant furnished the current for the Mitteldeutsche Stahlwerke's own plant, and furthermore furnished apart from that, electricity to a number of communities. And our brown coal basis at Lauchhammer, that is in the Lausitz, was very feeble and very small. At that time we could reckon with about 20 or let's say 25 years of life for these deposits. As brown coal and brown coal briquettes were vital for the Mitteldeutsche Stahlwerke, together with the scrap iron we, of course, had an interest there to strengthen the basis of our plants as far as fuel was concerned and to prolong their life. Because it is not a very comfortable sensation for a plant if you have to think that after about 25 years you would be there without any raw material basis at all. Therefore, we really had an interest in that toward the end of the thirties.

Q. Now, this Petschek property was in Germany and I think that the Tribunal would like to know what was the general position of the Petschek combine in Germany. I don't mean only with regard to the Nazis, because they were Jews; but even before 1933, what was the general position and the reaction of public opinion, of those who knew, toward the Petscheks? How did they appear in public? I think my question is quite clear.

A. There were two groups of Petscheks. One was the Julius Petschek group at Prague; and the other was the group Ignaz Petschek, in Aussig. The group Ignaz Petschek had developed from commerce—old Ignaz Petschek had been an employee of the Bohemian coal firm Weinmann. He had become inde-

pendent, and had had very considerable successes. Perhaps successes like that happen only once. And he had worked in the brown coal field, and later on the Petscheks had also entered production, and had gained decisive influence in commerce, in a really dominating manner, but also gradually in so many companies of the brown coal and briquette production that here also they had gained a decisive position.

I have made some notes from memory here, and I have figured out exactly what the position of the Petscheks was. Well, you have to distinguish their East Elbe syndicate and their central German syndicate. The two Petschek groups dominated five big companies in the East Elbe syndicate: The Ilse, which at the time was the biggest brown coal company in central and eastern Germany; then the Eintracht and the Niederlausitzer Kohlenwerke, both of them also very large and prominent companies; and then the group Julius Petschek had the Anhaltische Kohlenwerke which within the East Elbe syndicate also had an enterprise. And the coal production of those Petschek combines together I should figure as about—well, I don't have any documents to support that, but I don't think that I am far from reality if I give you that figure: I think there were about 30 million tons per year. And as a total perhaps 43 million tons in the whole area. And therefore the two Petschek groups together had about 70 percent of the production of unprocessed coal in the East Elbe syndicate. And if you take briquette production, they probably had an even higher percentage of the production.

In the central German syndicate, which had its seat at Leipzig, on the Ignaz Petschek side five companies had shares which were the Niederlausitzer Kohlenwerke, the Coal Works Borna, the Pleiger Coal Works, the Phoenix, and furthermore the Leonhard Company. And the group Julius Petschek was represented by two companies, the Anhaltische Kohlenwerke and the Werschen-Weissenfels. I estimate that in the central German area both companies together produced about forty to fifty percent, but I cannot give you exact figures. At least not as exactly as I gave them for the East Elbe syndicate, where the share was about 70 percent. That their influence in the trade was comparatively even larger is doubtless; because as far as I know, the Petscheks had also participations in other companies which they had purchased.

* * * * *

Q. Now, Ignaz Petschek was, after all, very clever, and far-sighted. How do you explain that the Ignaz Petschek group had so little of the spirit of Ignaz Petschek?

A. Well, the only explanation I can find, and I have already hinted at that, is that Ignaz Petschek at that time personally had withdrawn more and more from conducting the business and had left it to other persons. I can only say that I knew the old man, Ignaz Petschek, as an exceptionally capable and far-sighted merchant. He had unique successes and he started out from the smallest beginning as a Prokurist* and traveled for another coal business. That was the firm Weinmann, and certainly I have the conviction that when he died he left one of the largest fortunes in Europe, and one can well imagine how far he looked ahead, if you call to mind that to my knowledge—at least according to the information I received—I even was told so by my directors that he at the same time was the largest owner of unused coal deposits in the United States. He had created all that in the course of only one generation.

PRESIDING JUDGE SEARS: What year did Ignaz Petschek die—about what year?

DEFENDANT FLICK: Well, I think, as far as I recall he died soon after Hitler's rise to power, perhaps in 1934 or something like that. I still remember that I had sent him congratulations on his seventy-fifth birthday. It was a long telegram which he answered on the same day, and on this occasion I can state here that I was on the most friendly terms with old Ignaz Petschek at all times.

I made his acquaintance in 1923 when I joined the Aufsichtsrat of the Alpine Montan Company, which I have repeatedly mentioned, was the largest Austrian company. Petschek was already a member of the Aufsichtsrat, and I joined the Aufsichtsrat. We were also together in the Aufsichtsrat of the Linke-Hofmann Works, and then I got into still closer contact through Schacht who had invited both of us to dinner.

First of all, I sold him 40 percent of the Preussen Mine which was in the Upper Silesian soft coal area, and later on he purchased the rest of it, and then I told him, "Herr Petschek, in general I only remain in an Aufsichtsrat when I have interests to represent there and here in the Preussen Grube which now belongs to you—well, I don't have any shares in it any more. It doesn't belong to me and therefore, please release me from the Aufsichtsrat," and I still remember that he called me up during my holiday and said, "Herr Flick, please do me the favor and stay in the Aufsichtsrat."

I remained for a certain period of time. As I said, I was working together with him in several Aufsichtsräte [supervisory boards] and at all times I considered him an exceptionally

* Company official with power of attorney.

capable man, and I might even say that I admired him as such. To prove the way he looked ahead let me relate an experience. The Vorstand of one of the former Petschek companies—that is the Eintracht Company—has told me the following: perhaps that is typical. The Vorstand of the Eintracht had suggested to Herr Petschek to purchase a large and especially good coal deposit. It was to cost ten million marks. That was in the twenties. Mr. Petschek asked the question.

“When can we start using this deposit?”

The Vorstand said, “Well, 40 years from now,” upon which Petschek answered, “All right, then we don’t want to buy it because in 40 years we will have no privately owned mining companies in Germany.”

* * * * *

DR. DIX: I beg your pardon. When you went to Goering did you already know that Goering had commissioned Posse to draft an expropriation law?

DEFENDANT FLICK: Yes. That is shown by the file note of 19 January—the discussion between Steinbrinck and Posse. It’s quite clear from this that Goering instigated the expropriation law, and on 21 January, 2 days later, I went to Goering. I repeat: the commission had been appointed. The expropriation law was already there, I mean it was being drafted and—

Q. The expropriation law was being drafted?

A. Yes, it was being drafted. Over and beyond that Goering decided that no foreign currency was to be available.

Q. You went to Goering when?

A. On 21 January.

Q. Then it is quite important or at least probable at any rate this file note—

PRESIDING JUDGE SEARS: We remember the document.

DR. DIX: I do not want to journey through these documents but I am afraid there is no alternative. It’s Document NI-784, Prosecution Exhibit 397 * of 19 January. Does this note originate with you?

DEFENDANT FLICK: Just a moment, please.

Q. Page 1 of the German text, Book 10-A of the prosecution document books?

A. Yes.

Q. Page 1 continues on the following page. You wrote that, didn’t you?

A. Yes.

Q. This note which was written 2 days before you visited Goering. Was there any connection between this note and your visit to Goering?

* Memorandum of defendant Flick, 19 January 1938, reproduced in B above.

A. Yes, the note is a memorandum from me which approximately lays down what I intended to say to Goering. Of course I didn't read it to him but these were just ideas and it is a survey of the situation as I saw it at that time and of what I intended to tell Goering and, of course, I intended to take into account the whole state of affairs and his mentality. In fact I had to do so. In the long run, in the last instance, one could not talk quite openly to the "big shots" of the Third Reich, and it would not have been possible for me to tell Goering, for instance, that everything planned here was unheard of; that it mustn't happen in any event. One had to adapt oneself to the language of national socialism and also to the person concerned. It was unthinkable for me to go to Goering and tell him, "You have asked for an expropriation law; this is complete nonsense." I had to try tactical and diplomatic means to get him on to the way I considered right and along those lines which I was trying to get at in the matter, and which in the end I managed to achieve.

Q. I must put to you some parts of this document and ask you to explain them, because I can perfectly understand that at first sight every prosecutor could be highly pleased both about this document and some of the later ones in the document books of the prosecution. That is why we must discuss them in detail. There are quite a few anti-Semitic remarks in them. If, for instance on page 5, in the middle, if you look at that, it says—"Many Jews have wondered how it was that, in view of the influence and property owned by this group, no change has been made." I'll take them altogether later on and then you can answer these points altogether. "I, *personally, do not believe* that these British and American interlocking holdings [Verschachtelungen] in any way are based on *actual ownership*." In other words you are telling Goering and the committee it is all rubbish about the alleged Aryan property; it is actually Jewish property. And, then also important but perhaps with another tendency at the top of page 6, "It should not be forgotten that should we begin to confiscate the property legally or by decree, a thing like that would not be so easy to do and the consequences, from an international point of view, cannot be overlooked," etc., and then at the end or rather at the end of page 6 you say, "No foreign currency can be spared," although you knew that the Petscheks wanted foreign currency. And, then, first of all these circumstances, because they are not really in your language. Could you briefly remark on this? You have already mentioned the practical character of this document.

A. That one had to make a small anti-Semitic remark occasionally to Goering or to the committee, that, in view of the situ-

ation as a whole I might say was a matter of course, if one wanted to be included in any practical collaboration in order, in this way, to have the possibility somehow or other to be able to exercise any influence at all and to avoid the use of arbitrary force. As far as the question is concerned, whether it was Jewish property or not, this was an open question at the time. I had been informed about this by the director of a large bank, Dr. Mosler of the Deutsche Bank. He told me that the property which was under the Petschek flag was internally solely Petschek property.

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Q. Now, we move to the next, Document NI-3675, Prosecution Exhibit 405,* and I would draw your attention to pages 26 and 27 of the German document book. There again on page 26 below there is an anti-Semitic insinuation. It talks about brown coal, and about Jewish business dealings. It is natural when Jewish property is broken up, etc. Wait a moment. I shall only come to the next page afterward. Would you just shortly give your opinion about this anti-Semitic remark and tell us what this rather long note means. I don't think it has even a date—January, but no exact date. Now, what does this mean? What purpose does it serve?

A. That's a memorandum. It was meant for the meeting of this commission, the commission meeting which, of course, never took place. And even though there's an anti-Semitic remark referring to the Jewish coal base—it doesn't refer to Petschek but it refers to a man called Friedlander who was a big shareholder of our neighboring mining enterprises. Friedlander really had bought up the soft coal before the very nose of my predecessor. A few meters before the house of the manager of Mittelstahl, Friedlander had started mining and the house itself became a sort of peninsula. It was surrounded by mines. When I first came to Lauchhammer and asked: "How is it possible that you, as the oldest company of the Lausitz industrial district, have so little soft coal or at least brown coal?" Of course it was blamed on Friedlander, and it was said: "This was all Friedlander's Jewish doings." If I wanted to mention something to that effect to the commission I still can see no crime in doing so. It was as I said. One had to talk the language of the Nazi Party to some small extent, and had to howl with the wolves, as they say, if one wanted to play a part at all, and if one wanted to try to deal with the matters as one thought right.

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* Handwritten memorandum of defendant Flick, undated, reproduced in part in B above.

Q. Then, in order to clear the matter up thoroughly we must also establish what was the reaction in the upper circles between February and April [1938], and what the atmosphere was like. And there Document NI-3241, Prosecution Exhibit 421 * of the prosecution is of importance, on page 67 of the German text of book 10-A. If you will just glance through that, it shows that Keppler, Pleiger, Koerner, and Goering wanted to start a scheme, a press campaign, with the aim of stirring up the Petscheks, as one says, and then at the end we find your view, according to Mr. Steinbrinck, who wrote this note. Finally it says: "Since we must be of the opinion that only through arrangements based on the rules of private enterprise will we be able to gain influence on the firms, and that for that reason we must not actively participate in a political action, we are interested in having the negotiations continued." Of course, the Court is acquainted with the document. Is that what is shown by this document, Mr. Flick, namely, that the atmosphere had got a lot worse, the political atmosphere, in the meantime—the anti-Semitic atmosphere—and that your negotiations in April were under much stronger political pressure than in February. I understand that you want to hurry. I want that too, but this seems to me not altogether insignificant. Would you please, therefore, comment on Exhibit 421?

A. Exhibit 421, as I have already said, shows that the political atmosphere in general, and specifically towards the Petscheks, had deteriorated considerably, because people like Keppler, Pleiger, and Koerner had stated that no negotiations were to be carried on any more. That surely proved how the situation had developed.

For the rest, the whole document contains more positive matter for the Petscheks than negative matter against the Petscheks, and in addition I must tell you that it was not shown to me. I cannot say any more than that.

Q. In any case, this document, which is much more important than the question of whether it was available to you, correctly reflects the political atmosphere in its more acute form?

A. Yes.

* * * * *

Q. Now I have to return again to the document book of the prosecution. The whole thing ends with the letter of the Plenipotentiary for the Four Year Plan of 25 May 1938, signed by the deputy of Goering, namely Koerner. This is page 97 of the German document book, and I think it is Document NI-3320,

* Memorandum of defendant Steinbrinck, 17 February 1938, reproduced in B above.

Prosecution Exhibit 432,* at least as far as my copy goes—perhaps it is wrong. The first contents of this document have already been read by the prosecution; only the last paragraph is interesting for me because it goes over to the new chapter which we will now reach, namely, Ignaz Petschek company, and it says: “The problem Julius Petschek having thus been solved, I am awaiting your proposals for the further handling of the problem Ignaz Petschek. However, I call your attention to the fact that, by acquiring interests of Ignaz Petschek, important interests of Reich companies will be affected, and I reserve the right to protect these.”

First question—Reich companies—which turn up here for the first time?

A. I presume that first of all the Hermann Goering Works were involved here—I suppose so. There might have been other Reich companies, too. I don't think that it was a matter of the Hermann Goering Works alone or the state-owned Viag [staatliche Viag], which was a holding company in which many Reich enterprises were concentrated, as regarded stockholders at least.

Q. Well now, when Goering looks forward to the further consideration of the problem Ignaz Petschek, how does that effect his order of 1 February? Was this order now canceled or did it go on?

A. Doubtless the order still existed—it went on. That can also be seen from the letter of 27 May. There it is pointed out expressly—“One matter had been settled. Now only we look forward to your proposals for the further consideration of the problem Ignaz Petschek”. Therefore, it was without doubt that the order given to me by Goering continued. We, after all, were no longer interested. By the purchase of coal of Julius Petschek, we had satisfied our requirements, at least as far as the quantities were concerned.

* * * * *

Q. Now, I would like to ask you here, after all an order by Goering was not chicken feed. After all you couldn't just do with it whatever you wanted, if you didn't want to get into quite considerable trouble. However, I have the impression, at least up to now, that until December 1939 you left this Ignaz group rather alone. You didn't do quite so much, did you? At least that is the impression one could gain on the whole, isn't it? Therefore, I ask you to give your explanation to this impression I have gained, and if it is incorrect, then I would like you to tell the Tribunal what had happened in the meantime—well, let's say until Decem-

* Reproduced in B above.

ber 1939, and what had been done for carrying out this commission by Goering? What steps had you taken?

A. I presume that if you speak of December 1939, you really mean December 1938?

Q. Yes, that assumption is correct. I ask you to please forgive me. That was just a mistake, a *lapsus linguae*.

A. Now, after this matter of Julius Petschek had been cleared up, the commission given by Goering was renewed and confirmed. The sale had been published in the newspapers and had become known therefore. Then we got in touch with the group Ignaz Petschek.

* * * * *

Q. Didn't the situation deteriorate for the Petscheks more and more as time went on?

A. Well, I do believe that in a general way you can say that. The situation in Germany became more and more stringent. The shortage of foreign currency increased and the position of the State towards the Jews, especially in autumn after the well-known events of November,¹ took a new and more severe course. And a political event was added thereto, namely, the incorporation of the Sudeten country at the end of September 1938. The Petscheks were Czechoslovakian citizens, they had their residence in Aussig in the Sudetenland, and now automatically they got German citizenship which also made their situation considerably worse. Both events, incorporation of the Sudetenland and the November events of 1938, then the beginning of December 1938 brought the new laws against the Jews, all these events made the general situation for the Petscheks considerably worse.

Q. In this period of time, even as soon as the beginning of July 1938, this bad tax question was mentioned. May I remind you that although not in the document books of the prosecution but in the documents which the prosecution kindly placed at our disposal outside of the document books,² among these documents you find a note of 5 July 1938, referring to a conversation between you and Dr. Bueren, director of the Bubiag.³ Do you have this note before you?

A. Yes.

Q. And there you have already mentioned the tax policy of the financial authorities and your, Mr. Flick's, position. Will

¹ See "IX. Atrocities and Offenses Committed against Civilian Populations," Volume XIII, this series.

² In connection with the preparation of the trial, numerous files of the Flick Concern were temporarily brought to Nuernberg, and of course, many of the documents in these files were not included in the document books containing copies of the documents to be offered in evidence by the prosecution. Counsel here refers to the fact that these various files collected in Nuernberg were put at the disposal of the defense.

³ This document, later introduced in evidence as Document Flick 55, Flick Defense Exhibit 55, is reproduced in B above.

you please explain to the Tribunal this matter which according to my opinion is important for your personal stand, and will you explain this conversation in more detail?

A. This document is quite interesting.

Q. Just a minute. I want to interrupt you just a minute. This is for the guidance of the Tribunal. I am going to submit this document in my document book. The text of the translation will be submitted to the Tribunal, however. Mr. Flick, will you explain your position?

A. The general manager of the Bubiag, Dr. Bueren, had approached me in order to discuss the question Ignaz Petschek and to clarify the whole problem. I think it is of considerable importance here if one makes it quite clear at once, in order to see the position taken by other industrialists in this matter. Mr. Bueren had the plan of using the tax problem in order to get the Petscheks ripe for the sale of their holdings. May I just read to the Tribunal what I answered. I answered Bueren that the commission for the Ignaz group was already in my hands, but that at that time, however, I did not see any possibility of solving the problem. Bueren then gave me some confidential information, that at that time large tax actions were being taken against the Ignaz group and were in full swing, not against the company or the companies, but rather against the Petscheks personally. He added that the only way would be to make the Petscheks ripe for the negotiations in this or in a similar manner. Now I am giving you the position that I took, and I quote: "I especially brought to his attention the fact that I considered that my task consisted in avoiding an expropriation move, and that my plan was aimed at retaining the Petscheks' property for them in Germany, but in another form and without any influence on the companies." A plan which I already have mentioned to the Tribunal.

Q. I think that we owe it to Mr. Bueren to read the next sentence too.

A. Have you—I did not understand—

Q. I think we owe it to Mr. Bueren to read also the next sentence.

A. Bueren agreed to this entirely, but repeated that in order to carry out this correct plan, the people would first have to be brought into a different mood by the authorities. Moreover, he believed that it was entirely possible to achieve this.

Q. Very well. Anyhow, you refused the idea of putting on the tax pressure [Steuerdruck] as a tactical measure, and here I want to use the occasion to [ask you] quite basically—at least for that period of time, and for all the time after that up

to the point when Ignaz Petschek's liquidation funds were seized by the government, did you at any time intentionally favor the putting on of these tax screws?

A. I never did that. Wherever I had the possibility to oppose it and do something against it, I did so. I proved that here in the case of Bueren, whose plan was to get the Petscheks ready by putting on the tax screws. I rejected that proposal and explained to him that I wanted to do the contrary and that I saw a duty in preserving the fortune for these people in Germany, and when at a later stage there was another occasion to deal with the tax question, and that was the beginning of the negotiations concerning the exchange of soft coal for brown coal, (on 14 February, the document has been submitted to the Tribunal,) I asked Pleiger on the very first day when he came to see me in order to initiate that transaction, "Is there no possibility of avoiding this tax question and getting it out of the way?"

* * * * *

Q. The time at which we stopped yesterday, Mr. Flick, it strikes the reader of the prosecution documents that the question of the commission is somewhat uncertain. In December 1938 you returned your commission [Mandat] to Goering, while, as we saw yesterday just in this particular letter it was expressed that the commission was going on and that further developments in the Ignaz Petschek problem were awaited. Would you tell the Tribunal this obvious discrepancy here?

A. The order of Goering, through this letter of Koerner at the end of May, was confirmed again with an addition, a special addition which I mentioned here yesterday. In this letter of Koerner, which I believe was written on 25 May, special mention is made of the interests of the Reich which had to be taken into account. The order, therefore, even after the conclusion of the case of Julius Petschek, went on, clearly in the sense of a State order.

In order to clarify this—I mean the clarification of the question of that order—I might add here that in the whole Petschek problem, especially also referring to the order itself, there were three different stages. The first stage was from January until June, practically the conclusion of the Julius Petschek transaction.

The second stage was initiated by the new Koerner order which began in June and ended in December. During this stage we acted only according to the State order. Nothing much happened. Mainly the connections and relations to the State offices were maintained by Steinbrinck. This was necessary. I myself had very few discussions during this stage, which in part have already been mentioned yesterday. It is notable from this partic-

ular stage, the discussion with General Manager Bueren of another brown coal company, which I also mentioned yesterday and which is characteristic of my own personal attitude and which is to the effect that my task was to preserve the property of the Petscheks within Germany, but in a different shape. In the same way during the further course of the year 1938 various discussions took place with Funk, even in December, with Reinhardt and Goetz, all to the effect to instigate the Petscheks to see the clear situation and to prevent the worst and to preserve their property in Germany in a different shape without any material loss, and to give up their influence and to give up their monopolies.

After nothing had resulted from this, the time had come when I had to report to Goering about these matters, and just before this final report to Goering we made our last efforts, concentrated within a very short time, in order to find out whether there was no possibility of solving the problem on a private business basis, and therefore I did not report to Goering for some time.

On 13 December it took place and this is the end of this second stage which was also of special importance, because we, during this stage, did not carry out any efforts to purchase any property for ourselves. One would, of course, gain the impression here that we had an extraordinary amount of memoranda even about unimportant matters, yet during the whole of these 6 months one does not find any file note in which there is any clarification or any consideration to examine the question of how can we participate in the acquisition of the Ignaz Petschek property. The objective, Ignaz Petschek, was in its volume considerably larger than that of Julius Petschek. The shares of Julius had a stock exchange value of 35,000,000 to 40,000,000 marks, and the whole property, Ignaz Petschek, was worth about 130,000,000 to 150,000,000 marks.

Our financial power would not have been enough. Even the acquisition of only a part of it was impossible for us as the extent of financial possibilities at that time had been exhausted through the purchase of Julius. If, however, we actually had dealt with this problem to acquire a part of the Ignaz property, financial preparations on our part would have been necessary, because such a thing cannot be done just like that. One would have to be prepared and one had to consider how it can be acquired, how it can be financed, where you can get the money. There is no word in all the many documents to the effect that we ever considered such an idea. As far as quantity goes, we had been saturated by the purchases of Julius Petschek. I shall refer to it at a later stage. Geographically speaking, a large part of the property of Julius Petschek was not really suitable for our concern, because

only some of the brown coal was near the Lausitz plants or our smelting works, a large part was further away in the district around Leipzig and Borna. Therefore, later on the idea struck us that we should exchange enterprises in such a way that we should give a part of the brown coal near Leipzig for brown coal which was near our own plant in Lausitz.

Now, I shall come to the discussion with Goering. I gave him the reports, which you find in the files, about the acquisition and proposed splitting up of the [Julius Petschek] properties and their distribution to other corporations; that is, Salzdetfurth, Wintershall, and I.G., for his approval. The approval was given to grant these aforementioned companies participation.

It was natural, after that, to ask, "What about the Ignaz Petschek case?" I had to admit that the efforts I made had failed. There was no possibility of solving the problem in the manner I had imagined. I told Goering, "With this, my task is finished," and Goering took note of this at a dinner, which was given afterwards at which Steinbrinck and a number of his experts took part. The matter was mentioned again and the return of my mandate was mentioned. He commented about it with the words: "As far as all these questions and information are concerned, you have to continue to be at our disposal." But, from this day, which was in the middle of December of 1938, concerning this commission, there was some uncertainty. I had said that my commission was finished and I had given it back to Goering. Goering, of course, did not actually contradict me but said, "If we need you on one or the other questions, you have to be at our disposal." There, during these first months in January and February of 1939, was an unclear situation which came about through these facts.

Generally, the agencies at this time were of the opinion that Flick had nothing to do with the matter any longer. Immediately in January—this can be proved by documents, too—a big hunt started from all sides. A trustee was named in January. At the beginning of February, there was a file note by Voss who said that the potential shareholders are applying to the various ministries. There was a wild drive from all sides. In this situation I again made an effort to describe the position as if we still held the exclusive mandate, and I said that I would make the effort again to solve the problem from a private business point of view. As it also says in my office memorandum, I tried to make a constructive plan, and this was the last plan. Therefore, we said we still had the mandate, and when others did not recognize this, I tried to get together with Gritzbach, possibly at the end of

February, but all of this became unimportant because in the middle of February, negotiations about exchanging soft coal and brown coal, were started by Pleiger.

* * * * *

Q. Then I would suggest to you that we should deal with this in connection with the very important Document NI-6013, Prosecution Exhibit 456,¹ which is on page 64 of the German text of the Book 10-B of the prosecution. I have to put to you a number of particular questions concerning this document, and I would like to do so with you looking at these documents. You remember that the prosecution read this document and said about it: This document is the best evidence of the willingness and the initiative of Flick.² Therefore, it is worthwhile to remain at this document for some time, since apparently one blamed you very much as becomes evident—one perhaps hasn't blamed you but at least it's most unpleasant—from this document. You had a very good breakfast with Pleiger and you write yourself—the prosecution has underlined these words: "The discussion took a very friendly course, etc." That is the reason why we have to remain at this for some time. Then you said, "When Pleiger revealed his claims"—I should like to go over to the next page before you go on, where it says in the first line, "I laughed at him." This apparently was the remark about which you were just beginning to tell us. I would like to ask you when you proceed with your statement, if possible, to consider this document so that my questions which I do not like either, can be curtailed.

A. If one had breakfast with Pleiger, and if this breakfast with Pleiger is an argument for my willingness and my interest, then, of course, it is correct. Well, we did have breakfast at the beginning of the discussion in February. But in December 1939, when after 9 months of negotiations we had not come to any satisfactory conclusion, we no longer had breakfast together. We were on different relations. If I should express my opinion about this document, I must come to the reasoning of Pleiger or at least explain it, because it contributes towards the understanding of the whole problem. I told Pleiger, "Why do you apply to me? We are not the only enterprises who have soft coal. There are other soft coal properties in the Ruhr.

¹ Memorandum of defendant Flick, 14 February 1939, reproduced in B above.

² In offering this document, the prosecution stated: "This memorandum reports the substance of conversations which Flick had with Paul Pleiger, and the date of this memorandum, 14 February 1939, shows the state of the matter at that time and particularly indicates, in the opinion of the prosecution, the initiative taken by the defendants in promoting an exchange of soft coal for brown coal, the idea being that the brown coal would first be acquired by the Hermann Goering Works from the Petscheks" (Tr. p. 1828, 19 May 1947).

Why do you come to us? Why does it have to be us?" And Pleiger's explanation was the following, which was in a way factually justified. The group Harpen-Essener Steinkohle, which you find in the plan on the wall, took second place with their soft coal output in the Ruhr. They held participation in the coal syndicate with 22,500,000 tons of coal per year. The largest firm, the Vereinigte Stahlwerke, had 32 million. The difference between this and all of the others was that on the part of Harpen-Essener Steinkohle, compared with the high output and the large amount of interest they held in soft coal, they had only a self-consumption of 500,000 tons. Harpen-Essener Steinkohle supplied the large majority of their coal output via the syndicate to the small consumers and other concerns.

The position of the other concerns on the Ruhr was the following: Their coal output, as far as developed for the production of coke, was used in their own smelting plants. Therefore, Pleiger (and I can prove it by another document) has made a point of saying that the group Harpen was the only one which could come up to his requirements. That is of major importance. Nobody could have fulfilled Pleiger's wishes. Nobody could have coped with it except our own group, factually speaking. Pleiger, after a number of preliminary discussions, made his wishes known to me. First he requested that he should get the whole of Harpen. Then he confined himself to a coal output of 10,000,000 tons. You have to differentiate between participation and output. This would be approximately 70 percent of the Harpen-Essen mines. I laughed at him. I offered him large properties of still unexploited mines with estate property for a preference price, if the problem would be settled by this deal. As he did not accede to it, I explained to him, if he would half these present requirements, I would think it over. Furthermore, it becomes evident from this document, as I thought it out, to procure those 5,000,000 tons. We would not supply them alone but they would be supplied by a certain combination of other neighbor firms. We would supply 2,000,000 tons and the other 3,000,000 tons would be supplied from the property of our neighbor company.

* * * * *

Q. Please go on with your explanation of the discussion of 14 February as far as there is anything to say.

A. I have already said that from this document * it becomes evident that I made efforts to reduce the extent of the transaction. Since Pleiger was not prepared to confine himself to the offered

* This refers to Flick's memorandum of 14 February 1939, Document NI-6013, Prosecution Exhibit 456, reproduced in B above.

estates and mine fields, I made a suggestion, which, in its main lines, is set out in this file note. This suggestion was to the effect to give the Reichswerke 5 million tons, but only 2 million from our own property and 3 million tons from neighboring mines—Wendel and the Sachsen mine. Furthermore, in this note something is very notable which you will find on page 60 of the German document book. I asked Pleiger finally whether it would not be possible to, as it says here, give the whole transaction the character of a voluntary transaction with the Petscheks. I tried to influence Pleiger with the idea of a private business transaction, and he said he would consider it and he would see whether he could give it the character of a voluntary transaction. Second, on this day I told him the same thing as I have already said yesterday, to retract the matter of taxes, and Pleiger telephoned the Ministerial Director on my instigation.

Q. You have said that yesterday. The witness has already explained this to the Tribunal yesterday. Now we want to come in this connection to the first document in book 10-B, which is Document NI-5524, Prosecution Exhibit 436.* It is on page 1 of the German document book. Have you got it?

A. Yes.

Q. Now, first, the question—who wrote this memorandum? It is obviously a file note.

A. I assume that it is a collective document which was partly written by my associates and partly by myself, and it was supposed to serve as a guide for the ensuing discussion with Koerner. The note bears no signature and I assume, as I have said, that it must be a collective document.

Q. Former memoranda of a similar content, preparation of a discussion with a government office—about those you said that these memoranda were written for tactical reasons in a way, “How to break the news!” Now, is this the case with this particular memorandum, or could it be the case? For answering my question, look at paragraph 2 of the document. “The aim,” as it says here, “was to buy the smaller group (Julius) in order to isolate the large group (Ignaz) and to have a better basis of actions toward the latter. The large group Ignaz is now, as before, very unbending.” The next part is not interesting any longer. What is your explanation for this remark about which at first sight, of course, the prosecution is very pleased?

A. I explain it to the effect that it was an explanation for the State Secretary and that those tactical measures and considerations were the base of it. I also believe that the word “actions” should read “transactions” but I am not absolutely

* Unsigned file note from the Flick files, 24 May 1938, reproduced in B above.

certain. Yes. Furthermore, it is a backward look on the course of the Julius Petschek affair. A financial statement was made which I cannot explain in detail which, however, perhaps created a false impression here.

Q. Mr. Flick, it was made because you remember, perhaps, that the prosecution from this calculation or finance transaction, as it becomes evident from page 2 of the document, draws the conclusion that a very cheap purchase price was paid. But I assume that the handling of this question was dealt with by the man in charge of your financial department?

A. Yes.

Q. Now the document contains a number of interesting things, very important things, very essential things, which however, at the moment it is not the proper time to discuss. I would like to conclude it and as we have arrived again at the chapter on tactical diplomatic influence on government offices in favor of Petschek, we shall now come to the discussion of the so-called Dietrich expert opinion, which is apparently the same chain of thought which the prosecution had. Dietrich deals with a number of legal questions. It is in book 10-B; it is Document NI-898, Prosecution Exhibit 437.* Would you read this page where it says Problem—Ignaz Petschek? I should like to ask you the question: At that time—by “that time” I mean the end of June 1938, namely, the time at which this expert opinion was submitted to Steinbrinck, according to the supplement of this document written by Dietrich on 20 June 1938—did you, as I say, at this time, at the end of June 1938, know of this expert opinion? Did you find out about the letter and its contents?

A. After what I said about this affair today I think I have to answer this question in the negative.

Q. Now, at an earlier stage you told me in one of our various discussions before the beginning of the trial that it was different. And you also said you stated the matter in a different way to the interrogator in Frankfurt and here, and that you had said, “Well, at random,” you had talked to Dietrich about this expert letter in a vague form, perhaps even slightly ironically. And now you say no. Would you like to explain to the Tribunal this obvious discrepancy?

A. The matter was like this. When I was asked about it, I thought I remembered that Dietrich told me vaguely, one day, that he had made a journey to the Central German District Courts at Halle and Muskau, as far as I remember, in order to find out about these shares of the Petschek companies, and on

* Letter from Dietrich to defendant Steinbrinck, 20 June 1938, enclosing expert opinion on the Ignaz Petschek question. Reproduced in B above.

this occasion he told me that he was also busy in working on expert opinions concerning a number of amendments to laws. As I was only told about laws pertaining to Jews, I assumed that it was a matter of an expert opinion about the Jewish question. Files did not come into my hands at this point. I remembered that Dietrich dealt with laws to this effect. I had heard that Dietrich denied ever having talked to me about legislation. I also assume that his memory is probably very much better than my own, because it must be assumed that for him discussions with me were more important than the other way around. Be that as it may, I cannot say more about this affair; whether these discussions with Dietrich actually took place or whether they did not, must be left open. Dietrich says no, and I thought that such discussion had taken place. But in any case, if we have had a discussion it took place in connection with his journey to central Germany which was made for the purpose of applying to the District Courts at Halle and Muskau for information about the sum of shares registered in the general meetings of the Petschek company. And this journey of Dietrich's could not have been made at the same time as the demand for the expert opinion as to the Jewish problem, because I looked it up in the files. The order was given apparently on the 18th, because it says in this cover letter referring to the discussion on Saturday, which was as far as I can see now, afterwards—on the 18th; and on the 20th the expert opinion was already written. And in this expert opinion reference is made to his former expert opinions about the nationalization of mineral deposits. These are added enclosures that date back to March—

Q. Mr. Flick, may I read to the Tribunal the sentence in question? It is on the first page of the letter, on the bottom. It reads:* "The material which I"—that is Dietrich—"could gather of laws existing in foreign countries concerning the nationalization of corporate land acquisitions and mining rights are to be seen from enclosures 1 and 2 to my letters to Director Steinbrinck dated March 17, 1938 and March 28, 1938." They are in supplements Nos. 1 and 2. This continues with repeated emphasis on March, but that is no matter of importance here.

A. Well, that is what I wanted to say. As far as the time goes, it was not at the same time as this discussion, and if a discussion did take place it must have been about the question of legislation about nationalization of iron ore deposits which took place in March.

Q. You mean it could not have been at the same time?

A. No.

Q. Because you know that it was the reason for his journey to Guben, and in this short time from the 18th to the 21st it

* Document NI-898, Prosecution Exhibit 437, reproduced in section B, above.

would have been impossible—that all this took place; is that what you mean?

A. Yes, there was also a Sunday in between, and apart from that, Dietrich examined the documents in June, and emphasized then that a lot of time was involved, 8 years. There were share registrations from 10 companies—that cannot be done in 2 days.

Q. And, as you know, which is the only thing you do know, and you knew it then—when your first discussions first took place with your interrogator and with me you knew it, as I say, that if this discussion took place in a vague sort of way before this journey, it must have been in March, is that what you want to say?

A. Yes.

Q. All right. Now did you not—speaking about the knowledge of this expert opinion, according to the notes I made, I should like you to check up on this. This is Prosecution Exhibit 437, which we are talking about. Did you sign this document? Is my note correct? Did you initial it?

A. I initialed the cover letter, yes.

Q. Now, the question of the signature has been dealt with by the prosecution and it played a certain part. I would therefore ask you to state to the Tribunal, what does your initial actually mean? What does it imply? Does it actually mean you have received everything, including enclosures, or has it another significance as well?

A. It means that I had the opportunity to read and look at the letter or document in question. I initialed every document that was put on my desk in my office. But that is no proof that I actually read every document that was sent to me or put on my desk—that was put on my desk by one of my secretaries or collaborators. I have to explain this. If, for instance, a monthly report was submitted by Mittelstahl it is just possible that I studied it carefully and initialed it and sent it over to the secretary or returned it to my collaborators. But it is also possible that I initialed it without actually reading this most voluminous report. That just depended on how much time I had and it depended on conditions. The same applies to my collaborators. I believe that Mr. Weiss signed perhaps all the reports from the Rombacher Huettenwerke. I don't actually believe that he read any of them. Therefore, I say it was an occasion to take knowledge of the matter, and for the secretariat and my collaborators it was a sort of certificate, that I had been given the opportunity to look at the report. But if a more important document was concerned, which I had discussed with my collaborators before, I made a note myself which said "for rediscussion." Then the documents went back to my collaborators and at the appropriate time they came

back to my office on the base of the note which I had made myself, to discuss the individual points of the matter.

Q. Now to complete this question I should like to say, especially for the benefit of the Tribunal, that in this Exhibit 437, which is the expert opinion by Dietrich, there is a discrepancy concerning the knowledge of the defendant Flick as shown now, and the statement made by the defendant Steinbrinck. I am only calling attention to it. I have questioned Mr. Flick about this discrepancy. I reserve myself the right, unless Mr. Steinbrinck has already stated his opinion through the questioning of his defense counsel, to ask him about it myself. You Mr. Flick insist in any case on your present statement?

A. Yes.

Q. If this is so, I must ask you whether you have not read Document NI-897, Prosecution Exhibit 438,¹ and Document NI-896, Prosecution Exhibit 439,² in Book 10-B, whether you have not known these documents, or at least, whether you have not heard of them; these are letters of the defendant Steinbrinck to State Secretary Neumann, i.e., the Four Year Plan, and to Mr. Wohlthat, i.e., the Reich Ministry of Economics, in which he makes this expert opinion by Dietrich known, and sends it to the authorities in question. Did you know these letters?

A. I do not remember anything about them, and I should like to say that on 14 July 1938, when this expert letter was sent to Wohlthat, I was on a holiday in the Alps. I was in Bavaria and I was in Styria.

* * * * *

Q. Let us stop at the letter of the Reich Ministry of Economics, of 19 January 1939, which is on Page 47 of the German text; it is Document NI-892, Prosecution Exhibit 450,³ and it's on page 40 of the English text. This letter, which deals with the appointment of the trustee, is dated 19 January 1939. If I understood the prosecution correctly, the assertion is that, therefore, you at that time—that is, at the time of the appointment of the trustee—you heard about this appointment.

From our document book at least, the addressee of this letter cannot be seen. However, the text of this letter shows, as far as I think, without any doubt to whom this letter of the Reich Ministry of Economics concerning the appointment of the trustee must have been directed. What is your opinion, Mr. Flick?

¹ Letter from defendant Steinbrinck to Neumann, 22 June 1938, reproduced in B above.

² Letter from defendant Steinbrinck to Wohlthat, 14 July 1938. This letter, not reproduced herein, is identical in its text with the last mentioned exhibit, Steinbrinck's letter of 22 June 1938 to Neumann.

³ Reproduced in B above.

A. It could not possibly have been addressed to us. It can only have been addressed to a company for which the trustee was appointed because after all, the document does not come from our files. Apparently, it is a letter by the Minister of Economics to one of the Petschek production companies, probably to the Niederlausitzer Kohlenwerke, which had an office in Berlin. I think that is also the office where it was found. There is no initial of ours on there either. It is an internal [not for publication] letter, in my opinion. I think it must be from the Reich Ministry of Economics to the Neiderlausitzer Kohlenwerke. It has nothing to do with us.

Q. I want to ask you about it because when this letter was submitted, as far as I recall, we had a slight discussion on it. The addressee of the letter received orders to sell his industrial enterprise by 28 February 1939. Therefore, it must be the Petschek company, be it by transfer of shares or by the sale of the real capital. At the end of the letter, it is specifically stressed that the trustee is not authorized to sell the enterprise or to liquidate it. However, this letter refers to the anti-Jewish laws which we have just mentioned, issued on the third of December 1938.* I could explain that, but it is not my turn now. I ask you whether you can explain the significance of this letter to the Tribunal as a quite normal and necessary result of the anti-Jewish laws of 3 December.

A. I cannot give you any detailed explanations. After all, I am not a lawyer, but the fact remains that if the person involved received the order to sell his enterprise and did not comply with the order after a certain time, then the administrative trustee automatically is converted into a sales trustee.

Q. Was that the case here?

A. Doubtless. At least I assume it because the administrative trustee had been appointed. Later on, there was a sales trustee.

Q. Therefore, that was the situation, was it not? And now I want to come back to the question I put to you. According to your recollection, approximately, I do not want to know the exact date, when did you gain knowledge that now the Ignaz Petschek companies had a trustee in the sense of this law of 3 December 1938?

A. I saw that from the documents here, that it was in March 1939. From memory I could not tell you after 10 years whether I heard about that in January, or in February or in March.

Q. That is quite correct, Mr. Flick, but I have not asked you after all whether you remember that from that time. I only asked

* Decree concerning the Utilization of Jewish Property, Document 1409-PS, Prosecution Exhibit 343, reproduced in B above.

you whether you know it now. And the source of your knowledge may well be a document of which you only gained knowledge here.

Let us stop early in 1939. On 14 February, Pleiger approached you with his demands in plain words.¹ It is interesting to the Court whether already at that time, State agencies, particularly the Ministry of Economics, recognized the economic necessity of the Pleiger claim and agreed to that. For this I refer you to Document NI-889, Prosecution Exhibit 453² which is on page 50 of the German document book. That is in the second half of this document. It is on page 43 of the English document book.

A. Apparently the situation was that the Ministry of Economics, at that time was not 100 percent in agreement with the claims made by Pleiger concerning the necessity for his own soft coal basis.

Q. When did you for the first time recognize that the carrying out of Pleiger's plans was unavoidable?

A. That Pleiger's claims were serious was always quite clear to me after he had voiced them in our first important conversation and gave detailed reasons for them. The national economic importance of his claims had been pointed out during that conversation. He declared especially that he acted on Goering's behalf. He came to see me on Goering's orders. Goering emphatically was behind this claim of his. That the claims were factually necessary could not be contested. I have already explained that to the Tribunal this morning. It was impossible to deny Pleiger's claim and the right of the Hermann Goering Works, for factual reasons.

Q. Now again and again, especially at this stage of the developments the documents show that under no circumstances did you want to purchase directly from the Petscheks, but that you wanted to purchase either from the State or from the Hermann Goering Works or from some other intermediary source. Would you explain to the Tribunal the reasons for this unwavering attitude you had until the very end as can be seen from the documents?

A. The reasons for this are various. I already said during the first conversation I had with Pleiger, on 14 February, that on our part, we had considerable misgivings and that politically it was also impossible for us to be the heirs of Ignaz Petschek. First of all, there were reasons of internal policy [innerpolitisch]. If the facts were that the Petscheks were attacked because of their important monopoly in the two central German brown coal areas,

¹ Memorandum of defendant Flick, 14 February 1939, Document NI-6013, Prosecution Exhibit 456, reproduced in B above.

² Memorandum of 2 February 1939, by defendant Steinbrinck on conversations with Dr. Voss. This document is reproduced in B above.

then for us again, it would not be possible to take over this whole property because, after all, we would have gotten into the same situation.

Pleiger tried to dissuade me from that by saying, "Now you can conclude this deal with the Hermann Goering Works. If you have a deal with the Hermann Goering works, you are sure from the beginning that you are politically covered, and you can have no difficulties from the viewpoint of domestic policy." But I was of a different opinion. Later, this became very clear when the idea of another fusion with a Petschek concern, i.e., the "Ilse", was aired and the opposition of the Ministry of Economics to monopolies was clearly expressed by Minister Funk. Now the matter took its further course and reached a stage where again we had reason to explain why we would not become heirs of the Petscheks in the legal sense. This was in connection with the fact that the State demanded soft coal from us and wanted to pay us in expropriated Petschek shares or by substitute shares [Ersatz Aktien] for these expropriated Petschek shares. Our viewpoint was that if the State expropriates foreigners and Jews, or wants to expropriate them, and if they want to give us those shares which had been obtained in such a manner as payment, we on our part would refuse to receive those shares. I believe that a certain courage was necessary to declare in the Third Reich as an answer to the State, that we would not receive such property.

That was our line of conduct which we took during the whole period, and we also refused to take over all of the brown coal by means of a private deal. We always demanded that if the State wanted us to do that, the State had to make the appropriate ruling and decree. Therefore, I can repeat again that our basic line of conduct was, we will only take over the Petschek property as payment for the soft coal requested from us voluntarily, only if it is done in the way of a private agreement. If the State, in spite of that, demands and exerts pressure, then it has to confirm that corresponding requests have been made by the State. The situation was that the State, which made this policy of force, wanted, as far as possible, to make it appear that we had the risk and we had the blame of these measures of force, and they wanted to do it by making us the immediate lawful successors of the Petscheks. And we resisted against that. Our line of conduct, and I want to repeat that, was based on private economic agreements and negotiations. We were ready to do that but rejected any collaboration beyond that.

Q. Now the prosecution has stated, or at least hinted, that your dislike of these State measures was not so clear and did not go very far, because that could be seen already from the fact that hardly had the trustee been appointed when you immediately took

up contact with this sales trustee. Will you please explain to the Tribunal how the matter really was and, if possible, you might use as a basis for your answer the document in document book 10-C, that is Document NI-3258, Prosecution Exhibit 462,* the letter from the Reich Ministry of Economics to Mittelstahl concerning the question of exchange. Do you have it or shall I give it to you? Well, you had better give it back to me later on.

A. Just a minute.

Q. I would like you to give it back to me later on. Please don't hide it somewhere.

A. Well, at that time negotiations for conversation took place and they were already in full swing with Pleiger. It was obvious that now a mutual clarification had to take place concerning the conditions. Nobody can buy a pig in a poke and Pleiger wanted to have information concerning the pits which we would make available for the exchange. It is obvious that he wanted to know figures about the output, about coke production, and about the production costs and the profits. All these documents we furnished and gave to Pleiger. When, however, we said "Well, now, what about the brown coal which we are to receive as compensation for the soft coal?" then the answer was: "I don't have those figures. For those you have to go see the trustee." When we went to see the trustee, then the trustee said, "I agree. However, I have to have an order from the Ministry of Economics." That way we were sent from pillar to post, and in order to gain an insight into the brown coal situation, which indeed had been offered to us by Pleiger, we had to make application ourselves to obtain permission to look into the matter and to inspect what we were to take as compensation. Thus the visits to the trustee are to be understood in the later course of the negotiations and also in other connections. The trustee also dealt with the matter of substitute shares and other matters, and all along the line we had not only to deal with the Hermann Goering Works but the Hermann Goering Works have to be understood as only a part of the total State organization in this connection. Before you dealt with the Hermann Goering Works, you had to deal with the Ministry of Economics; then again you had to deal with the trustee. We were sent from one to the other. And most of the time we had to justify why and for what reasons the transaction which we hadn't started but which had been started by the Hermann Goering Works, went on so slowly and took so long to negotiate. Well, I will have to give you some further details concerning that matter.

* Letter from General von Hanneken, Reich Ministry of Economics, to Mittelstahl, 30 March 1939, reproduced in B above.

Q. Yes. Well, but now, at least as far as I am personally concerned, the documents show, and I point out here as an example, the final sentence of the Document NI-3364, Prosecution Exhibit 463 * in document book 10-C. That is a file note by Mr. Steinbrinck concerning a conversation with Dr. Hahn, and there at the end it is said that Dr. Hahn will not do anything without our previous agreement. There the document did show that at least you made it a point to be informed on all steps which were to be taken by the State agencies against the Petscheks. Is that correct, and if so, why did you want to be informed?

A. Well, I have already explained that it was a matter of course that with most of the State agencies, whether voluntarily or involuntarily, we had contact and we had to have contact. We had to have an insight also into the progress of matters. If, for instance, we were offered substitute shares, we had to know—"How were these substitute stocks created?" A certain maintaining of contact with the State agencies was an absolute necessity. I could give you examples. For instance, during one month I was summoned to the State Secretary four times and I was always asked "Why doesn't the matter progress?"

* * * * *

Q. Now we have the picture. Shall we say,—pressure on the part of the State on all sides—pressure on the Petscheks and pressure on you, and the object of this pressure perhaps submits eventually, but he has ideas of clearing up matters and thinks about restitution and claims. When the State used pressure against Petscheks and when you felt the pressure yourself, did you ever think of possible later demands for reparation on the part of the Petscheks as well as possible claims on your own part, because you and the Petscheks were almost in the same boat now?

A. Our chain of thoughts was the following: The whole transaction is legally void—the transaction with the Hermann Goering Works. We did not regard it as a legal transaction. I wrote to Funk in 1943—if one part of the transaction which had not been fulfilled yet will not be fulfilled soon, we would like to stop proceedings altogether very soon. I shall have to mention this in another connection as well. We were cheated by the Ministry of Economics, so to speak.

* * * * *

Q. Now before we pass on to the last question, and we want to do that very quickly. I think that I might inform the Tribunal that we have a chance of finishing the Petschek case today.

* File note of defendant Steinbrinck, 12 June 1939, reproduced in part in B above.

Well, I would like you to answer the question whether the already-mentioned letter of Goering of 6 December—that is in document book 10-C of the prosecution, and that would be Document NI-935, Prosecution Exhibit 476.* It is a letter by the Plenipotentiary for the Four Year Plan, Goering, but it is signed, not by Goering but by the State Secretary, Koerner. Now, would you answer the question whether this letter of 6 December had been caused by you; whether this letter was ordered by you as the prosecution has alleged.

A. The facts were the following: we wanted to have that in writing, and to have in writing what had been told to us verbally on 1 December, namely, the demand to conclude the deal by 9 December. It was, therefore, a question of having a written confirmation of the State request to deliver the soft coal, which we always had considered the primary condition for the carrying out of the whole transaction. When now this matter took this violent turn, our viewpoint was the following: We now finally wanted to have a written statement of the request made by the State and of the reasons which we were given and which had been used for almost a year, namely, the demand that the soft coal should be surrendered for reasons of State policy.

Then I gave Kaletsch the order to go and see Gritzbach on 5 December. We had a special reason for that assignment by the fact that the Harpen Vorstand had been summoned to Berlin for 6 December for a final clarification and information concerning the latest developments. Kaletsch was to tell Gritzbach that we needed a written confirmation of the directive which had reached us already that we would settle the matter by the 9th of December. Gritzbach, who knew of the order Goering had issued, then told Kaletsch that he, Gritzbach, wanted Kaletsch to draw up a draft. That's what was done. The draft was then slightly changed by the offices of Goering and put into a more severe form. That was what we had requested, and as far as that goes this already had been ordered by us, this letter on page 40 of the English Document Book, if that's what you call it "ordered work", [bestellte Arbeit] then it's correct.

Q. Therefore, the facts which already existed were only to be established in writing and more particularly the responsibility of the Reich government, or rather of Goering, should be established without any doubts, in writing, namely, to the effect that he actually had given that order?

A. Yes.

* Directive from Koerner, as State Secretary of the Plenipotentiary for the Four Year Plan, to Flick, 6 December 1939, reproduced in B above.

Q. That would, therefore, be in the framework of the battle you conducted to get written confirmation, clear written confirmation about who was responsible for all this occurrence?

A. Yes.

* * * * *

Q. Now, this morning you already explained why you conducted this struggle and this constant battle for the State taking over the responsibility and for the written declaration of this responsibility by the State. Now how did this battle end? I don't mean now the battle for the exchange but the battle to force the State to recognize its responsibility without any doubts in writing, so that it, the State, is responsible?

A. Well, after the order of 6 December had been issued, on 9 December a preliminary contract was drawn up between the Harpen and the Hermann Goering Works and concluded.¹ It wasn't a legally fool-proof contract. It was not drawn up before a notary but, for the rest, it had been signed by the Vorstand of both companies. In this preliminary contract all real agreements had been established. Of course, a fact which was very important to us was the history of the development of the transaction. That is, the demands by the Hermann Goering Works to have its own soft coal basis, all that under the form of a so-called preamble, and then we had chapter B, which dealt with the economic question and gave a description of the mutually surrendered objects. Then we had chapter C, the so-called concluding part, in which questions of syndicate were discussed and also the questions of the reserve deposits for Ilse, etc. The fields of the ministries involved, and the expert offices of these ministries later decided on a formal division of these three parts. Their viewpoint was that chapter A was a matter only between the Ministry of Economics and Harpen while Chapter C was a matter of the Ministry of Economics and Harpen also, and chapter B only concerned the question of the exchange between the Hermann Goering Works and Harpen. That's the way matters were later on certified—of course, always as a conditional contract [Junktim]. They were being put into force like that, too. And what on 15 September was still the subject of the discussion within the expert offices, namely, the division of the record into three parts, became irrelevant because later on the Ministry of Economics gave its express agreement to the record of 9 December² and confirmed it, and Goering himself personally confirmed it, and therewith the whole contract was put in force. Also on a later

¹ Document NI-937, Prosecution Exhibit 480, reproduced in B above.

² Letter from the Reich Ministry of Economics to Harpen, for the attention of defendant Flick, 18 January 1940, Document NI-3438, Prosecution Exhibit 486, reproduced in B above.

occasion the Minister of Economics again gave us a confirmation which meant that the whole was an act of sovereignty of the State.

* * * * *

CROSS-EXAMINATION

* * * * *

MR. LYON: Now, Defendant, yesterday we were looking at the activities of your principal collaborator, Mr. Steinbrinck. We tried to ascertain which activities and methods, as you understood it, he was using or was engaged in in connection with the whole Petschek affair. I would like now to direct your attention to a memorandum by Steinbrinck written 17 February 1938. This is Document NI-3241, Prosecution Exhibit No. 421 * and appears in the English document book at page 63 and in the German document book at page 66. I would like to look particularly at the last paragraph beginning at the bottom of page 63. I would just like to read one of two sentences there and I quote:

“Since we must be of the opinion that only through arrangements based on the rules of private enterprise will we be able to gain influence in the firms, and that for that reason we must not actively participate in a political action, we are interested in having the negotiations continued. The following plan should be pursued in this respect:

“1. Permission to negotiate on foreign currency;

“2. Prevention of attacks against the Julius Petschek group and possible promotion of attacks against Ignaz Petschek;

“3. Resumption of negotiations with Julius Petschek after the press campaign has been in effect for some time.”

Now, I would like to ask you first, do you remember whether you read this memorandum?

DEFENDANT FLICK: I don't remember having read this memorandum. As I said, I don't remember having read this memorandum. Also, it isn't directed to me. It's apparent that this is a sort of monologue of Steinbrinck's, and the prosecution has not asserted either that this file note had been submitted to me.

JUDGE RICHMAN: The only question he asked was whether you read it or not.

PRESIDING JUDGE SEARS: He says “no”. He says “he doesn't”.

DEFENDANT FLICK: After 10 years I can't tell you whether I have read the note because it hasn't been initialed and therefore I assume that it is almost certain that I haven't read it.

PRESIDING JUDGE SEARS: I think we understand the answer.

* * * * *

* Reproduced in B above.

MR. LYON: Defendant, I would like to direct your attention to another document written by Steinbrinck. This document is Document NI-3225, Prosecution Exhibit 441.* It appears in document book 10-B, page 21 of the English text; page 25 of the German text. This document is a memorandum by Steinbrinck dated 6 August 1938. It is headed, "File Note. Subject: Problem Ignaz Petschek." The document bears your initials. The memorandum reports a conference which Steinbrinck had had with Mr. Hahn of the Prussian Ministry of State. I would like to direct your attention, particularly, to the last paragraph beginning on page 21 of the English text. That is at the beginning of page 4 of the original. I would just like to quote two sentences. This is the part that follows paragraph 5 (d) of this document.

"I informed Hahn about our discussions with Reinhardt and Wohlthat, and I repeated the proposals I had made before. In my opinion we shall make no progress in the Aryan question as long as the Ministry of Economics or another higher authority is not in the position to give a clear ruling as to whether an enterprise could be regarded as Jewish, even if foreign Jews were represented on the supervisory board."

PRESIDING JUDGE SEARS: Where did you say that was?

MR. LYON: Your Honor—

PRESIDING JUDGE SEARS: After (d)?

MR. LYON: Yes, Your Honor.

PRESIDING JUDGE SEARS: It begins in the middle of the paragraph, the end of the first line?

MR. LYON: Yes, Your Honor.

Now, Defendant, do you remember having read that memorandum?

DEFENDANT FLICK: I suppose so. However, I cannot remember it, but I assume that I saw it. I cannot remember at all after 10 years whether I have seen a file note or not, or whether I have read it. In a general way, I do not think anybody could remember after 10 years.

Q. I understand, Defendant. Now the question is, would you have been surprised at these sentences written by Steinbrinck?

A. You mean that sentence that according to my opinion, we do not make progress on the Aryan question?

Q. Yes. That is the sentence.

A. I do not think that I would have been surprised because the only explanation I can find now would be that that was merely a factual investigation of the question under what circumstances an enterprise could be Aryanized by the government agency and could

* Reproduced in B above.

be considered Aryan or non-Aryan. In this I can only see an attempt made by Steinbrinck to bring about a clarification in this connection, that is, a clarification by government agencies. Nothing is unclear to me about the tendency he followed in that connection because this tendency can be seen from the sentences at the end of the file note, that is the summarizing sentences. There the sentence reads—"I could not get a definite promise that these enterprises"—i.e., the Petschek enterprises—"would then be regarded as Aryan; on the contrary, Dr. Hahn emphasized that this suggestion should come solely from us without any reference being made to the authorities." I derived from that that Steinbrinck made attempts to obtain a statement from a government agency, according to which the Petschek enterprises were to be considered Aryan, under the condition that the non-Aryan representative would resign from the Aufsichtsrat. If they succeeded in that in August 1938, that would have been a very considerable success for the Petscheks.

* * * * *

Q. Now, Defendant, I would like to return to Mr. Steinbrinck. I would like to look particularly at a matter which was written to Steinbrinck by this lawyer, Dietrich, on 20 June 1938. This is Document NI-898, Prosecution Exhibit 437.* It appears in document book 10-B, on page 3, that is on page 4 of the German book. May I ask whether the Secretary General has the actual exhibit here this morning—this is Exhibit 437?

THE SECRETARY GENERAL: I haven't it here. I could send for it.

MR. LYON: Could you send for it?

Now, Defendant, you have been questioned at considerable length on various occasions about this letter. I would just like to come back to it once more, I hope for the last time. Dr. Dix discussed this with you at some length and I would like to summarize very briefly what I understood the testimony to be. I am not sure I understood your final answer about this letter. This was a letter, as I say, from this lawyer, Hugo Dietrich, to Steinbrinck, dated 20 June 1938. The letter is only one sentence long and it encloses what is referred to as an exposé of some 7 or 8 pages, which is a study of the existing laws affecting Jews, and which contains a suggested draft for legislation. The covering letter from Dietrich to Steinbrinck reads in full as follows:

PRESIDING JUDGE SEARS: We have read it. Why do you want to read it again?

MR. LYON: Well, I can postpone reading it. It will be necessary to read it sooner or later, Your Honor.

* Reproduced in B above.

PRESIDING JUDGE SEARS: Well, I don't know if it will be necessary to read it or not. I don't see any reason for reading it now. It only clutters the record. Of course, this conversation may be just as bad.

MR. LYON: Very well, Your Honor. I would like to reserve further discussion on it if I may.

PRESIDING JUDGE SEARS: Very well, there is a covering letter that we are interested in.

MR. LYON: Yes, Your Honor. I only thought that might be the shortest way of describing it.

PRESIDING JUDGE SEARS: It would have been.

MR. LYON: Now, defendant, I would like to summarize your testimony with respect to this letter as you gave it to Doctor—

PRESIDING JUDGE SEARS: I don't think a summary of the testimony is necessary now. Ask the question. What question have you to ask? I want to expedite this examination as far as we can.

MR. LYON: I understand, Your Honor—

PRESIDING JUDGE SEARS: You have now had Mr. Flick on the stand in cross-examination a very long time.

MR. LYON: Yes, Your Honor. I can perhaps avoid that. I thought it might expedite it if I could simply read two or three sentences which seemed to me in connection—

PRESIDING JUDGE SEARS: Can't you argue that, without reading it?

MR. LYON: I think perhaps—

PRESIDING JUDGE SEARS: We can't take up any more time from your reading to us than if we read them ourselves.

MR. LYON: Now, Defendant—

PRESIDING JUDGE SEARS: But if you want to read three sentences, of course, go ahead and read them.

MR. LYON: I thought it might save the defendant the necessity of repeating his conversation with Dietrich.

JUDGE RICHMAN: It may save him that, but probably, as we know him, he won't take the opportunity.

PRESIDING JUDGE SEARS: If you want to read them, there is no objection to your reading them. Further, we will listen to them.

MR. LYON: I would just like to read two short sentences, if I may.

PRESIDING JUDGE SEARS: Very well.

MR. LYON: At page 3346 of the [mimeographed] record, I think you stated, and I quote: "I am quite certain that I did not order it, and I am convinced that I had not known it either."

DEFENDANT FLICK: Can I rectify that statement, Mr. Prosecutor?

Q. That is what I would like you to do, Defendant, I would like you to explain that, if there is anything to explain.

A. I happen to know even the wording of it, of what I said. When defense counsel asked me the following question, "Did you know the expert opinion given by Dietrich?" then my answer was: "In accordance with what I know today, I believe that I have to answer this question in the negative." Those were the very words I used, not one word too many and not one word too little, and I can confirm that today.

Q. Now, as I understand it, then, you did not know about this letter at any time by the end of June 1938, is that correct?

A. I am of the opinion that in June, I did not read the expert opinion. As for the covering letter which consists only of one sentence, I have initialed it. However, the expert opinion itself did not have six to eight pages, because there were enclosures, and the whole included perhaps fifty to sixty pages.

Q. Now, Defendant, my next question is, whether you knew in June 1938, that Dietrich had written a letter to Steinbrinck with these various enclosures.

A. I assume that in June 1938, I saw a letter of Dietrich on my table, but I had no knowledge of the contents of the enclosures and I had not read through it. That is the opinion I have of that matter today.

Q. Well, now, Defendant, I would like to show you the original letter—

PRESIDING JUDGE SEARS: You mean the short letter of Dietrich's?

MR. LYON: Yes, your Honor.

Q. —and my next question, Defendant, is: Did you have any idea by the end of June 1938, whether from this letter or from any other source, that Dietrich was preparing legislation affecting the Jews, preparing drafts of legislation?

A. Law drafts, legislation, concerning the Jews? Well, that I couldn't tell you really. I did know that Dietrich was working—I wouldn't say on legislation—but that he worked on laws concerning the nationalization of mineral deposits. I think that I had some general knowledge of that. At least I had some kind of knowledge that he was working on such matters. And I think that there he made a compilation of all the material as was done in the other countries, for instance, in Sweden; and one could see from his compilations how matters had been arranged in these other countries.

Q. And he had prepared this study at the request of you or Mittelstahl, is that right?

A. He did not work on my initiative.

Q. That wasn't my question—

A. (Continuing)—I never gave him any mandate, neither in one matter nor in the other. That he probably had a relation to Mittelstahl and some connections, well, that is a matter of course, because otherwise he wouldn't have given an expert opinion after all.

Q. You know that he worked for Mittelstahl, don't you, defendant?

A. Sure, that I know.

JUDGE RICHMAN: Who did give the directions, if you didn't?

DEFENDANT FLICK: Well, you see, today I could only establish that from the documents. Dietrich himself states that he never talked these matters over with me at all, and this short letter, well, I am very sorry I have to read it to you. It reads here:

“Dear Mr. Steinbrinck: Referring to our discussion of Saturday concerning the Ignaz Petschek problem, I enclose the exposé we discussed, * * * which you might transmit to Ministerial Director Wohlthat.”

According to my opinion, I can derive from that the connection so far as Dietrich and Steinbrinck discussed the matter. But whether Steinbrinck gave Dietrich the mandate or whether Dietrich himself made the suggestion, well, that I can no longer find out. But I think it might be clarified by questioning both these gentlemen.*

Q. What was Dietrich's job there? Was he your lawyer for Mittelstahl? Was he employed solely by your concern?

A. He was not working for us fulltime, he was an advising counsel for us and we would call him in for quite a number of matters, and in compensation we made the necessary retributions, and payment; but we had our own lawyers, Dr. Streese, Dr. Saubrich, and these lawyers were full-time employees of Mittelstahl. And Dietrich was only occasionally called in for some special jobs. But there were also other lawyers, for instance, Justizrat Frey, or Kempner. Well, altogether, we had about six lawyers with whom we worked.

Q. He wouldn't have been working on this particular task if somebody of your organization had not asked him to work on it, would he?

A. Well, I am convinced that is correct, Your Honor.

* Defendant Steinbrinck's testimony concerning this matter is reproduced in E below. Hugo Dietrich was not called as a witness but submitted an affidavit which is reproduced in F below.

Q. And probably Steinbrinck, if you didn't ask him, probably Steinbrinck asked him.

A. I assume so, Your Honor, but in order to clarify the matter I wanted to add that Dietrich was a very capable and active man who liked to stress his importance and show his usefulness; but that he had a mandate, that I believe. I am convinced of that. But whether he also developed some initiative on his own, well that I couldn't tell you today.

MR. LYON: Now, Defendant, I would like to direct your attention again to this letter that you just read, and I would like to have you tell me what you must have thought when you read this letter over. I am not referring to the enclosures, only referring to this one-sentence letter which you initialed. You certainly noticed when you initialed it that it was from Hugo Dietrich, didn't you?

A. I can only state what I have already stated, namely, as the enclosure was composed of at least fifty or sixty pages, and as this enclosure is not signed and initialed by me, it is first of all doubtful whether it was joined to the letter at all, and I don't think I have read the enclosure.

* * * * *

E. Testimony of Defendant Steinbrinck

EXTRACTS FROM THE TESTIMONY OF DEFENDANT STEINBRINCK *

DIRECT-EXAMINATION

* * * * *

DR. FLAECBSNER (counsel for defendant Steinbrinck): Now, Mr. Steinbrinck, let's pass on to the Petscheks: If Your Honor please, this refers to the document books 10-A to 10-D, and I would ask you to kindly take these document books.

Now, Mr. Steinbrinck, you have followed the proceedings here and you have heard what the prosecution had to say concerning the Petschek case. In Mr. Flick, the prosecution sees the initiator with whom all the measures against the Petscheks originated. Will you please explain to the Tribunal what were the reasons why you had an interest in the brown coal holdings of the Petscheks at all?

DEFENDANT STEINBRINCK: May I submit the chart to the Tribunal again, the chart which we had referred to the other day? (Handed up)

* Complete testimony is recorded in mimeographed transcript, 30, 31 July; 1, 4-8, 11-13, August 1947; pages 4674-5460, 10329-10331. Further extracts from the testimony of defendant Steinbrinck are reproduced above in section V F.

Now the brown coal holdings of the Lauchhammer works and of the later Mitteldeutsche Stahlwerke were exceedingly small, especially if one takes the fact into consideration that apart from the brown coal, scrap iron was the most important raw material to our steel works. In other words, to avoid a misunderstanding I would like to mention the fact that we had Martin steel works, in other words no blast furnaces, and that in contrast to the blast furnaces of the Hermann Goering Works, we used only brown coal for our steel production in Riesa, while the blast furnace works can use only soft coal and coke.

When in 1923 I came to Lauchhammer, our coal deposits were only good for 25 years, and the holdings at that time, Your Honor, can be seen on the chart about in the middle, where you have the red square, Lauchhammer, and there are two red spaces about in the middle, two areas in the middle—it's in red shading, Your Honor—and you can see that the holdings are divided in two parts, one of them north of Lauchhammer and the other one to the west of Lauchhammer, and we were encircled south, west, and north by the green shades there, the green squares; in other words, the Bubiag, and further south the Niederlausitz Coal Works, that is orange shaded.

Now, every few years our coal deteriorated in quality, and when Mr. Flick had gained his influence over the Lauchhammer group and when the Mitteldeutsche Stahlwerke had been founded, then in 1926–27 we made an attempt, in cooperation with the banker Goldschmidt, Jakob Goldschmidt of the Darmstaedter National Bank, to gain an influence over the Bubiag, either by getting the majority of the shares or by forming a company of joint interest.

Unfortunately these plans were not carried out because at about that time the majority of the Bubiag passed from the weak Friedlaender group to the hands of the very strong Graf Schaffgotsch of Upper Silesia. In other words, our plans of getting coal right near our own pits did not succeed at that time. Therefore, in those good economic years of 1928–29, we had to buy brown coal from the syndicate, from the East Elbian Brown Coal Syndicate which was controlled by the Petscheks, and we had considerable difficulty, especially for the Hennigsdorf Works near Berlin, to get this brown coal which we absolutely needed.

The brown coal supplies for the concern Mittelstahl was our weakest point, the weakest point of the whole concern, and that was the reason why we were, of course, extremely interested when it was said that brown coal holdings or brown coal shares from the Petschek holdings were to be put on sale, and as Mr. Flick states, that was for the first time in 1935 and then later on, in 1937 again.

Q. According to your recollection, when did the whole affair with the Petscheks take an active course?

A. Maybe you can clarify this first of all. What do you mean by "Petschek affair" and what do you mean by "taking an active course"? Because be it Julius or Ignaz Petschek, they usually were put in the same bread basket, and as long as I worked in the steel industry near Lauchhammer they had the worst possible reputation in Germany. Whether that was justified or not, that does not have to be discussed here, but the main reason probably was the policy of their trading companies and the methods they used against the Viag; that is, the German Reich-owned holding company for the industrial property of the Reich, especially in the case of Ilse.

Last, but not least, the Karo-Petschek trial* was one of the reasons, and the struggle for the Hohenlohe holdings which the Petscheks also took over, but all that was before 1933, Your Honor.

Q. Now, what were the Petscheks charged with? What was the subject of the attacks against the Petscheks?

A. Apart from these special cases which I just mentioned; namely, Hohenlohe, Ilse-Viag, and the Petschek-Karo trial; first of all the Petscheks were charged in their trade, and that is the Petscheks as entrepreneurs, that their influence in the syndicate was the reason why the coal price was kept artificially high for the consumer, because the difference between the purchase price which the large dealers paid to the syndicate and the sales price for the consumer, was too high; those were the charges the consumers made against the Petscheks. Now, the independent dealers, that is, the dealers who had nothing to do with the Petscheks, complained that they were not allowed to buy directly from the syndicate, but that they were obliged to buy from the sales representative at the mine, that is, the Petschek dealer of the syndicate. That brings up also the third charge, according to which the Petscheks made profits on both sides; that is, on production and on trade. But, first of all, that these high double earnings and profits did not remain in Germany but went to Czechoslovakia. I think that is the reason why the charges made by the Party and by many consumers against the whole of the syndicate policy were directed in the first place against the Petschek group. I remember a special case in 1936 when one Petschek group wanted to purchase the *Fortschritt* mine and that was quite exaggerated in the newspapers and was stirred into a big scandal.

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* This refers to a divorce suit in the Petschek family.

Q. Now, toward the beginning of January [1938] you heard via Herbert Goering of the formation of a political commission to study that Petschek question. Did this commission or the information concerning setting up this commission influence your plans of negotiations in any way?

A. Well, I think that this commission changed the whole situation and the basis of further negotiations considerably, because all considerations up to that point were based on our wish to solve the problem by measures of private enterprise; that, in full agreement with the competent State agencies, we wanted to privately purchase the shares for ourselves; but this commission now confronted us with a position in which the shares or the whole enterprises would go into the hands of the State or into the hands of Mr. Sauckel. Therefore, of course, it would have been out of the question that we as private owners would receive brown coal.

Q. Now, may I interrupt you? If you speak of the hands of the State or in the hands of Sauckel, do you make a difference between the two there?

A. No. In both cases it would have gone to the State: but in the one case the State was the Hermann Goering Works, whereas in the case of Sauckel it was a province, I might say a province in the State of Prussia, but that also would have been State-owned.

Q. Well, will you please go on.

A. Now, this information from Herbert Goering showed us, furthermore, that very strong forces were working, namely Pleiger and Keppler, in order to solve the problem by political means. Pleiger and Keppler were of the opinion that new German mining deposits should be opened and made available, and whatever could be purchased of such deposits should not go into the hands of private industry but to the State in order to be administered for the benefit of the State. The State ownership tendencies of Sauckel I have already characterized. I only have to remind you of the Gustloff-Foundation, and the telegram to the Gestapo which is referred to in this document, started exactly as it started in the case of the Fortschritt mines and in the case of the Gustloff-Foundation that is, Simson-Suhl.

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Q. Now, your statements which can be found in Document NI-3252, Prosecution Exhibit 404,¹ Document NI-3254, Prosecution Exhibit 406,² and Document NI-3251, Prosecution exhibit 407,³ in document book 10-A, according to Mr. Flick's indication,

¹ File note by defendant Steinbrinck, 5 January 1938, reproduced in B above.

² Enclosure IV to Steinbrinck's memorandum of 10 January 1938, reproduced in B above.

³ Memorandum by defendant Steinbrinck on the "Petschek Project," 10 January 1938, reproduced in B above. Enclosure IV to this memorandum is the exhibit mentioned in the preceding footnote, Document NI-3254, Prosecution Exhibit 406.

are preparations for the conference of the commission which was to be held. That is, for a conference of the commission of the foundation of which you had been informed by Herbert Goering. In other words, the Sauckel Commission, if I should term it that way. Now, Mr. Flick has stated that he wanted to conclude the whole transaction by strictly private measures and that thereby he wanted to preserve the Petscheks' fortune for them. Now, how would you account for the fact that you as well as Mr. Flick in these memoranda suggested State measures and discussed them? Will you please explain that to the Tribunal now?

A. May I point out again that such memoranda as the ones submitted here, were not always correct; they were only considerations in order to clarify the matter in one's own mind. First of all, one writes it down, that's a sort of monologue for Mr. Flick. One considers the pros and cons without, however, reaching definite conclusions from the very beginning or any definite results. In this particular case here, it is what I would try to call "feelers" in order to develop a constructive plan how the problem can be solved and in order to submit this constructive, this definite plan to the Sauckel Commission. If this document 407, which consists of five or six pages, is read through, then one must admit that the attempt to find a constructive plan on a mere private ownership basis has really been made thoroughly. Surely I think these attempts constitute about 90 percent of the whole written matter and if it's criticized that there were such considerations of legal measures, they are only in the last paragraph. But maybe I can first briefly refer to the first part which seems very significant to me and very important. I have thought it over, and it can be seen from pages two and three, if the whole Petschek project was to be solved on a private ownership basis, then how much money does it take and how can the Petscheks be decently indemnified? Now, as has been calculated, it was a project of 192 million Reichsmarks, and that can be seen from the top of page two. We did not take the exchange rate of the stock exchange as a basis, but we wanted to be fair and we added a supplement of about forty points, that is, more than 20 percent.

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Q. Mr. Steinbrinck, we were discussing the question that in the notes made by you and Mr. Flick, which you describe as preparations for the coming commission negotiation, you were already considering that possibly legal measures might be considered. You said in your answer that you would try to give the Court a survey of the magnitude of the problems to be solved, and now after having done so would you concentrate on these legal measures you mentioned?

A. I want to avoid misunderstandings. May I make a few more remarks about the material point?

PRESIDING JUDGE SEARS: Yes, you may.

DEFENDANT STEINBRINCK: Your Honor, these notes in the first page of the document were not made by us and do not mean that we wanted to buy these shares. It says on page 3 at the top, for example, the counter value of the 190 million marks must be covered as follows: "40 percent equivalent value, by surrender of securities, 35 percent equivalent value by preferential shares without voting rights, 25 percent equivalent value in cash." What matters is the next sentence. "As a number of very powerful groups, including the Viag [Vereinigte Industrieunternehmen A.G.] and the Hermann Goering Works, are concerned in the division of the P. property", it continues, "it can be expected that these groups can supply considerable parcels of shares which on general grounds can remain in the ownership of the P. groups without objection." The following passage also seems important to me, on page 2, still to illustrate the idea with which we approached our task. There it says: "If foreign exchange cannot be paid, all the shares are to be purchased, then the Petschek groups must be allowed to invest their fortune in other enterprises as they would be unable to do anything with such a large amount as almost 200 million Reichsmarks". And even the 40 million Reichsmarks which they were to get as 25 percent of their participation has seemed too high to me; this is shown on page 4, at the end of the first paragraph. And I was thinking that not even 40 million Reichsmarks could you, in decency, offer to the Petscheks, and my starting point is that it will be possible for them, or that they will be permitted to obtain other soft coal pits, the Waldenburg pits in Lower Silesia, where they have not had a participation until now.

I just wanted to say that briefly to characterize the fundamental ideas of our proposition, which were based on private economy, and I pass now to legal measures. And how did I come to think of such a thing? In principle, Mr. Flick and I had exactly the same experience. We had to remember what would the commission ask, and I ask the Tribunal to consider that neither Mr. Flick nor myself, up to that time, had ever been to report to Goering and we could not get any idea of what he would ask, what his attitude to the problem would be, and as we had always been used to compiling notes for Aufsichtsrat meetings or to prepare very carefully even our own ideas for our own use, this same tendency was also shown in the preparations for the commission.

A week or 10 days later the same thing applied in the preparation for the discussion with Goering. These legal considerations,

considerations about legal measures, are found in paragraph 4, paragraph numbered 4 on page 4 of the document, and it says: "One must contemplate forcible measures or State intervention. The promulgation of a decree has already been considered which would prohibit foreigners or other non-German citizens from exploiting or profiting from German mineral resources. This decree has weak foundations and may lead to consequences, the effects of which cannot be yet assessed. The question whether force should be used at all against the P. groups is a purely political one and solely dependent on political factors. If such an action is decided on, it must be borne in mind that the most rigorous means may have to be employed".

I would like to comment on this, that in my opinion this is a clear warning, a warning which we wanted to make to the political commission and which was to be given to Goering in private. This law about the exploitation of mineral deposits, the draft of the law I should say, about the exploitation of mineral deposits by non-Germans, I declined to have anything to do with. But a few weeks later, perhaps even a few days later, I saw Mr. Hugo Dietrich, one of our attorneys, and commissioned him to establish in the German ministries whether and what laws existed in foreign countries, the purpose of which was to prevent important local mineral deposits being exploited and acquired in the interests of foreigners, and to prevent important key industries from too many foreign elements in them. In other words, it was a question of legislation concerning laws which already existed abroad. This work, as far as I remember, took several months, and I hope that it is available and will be submitted.

These are very extensive documents; one was about thirty pages long and the other about the same length, and at my request, in order to make things clearer, a summary was made in the form of a chart which must be available somewhere. If I remember correctly, this collection of laws or the extracts from this collection, I sent to Mr. Keppler, possibly to Wohlthat and Neumann too, with the idea of showing that even by very mild measures one can protect one's own mineral deposits.

Unless I am mistaken—after all, it is 10 years ago and I never bothered about it again—I pointed out at that time that there were regulations in Sweden and Brazil which, as I say, according to my memory—I am not sure whether that's absolutely correct—determined that foreign influence on important mineral deposits and important key industries can be eliminated by limiting the number of foreign Vorstand members in the companies as well as of the members of the Aufsichtsrat.

I mention that because that is all in my line of thought when I fought for getting the Petschek company considered as Aryan

as long as none of the Petscheks were any longer on the Aufsichtsrat or on the Vorstand, and if instead, a trusted representative was appointed to the Vorstand and Aufsichtsrat to see to their interests, but I think we will have to come back to this problem several times and in order to make my fundamental ideas clear, I point this out especially.

I believe too that this idea suggested by myself, of studying the regulations existing abroad and to apply them to our legislation, was a parallel to the mandate given by State Counselor Posse, namely, to draft an expropriation law. May I stress once again that we, as representatives of Maxhütte and Harpen-Essener Steinkohle, were fundamental enemies of every nationalization of mineral deposits. I think it is obvious, because it would have taken away Mr. Flick's biggest property, or might at least have affected it. We, under all circumstances, disliked this scheme and tried to prevent the nationalization of the brown coal mining industry, and especially of the Petschek enterprise, by the political commission.

Q. Now, Mr. Steinbrinck, let us hope that fate will be as favorable to us as in the case of this note concerning the Berchtesgaden conference, and that this work of Dr. Dietrich will be found, too. Other works of Dr. Dietrich have been found, and I would like to turn to these right away. These, Your Honor, are Document NI-898, Prosecution Exhibit 437;¹ Document NI-897, Prosecution Exhibit 438;² and Document NI-896, Prosecution Exhibit 439,³ in document book 10-B.

Mr. Steinbrinck, what does this expert opinion mean which the prosecution found and submitted? Will you please comment on it?

A. May I here, too, say first of all that I don't recall these things at all. I do recall the commission concerning the compilation of the laws as existing abroad, but I do not remember this case and what I am saying now, Your Honor, is what I have reconstructed on the basis of documents which have been submitted, and my careful thought of the possible connection of all these events. I am fairly certain that I have things straight. To make this understandable, may I point out how Dietrich's commission came to be given in the first place. On 25 May 1938, we were commissioned by State Secretary Koerner—that is after the Julius Petschek problem had been solved in principle—to make concrete

¹ Letter from Dietrich to defendant Steinbrinck, 20 June 1938, transmitting expert opinion on matters related to Petschek problem. Reproduced in B above.

² Letter from defendant Steinbrinck to State Counselor Neumann, 22 June 1938, reproduced in B above.

³ Letter from defendant Steinbrinck to Ministerial Director Wohlthat, 14 June 1938, not reproduced herein. This letter was identical in its text with the last mentioned exhibit, Steinbrinck's letter of 22 June 1938 to Neumann.

proposals for the Ignaz Petschek problem. This letter is introduced as a document. I haven't it in my hand at the moment, but you can always come back to it.¹

It was on 26 April, 4 weeks before, that the decree concerning the registration of Jewish property had been issued, and 3 weeks later after Koerner's commission had been given, a sort of explanatory regulation appeared on 14 June which laid down under what conditions and when property is to be considered as being Jewish.² One must keep that in mind. On 14 June this law or rather the explanatory supplement to it appeared. According to these regulations the Four Year Plan was able to use this property declared Jewish in agreement in the interests of German economy and safeguard it. That is what the law says. If these two laws are now applied to the Ignaz Petschek case, that means that now the two Petschek companies are definitely described as being Jewish and are in the danger, on the basis of the law of 26 April, of being seized and registered and used by the Four Year Plan. The documents of Hugo Dietrich, the document which you have just submitted, and other documents show that a few days after 14 June, I visited State Counselor Reinhardt, the confidential adviser of Ignaz Petschek. I will come back to the details later. And on 18 June I had a discussion with Wohlthat or Neumann, perhaps even with both of them. I must assume that in this discussion with Wohlthat or Neumann I was told that on the basis of the explanatory regulations of 14 June a governmental action against the Petscheks was imminent.

Q. Just a moment, Mr. Steinbrinck, if I may interrupt you. Did Wohlthat and Neumann in their fundamental attitude follow the private business line recommended by Mr. Flick, or did they incline rather to solving the Petschek problem by political means? In the commission you mentioned this morning, consisting of Sauckel, Pleiger and possibly Keppler, what view did they represent? Could you inform the Court on that point?

A. Neumann at that time, I believe, was still Ministerial Director in the Prussian Ministry of State, and extremely correct. One might almost say he was an over-cautious administrative official, the typical careful Prussian official. Wohlthat was a former colleague of Schacht. I believe Schacht took him into the Ministry with him in 1934, and as far as I remember, he remained in close touch with Schacht personally. I believe that these two indications are sufficient to characterize the absolutely pro-business and sensible economic line that the two gentlemen followed. Wohlthat and

¹ Reference is made to Koerner's letter of 25 May 1938 to defendant Flick, Document NI-3320, Prosecution Exhibit 432, reproduced in B above.

² Third Regulation under the Reich Citizenship Law, 14 June 1938, Document 1404-PS, Prosecution Exhibit 335, reproduced in B above.

Neumann both were opposed to a policy of force, and both of them as far as I could find out, never felt quite at home within the State Ministry—I mean with the other representatives of the Ministry. They always kept a little apart. Both of them followed the same line recommended by Mr. Flick and every sensible private business man.

If I may supplement my remarks, I must assume that at this meeting in the Ministry, since I left the Ministry after a meeting with Wohlthat and sent the letter to Wohlthat a few days later, and since Hugo Dietrich in his letter to me expressly mentioned this material was to be passed on to Wohlthat, it is very probable that in the course of the discussion with Wohlthat or Neumann I was told that supplementary regulations have been issued, now the Four Year Plan will act, the “Iron man”, i.e., Hermann Goering. What can be done in the interests of the policy followed so far together with Wohlthat and Neumann? We have no one to support our paying foreign currency to Julius Petschek. And notes from the discussion with Wohlthat show that his policy was one purely determined by world economics. The result presumably was that he told me, “Steinbrinck, you are supposed to make concrete suggestions to Koerner. You have personnel available. Make a draft of it, now that the two laws of 26 April and 14 June are available. What can be done now so that no expropriation takes place, but that a decent price is assured?”

I am convinced, and it is shown by all these documents of Hugo Dietrich's, that the fundamental idea of Hugo Dietrich was: Now the laws have been promulgated. Now make a draft. What must happen so that the Four Year Plan does not register and seize everything in the interests of German economy—that means just take over everything for the State and just put the money in their pockets, as they did in the case of the Gustloff Foundation, and in other cases which I don't remember at the moment.

These drafts now, which Dietrich sent with his remarks about foreign legislation, I sent on to Wohlthat and Neumann, and this fact confirms my idea and my conviction. Thus these proposals were very mild. Our aim with the Hugo Dietrich proposal, too, was to show that there are sensible regulations and one can promulgate sensible laws. One needn't be rough and smash everything.

These documents I sent off on the 22d, a few days later, to Wohlthat and Neumann, and I said expressly that these were definitely not concrete proposals such as Koerner probably expected us to make, but that this was discussion material and suggestions. Whether it was used, and how it was used, the agencies would have to decide for themselves. I only wanted to present this material showing the result of conversations which

we had with Wohlthat and Neumann in the past concerning the ways and means which could be considered in case statutory measures contrary to our wishes were inevitable, and in case the Four Year Plan should take these matters into its own hands,—Goering had reserved the right to regulate the Petschek case himself—the two expert advisers, Wohlthat and Neumann, then, at any rate, would have some ideas available as to how one could proceed in the mildest possible way.

I may add here, too, it was a protective measure against the effects of the laws of 26 April and 14 June. If I, as the prosecution submits, had drafted these laws myself with the aim of finally pushing the Aryanization forward, then surely it is hardly comprehensible for me, during the next few weeks, according to the documents for the first time on 5 July and then on 6 August, and I believe again in October, to make suggestions, to appoint trustees, to see that the Petscheks resigned from the Aufsichtsrat, in order to protect them against all the anti-Jewish laws. That was my view, I might also say, with Karl Petschek: “If you would only get out of the Aufsichtsrat and make up your mind to appoint somebody whom the government will approve and whom you can trust to take your place in the Vorstand—after all, State Secretary Reinhardt can take over your voting right—then you are safe. Then you are considered an Aryan. Then your enterprise is Aryan. Then nothing can happen.”

We had the same case—I mentioned it yesterday—with the Swedish and French shareholders of Rawack and Gruenfeld. We had the same case with Henkel-Persil. The big firm of Henkel-Persil, I don't know if the name means anything to you, Your Honor, but it's a world-wide enterprise for soap manufacture and the decisive influence in this company lies in Switzerland and the Swedish shareholders, especially Dr. Huber Henkel, had agreed with Landrat Wilhelm Tengemann to submit to a German trusteeship, and in this way to protect themselves and to guarantee the German influence so that there would be no foreign influence left in such an important enterprise. These were the ideas which prompted me after the draft of this law to find out how the enterprise could be labeled Aryan without any loss to the Petscheks. I think that's the decisive part.

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Q. Mr. Steinbrinck, this morning you already talked about the expert opinion of Hugo Dietrich, but I am afraid we must refer once again to Document NI-898, Prosecution Exhibit 437 * of 20 June. The prosecution claims that here one sees quite clearly the

* Reproduced in B above.

line which is characteristic of the whole transaction—private people are asking for a law which is directed not against foreigners, but against Jews—but in spite of that it is disguised as nationalization of mineral deposits; in addition, this law was allegedly being pursued for selfish reasons only. Will you please comment on these charges?

A. I believe that at this time and at this stage, when Hugo Dietrich got this commission, we were not private persons in that sense. Either we had Koerner's permission to make concrete proposals—in that case we had not only the right but I presume the duty, to put ourselves in the place of the State and its ideas and to consider what could be done; and if I discussed this "What can we do" with the experts, who were proper officials, then surely it is an internal discussion between, if you like, experts commissioned by the State, and not a private person. However, as far as I remember, such discussions never came up and as far as I can see from the documents, these drafts of letters were sent to Neumann and Wohlthat, but up to now I have not been able to discover whether they were ever discussed again. If you now say that we had drafted the letters to our own advantage, so can this, I believe, in no way be proved. We were saturated with coal. We did not want or need any more coal for the time being because, with the increase of 2 million tons, our requirements were met. We had, as I mentioned, much too much of our own work to do because at that time we had not started negotiations at all with I.G. Farben. We were still having considerable disputes with Wintershall and we had taken over a job together with Salzdettfurth which caused us a good deal of headaches. We did not have any money either. Unfortunately, I forgot to mention how difficult it was to get money; in connection with the final report of Goering we even had to ask the Four Year Plan for support in the granting of a loan totaling 15 million RM for Anhaltische Kohlenwerke. I would like to say further for purposes of proof that we had no further interest, and to point out that considerations of financial expansion, obtaining of money for further mines or transactions on our own account, in the whole 6 months up to the end of 1938, as far as I remember, no longer occurred for buying brown coal. At any rate, so far they have not been submitted. And I would like to consider this proof of the fact that we really had other things to do than to concern ourselves mainly with the Julius Petschek business.

Q. Yes, but still the prosecution believes that the law or decree of 3 September 1938, which was finally issued, to a large extent agrees with the draft which Attorney Dietrich delivered on your behalf, and that in both drafts, so they say, a trustee is provided for, and then in both versions a provision was made that legal

steps were to be made available, and so on. Now, I wanted to ask you, what did you think of this draft of the attorney Dietrich? Was the appointment of the trustee to be a prelude to expropriation? Is there a fundamental difference in your opinion between these two regulations?

A. We have already had to establish here that the concept of "trustee" is causing a frightful amount of muddle. This morning I pointed out that my idea of a trustee was a man on the Vorstand and Aufsichtsrat of the Petschek companies, to give by his presence an Aryan character to the enterprise and to protect it against interference by reason of the law of 26 April and its supplementary directive of 14 June. I then suggested a trustee with voting rights, who for a definite number of years should have transferred to him the voting rights of Petschek's shares, but who could be appointed at Petschek's request; and then I suggested the appointment of a trustee for the syndicate because before we had rows and disagreements in the conduct of the syndicate business. The trustee envisaged by Dietrich was to take over only in case on the basis of the law of 26 April and the supplementary decree of 14 June, the Four Year Plan would take over the brown coal enterprises. This suggestion of Dietrich was to establish and guarantee that a decent, fair, and just price was fixed. That was the only function of this trustee. And beyond that there was the second instance, to safeguard at all costs that a fair, just price was reached here and not a price which does not correspond to the true value.

Q. We can argue about that later, about the legal aspects. Now, I want to ask you, what was your aim in sending Dietrich's expert opinion to Wohlthat and Neumann?

A. I have already said this morning, I don't remember any longer. I have tried to reconstruct how it came about and as to the whole idea, the whole concept of the law in all the other documents which have been submitted up to now and did not occur again in the discussions with Wohlthat and Neumann. I believe that the purpose must have been to give the two gentlemen, with whose line of economic policy I agreed, a picture once again, to show them, or shall I put it like this? To show them that the goal of the State could be reached with very mild and just measures, and not by the clenched fist and force.

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Mr. Steinbrinck, yesterday we wanted to talk about Document NI-3225, Prosecution Exhibit 441,* in document book 10-B. In

* File note on the Ignaz Petschek problem by defendant Steinbrinck, 6 August 1938, reproduced in B above.

this document there appears for the first time the tax claim on the Petscheks. Since this tax claim plays a large part in the course of the whole affair, please comment on it now, whether this claim as set out by the expert of the Prussian State Ministry here was also imposed on other concerns, and whether above all you believed that this was a genuine tax claim?

A. To my knowledge, after the big crisis of 1931-32, all big concerns were subjected to a tax examination by the competent tax authorities or the Reich Ministry of Finance. Hand in hand with this tax examination there was a so-called foreign exchange examination the purpose of which was to establish whether the German firms, especially those with extensive connections abroad, had complied with the foreign currency regulations, and especially whether they had called in their foreign assets as they were supposed to do and handed over this foreign currency to the Reich. The Ministry of Finance as taxation authority, and the foreign currency authorities usually worked for months with a large staff, in the Charlottenhuetten too, and not only in the main administration did they examine the books but also in the branch offices, the subsidiary companies, and so on.

I have already mentioned that in Charlottenhuetten and Mitteldeutsche Stahlwerke we had such an examination. I remember especially the examination of the Otto Wolff concern, because at that time it caused a lot of excitement. Then in the case of Henkel-Persil and in the Werner Karp concern and the Haniel group. Now, the chief administration of the widespread Petschek company, there was on the one hand the Deutsche Kohlen-Handelsgesellschaft and on the other hand the Deutsche Industrie A.G.—I think they were the two main central administrations in Germany of the Ignaz Petschek group—they had extensive connections—trade connections—not only with Czechoslovakia where the main office of the firm was, in Aussig, but also in Poland where they had large soft coal mines, and to my knowledge also with Switzerland and France. And therefore, it doesn't seem unusual to me if in the course of time, just as in the case of the other big concerns, the Ignaz Petschek group was investigated by—I suppose it must have been the central finance office in Berlin as competent authority, and the foreign exchange control offices. If you ask me whether I believed that these offenses against tax and foreign currency regulations which were established, were true, I must say yes. Karl Petschek was an exceedingly skillful businessman, not to say a ruthless businessman.

Through his enterprises in Czechoslovakia and Poland, and commerce all over the world, he had opportunities enough to dodge the rather rigid taxation laws or to interpret them a little differ-

ently. And since in the case of other companies considerable offenses against these tax and foreign currency regulations had been established, may I expressly say that in Charlottenhuetten, in our concern that was not the case, particularly not in foreign currency questions. I would really have been surprised if in the Petschek concern nothing had been found. If I may mention an example, I remember that in the case of the Henkel-Persil concern, 30 to 40 million Reichsmarks tax deficiencies were established which were then later cleared up by the appointment of a commissioner.

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PRESIDING JUDGE SEARS: Was Ignaz Petschek a subject or citizen of Czechoslovakia?

DEFENDANT STEINBRINCK: Ignaz Petschek lived in Aussig. He was a Czech citizen. Aussig, however, after the occupation of the Sudetenland, had been incorporated in the Reich and had become a part of the Reich. Julius Petschek was in Prague.

Q. But Ignaz Petschek had died in 1935, so that the taking over of the Sudetenland didn't have anything to do with it. It was a part of the Czechoslovak Government, wasn't it?

A. Excuse me, Your Honor, my answer wasn't quite correct, not Ignaz Petschek was there, but his company—

PRESIDING JUDGE SEARS: Oh, yes.

A. (continuing)—the company, Ignaz Petschek was in Aussig, while—

Q. Well, the taxes, especially the inheritance taxes, were a matter for the Czechoslovak Government, he having died a citizen of Czechoslovakia. What did the German officials have to do with that? Of course, this is a legal question, and you may not feel that you are competent to answer.

A. Your Honor, as far as I am informed, the inheritance tax plays no decisive part at all for the German financial authorities in the further course of the matter, because as far as I know, Ignaz Petschek had always lived in Aussig. On the other hand, his sons, Ernst and Karl, who were his heirs, lived in Berlin for many years.

Now, of course, I can't answer your legal questions, whether the inheritance tax had to be paid by the heirs or by the deceased, but it's less a question of the inheritance tax than of corporation taxes which arose out of the business deals and transactions carried out by the administrative head offices in Germany of the Petschek companies in their deals with foreign countries.

Q. I must have misunderstood your file note because in Document NI-3225, Prosecution Exhibit 441,* in subdivision 2, under the heading taxation questions, it says: "The central fiscal office

* Reproduced in B above.

has been working for months examining the estate left by Ignaz Petschek from the point of view of taxes and duties." I suppose those were inheritance taxes and duties; otherwise they wouldn't examine the estate. If I understand the meaning of the word "estate"—it may have a different meaning from what I think—if it means properties, why, that's another matter.

A. Your Honor, estate, of course, means what property the deceased man left.

Q. Yes.

A. There is no doubt about that, but since he left estates in Germany too, whether this comes under the German inheritance legislation or not, I can't say, but I suppose it does.

PRESIDING JUDGE SEARS: I don't think that it is very material anyway.

DR. FLAECBSNER: Your Honor, I will be able to clear up the taxation question in the course of my case-in-chief. I am afraid my client is in no position to know this, but I will provide some material on this subject later.

PRESIDING JUDGE SEARS: Well, I intimated that, Dr. Flaechsner, in my question to Mr. Steinbrinck.

DR. FLAECBSNER: Mr. Steinbrinck, in connection with this memorandum concerning the discussion with Wohlthat, we must consider Document NI-895, Prosecution Exhibit 443 ¹ which concerns a short telephone conversation with Keppler. From this the conclusion has been drawn that you were very interested in this alleged tax claim against the Petscheks. I would like to ask you to what extent Keppler at this time was actively concerned with the solution of the Petschek problem, and did he have any connection at all with this tax business?

DEFENDANT STEINBRINCK: No, Keppler had nothing whatsoever to do with the tax matter, but Keppler was at that time already, I believe, State Secretary in the Foreign Office, and he was a specialist on the Balkans. He was also very friendly with Pleiger. But what interested me in particular, both in the visit to Wohlthat of 4 October, Document NI-3314, Prosecution Exhibit 442,² as well as Exhibit 443, was less the tax question than the question which was much more important to us that is, what is Pleiger doing and what are his intentions. Hence the question put to Wohlthat. Wohlthat heard that Pleiger was interested in the acquisition of the German properties of the Petscheks and had negotiated for them. Pleiger had already made certain of getting the entire Sudetenland brown coal and had had it granted him by

¹ File note by Steinbrinck on the Ignaz Petschek matter, 7 October 1938, reproduced in B above.

² File note by Steinbrinck on conversation with Wohlthat, 5 October 1938, reproduced in B above.

the Reich Marshal. This Prosecution Exhibit 443 shows that Pleiger was also interested in Witkowitz, the biggest steel mill in Czechoslovakia, and wanted to incorporate it, as it says here, into the Hermann Goering Works. It is interesting to note here that we at that time, in spite of our good connections with Keppler, on 7 October still assumed that a plebiscite would take place both in Sudetenland and in Czechoslovakia. Why were we interested in Pleiger? Pleiger had been negotiating for weeks with the Rhine-Westphalia Coal Syndicate in order to make sure of getting coking coal for his Salzgitter and Linz works. But he demanded a very low price; that is, a price 20 percent below normal, a demand which the syndicate refused under all circumstances. This attitude of the syndicate was highly convenient for Pleiger because he was able to say, "Now I have got a capacity of 2 million tons of steel in Salzgitter; I have got Witkowitz with 700,000 tons of steel; I have got the Alpine Montan Industry with 600,000 tons of steel; but I have not got a single mine in the Ruhr", and that is why—this was in October—he approached us again and again: "Herr Flick, I want mines from you". This demand was not made for the first time in October. I think at the end of 1936 we battled with Pleiger for the first time because of his demands to participate in Harpen, and, of course, we were exceedingly interested to find out to what extent Pleiger intended to expand his steel industry, because he would come along with his demands for coal, and only a fortnight later he told Mr. Flick, "If I show my chief a map of the Ruhr mine fields, well, you will see something." In other words, "I will get my coal fields all right."

So I would just like to stress that the tax question had no connection with Keppler at all. The taxation question only interested us by the way.

PRESIDING JUDGE SEARS: May I interject a question at this point? From at least 1938 on you show a great interest in the Petschek business. Now the interest which you showed was on behalf of the Mitteldeutsche Stahlwerke I suppose, principally?

DEFENDANT STEINBRINCK: Your Honor, the interest which I had as an associate of Mr. Flick arose out of the Koerner commission of 25 May 1938, when he said, "I commission you to make concrete suggestions for the solution of the Ignaz Petschek problem." So, in broad outline, we had to remain in on this in order to know what the government was doing, because it was to be our task, if Petschek was prepared to negotiate, to deal on behalf of the Reich and on behalf of Hermann Goering in order to see whether we could reach an agreement. In the next few days we would see what happened and that is why we had to keep up to date with what the Reich was doing.

Q. Well, what I am interested in particularly is why you were so interested. It wasn't merely as an expert adviser, was it, as you demonstrated? Wasn't there further personal interest—I don't mean personal to you but to your company—in this whole matter, even as far back as at least 1938? Now, I haven't forgotten also that Mr. Flick was given the commission to negotiate along in this same time, but you weren't particularly interested to help him as negotiator.

A. Your Honor, we with our brown coal and our egoistic wishes, if I may so describe it, had wishes fulfilled in the course of June after we had made our deal with UCC [United Continental Corporation].* I am speaking of 1938 now. And best of all at that time we would have liked to say: "Very well, now the Hermann Goering order is done with, we have nothing to do with it anymore"—because, Your Honor, we didn't want any more brown coal at that time, but we had the order and the difficult task of continuing to bother about the Ignaz Petschek case and having to negotiate.

Our subjective interest, Your Honor, our own independent interest, only begins again in January 1939. That is at a time when Goering said in the final talk in December 1938, "When the Ignaz Petschek problem will shortly be solved, Mr. Flick, then it is better if you get some of the Petschek brown coal in the Lausitz which is at your front door and for this purpose give up the brown coal you got from Julius." That was our idea, Your Honor.

Q. Well now wait a minute. What date was that?

A. That was on 13 December 1938, and then we took it over in January and February 1939.

Q. Well, here are file notes in October 1938, showing that you were still very much concerned about the Ignaz Petschek problem. Now by that time the transaction with the United Continental Corporation and Julius Petschek was, theoretically at least, settled so far as their giving up their German property, their German coal mines, their lignite mines, goes.

A. Yes. Yes.

Q. But you still even before this January or December order about the Petschek—Ignaz Petschek—property showed a very great interest in the Ignaz Petschek problem. Now here is what I am trying to find out: Was that because you felt that the Mitteldeutsche Stahlwerke or some one of the Flick corporations was going to acquire some of the property from Ignaz Petschek? I don't mean from him personally, from his company.

* This refers to the acquisition of parts of the Julius Petschek holdings from the holding company, United Continental Corporation of New York City.

A. Your Honor, today I can only talk according to the best of my knowledge and my memory as I see it today and as I think it certainly happened. We had no new interest in purchasing in the second half of 1938. We didn't want to buy any more because we had enough coal and we had taken over enough debts, too, in connection with the problem of AKW and WW.¹ We had to digest that first, and if we bothered about it and if I visited Wohlthat from time to time—I would like to point out sometimes it happened that Wohlthat summoned me and I didn't go there of my own accord—but, Your Honor, as a conclusion of our activity with UCC we had received the commission from Koerner, and so from Goering, too, to continue to take an interest in Ignaz, and we did it as little as we possibly could actively, but we couldn't withdraw entirely.

Q. Well, then I understand from that answer that your interest was really on behalf of the State, as the adviser of Wohlthat.

A. Your Honor, in the state of affairs after the winter of 1938, that is so.

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DR. FLAECHSNER: In your note dated 28 January 1939 you mentioned that Karl Petschek had rejected any further proposals for negotiation. Your Honor, for your information, this is book 10-B, Document NI-3286, Prosecution Exhibit 452.² I would like to ask you now, Mr. Steinbrinck, did, as far as you know, this rejection take place before or after the trustee was appointed?

DEFENDANT STEINBRINCK: The letter carried the date 28 January, but on what date the information was given me and on what date Karl Petschek mentioned these matters, that I can't quite say. I would assume that this is a record of the information we had about Karl Petschek. We just made short notes—just kept the matter up to date for possible discussions.

Q. Mr. Steinbrinck, will you please look at document NI-889, Prosecution Exhibit 453.³ That's a very long document, but perhaps we can finish it quickly. The prosecution assumes from your discussion with Mr. Voss that the Hermann Goering Works really did not want any soft coal, but that the idea to exchange the soft coal for brown coal was made as an excuse by you just as much as a State political necessity had been used as an excuse by you. Would you please tell us something with respect to that, but please say this briefly, otherwise we shall be short of time.

¹ Anhaltische Kohlenwerke and Werschen-Weissenfelder Kohlenwerke, the main holdings of the Julius Petschek group.

² Memo of defendant Steinbrinck for defendant Flick, 28 January 1939, reproduced in B above.

³ File note of defendant Steinbrinck, 2 February 1939, on conversations with Voss of the Hermann Goering Works.

A. It is my opinion, looking at it objectively, that theoretically it is quite possible that Pleiger would be able to supply his furnaces with coal from the syndicate, because doubtlessly a furnace with 120 million tons coal production is more easily in a position to get the supplies which amount to 4 to 5 million tons coking-coal per year; but more precisely and technically speaking, it is a matter of course that he should make plans with a long view and that he would need his own coal basis. Mr. Pleiger himself has explained that the architect and the engineer who was responsible for building the factory, that was Mr. Brassert, had definitely demanded that the same quantity of coke should always be supplied. He could only guarantee this supply from his own deposits. I have already mentioned that I do not know of any furnace works and I don't think there is one which did not have its own coal basis. To the question whether we were asked to get the coal from Harpen and to the question who suggested that, I would like to say that Pleiger had mentioned that the group Harpen-Essener Steinkohle only had available for its own smelting plants 5 or 6 hundred thousand tons per year, whereas the pits themselves, produced 14 million tons per year. I shall show you figures and tables about that, but just to give an example the Vereinigte Stahlwerke produced in their pit 24 million tons and used in their own plant only 12 million tons.

* * * * *

Q. Mr. Steinbrinck, on 22 February 1939 an application from the Mitteldeutsche Stahlwerke reached the Ministry of Economics. This is Document NI-3272, Prosecution Exhibit 457.* You signed this application. In this application you register your claim of the Mitteldeutsche Stahlwerke for Eintracht and at the same time you offer an exchange or declare your preparedness to make an exchange. Will you tell the Tribunal why this application was made?

A. In one of the documents which was submitted and just before—I think the one of 6 February—it's shown. It was shown by my discussion with Gabel on 14 February that the Reich Minister of Economics was anxious to make a constructive plan how the brown coal situation could be best cleared up and which of the interested groups were to get shares. Flick too was asked to concern himself with it, but the way we regarded the whole matter was that the Reich Ministry of Economics should do all the preliminary scrutinizing and make proposals. The Reich Ministry of Economics then submitted its developed plans to Field Marshal Goering who then probably called in Flick as technical adviser. As a result, at the suggestion of Gabel with whom I was in con-

* Reproduced in B above.

tinuous contact, we gave our ideas about clearing up the brown coal business within the groups Mittelstahl and AKW. A letter will show that at that time I saw Gabel roughly once a week to exchange ideas with him, because I think at that time I knew conditions of brown coal better than Mr. Gabel did. The application of 22 February was made in an effort, concerning a distribution plan by Gabel, to get Eintracht allocated to us, for we were prepared in exchange to give up the Geiseltal in central Germany and other brown coal deposits. That's the meaning of this suggestion, and may I point out on page two, in the middle, that we were prepared to take over the capital stock of Eintracht and pay for it in brown coal.

* * * * *

Q. Would you now please turn to Document NI-6007, Prosecution Exhibit 460? * The prosecution has submitted this as evidence, that the Ministry of Economics and Gritzbach, etc., were of the opinion that Pleiger could get enough coal from the coal syndicate and that the exchange was not necessary for reasons of State; and Flick's remark that he wanted to give Pleiger coal at an especially cheap price was in direct contrast to the price that Flick later on got. Will you please comment on this? On the first point you may be very brief.

A. Exhibit 460?

Q. Yes.

A. I believe that there is no contradiction with what I have said so far but I think it is rather a confirmation. Here we have a remark in the conversation between Mr. Flick and Mr. Gritzbach, in which Flick asked Gritzbach—"Has Goering made a decision about brown coal" and, second, "Has Pleiger already complained to Goering about Flick?" Even if Gritzbach here represents the viewpoint that Pleiger should buy his coking coal from the syndicate—so I too took this viewpoint to begin with—but that could always be only temporary. That Flick wanted to get out of this deal by giving up part of a field and only resisted the necessity of sacrificing a mine, that, I think, General von Hanneken also confirmed a few months later, and Mr. Pleiger himself, too, when he said he remembered that Flick told him: "Herr Pleiger, take the Maximilian field with the workers settlement. It has a value of 6 million marks. That's the value in the ministry's account, but for heaven's sake, leave me in peace", because being with Herr Pleiger was like being in the company of a lion.

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* File note of defendant Steinbrinck, 28 February 1939, reproduced in B above.

Q. What was your idea about the exchange?

A. Well, it is relatively simple with shares. In the case of Eintracht and the Niederlausitzer Kohlenwerke a capital stock of 80 million marks each was involved. If we wanted to get half of each, we, Mittelstahl and Salzdettfurth, it would have cost us at the stock exchange rate of 150 percent, between 18 and 20, perhaps at the most 21 million marks. That is putting it very high. That is the value, approximately, of a small mine with an output of one million tons or so, as, for instance, the value of the Mount Ceniz was later; the value of Herne would have been 6 or 7 million more, and the Sachsen mine, without its fields, would have come to about the same. So if they had given us the share majority we would have been able to meet the purchase price quite easily by giving up these two relatively small mines. At that time, in the middle of March, we didn't know what Pleiger really wanted from us. Only in June did he definitely say: "I will not be satisfied with one small mine and one coal field but I want from you, Flick, the Herne and Victoria mines" and that changed the picture considerably.

Q. You say, Mr. Steinbrinck, that you did not know what Pleiger wanted from you. The extent of the Salzgitter works you knew, and what Pleiger, if he wanted to get Salzgitter into full production would need in the way of coke, you could work out. Now you will be asked, as mining experts you would have been able to count up on your five fingers what Pleiger would need.

A. You are absolutely right. But you must take into consideration that this was in February or March, and the first two blast furnaces were to start up in September. The two million tons of steel and the five million tons of coal Pleiger would need only when he did not have two blast furnaces going but when he had, I think eight—but that would take 1 or 2 years. On the other hand, we wanted to get off as easily as possible and we didn't know how Pleiger could pay. None of that was cleared up but I think that it would have been asking really too much of us if you think that we would voluntarily have offered Pleiger two, or three, or four million tons of coal. There you know us very badly if you think that.

Q. Now, another question. In this letter you do not mention the State decree at all. Would you have carried out this deal, on the basis on which it was carried out at that time, without an order from the State?

A. To make it absolutely clear, an order from the State had to be issued; oral instructions from Goering and the State political necessity was obvious. These State political necessities we would have taken into consideration at this stage, in February and

March, if we had given up only one mine or one field, without getting it sealed, signed, and delivered. But later, that is, when Pleiger asked for more, then nobody could expect us to simply admit the political necessities. There we wanted a law, a regulation, a written instruction, which could be published before the whole world—"the private individual, Flick, did not do this voluntarily. He was ordered to do this." It was my innermost and personal fight, from the first day on, when I recognized that Pleiger was a person who was never satisfied, and that he would not be satisfied with a few fields. I realized the only way it could be done was through a written regulation which could be published. To make it clear, to part with the Alpine, that went at full speed without any written instructions at all, and it was always asked later, "was that really necessary? Did you have to part with this enterprise that you have had for 20 years?" And, we wanted our prestige preserved and we wanted the State to say, "I have ordered it; I have issued this instruction." And then nobody could tell us that we, as private businessmen, had supported the State economy. I mean that is the difference. At the first small stage you could make a concession, but it became a principle when it was a matter on the scale of this Harpen affair. One word more: I still believed up to April that agreement would be possible with the Petscheks, and my demand for a State order concerning the brown coal property dates from the beginning of April when I did no longer believe that we would reach an easy agreement with the Petscheks. I shall prove that.

PRESIDING JUDGE SEARS: Witness, the brown coal properties which you received—the Flick Concern received—had formerly belonged partly to the Julius Petschek family and partly to the Ignaz Petschek family, had they not?

A. Yes, the brown coal we had up to December 1939, came partly from the old Lauchhammer property, but the bigger part was acquired from Julius Petschek, while the so-called new acquisition belonged to the companies controlled by Ignaz Petschek.

Q. Of the brown coal which the Julius family had, what proportion—I mean the brown coal within the German Reich—what proportion of that would you say, roughly, came into your hands?

A. From Julius Petschek we got roughly a little over three million tons in briquettes.*

Q. How much did he have in all, in Germany? Don't take the mines outside of Germany, but all in Germany.

DR. FLAECBSNER: The German Petschek property.

* In the language of the trade this means lignite mines and installations producing 3 million tons of briquettes annually.

PRESIDING JUDGE SEARS: The German Petschek property.

DEFENDANT STEINBRINCK: The Julius Petscheks gave all.

PRESIDING JUDGE SEARS: The Julius Petscheks gave all?

A. Yes, everything in the German Reich—they still had some soft coal in the Sudetenland.

Q. Now of the Ignaz Petschek [property] which they had in the German Reich, how much of it came to your hands?

A. Finally, roughly 30 percent; altogether it was 13.5 million tons, which were controlled by Ignaz Petschek, and we got 3.8 million.

Q. Then these are the companies, the I. G. Farben, the Wintershall and Salzdettfurth concern, they received the balance, or were there still some others, besides those three, of the Ignaz Petschek brown coal properties in Germany?

A. The remaining Ignaz brown coal was distributed as follows. The Reich, the Viag, got 4½ million tons, everything that belonged to Ilse. The Phoenix-Leonhard got a part of it, with production, I believe, of almost 2 million tons. This was not exchanged for soft coal, as far as I know. This must have happened after 1941. This the Reich, I believe the Dekobe, kept, and the Salzdettfurth group got—please don't check me on that—I think there were a little over 2½ million tons.

Q. Did they keep it, or did they pass it on?

A. No, they kept it; they had brown coal deposits of their own in central Germany and in the Lausitz.

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DR. FLAECBSNER: Your Honor, in my document book 2, that is the document on page 76 of the German book and, if I am not mistaken, it is the same page number in the English book.

PRESIDING JUDGE SEARS: Now, you want to refer to this and let us call it defendant Steinbrinck Document 333, for identification exhibit number—I mean, Steinbrinck Defense Exhibit 75 * for identification.

DR. FLAECBSNER: Thank you, Your Honor.

DEFENDANT STEINBRINCK: May I explain the contents of this note? It is one of those monologues which one carried out in order to clarify one's mind, but I think it had some significance because it was a sort of a little testament by me because I was going on a holiday immediately afterward. I think it is also significant for the way not only in which we were as Mittelstahl and Harpen supposed to settle the problem but also how I thought the State should settle the problem. Therefore, maybe I may read it here:

* File note of defendant Steinbrinck, 6 April 1939, reproduced in part in B above.

“Viewed from the standpoint of private enterprise, it is hardly desirable if German industrial circles help to introduce measures leading practically to the expropriation of a foreign private individual. In like manner, from the point of view of private enterprise, it would be considered a furtherance of State economy if the Hermann Goering works were put in possession of a soft coal base without the strongest pressure having been brought to bear on private interests for the purpose of ceding the soft coal fields.

May I explain here, now follows the paragraph according to which the Ministry of Economics asked the interested people to state their demands. It says here:

“In consequence of the letter from the Reich Ministry of Economics, the interested parties are now to declare whether they are prepared to exchange soft coal for brown coal, and our group is to submit a definite proposal to accomplish this exchange. In my opinion, such a proposition can refer only to purely internal measures, such as establishing a basis of evaluation and determining the fields to be exchanged. The actual execution of the plan would have to be done in another way, perhaps as follows: Whenever the State considers the moment opportune for asserting its claims on Petschek, it should acquire the coal fields from the Petschek Concern for the explicit purpose of procuring a soft coal base for the Hermann Goering Works. At the same time there would have to be a kind of sequestration of the coal deposits under consideration for an exchange and, to the owners, an injunction to cede these soft coal properties to the Hermann Goering Works, similarly as was done previously with the ore deposits. However, compensation for the cession of the soft coal deposits would in this case not be given by the State, that is to say by the Hermann Goering Works, in the form of Hermann Goering Works shares, but in the form of actual brown coal deposits.”

I believe that here the basic idea is stated how this whole transaction could be carried out; that is, the idea that this must be a State action and not a private economic contract in any phase of the various operations.

Q. Did you mean to indicate by these explanations, Mr. Steinbrinck, that from the beginning of April onwards the execution of this exchange deal was dependent on the Four Year Plan; that is depending on a decree which provided for the surrender of soft coal, as well as the taking over of brown coal as a quota to Harpen?

A. Yes. I think that from this point onward, at every possible opportunity, I have pointed out, and also Mr. Flick pointed out,

that this exchange operation was only possible from our point of view and could only be carried out, according to our opinion, by way of definite decrees issued by the Four Year Plan, the Four Year Plan being the supreme authority for economic questions in Germany. If we had had laws for such matters, I would have suggested a special bill. Mr. Flick also has always stated that we can only carry out this deal by way of a State decree.

Q. Why, now, did you fall in with these increasingly severe demands by Pleiger during this time? From the fact that you never once rejected these demands, the prosecution follows that the Flick Concern intended to have brown coal at any price. What would you like to say on this point?

A. My own experiences induced me to return to these business deals at the beginning of June. At that time, the Ruhr was in a very militant mood as a result of the entirely senseless orders of Goering with regard to miners' wages and also on account of the conflict between Pleiger and the coal syndicate. Pleiger demanded, as has been said before, that coal should be delivered by the Ruhr at a price which, in many mines, would not even have covered current cash expenditures. He threatened in his characteristic manner, also in the press—that was the beginning of June—to take "suitable" measures against the Ruhr magnates, as he expressed it. As documents show, Mr. Flick at that time discussed the matter with a great number of well-known experts. In the documents which the prosecution have submitted he mentions Hugo Stinnes, Dr. Kimmich of the Deutsche Bank, later on Kloeckner, and finally Dr. Knepper, the foremost German mining expert. All these people advised him in that way—"Mr. Flick come to an understanding with Mr. Pleiger. Otherwise there will be disaster." As Mr. Knepper phrased it: "If you can get an agreement, you will prevent the Ruhr from being expropriated." I think in this atmosphere, even with the best intentions in the world, one could not, without any difficulties, have rejected to negotiate even when, later on, Pleiger's demands increased in severity.

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Q. Will you kindly look at Document NI-3372, Prosecution Exhibit 467,¹ and Document NI-3373, Prosecution Exhibit 468.² Your note, Exhibit 467, deals again with the exchange possibilities. For the first time you find here the tax exemption [Steuerfreiheit].³ Will you discuss this briefly?

¹ File note of Steinbrinck, 3 August 1939, reproduced in B above.

² File note of Steinbrinck, 5 August 1939, reproduced in B above.

³ Steinbrinck's memo stated as to tax exemption: "In this connection I pointed out anew that tax exemption was *conditio sine qua non* for the exchange transaction."

A. I would like to give you a practical example which will settle the matter most efficiently. I would like to suppose that the nominal value of the brown coal deposit Eintracht, that is the taxable value, amounted to 40 million Reichsmarks, and that the taxable booking value of the soft coal which we were to surrender for this was 30 million Reichsmarks. That is quite possible because the basis for the valuation of brown coal and soft coal is different.

Now, if this exchange deal came about, we would, in Harpen, show in our balance sheet the brown coal with a taxable value of 40 million whereas we lose on the other side of the book the soft coal with a value of 30 million marks, so we would make a theoretical profit of 10 million marks and would therefore have to pay—I don't know quite what it was at the time—perhaps 40 percent taxes, and again every year another tax. This would have been quite impossible, and that is why we claim that such an exchange would have to be free of tax.

(RECESS)

Q. Mr. Steinbrinck, we stopped our discussion last night with your file note of 5 August 1939. This is the note regarding a telephone conversation which you had with Dr. Delius. In this note it is expressed that the authorities wanted to revive your old plan to form the holding company. The prosecution considers this a special proof of the influence of your group. As far as your opinion goes, was there any other possibility you could take into consideration?

A. If Your Honor please, if the State could not supply us with the shares, and on the other hand wanted to have our soft coal in exchange for brown coal, as far as I could see, there was no other way than the one that I had proposed. But the way the Ministry of Economics dealt with the matter, that was not what I had proposed. I must emphasize that point. Shall I indicate this difference once more?

JUDGE RICHMAN: Which note is this? What's the exhibit number?

DR. FLAECBSNER: 468 [Document NI-3373, Prosecution Exhibit 468], Your Honor, in document book 10-C.

DEFENDANT STEINBRINCK: If I might point out, on page 2 of this document, you can see the difference between our suggestions and theirs: First of all, the holding company has only a very small capital instead of somewhat more capital which would have corresponded with the extent of the transaction; second, there is an accounting in which the soft coal value, and not the returns from the liquidation is the basis of the accounting; third, it is here supposed that there is to be a distribution of dividends

in cash without taking into account that the company actually had no cash; and fourth, this exchange deal is to be built up as a private deal. In every case we ourselves had proposed something different, and that is why I was fundamentally opposed to this suggestion.

Q. In this document I notice the sentence—and that is on page 23 of the German book, in the original it is page 3—there is a sentence in the first paragraph from the top of the page which reads: “Hanneken raised objections; he wanted to effect this transaction alone.” Have you found this?

A. Yes, I’ve got it now.

Q. Would you kindly explain this sentence?

A. Hanneken raised objections to the suggestion of the representative of the Four Year Plan, who was of the opinion in this meeting that a private business, a private deal between the holding company and the soft coal group, that is Harpen, would not be possible, but that a decree of the Plenipotentiary for the Four Year Plan would be necessary.

Hanneken objected to this proposition of the representative for the Four Year Plan, that is, Dr. Hahn. That it meant he wanted to effect this transaction alone, I can only deduce. At the time I was of the opinion that he meant to issue this decree, or, as can be seen from the following paragraph, he wanted to build a private deal from this whole transaction. That is why the following sentence reads: “I agreed with Dr. Hahn that this procedure cannot be adopted and does not serve our interests.” And I think I could point this out. The prosecution interpreted this that I was following my own interests here, but I think it should read here “our common interests” because the State too had to be interested in the fact that this transaction should have been carried out in a fair and completely legal way, that is, on the basis of a decree. The difference in the opinion of the Ministry of Economics and the Four Year Plan starts here to make itself felt, and from this difference later on resulted the conflict which led to the ultimatum.

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DR. FLAECBSNER: Now, Mr. Steinbrinck, how was the development? Would you kindly turn to Document NI-935, Prosecution Exhibit 476? * This is a letter from Koerner and please describe to the Tribunal how this letter came about to be written? If you could keep that very short I am sure the Tribunal will appreciate that.

DEFENDANT STEINBRINCK: I think I have already mentioned the essential points. Koerner interfered, but he could not, or rather

* Directive from Koerner to Flick, 6 December 1939, reproduced in B above.

perhaps didn't want to prevail. The matter remained the same. The Hermann Goering Works were of the opinion that a private deal should be made, although we had agreed a dozen times, even as late as 22 September, that a State decree was necessary because this transaction was carried out on the wishes of the State and had its cause in State political necessity. Now, on 30 September 1939 we heard from Delius, Marotzke and Gritzbach. Marotzke was a Ministerial Counselor in the Prussian State Ministry and personal adviser of Koerner, that on 30 November there was supposed to be a meeting at the Field Marshal's office at which Coal Commissioner Walter and Pleiger were to be present. This meeting was to decide the issue between Pleiger and Flick. I don't know whether this rather important document had already been submitted concerning the telephone conversation of Marotzke.

Q. No, I don't think it has been submitted yet. Your Honor, you will find this file note with regard to the telephone conversation between Steinbrinck and Marotzke in my Document book 2, on page 83. The document is identified here as Steinbrinck Document 336.

PRESIDING JUDGE SEARS: The Tribunal will mark this for identification as Steinbrinck Defense Exhibit 78. ¹

DR. FLAECHSNER: I don't think I have to read it since it is before us. Would you, therefore, Mr. Steinbrinck, comment on this?

DEFENDANT STEINBRINCK: I think for the consideration of the question how the date of 9 December was fixed, this is the only important point here. The most important sentence reads that Koerner demanded, on the basis of this meeting at Goering's on 30 November, that an agreement should be made between Flick and Pleiger with regard to the exchange of soft coal for brown coal. Otherwise, if this agreement was not settled by 9 December, General von Hanneken had the commission to deal with these matters in the Ministry of Economics. Since the Coal Commissioner Walter was also present at this meeting and since his tendencies were known to us with regard to the nationalization of the mining industry, we had no doubt what this would mean. So we knew quite well what really lay in the back of this remark that General von Hanneken had been commissioned to take the matters into his own hands. I, myself, was not in Berlin on 1 December and only returned to Berlin on 5 or 6 December. From Document NI-936, Prosecution Exhibit 477, ² with regard to my conversation with Gritzbach and Marotzke, it can be shown how this letter came to be written, the letter which

¹ File note of defendant Steinbrinck, 1 December 1939, reproduced in B above.

² File note of defendant Steinbrinck, 6 December 1939, reproduced in B above.

Koerner sent to us and to Pleiger. In this letter Koerner confirms that the negotiations had to come to a conclusion that very week and that it was an absolute State necessity that the Hermann Goering Works should have the pits from Harpen. For a better clarification I have to add here that Flick and I did no longer see eye to eye with regard to the further development of these negotiations. I personally, exactly as Flick, was of the opinion that a State decree was absolutely necessary for every phase of the negotiations. That means there should have been a decree for the cession of the soft coal, for the values of the rate of exchange of the brown coal for soft coal, and another decree that Harpen had to take over this brown coal. Consequently when Koerner and Pleiger deviated more and more from this line to which they had agreed previously, I clung to it all the more and decided I would make no further concessions and yield only to force. Mr. Flick saw matters in a slightly different light, although on principle he agreed with me. He had in mind the war, in which the Hermann Goering Works were to play so important a part, and was worried that if we refused any further, the Hermann Goering Works would call this sabotage of their effort. This would have had very serious consequences for us in time of war. As a soldier, I thought slightly different about this. Therefore I was not satisfied with this letter from Koerner and, therefore, I still advocated with all means to carry on the negotiations for the settlement which I thought the only right one in the interest of the State as well as in the interest of Harpen. For the time being, however, Pleiger and Koerner would not give us this decree which we had been promised, and so nothing more could be obtained than this letter from Koerner.

Q. Did you need this letter in order to exert some pressure on Harpen or for what reason did you need this letter?

A. May I repeat that we absolutely had to have a decree, a written confirmation from high authorities that Pleiger was not bluffing us and that Goering personally demanded that we should cede this soft coal. On behalf of Harpen we also had to have this letter that we had to take over the brown coal, for Harpen had no brown coal. On the other hand, we needed this letter as a confirmation with respect to the original owners, that means the shareholders, no matter whether they were foreigners or Germans, we needed this in order to prove that this was not a private deal but a State transaction. This letter was not supposed to be used as pressure against the Vorstand of Harpen; it was, rather, to enable the Vorstand and us to assume the responsibility and to show that we had been compelled to do this.

* * * * *

CROSS-EXAMINATION

* * * * *

MR. LYON: Now, Defendant, there has been a lot of discussion here about these tax claims against the Ignaz Petschek group. When did you first learn of the tax claim against the Ignaz Petscheks?

DEFENDANT STEINBRINCK: I think that was toward the middle of 1938; at least, from the documents submitted here, one can see that it was 5 July.

MR. LYON: Excuse me a minute, my sound system does not seem to be working properly here. Could you give me a signal, interpreter?

[Here followed an exchange between counsel, the interpreter, and Presiding Judge Sears concerning the sound recording system]

MR. LYON: Defendant, I am afraid I did not hear your answer. The question was, when did you first learn of the tax claim against the Ignaz Petscheks?

A. I think it was toward the middle of summer 1938 and, if I look at the documents, it was, for the first time, on 5 July 1938.

Q. Do you remember a discussion with Hahn about this matter in August 1938?

A. Yes, that was on 6 August 1938.

Q. And do you remember a reference, at this conference, to the use of the tax claims as a means to induce the Petscheks to sell?

A. Well, in the document it is termed a little differently. It says there that in spite of the fact that the claims are doubtful, the Ministry of Finance reckons they will constitute such a burden on the fortune of the Petscheks that the holders of the estate will be forced to sell part of their shares.

JUDGE RICHMAN: What document is that?

DEFENDANT STEINBRINCK: That is Document NI-3225, Prosecution Exhibit 441, * Your Honor.

MR. LYON: Now, Defendant, you discussed this matter further with Wohlthat in October 1938, didn't you?

A. Yes.

Q. Wasn't it perfectly clear to you at that time that this tax claim was to be used as a pressure, to induce the Petscheks to negotiate?

A. Well, I couldn't tell you, but I don't think that is quite correct because during one of our meetings Wohlthat told me quite clearly that the tax claims were genuine and that he was

* File note of Steinbrinck on his conversation with Hahn, 6 August 1938, reproduced in B above.

going to fight that matter before the court, before the Court of Appeals, and even before the high courts. Therefore they must have been real tax claims—genuine claims.

Q. Defendant, that is not my question—whether or not they were tax claims. My question is whether these tax claims—whether it was not perfectly clear that these tax claims were to be used as a means of pressure to induce the Petscheks to negotiate? Wasn't that clear to you?

PRESIDING JUDGE SEARS: That is an ambiguous question. You mean that the State had this in mind, or Wohlthat, or some person that Steinbrinck was conversing with?

MR. LYON: Someone that Steinbrinck was conversing with, Your Honor. As a matter of fact the answer is applicable to all of your questions, as I understand the facts.

PRESIDING JUDGE SEARS: Yes. That was the attitude of the person with whom Steinbrinck was conversing.

MR. LYON: Yes. In this case, Wohlthat.

DEFENDANT STEINBRINCK: I could not tell you today what was the reason, what was the cause and what was the result—whether this whole matter of tax claim was raised in order to exert a pressure against the Petscheks, well, I don't think that; but once there was a tax claim, that was—

MR. LYON: Defendant—

PRESIDING JUDGE SEARS: I could not hear the end of the answer. Did it go off?

INTERPRETER: It was interrupted, Your Honor.

MR. LYON: I did not mean to cut the defendant off. I thought he had answered my question.

PRESIDING JUDGE SEARS: I don't think so; I am not sure.

MR. LYON: Well, perhaps we had better make sure, Your Honor.

PRESIDING JUDGE SEARS: Perhaps he answered it but the translation was cut off, I am not sure.

INTERPRETER: No, the answer was interrupted, Your Honor, by Mr. Lyon.

PRESIDING JUDGE SEARS: That is the German. Very well. The interpreter says that you interrupted and that cut off his answer.

MR. LYON: I see—his answer.

PRESIDING JUDGE SEARS: Of course I don't know.

MR. LYON: Well, Defendant, I think you remember my question. Is there anything more you want to say about it?

DEFENDANT STEINBRINCK: I want to clarify it, and in order to clarify it completely I would be most grateful if the prosecution could possibly repeat the question.

Q. My question was: "Wasn't it clear to you at this time that the tax claim was being considered, at least by Wohlthat, as a means to force the Petscheks to sell?"

A. I don't think so—not to force them to sell, but to force them to negotiate—yes, that is correct.

Q. You did understand that it was to be used as a means to force them to negotiate?

A. No, I just rejected that now. I said I don't know what was the cause and what was the consequence, but once there were tax claims by Wohlthat and he made efforts to explain to the Petscheks, and once the Petschek administration knew that there were considerable tax claims then this, of course, would be the cause and the reason why the Petscheks took up negotiations with Wohlthat. He did not have to put on pressure—it was a matter of course.

Q. Well, Defendant, you understood that it was the intention of Wohlthat, and possibly of others, to use those tax claims to produce that result, didn't you?

A. The tax claims were also a prerequisite and a justified assumption that now the Petscheks would enter negotiations after nothing had been heard from them for a year. That was an event in the business life of the Petscheks, a decisive event, which now could motivate them to take up the negotiations at least.

Q. Well, Defendant, perhaps to refresh your recollection completely I might refer you to Document NI-894, Prosecution Exhibit 444.¹ This is your memorandum of 13 October 1938. Your Honor, this appears in document book 10-B, on page 27. Now, at the top of the second page of this document, you reported as follows:

"The following has been agreed with Wohlthat: The tax and control measures as well as the supervision of the examination of documents remain in Wohlthat's hands. As soon as the Petscheks are prepared to negotiate, we are interposed² to take up negotiations according to the order of the Field Marshal."

PRESIDING JUDGE SEARS: What does the word "interposed" mean? That doesn't strike me as an English phrase. I don't know its meaning. Does it mean we are "disposed"? What does interpose mean? I know it is the word that was used—I have

¹ Reproduced in B above

² The court reporter by translating the German words "werden wir eingeschaltet" as "we are interposed" made a different translation than had been used in the original translation of the document where the words "we shall intervene" were used. Since the future tense and passive voice were employed in the German, an adequate translation is "we will be called in" or "we will be interposed."

got it written in just as you read it—but I don't understand what it means in English. We are interposed—we are shoved in—we are compelled to—?

MR. LYON: I don't get any idea that there is a compulsion there, Your Honor. I assume that it simply means that they have come into the picture directly.

PRESIDING JUDGE SEARS: I don't think the word interpose means that. It means to be thrust in—to interpose an answer—to interpose an objection. I don't know what the word means in the English translation in this sense.

MR. LYON: Well, there was an alternative—

PRESIDING JUDGE SEARS: Does it mean we are “disposed” to do it? Then it would be just as you say.

MR. LYON: There was an alternative translation which was originally employed here. The word was “intervene.” I think it gave the translators a little trouble to figure out just what the best word would be, Your Honor.

PRESIDING JUDGE SEARS: Does it mean we shall appear to take up negotiations—we shall intervene?

MR. LYON: Your Honor—

PRESIDING JUDGE SEARS: What is the German word?

MR. LYON: The German is “eingeschaltet.”

PRESIDING JUDGE SEARS: Well, I don't know what the shade of meaning is there.

THE INTERPRETER: That would be “called in.”

PRESIDING JUDGE SEARS: Well, is it in the passive—“We shall be called in to—”

THE INTERPRETER: Yes, Your Honor—“We would be called in” would be the meaning.

PRESIDING JUDGE SEARS: “We would be called in to do that” the interpreter says. That does not mean initiative on the part of the Flicks. But I don't know. We are talking about the translation, merely.

MR. LYON: Yes, Your Honor, I do not attach any weight to whether or not this in itself says that they are taking the initiative. I would be satisfied to rely on other evidence to supply that, Your Honor.

PRESIDING JUDGE SEARS: All right.

MR. LYON: Now Defendant, as you look at this language, isn't it perfectly clear to you now that the negotiations were to be tied in with the tax claim—that the tax claim was to be somehow essentially related to the negotiations?

DEFENDANT STEINBRINCK: No, not at all. Because it was at the discretion of the Petscheks whether they would recognize the claim for tax violations which they had committed and

whether they would repent to the point where they would say: "Well, we have violated the regulations and therefore we want to make good and in order to atone we now come to Mr. Wohlthat, the commissioner." But if they refused to make a confession, then Mr. Flick was to be requested by Wohlthat to come in as an economic expert and to talk with them and to ask them, "Well, how do you think that will go on now, because after all, if you have committed an offense, you will have to take the punishment upon you. You will have to pay the taxes. How are you going to pay them? And how are the negotiations to go on then?" That is the reason why Flick was to be called in as an expert.

Q. Now, Defendant, you understood that Wohlthat was in charge of these tax and other matters, didn't you?

A. Yes, he had been appointed commissioner for those matters.

Q. Was Wohlthat a tax official?

A. No, he was not a tax official. Gebhardt who worked with him was the tax official.

Q. Didn't it ever occur to you that this wasn't a normal tax situation when you had a man in charge of it who wasn't a tax man?

A. I think that after all it was not only a matter of tax questions but also violations of foreign currency regulations on a very large scale, and the Four Year Plan was the competent agency for foreign currency questions, and Wohlthat was Ministerial Director in the Four Year Plan. Therefore, Wohlthat was well acquainted with the questions of foreign currency and with the violations with which the Petscheks were charged, violations committed by taking a large part of their German shares abroad. Wohlthat, therefore, was the competent official for these matters.

Q. Then, do I understand correctly that from this point forward Wohlthat was in over-all charge of these various matters between the government and the Petscheks, and that you or Flick were the ones who were to carry on the negotiations? Is that a correct picture?

A. I don't think so, at least not only from that point on, because that had started much earlier, namely, that we on a merely private basis would make efforts to come to an agreement with the Petscheks. However, we had agreed that as long as State measures were to be taken we would not appear at all and would have nothing to do whatsoever with the whole agreement. Only when the Petscheks were again inclined to take up negotiations, then Mr. Flick was to be asked by the Four Year Plan to conduct these mere technical negotiations concerning a possible sale, because as can be seen from the document too, Mr. Wohlthat was

of the opinion that these difficult negotiations had better be conducted by a businessman than by an official. We were not to negotiate with the Petscheks concerning any fiscal questions or anything like that.

Q. Well, now, Defendant, I would like to direct your attention to another conference that you had with Wohlthat at that time. This conference was on 10 February 1939.

A. What date did you say?

Q. On 10 February 1939. This appears in the document book as Document NI-3277, Prosecution Exhibit 455 *—and, Your Honor, in document book 10-B, at page 53.

A. 455?

Q. Yes, that's correct.

A. Yes, I have found it.

Q. Now, I would like to ask you a number of questions which arise out of this document. You will note that it is a report by you of conversations you had had at a conference with Wohlthat and Gebhardt and Hahn, and that Karl Rasche of the Dresdner Bank had been there for part of the conference. Now, do you remember any offers or suggestions that were made at that conference to bring about a settlement of the Petschek tax claims?

A. Well, I do remember a few conversations, namely this conversation with Rasche personally. The fact of the offer itself I do not remember. I only gather it from the document here.

Q. Well, now, at the bottom of the first page of this document it says:

"In the course of these conversations Franz Petschek mentioned to Mr. Rasche the difficulties he encounters in connection with his German property."

Do you remember whether or not these difficulties had anything to do with taxes?

A. Well, that is quite possible. But I don't know it any more.

Q. This document doesn't refresh your recollection on this point?

A. Well, this special question, whether it was a question of tax claims, that I couldn't tell you exactly. But I told you it's possible.

Q. Do you remember any proposal that was made by Rasche in that connection, in connection with taxes—perhaps I can refresh your recollection a little further, Defendant.

A. No, not for the time being, I can't remember it.

Q. You don't remember any proposal by Rasche to negotiate with Franz Petschek to see if the settlement of the taxes couldn't be brought about?

* File note of defendant Steinbrinck, 10 February 1939, reproduced in B above.

A. I think there must be a mistake on the side of the prosecutor. I think that Franz Petschek's fortune was quite separate from the Karl Petschek holdings, and I think that in this particular case Rasche was negotiating with Franz Petschek concerning difficulties incurred by his cousin, Karl—or his brother; but as far as I know Franz Petschek himself had no difficulties on the tax side. I don't want to be misunderstood there.

Q. Now, Defendant, do you remember any references to taxes at this conference as having any relation to possible negotiations for purchase of the Petschek property?

A. I think Mr. Gebhardt was present at this very meeting, because after all Gebhardt was the most prominent fiscal expert in the Reich Ministry of Finance, and he dealt with this special Petschek question. I think that I even specially asked him—and if you don't mind I will look for the spot—I asked him, "How is the tax situation?" And on page 3 of this document I find that Gebhardt explained the matter to me and he stated that the tax position was very strong and that it was true that perhaps as far as the amounts were concerned a reduction was to be made, but in any event full success would be achieved, and this success was all the more sure as the new Czechoslovak Government had declared themselves ready to take joint action with the German Government concerning these fiscal matters and to exchange documents. In other words, that meant that now the fiscal files of Czechoslovakia were also placed at the disposal of the German fiscal authorities and thereby all the tax violations were uncovered completely.

* * * * *

Q. Now, Defendant, as you look at this document you certainly remember, don't you, that you advocated that in view of the tax situation an effort should be made to postpone negotiations, an effort should be made to prevent other possible purchasers from negotiating with the Petscheks to purchase the property? You remember that, don't you?

A. Other purchasers? Or do you mean other intermediaries were to be excluded? Do you mean that?

Q. It doesn't matter; either way, defendant, anyone who was interested in negotiating a purchase of the properties.

A. Excuse me. I don't agree that is—

PRESIDING JUDGE SEARS: That is entirely different.

DEFENDANT STEINBRINCK: That is different.

PRESIDING JUDGE SEARS: That is different from what you said you were indifferent to. Now it is in relation to the purchasing, not in relation to being an agent for the negotiation.

MR. LYON: My other question—that's right, Your Honor—I hoped I could facilitate an answer by giving the defendant his choice, but it didn't work out that way.

PRESIDING JUDGE SEARS: No.

MR. LYON: Defendant, you remember, don't you, that you advocated that in view of the tax situation an effort should be made to prevent the Petscheks from doing anything to dispose of their property. As you put it, you advocate that they should be made to fidget a little longer. You remember that, don't you?

DEFENDANT STEINBRINCK: Well, that's something quite different. It's true I said that, and I am still of the opinion today, but that's something quite different; namely, if somebody like Karl Petschek, with whom for 12 months we had taken the initiative and made proposal after proposal, a dozen times, is not graceful enough or doesn't see his way to even give us one single decent answer, and now it becomes evident that at the same time Karl Petschek committed offenses and crimes which in Germany were considered as treason and punished with the death sentence, namely, violations of fiscal and foreign currency regulations on a large scale, a very large scale, and then apparently his conscience tells him something has to be done so he sent an intermediary who submitted a proposal of which Wohlthat said that it was actually grotesque; in other words, it couldn't be taken seriously at all. I don't think that anybody could expect us, after we had made effort after effort a dozen times with the Petscheks, that we should now go and see the man who had committed the offenses—namely, Mr. Karl Petschek—that we should call on the sinner and say to him, "Now, come Karl Petschek, and make your confession." That would have been a very Christian spirit, that's true, but it wouldn't be exactly businesslike, because he was actually a very clearly established tax sinner, tax violator. When now, on 10 February, after he actually made such a ridiculous offer, it became obvious that if we would have gone and said, "Well, Mr. Petschek, how about it?", well, then he would probably have reprimanded us again and sent us home and that would not have been in line with the tactics of a mediator and businessman like Friedrich Flick. I mean, one couldn't ask that of Friedrich Flick. After all, this man, this sinner, must now repent and consider things, and he must come and tell us, "This is what we can do. Now I am ready to negotiate, and I would like to talk to you." That's the way he should have done it.

* * * * *

MR. LYON: Now, Defendant, I would like to turn to a new subject. I would like to talk to you about this letter from this

fellow Hugo Dietrich addressed to you. This is Document NI-898, Prosecution Exhibit 437.* This is in document book 10-B, Your Honor, on page 5. I beg your pardon, Your Honor, it begins on page 3 of the English document book. Now there has been a lot of discussion about this letter. I am sure you are quite familiar with it now, Defendant. I would just like to ask you a few questions about it. This letter from Dietrich to you encloses what he refers to as an exposé which runs to several pages, six or seven pages, and which includes among other things a suggested draft of an Aryanization law. Now this work of Dietrich's was undertaken at your request, wasn't it? That is, I mean you, personally.

DEFENDANT STEINBRINCK: Yes. On 18 June I asked Dietrich to think about certain questions, and these thoughts he put down here.

Q. Did you ever inform Flick about this?

A. I can't say whether Herr Flick knew about this before I gave the commission. I don't think so. Certainly not. It was a Saturday and obviously I had returned from a discussion at the Ministry, and Dietrich's reply arrived on Tuesday. I hardly think that before receiving this document I would have told Flick about the matter.

Q. Well, did you inform him about it afterward?

A. I can't tell you that either. As far as I remember this document which went through the mail has his initials, but I am not sure.

Q. Well, you did assume that he might see it in the ordinary course while looking over the correspondence, didn't you?

A. I didn't understand.

Q. You assumed that he might see it, didn't you, in the ordinary course while looking over the correspondence or memoranda?

A. I can't, of course, know in this specific case. Normally our correspondence, if it was interesting, went to all our colleagues in turn. Whether this letter which obviously I sent on the 22d arrived with the ordinary mail and was passed on to Mr. Flick and Mr. Weiss, I can't say, nor do I remember who initialed Dietrich's letter. I believe it even has my own initials on it, but I don't know for certain any longer.

Q. Well, now, do you remember whether Flick ever talked to you about it and told you whether he thought you were making a mistake in getting these drafts from Dietrich and sending them on?

A. That I cannot say.

* Letter from Dietrich to defendant Steinbrinck, 20 June 1938, enclosing expert opinion on the Petschek question. Reproduced in B above.

[Recess]

Q. Now, if it please the Court, I think we were before the recess referring to a letter from Dietrich to Steinbrinck with respect to the drafting of a law to effect Aryanization. I have just one or two more questions along that line. Defendant, did you have earlier discussions with government officials on the subject of legislation to bring about Aryanization of property?

A. As far as I remember I did not have any conversations with government agencies. I discussed the matter with Keppler. That is true, but Dr. Hugo Dietrich was the man who had the conversation with the Ministry of Justice.

Q. Did you have a conversation with Keppler as early as November 1937?

A. I think as far as I can see from the documents, yes. It was a matter of Keppler's proposal to draw up a law which prohibited non-Aryans or noncitizens of the Reich the acquisition and exploitation of mineral deposits.

Q. And didn't you tell Keppler on this occasion that you thought the law didn't go far enough?

A. Well, as far as I can see from the document I did say that. I told him, after all, such a law could be circumvented at all times. You can go around it because, after all, you only have to run this factory or this mine by an Aryan.

* * * * *

F. Affidavit of Defense Affiant Dietrich

TRANSLATION OF AFFIDAVIT STEINBRINCK 347
STEINBRINCK DEFENSE EXHIBIT 73

AFFIDAVIT OF HUGO DIETRICH, 15 JULY 1947, COMMENTING UPON HIS
EXPERT OPINION ENTITLED "PROBLEM IGNAZ PETSCHER"¹

I, Dr. *jur. et rer. pol.* Hugo Dietrich, born on 22 December 1896 at Berlin-Spandau, residing at Luebeck, Sofienstrasse 2a, have been duly warned, that a false affidavit on my part renders me liable to punishment.

I herewith declare on oath that my statement conforms with the truth and was made in order to be presented in evidence to the Military Tribunal at the Palace of Justice, Nuernberg, Germany.

1. I see from my expert opinion of 20 June 1938² that in my letters of 17 March and 28 March 1938 I composed a digest of

¹ Dietrich was not called as a witness.

² Document NI-898, Prosecution Exhibit 437, reproduced in B above.

the laws in force in foreign countries concerning the nationalization of corporations, of the right to acquire real estate and to exploit landed property; this was done at the request of the member of the Vorstand of the Mitteldeutsche Stahlwerke A.G., Mr. Steinbrinck. I handed this *digest* on 31 March 1938 to Mr. Amtsgerichtsrat Herbig, the Referent in the Reich Ministry of Justice competent for this field.

2. I had to deal with the Ignaz Petschek problem first on Saturday 20 June 1938; this was in no connection whatever with the foregoing matter. On this day Mr. Steinbrinck asked me, in virtue of the facts given him by me and related in my expert opinion of 20 June 1938, to let him have an expert opinion on the legal position and on what a legal regulation would look like under the given circumstances, in case the German Government, if negotiations for a sale should fail, would carry out their intention to transfer by law the Czech-Jewish share in the property of the Ignaz Petschek group. Following this I drew up the *exposé of 20 June 1938* which is based on

a. The result of my objective investigation dated 17/28 March 1938 on comparative law mentioned above in paragraph 1, concerning the nationalization laws of European and American States accessible to me, and on the tabulated survey composed in accordance with it.

b. The ordinances of 26 April¹ and 15 June 1938² and their official interpretation cited by me and published in the daily press.

In this *exposé* I gave my opinion on the legal position and drafted the text of a decree safeguarding, as I expressly emphasized, the interests of Jewish stockholders, which provided for the transfer of their share in the property by no means without compensation, nor with a cheap compensation, but only in exchange for the appropriate selling price, i.e., the full value; the amount and nature of this value was to be fixed by the ordinary courts in legal proceedings including appellate courts, in case the parties could not agree. To implement this procedure I provided for the appointment of a trustee for the property to be transferred, to be appointed by the Plenipotentiary for the Four Year Plan, the highest functionary of the German Reich government for economic questions, to be subjected to his supervision, to be obliged to render accounts to him or to the owner of the property, and whose competence was to be defined by the Plenipotentiary for the

¹ Decree concerning the Registration of Jewish-owned Property, Document 1406-PS, Prosecution Exhibit 334, reproduced in B above.

² Affiant Dietrich here makes a mistaken reference so far as the date of the ordinance is concerned. The ordinance referred to is the "Third Regulation under the Reich Citizenship Law" of 14 June 1938. This regulation, Document 1404-PS, Prosecution Exhibit 335, is reproduced in B above.

Four Year Plan in the letter of appointment. This arrangement is in complete conformity with every civilized system of law based on private property, among others with American, English, and French law, which to my knowledge all admit an expropriation of private property with compensation (cf. the tabulations in my letters of 17/28 March 1938 mentioned under paragraph 1, and the expropriation of coal mines carried through only recently by the English Government). I took this arrangement from the Law for the Conversion of Capital, in force probably since 1934, which gave each main partner, no matter of what nationality or race, the right to transfer the company to himself even against the will of the other partners provided he appropriately compensated the old stockholders. I do not know whether Mr. Steinbrinck in any manner discussed with other gentlemen or agencies my exposé of 20 June 1938, composed at his request for his legal information. I myself never heard anything to this effect, nor did I myself have any more talks, conferences, or negotiations on the Ignaz Petschek problem with any person whatsoever, in particular neither with Dr. Flick nor Mr. Kaletsch; I never spoke to these persons about my expert opinion, either before or after its delivery. Once (probably) in February 1939 questions were again submitted to me concerning this case, and this was again done by Mr. Steinbrinck only; I replied to these questions in my exposé of 1939.

3. *If, instead of Mr. Steinbrinck, the Ignaz Petschek group had asked me at that time for an exposé on the legal position and what under existing circumstances a legal regulation might look like, in case the German Government—as they had been notified—would after the failure of negotiations carry out a transfer by law of the group's share in the property, the substance of my expert opinion—apart from the alterations made necessary by the change of the persons requesting it—would of course have been identical.*

If however, the Ignaz Petschek group had requested the exposé, I would have been duty bound to use the *letter*, accompanying my expert opinion, to call their attention to the fact that the value contained in my draft was the highest imaginable within the law and partly by far exceeded the amounts provided for in the international expropriation laws. Assuming myself in the position of *attorney for the Ignaz Petschek group* and therefore the representative of their interests, I would, however, have taken into consideration the following points:

a. The ordinances of 26 April and 15 June 1938.

b. The official or semiofficial interpretation published in the daily press and cited by me.

c. The other regulations contained in the international expropriation laws.

d. The possibilities open to the legislator.

e. The intention of the Reich government to eliminate Jewish influence in German economic life, which had been repeatedly published and had been mentioned in the daily press, both domestic and foreign.

f. The possibility deriving from this, that the value of Jewish shares in enterprises listed as Jewish in accordance with the ordinance of 15 June 1938, would fall.

In view of all these points I would have urgently advised the Ignaz Petschek group to follow Julius Petschek's example and to dispose of their shares by negotiation, and not to await a regulation by law, the substance of which would be uncertain. Thus, but only thus, the Ignaz Petschek group could have preserved their property in the way Julius Petschek did. For even if everything had remained as it was, i.e., if not only their property in shares but also the mines had been unchanged at the end of the war, the Ignaz Petschek group together with all other stockholders would have completely lost their property invested in these plants. From what I learn all brown coal plants have been transferred without compensation to Russian combines.

A. A comparison of my expert opinion of 20 June 1938 with the decree of 3 December 1938 * promulgated 6 months later might prove that they are altogether different as regards both their contents and their purpose. This might apply in particular also to the trustee who was provided for.

My *expert opinion* merely dealt with a transfer by law of the Ignaz Petschek group's share in the property, which was intended by the Reich government. Therefore my draft contained two articles only—Article 1 provided for the following:

a. In the individual case in question, "in an essential enterprise" (cf. page 2 of the expert opinion), "if required by the interests of German economy" (cf. page 4 of the expert opinion).

b. The possibility of a trustee being appointed by the Plenipotentiary for the Four Year Plan, who was the highest functionary of the German Reich government in economic questions.

c. Of a trustee, "whose competence is defined by the Plenipotentiary for the Four Year Plan in the letter of appointment."

d. In particular for the carrying out of the transfer.

e. With the express limitation, that the transfer might be effected only in exchange for the appropriate price i.e., the full value.

* Decree concerning the Utilization of Jewish Property, Document 1409-PS, Prosecution Exhibit 343, reproduced in B above.

Article 2 lays down the special legal guarantee that in case of nonagreement of the parties as to the amount and kind of compensation, the ordinary courts would have to make a decision in legal proceedings of two instances, as provided for already in the Law concerning Conversion of Capital, in force probably since 1934.

On the other hand, the ordinance of *31 December 1938* contains:

a. 24 articles of the most varied contents and containing a regulation of an altogether general character; it contains—compare Military Government Law No. 52

b. the appointment of trustees in general

c. by the higher administrative agencies (cf. Article 17)

d. both for administration and disposition

e. with competences generally defined.

It contains:

f. neither the rule that the trustee can dispose of a property only in exchange for the appropriate price i.e., the full value,

g. nor the legal guarantee that in case of nonagreement of the parties the value has to be fixed by the ordinary courts in legal proceedings of two instances.

Luebeck, 15 July 1947

[Signed] HUGO DIETRICH

VII. SLAVE LABOR — COUNT ONE

A. Introduction

All six defendants were charged under count one with the commission of war crimes and crimes against humanity by criminal participation in the enslavement and deportation to slave labor of civilians and in the use of prisoners of war in war operations and work having a direct relation with war operations (pars. 1-7 of the indictment, sec. I, above). The Tribunal, in its opinion and judgment (sec. XI), found the defendants Flick and Weiss guilty under this count. In finding the other four defendants not guilty, the Tribunal concluded: "In this case, in our opinion, the testimony establishes a factual situation which makes clearly applicable the defense of necessity as urged in behalf of the defendants Steinbrinck, Burkart, Kaletsch, and Terberger."

This section contains selections from the evidence submitted in connection with the slave labor charges—a selection from the contemporaneous documents (B below) is followed by extracts from the testimony of one prosecution witness, Brambusch (C below); the testimony of one defense witness, Speer (D below), and extracts from the testimony of two defendants, Flick and Weiss (E and F below).

Evidence on charges of slave labor may be found in most of the volumes of this series. Apart from this volume on the Flick case, a number of volumes devoted to other cases contain one or more sections dealing mainly with slave labor charges: section IV A, Volume II, the Milch case; sections IX and XV, Volume VIII, the Farben case; section VIII, Volume IX, the Krupp case; section VII E, Volume X, the High Command case; and section XI, Volume XIII, the Ministries case.

Argument concerning the slave-labor charges in the Flick case are contained in the opening statements (sec. III) and in the selections from the closing statements (sec. IX).

B. Contemporaneous Documents

TRANSLATION OF DOCUMENT BURKART 606
BURKART DEFENSE EXHIBIT 3

EXTRACT FROM A DECREE OF GOERING, 13 FEBRUARY 1939, CONCERNING
THE SAFEGUARDING OF PERSONNEL REQUIREMENTS FOR TASKS OF
SPECIAL IMPORTANCE FOR STATE POLICY *

Decree for the Safeguarding of Personnel Requirements for
Tasks of Special Importance for State Policy, 13 February
1939, Reichsgesetzblatt 1939, Part I, page 206

The accomplishment of urgent tasks of special importance
for State policy must not be endangered by the lack of working
personnel. For the execution of such tasks the possibility must
exist of recruiting inhabitants of the Reich territory for those
jobs and of creating stronger ties with the place of employment.

On the basis of the Decree Implementing the Four Year Plan
of 18 October 1936 (Reich Law Gazette I, p. 887), I therefore
order the following:

Section I. Compulsory Service [Dienstpflicht]

Paragraph 1

(1) The Labor Office can recruit inhabitants of the Reich
territory for the execution of tasks which are considered by
the General Deputy for the Four Year Plan as being especially
important and urgent. The Labor Office can order the release
of workers from private and public enterprises and adminis-
trations to accomplish that purpose.

(2) Foreign citizens are not to be drafted for duty assign-
ments, if reasons exist for their exemption by virtue of State
treaties or by virtue of recognized provisions of international
law.

* * * * *

Berlin, 13 February 1939

The Plenipotentiary for the Four Year Plan

•
GOERING
Field Marshal

* The complete extract as offered by the defense is reproduced here.

TRANSLATION OF DOCUMENT NI-4151
PROSECUTION EXHIBIT 226

ORDER OF GOERING, 3 MARCH 1941, APPROVING THE FOUNDATION OF
THE REICH ASSOCIATION COAL AND APPOINTING PLEIGER, DEFEND-
ANT FLICK, AND OTHERS AS MEMBERS OF THE ASSOCIATION

Berlin, 3 March 1941

The Reich Marshal of the Greater German Reich
Plenipotentiary for the Four Year Plan

I approve the foundation of the "Reich Association Coal"
[Reichsvereinigung Kohle] with the tasks laid down in the en-
closed minutes,¹ and confirm the following gentlemen as mem-
bers of the above-named association:

Paul Pleiger ²	Chairman
Heinrich Wisselmann	(1st) deputy chairman
Franz Hayler	(2d) deputy chairman
Otto Berve	
Alfried v. Bohlen und Halbach ³	(Deputy Hermann Winkhaus)
Gustav Brecht	
Friedrich Flick	(Deputy Ernst Buskuehl) ⁴
Gustav Knepper	(Deputy Otto Steinbrinck)
Rudolf Stahl	
Ernst Tengelmann	(Deputy Wilhelm Tengelmann)
Edmund Tobies	(One representative of the
Two representatives of the trade	trade within the industry, and another of the ordinary trade)

The Reich Association Coal and its members are responsible
to me for the execution [Durchfuehrung] of the tasks pertain-
ing to the coal industry in the Greater German Reich. At the
same time I authorize the Reich Minister for Economics to take
all the necessary measures.

¹ The minutes referred to were not a part of the document offered in evidence.

² Defendant in the Ministries case, Volumes XII-XIV, this series.

³ Defendant in the Krupp case, Volume IX, this series.

⁴ Buskuehl was director general of the Harpen Mining Company in which the Flick Concern held a majority participation.

TRANSLATION OF DOCUMENT NI-5554
PROSECUTION EXHIBIT 228

LETTER FROM PLEIGER, CHAIRMAN OF THE REICH ASSOCIATION COAL,
TO DEFENDANT FLICK, 17 MAY 1941, REQUESTING THAT FLICK
ACCEPT MEMBERSHIP IN THE COMMITTEE FOR INTERNAL
ADMINISTRATION AND BUDGET

Reich Association Coal
The Chairman, Paul Pleiger

Berlin W 15, 17 May 1941
Meinekestrasse 18-19
Telephone 91 90 91
Ko. 32015/41

[Stamp]

Received 21 May 1941

[Initials]

F [Flick]
W [Weiss]
K [Kaletsch]
T [Tilmanns]
B [Burkart].

Dr. F. Flick
Berlin W.9
Bellevuestr. 12 a

[Marginal note] Wisselmann, copy.

Dear Dr. Flick,

As you have gathered from the minutes of the meeting of the Praesidium of the Reich Association and from the enclosed chart on the organization, a committee for Internal Administration and Budget has been created. I myself took over the chairmanship of this committee and my two deputies, Director General Wisselmann and Dr. Hayler, are its members.

I lay great stress on the fact that I get current support from the persons of the Praesidium in the important questions of personnel policy, of the budget, and other matters which concern the Reich Association Coal. I would be much obliged to you if you would accept membership in this committee and if you could spare the time and take part at the occasional meetings. I suggest that the committee should convene soon to its first meeting and I shall venture to inform you duly thereof.

Heil Hitler!
Yours very truly,
[Signed] PAUL PLEIGER

TRANSLATION OF DOCUMENT NI-5553
PROSECUTION EXHIBIT 229

LETTER FROM DEFENDANT FLICK TO PLEIGER, 22 MAY 1941, DISCUSSING
DIFFICULTIES IN THE WAY OF FLICK'S JOINING THE COMMITTEE ON
INTERNAL ADMINISTRATION AND BUDGET OF THE REICH ASSO-
CIATION COAL, AND RELATED MATTERS

To the chairman of the Reich Association Coal 22 May 1941
Director General Paul Pleiger

Berlin W 15
Meinekstr. 18-19

Personal!

Dear Mr. Pleiger,

I acknowledge receipt of your letter of the 17th of this month.¹ On principle, I would be ready to join the committee in question. There are, however, some difficulties insofar as originally it was not my intention to become a permanent member of the Praesidium of the Reich Association Coal. In this respect I must tell you the following:

Director General Wisselmann, in whose hands the whole matter was, had invited me to take part in the discussions concerning the Walter affair.² I complied with this request. From the very beginning Mr. Wisselmann told me that permanent participation by me in the activities of the projected Reich Association Coal should not be taken into consideration. He would merely ask me to join the delegation of the coal industry which was to see the Reich Marshal. Once this was accomplished I was to retire, and automatically, Mr. Buskuehl, who was intended to do so from the beginning, was to take my place.

However, matters then took such a course that soon after the meeting with the Reich Marshal I received my appointment as member of the Praesidium. I did not think I could refuse it on the spot, although for the reasons stated above it did not agree with my intentions and with my arrangement with Mr. Wisselmann.

At a chance meeting with Mr. Wisselmann I again discussed this matter with him. Mr. Wisselmann was to talk to you on this point in order to explain the facts. I do not know whether this has been done in the meantime.

¹ Document NI-5554, Prosecution Exhibit 228, reproduced immediately above.

² Reference is made to coal commissioner Walter and attempts by leaders of the coal industry to remove him from office, which attempts were successful.

I should like to discuss this and some more with you and would ask you whether this would be possible within the next few days. I would also readily be at your disposal during the evening and it would give me pleasure to see you at my house.

I await your news and remain with kindest regards and Heil Hitler,

Respectfully yours,

[Stamp] Signed: FLICK

TRANSLATION OF DOCUMENT NI-5515
PROSECUTION EXHIBIT 192

LETTER FROM DEFENDANT TERBERGER AND KRUGMANN TO DEFENDANT
FLICK, 21 AUGUST 1941, CONCERNING PROPOSAL OF GOVERNMENT
OFFICIALS THAT MAXHUETTE AND OTHER FIRMS EMPLOY RE-
SETTLED ETHNIC GERMANS, STATING WHY PROPOSAL
COULD NOT BE COMPLETELY REFUSED, NOTING EM-
PLOYMENT OF FOREIGNERS AND PRISONERS OF
WAR AT UNTERWELLENBORN FOUNDRY, AND
RELATED MATTERS

[Initials] W ; B ; Ts ; N ;

[Stamp]

Received 26 August 1941
J NR

Eisenwerk-Gesellschaft
Maximilianshuette
Managing Board [Vorstand]
1/36

Sulzbach-Rosenberg Huette
Bayer. Ostmark
21 August 1941

To: Dr. Freidrich Flick
Chairman of the Aufsichtsrat
Berlin W9
Bellevuestr. 12a

Settlement of Ethnic German Returnees

Dear Dr. Flick:

Gau Economic Adviser [Gauwirtschaftsberater] of Thuringia, State Counselor [Staatsrat] Dr. Schieber, in conjunction with representatives of the Regional Labor Office Mitteldeutschland in Erfurt, invited on 5 August of this year the representatives of 42 industrial firms of Thuringia to a meeting to confer about the settlement of ethnic German resettlers [volksdeutsche Rueckwanderer] * with a request to take measures to effect the settlement of these resettlers. Purpose of the settlement would be to relieve the catastrophic shortage of labor of the manufacturing companies. The ethnic Germans making their homes here would not be compelled later on to return to their country of origin, but are to be settled permanently.

* "Ethnic Germans" (Volksdeutsche) were persons considered to be "ethnically" or "racially" Germans even though they lived outside of Germany proper and were citizens of other countries. During the war many of these persons were transferred to Germany or to areas which Germany "annexed". Considerable evidence on the resettlement of "ethnic Germans" is reproduced in the materials on the RuSHA case, Volume IV and V; and in the Ministries case, Volumes XII-XIV, this series.

It is well recognized that their housing will occasion difficulties and expense to the companies concerned. If, on the other hand, this proposal is rejected, no reproaches should be made in the future because workers cannot be procured.

According to plan the Maxhuetten will receive 200 workers with about 600 dependents, altogether approximately 800 persons. They are to be billeted and fed in communal barracks. The cost of housing per person is estimated to be RM 500 to RM 600, amounting therefore to about RM 500,000 for our works in Thuringia.

At the present time the foundry in Unterwellenborn employs:

Prisoners of war	82
Poles	123
Other foreigners	49
Compulsory labor service employees	179
Total	433
Minus those drafted into the Wehrmacht	232

Consequently there is a deficiency [sic] of 201 employees.

We requested from the Reich Ministry of Labor 160 Croatian workers so that total requirement would amount to 361. In addition the mining industry could use 20 for Kamsdorf, and for Wittmannsgereuth 50 more workers, or a total of 431 workers.

By employing these returnees still more expenses will be incurred later on with their housing, because the building of the settlement apartments would require additional plant funds or loans.

We have come to the conclusion that we cannot completely refuse the proposition, and have authorized Unterwellenborn to hire, for the time being, 50 workers (altogether about 200 persons) on probation, on the following conditions:

1. That we can select for our foundry suitable, strong men, if possible workers with experience, and
2. That they are housed for our account, against payment of rent, in Neustadt/Orla, until our own billets (barracks) will be completed.

The ethnic-German employment exchange in Weimar and the Regional Labor Office in Erfurt, respectively, are willing to agree to these conditions.

For the sake of the record we wish to inform you of this additional expense.

With German greetings,

Eisenwerk-Gesellschaft Maximilianshuetten

[Signed] TERBERGER
KRUGMANN

PARTIAL TRANSLATION OF DOCUMENT NI-4104
PROSECUTION EXHIBIT 267

EXTRACTS FROM "SOCIOLOGICAL INFORMATION NO. 6" OF THE COMMITTEE FOR SOCIAL MATTERS OF THE REICH ASSOCIATION COAL, 1 NOVEMBER 1941, CONCERNING EMPLOYMENT OF RUSSIAN MINERS FROM KRIVOI ROG, EMPLOYMENT STATISTICS OF PRISONERS OF WAR AND FOREIGNERS IN THE GERMAN COAL INDUSTRY, DISCIPLINARY MEASURES, AND RELATED MATTERS

Berlin, 1 November 1941

Committee for Social Matters
Reich Association Coal

[Initials]
K [Kaletsch]
W [Weiss]
T [Tillmanns]
K [Kurre]

Chairman : Ernst Stein
Member of the Reichstag
Special Officer [Fachamtsleiter] for the
Mining Industry of the German Labor Front

Sociological Information No. 6
(Confidential—for official use only)

* * * * *

Miners from Krivoi Rog for the Ruhr Mining Industry

At the suggestion of the Reich Association Coal, the responsible agencies have dealt in the last weeks with the question of the allocation of miners from the ore district of Krivoi Rog for the Ruhr mining industry. Regarding the political aspect and supervision problem of these workers considerable concern was felt against the execution of this measure.

The Reich Marshal has now agreed to the proposal of the Reich Association Coal to allocate 10,000 to 12,000 miners from the Ukraine, provided certain conditions are observed. He has ordered the chairman of the Reich Association Coal, in agreement with the Reich Leader SS and Chief of the German Police, the Armed Forces High Command, the Reich Ministry of Food, and the Reich Ministry of Labor, to make immediately the necessary preparations for the allocation of these workers. Since speed is essential for special reasons, the early transport of the workers from the

Ukraine can be relied upon. The detailed conditions for the allocation are now determined with the previously mentioned agencies.

* * * * *

Prisoners of War and Foreign Workers in the Coal Mining Industry

Situation at the end of September 1941

<i>a. Soft coal</i>	<i>PoW's</i>	<i>Foreigners</i>
Ruhr	1,772	26,505
Aachen		3,811
Saar		787
West Upper Silesia	2,647	2,161
Olsa District	38	5
Dombrova		9
Javorzno		25
Lower Silesia	860	47
Soft Coal Mining, Central Germany		5
Sudetenland	200	4
Lower Saxonia	371	451
Ostmark	85	16
East Upper Silesia	315	43
	<hr/>	<hr/>
	6,288	33,869
 <i>b. Brown coal</i>	 <i>PoW's</i>	 <i>Foreigners</i>
Brown Coal from central Germany	7,920	8,785
Brown Coal from the Rhine District	767	135
Coal mining industry from southern Germany	797	37
Sudetenland	2,088	1,951
Ostmark	372	727
Wetzlar		
	<hr/>	<hr/>
	11,944	11,635
 * * * * *		

Measures Against Lack of Discipline in the Coal Mining Industry

In addition to the communication in the "Sociological Information No. 2" we bring, as follows, a summary of the measures against the lack of discipline of miners ordered in the period between January and September 1941 by the Reich Trustee for

Labor for the economic district Westphalia-Lower Rhine. (The numbers in parentheses refer to all industrial groups for the entire economic district.)

1. In the mining industry were reprimanded2105 (18689)
2. Warrants for arrest into protective custody
were proposed 252 (1438)
3. Warrants for transfer into labor educational
camps were proposed 423 (1193)
4. Warrants for transfer into a concentration
camp were proposed 13 (38)
5. Sentences by the public prosecutor were
demanded 116 (1193)

In the above-mentioned time so far the following were carried out in the mining industry:

Warrants for protective custody	248
Transfers to labor educational camps	329
Warrants for transfer into a concentration camp	13
Punishments by the court	61

* * * * *

At first, all workers will be employed as carriers in the Ruhr mining industry. The wages are regulated according to the terms set by the Reich Marshal. The same also applies to the support of the relatives.

For the time being workers with completely worn out clothing will be exempted from the transfer. For purposes of supplying clothing, a suitable amount will be deducted from the wages of the laborers.

Transportation will take place in sealed and guarded trains. Guards will probably be furnished through the SS. Transport provisions will be supplied by army supply offices.

The beginning of this transfer action will take place within the next few days. According to plan, the first scheduled transport should leave Krivoi Rog on 5 December 1941.

* * * * *

TRANSLATION OF DOCUMENT NI-5253
PROSECUTION EXHIBIT 323

CIRCULAR LETTER, 15 NOVEMBER 1941, FROM ECONOMIC GROUP IRON
PRODUCING INDUSTRY TRANSMITTING THE SECOND FAULHABER
REPORT TO DEFENDANT FLICK AND OTHERS, REPORTING ON
AN OFFICIAL TRIP IN GERMAN-OCCUPIED UKRAINE, THE
FOOD SITUATION, SHOOTING OF PRISONERS OF WAR,
LIQUIDATION OF JEWS, SABOTAGE, RECONSTRUC-
TION DIFFICULTIES, AND RELATED MATTERS

Economic Group Iron Producing Industry

Your reference—your letter dated: Berlin NW 7
 Unter den Linden 90
 Tel: 165775
 15 November 1941

[Stamp]

Received: 19 November 1941

J. No. 14497 19908 R/W

[Initials]

F [Flick]

K [Kaletsch]

T [Tillmanns]

W [Weiss]

To—

Director General Dr. Flick
Director Maulick
Dr. O. Petersen
Director General Dr. Pott
Director General Dr. E. Poensgen
Director Dr. H. Poensgen
Counselor of Commerce Dr. H. Roechling
Director General Dr. v. Schoeller
Dr. Steinberg

Subject: Russia

Enclosed I am forwarding to you for your information some
interesting reports I received from Dr. Faulhaber.

Heil Hitler!

The General Manager

[Signed] REICHERT

[Handwritten] To Dr. Tillmanns

Enclosure

Second report *

Departure with a convoy of motor vehicles consisting of 5 automobiles on 8 October at 0730 in front of the building Potsdamer Strasse 31. First day schedule to Gleiwitz via Breslau-Brieg (550 kilometers). The following day the trip is continued to Lvov via Krakow-Reichshof (464 kilometers). Everything in Lvov was overcrowded. The Government General administration has further extended. All kinds of arguments between the civilian authorities and military personnel are an every day occurrence. Since our departure from Lvov (10 September), food prices have increased considerably. Food ration cards had been introduced. Compared to the abundance of foodstuffs that could be found only a few weeks ago in all restaurants authorized for Germans, a certain shortage was evident now. After having repaired one of the cars the trip was continued on 12 October in the direction of Rovno via Brody and Dubno (221 kilometers). In Bovno we had to take quarters because of a heavy snowstorm that made a continuation of the trip impossible. Next day we proceeded in bright sunshine to Kiev via Zhitomir (361 kilometers).

We visited Kiev briefly. The inner city made a horrible impression. The main business streets and adjoining side streets were completely in ruins, and that to such an extent that on account of all the debris one hardly could recognize the street arteries. Ten-story and higher buildings were either blown up or burned out. The old cathedral and the famous monastery on the west bank of the Dnepr river were undamaged. Unfortunately it was not yet possible to visit both buildings. The Russians had changed them into museums for the purpose of propaganda, so that their contents had first to be inspected. The only and rather new building that had been preserved was the building of the GPU, a huge construction of 14 floors. We did not feel at ease in the city. During the night of our stay not less than eight fires had been set by partisans and one could not shake off the disagreeable feeling to be still blown up somehow. The Russians used for their blasting, mines with ignition fuses that were released by a special sound transmitted from certain radio transmitters. As it is known, several large buildings occupied by German troop units were blown up this way. Life in the streets was very poor yet. A large part of the population had fled and was returning only slowly, a situation that worried the local occupation authorities who were in no position to provide the people with food. For

* The first Faulhaber report was not discovered.

many weeks the people had not been fed properly, and one was wondering how these people managed to be still alive. In spite of the hazy weather, the view from the west bank of the Dnepr across the river towards the eastern plains was unforgettably beautiful.

After an inquiry regarding the road conditions, it was decided not to continue the trip along the east bank of the river, but to proceed on this side by way of Uman and Gaisin. Belaya Tserkov, a small town, made an end to this plan because there the highway had become a trackless mire. After hours of effort we succeeded in getting two of our cars free again. We took a rest, and I took quarters in the house of a small craftsman who, as we found out later, was a member of the Communist Party. The house was surprisingly clean and the people extremely kind. Unfortunately, a conversation was not possible. I was amazed to find a remarkable collection of manuals mainly dealing with technical subjects. He further had German-Russian and Russian-English textbooks. The rest of our comrades made the same discovery in this town. It is astonishing how much the Bolsheviks accomplished in this field.

It was nevertheless decided to continue the journey on the east bank the following day since there was no chance of getting forward on this side of the Dnepr River. We had to return to Kiev, because up till now there are only three bridges across the Dnepr River, that is in Kiev, Kremenchug, and Dnepropetrovsk. Realizing that the river near these towns is between 600 to 900 meters wide, one is amazed about the achievements of the engineers. The journey now led through a district that still showed recent traces of combat. The number of graves of German heroes was increasing. Russian graves cannot be found at all. The Russian soldier is just covered with earth because the dead is of no use for the community any longer. Corpses as well as horse carcasses were lying everywhere along the road. A part of the corpses were ransacked to such an extent that they did not even wear shirts. Burned out and looted vehicles of German and Russian-make were standing on both sides of the road. We passed troops returning to rest camps, that according to their faces they had well deserved. Endless columns of prisoners passed by. In one case there were 12,500 men, guarded by only 30 German soldiers. Those who were unable to walk were shot. We passed the night in a little village where again we got stuck in the mud. There was a prisoner transit camp where we witnessed the fact that at night prisoners fried and ate their own comrades who had to be shot during the night by our patrols because of their lack of discipline [wegen Disziplinlosigkeit]. The food for the prisoners consisted of potatoes from

the population of that village. At most, every man received two potatoes per day.

The continuation of the journey resembled more and more a cross-country trip. The roads were so worn that we could only advance across the stubble fields. Therefore, we seldom covered more than 150 kilometers a day. The huge and only partly harvested sunflower fields were something new for us. Their stalks constitute the fuel for this district, destitute of wood. Remarkable was a sunflower harvesting machine that we saw near the road. We met many released Russian prisoners of war, all of them Ukrainians who were sent back to their home towns and who were now hiking for weeks in order to reach home. As there is still plenty of army equipment lying around, encounters of that kind are usually rather unpleasant. One hears every day of isolated vehicles and small convoys being attacked. I should like to mention other quarters in a Kolkhoz village where we passed the night in farmhouses. Again we found German-Russian, English-Russian school books, and German-Russian textbooks, mathematics books of such a high level as are only used in high schools in our country. The houses were clean but primitive. Everywhere a Lenin picture and cheap icons.

After a 9-day trip we arrived in Krivoi Rog on 18 October at 11:30 o'clock (covered mileage 2316 kilometers). Here is the Main Group South of the Mining and Steel Company East [Berg-und Huettenwerksgesellschaft Ost or "BHO"] whose members welcomed our cars, as well as the liquor we had brought along, with the greatest pleasure. Krivoi Rog is a city of 150,000 inhabitants, that extends over a wide area, not pleasant to look at. Destructions in the city are insignificant. The mining establishments are located very far outside the city. The foundry, one of the most recent Russian works, is located approximately 6 kilometers from the city. These works were planned to be the largest in Europe (3.5 million tons of raw steel). Now it is in ruins. The rolling mill scheduled to start working as late as September this year was completely dismantled. The remaining parts ready for shipment are placed on freight cars that, due to some mistake, were not dispatched. Amusing are four isolated high chimneys that had been built for the sole purpose of demonstrating what is being done. An establishment, where these chimneys would have been of any use is not to be found.

I was given order to go to Dnepropetrovsk in order to straighten out the real estate affairs of the 11 plants located in this district. I departed on 21 October and, after a 244 kilometer trip on a fairly good road, arrived safely at the Petrovski Works in Dnepropetrovsk where I was warmly welcomed by Dr. Krebs (Oberhuetten-

Laband) as an additional aid. On our way to Dnepropetrovsk we made a short trip to Nikopol and had lunch in the Nikopol tube works.

The city of Dnepropetrovsk must have had a population of 800,000. Approximately 180,000 of them were working in the plants of the iron manufacturing industry. At present, approximately 1500 persons are reemployed in the works. The city had suffered a lot. There are only a few buildings that were not destroyed. Window panes are not to be seen. Even the offices and billets for Wehrmacht members frequently have no windowpanes but are nailed up with plywood. The club of the Economic Inspectorate South is in the house formerly owned by the refugee General Kussnepov who was assassinated in Paris. Some of the newer buildings were very beautiful, especially the university and its institutes. All the bridges across the river that is 900 meters wide were blown up. Railroad engineer units are working feverishly on the reconstruction of the railroad bridge as all further operations of the Army Group South depend upon the reestablishment of the traffic across this bridge. The weather is now such that motor vehicle transports are bound to get stuck in the mud. One of the churches of this city is now being reconstructed. The others are still deserted, some of them had been used for other purposes, or had been pulled down in order to be utilized for other purposes.

Our living conditions here are rather difficult. Messing facilities are limited to the clubhouse of the inspection section. We therefore have to ride a distance of 18 kilometers twice a day in order to take our meals. There are no other facilities.

Letters from home take 4 to 6 weeks to reach us. Letters sent home allegedly only take 2 weeks. Newspapers are not available at all. In the evening during supper, the daily bulletin of the Wehrmacht is read, and that is our only connection with the external world. Up till now our furniture consists of an iron bed, a bucket, chair, and table. But on the other hand we have light and heating. There is no telephone etc., which makes the communication with the 11 works very difficult.

The city is free of Jews [Die Stadt ist judenfrei], so are Kiev, Krivoi Rog, and a few other towns that we passed. Those who did not escape were "liquidated" ["liquidiert"].* The slowly recovering economic life has some other enemies to cope with, however; these are our allies, Hungarians and Italians. They steal everything that can be removed. One column was encountered on the highway driving a flock of several hundred head of cattle "to

* The Einsatzgruppen case was concerned with the special task groups assigned to exterminate Jews and others in the German occupied east. See Volume IV, this series.

the estate of the Hungarian cavalry captain." The female kitchen personnel of our club must be taken home on trucks every night in order to protect them against these allies.

Acts of sabotage are committed daily. The tube works Nikopol, for instance, was blown up after being captured by our troops. The agglomerating establishment in Deprodzerzhinsk where we intended to take up the work in a few days, was set afire a few days ago. Some cases could even be traced back to the activities of political agents. They have a good field for their activities because of the extremely difficult food situation. At present workers receive 300 grams of bread and 50 grams of meat daily. The members of their families receive one kilogram of millet each, once every 4 days. The nonworking population does not receive anything. It has been ascertained however, that in view of the uncertain situation the people hoarded a great deal during the harvest time so that an acute famine is not to be expected for some time. Four million head of cattle were shipped to Germany. Furthermore great quantities of grain. The Russians, on the other hand, have removed from the Ukraine roughly 15 million horses. This loss as well as the insufficient number of tractors cause great difficulties in the cultivation of the large farms. Moreover there is a shortage of German farmers. On my trip I met two Austrian farmers in a village who were assigned to supervise 40,000 hectares¹ of land, consisting of approximately 40 Kolkhoz.² They did not even have a car for this job and had to make their inspection tours in a Russian horse wagon. They don't get any help from the Ukrainian farmers, who are without the least initiative.

A matter of prime concern in the area is the reconstruction of the dam near Zaporozhe in order to resume operation of the power plant as soon as possible. Reich Minister Todt has been here himself. Explosives had blown a hole in the dam 190 meters long and 18 meters deep at a time when a broad stream of refugees passed over it. The power plant itself has not been blown up. It is hoped that before the beginning of next year's frost period (1942) work will be completed so far as to allow operation of the power plant to about 50 percent of its capacity. Full capacity can only be reached in 1943. The aluminum plant in Zaporozhe is to be taken over by the Vereinigte Aluminum Werke (United Aluminum Works). The steel mill is, similar to the other plants so far in our possession, badly damaged. Metal alloys practically have not been found at all. Even ores have been shipped from Zaporozhe, a rather unusual occurrence in the history of evacuations. The elec-

¹ A hectare is equivalent to 2.471 acres.

² A collective farm in Soviet Russia.

tric steel plant was shipped to Kuznetsk, and the conveyor belt to Magnitogorsk.

The fuel situation is very difficult at present. Even our military unit draws only 20 liters at a time from each gas station which amount is, of course, soon used up due to the great distances. The oil section around Rodny had been put back into operation several weeks ago with a first drilling of 80 tons a day. There is a good reason to expect an increase in output soon. It is hoped to begin with the output of ore in several pits of the manganese ore mine Nikopol by the middle of November after the supply of power has been secured. The mining battalion of Cavalry Captain Tengemann took a decisive part in the quick repair of the damage done in Nikopol. Resumption of work in the ore mine installations of Krivoi Rog cannot be brought under way within foreseeable time. All serviceable installations and equipment used for extraction of ores will be dismantled and shipped to Nikopol.

On the whole, work of every kind is hampered to a more or less considerable degree by enemy interference. A huge effort of work will be required during the next decades to regain the old level of production. At present we are very much handicapped by the lack of motor transport and the lack of suitable clerical workers [RiKs- und Schreibkraefte]. Hours and hours of the daily work are spent on unimportant tasks like procurement of food, window-panes, matches, etc. German officials who in many cases don't lend sufficient support to each other, and in some cases even refuse cooperation for some unknown reason, are to be blamed for a considerable part of these difficulties. It is hoped a strict centralized leadership will take things over and offer an opportunity to the appointed German managers, to show what they are able to do in this boundless country within the framework of the broader line of policy [der grossen Richtlinie].

TRANSLATION OF DOCUMENT NI-3194
PROSECUTION EXHIBIT 143

MEMORANDUM FROM DEFENDANT WEISS TO DEFENDANT FLICK, 16
JANUARY 1942, CONCERNING REQUESTS FOR RUSSIAN PRISONERS
OF WAR AS LABOR REPLACEMENTS AT THE BUSCH RAILWAY
CAR FACTORY

W/Ga.

16 January 1942

Memorandum for Mr. Flick

Subject: Busch railway car factory.

Dr. Reichert informs us that 60 members of the staff have been newly drafted. He hopes he can have them replaced by Russian prisoners of war. Bautzen * has asked for a total of 100 Russian prisoners of war; for the moment 50 have been promised.

I have given my assent to the construction of barracks for accommodation purposes.

As a special symptom of the heavy duties and overwork of the employees due to the war, Mr. Reichert reported that of the ten commercial employees presently ill, eight are suffering from nervous disorders and strain.

[Stamp] Signed: B. WEISS

* The Busch factory commonly referred to as Busch-Bautzen or Bautzen, was located at Bautzen near Dresden.

TRANSLATION OF DOCUMENT NI-5222
PROSECUTION EXHIBIT 126

COPY OF LETTER FROM THE REGIONAL LABOR OFFICE OF WESTPHALIA,
3 FEBRUARY 1942, INITIALED BY DEFENDANTS WEISS AND BURKART,
CONCERNING PRISONERS OF WAR AVAILABLE FOR ASSIGN-
MENT TO LABOR IN GERMANY AND IN WESTPHALIA PAR-
TICULARLY; MORTALITY BECAUSE OF TYPHUS, HEALTH
CONDITIONS, AND RELATED MATTERS

(Copy)

[Initials] B [Burkart]
W [Weiss]

The President of the Regional Labor Office,
Westphalia

File number 5135/42 g

Dortmund, 3 February 1942

S E C R E T

To the District Group Soft Coal Mining Ruhr of the Economic
Group Mining.
Essen

Subject: Allocation of Soviet prisoners of war.

The Reich Minister of Labor has set up a commission for the
utilization of the labor of Soviet prisoners of war of which your
representative is supposed to be a member.

I have so far refrained from calling this commission together,
because it would seem inappropriate to me to divert the members
from their own business even for a day if the conference were
likely to result in lesser numbers of prisoners becoming available
than there are members in the commission. For this reason I am
giving you the following information on the situation with regard
to the Soviet prisoners of war, asking you at the same time to
treat these figures confidentially.

According to a decree of the Reich Minister of Labor [RAM],
the number of Soviet prisoners of war still held in November 1941
totaled according to the military authorities, 1,581,000. Therefore,
it would be quite wrong to start from a figure of 3.8 millions
when contemplating the question of the allocation of the Soviet
prisoners of war. Until recently typhus caused a daily death toll
of 15,000. At a camp in Westphalia more than 900 prisoners of
war died in December.

Of the 1,580,000 of prisoners of war, about 225,000 were em-
ployed in the Reich territory, others, approximately 490,000, were

working in the eastern territories. There and in the theater of operations prisoners of war will be employed in large numbers for a long time to come. In the middle of December the Reich Minister of Labor anticipated that on the whole not more than 200,000 prisoners of war would be available for work in the home country. Perhaps even this number has dwindled in the meantime through illness and deaths. How many of these prisoners of war will be Westphalia's share cannot yet be ascertained. The military district commander has been promised 70,000 prisoners of war for the military district VI; elsewhere it was said that 20,000 prisoners of war would be placed at the disposal of the whole military district. But even these numbers can only be given on the assumption that we continue to be successful in curbing the spotted fever. But in any event these prisoners of war will only be forthcoming when they are free from spotted fever and when the cold permits transportation. For the near future I should not expect the employment of an appreciable number of new prisoners of war to be possible.

In Westphalia, on 1 January 1942, a total of 4,763 Soviet prisoners of war was employed; by the end of January there will be still 3,810 Soviet prisoners of war in the Stalags [permanent prisoner-of-war camps].*

At the time a joint reexamination is taking place of all the prisoners of war actually employed, by a delegate of the representative of the Technical Department of the Ministry of Armament and War Production in the military district, in order to find out whether there are many skilled workers among them. These will then be employed according to their skill in armament plants and other urgent manufacturing processes. At the same time, it will be carefully examined whether or not the work they are doing is urgent. If that is not the case, they will be moved to work of that kind.

For the time being prisoners of war cannot be withdrawn from the Stalag on account of the typhus. The period of quarantine will expire about 20 February unless new cases should occur. Even assuming that the ban could be lifted by then, only 220 prisoners of war could be made available immediately.

As to the remainder, 872 prisoners of war cannot, judging by their actual state of health, be expected ever to regain their ability to work. The remaining 1,465 are being "pampered" ["aufgepaepfelt"] in order to give them enough strength to work. But this condition will at the earliest be attained at the end of the quarantine.

* "Stalags" were permanent prisoner-of-war camps as contrasted with "Dulags", temporary or transient prisoner-of-war camps.

In the plants belonging to the Wehrmacht and at the Stalags approximately 2400 prisoners of war are employed on 1 January 1942. Following an order of the High Command of the Armed Forces I have before me, 50 percent of these prisoners of war would have to be handed over to the authorities dealing with the allocation of labor in order to be put to work. But this order seems to have been suspended at the last moment. At any rate it has not yet reached the appropriate military offices, so that it cannot be expected that any substantial number of prisoners of war will be made available through this action by the reviewing of the individual measures taken. In this case also there will not be available a sufficient number warranting a convocation of the committee.

As soon as things change, I shall give you further information

[Signed] GAERTNER

TRANSLATION OF DOCUMENT NI-5207
PROSECUTION EXHIBIT 158

LETTER FROM BUSKUEHL, HARPEN MANAGING BOARD CHAIRMAN, TO
DEFENDANT FLICK, 16 FEBRUARY 1942, TRANSMITTING A CONFIDENTIAL
REPORT ON EMPLOYMENT OF RUSSIAN PRISONERS OF WAR, NOTING FAILURE OF
THEIR EMPLOYMENT AT THE FRIEDRICH HEINRICH MINE BECAUSE OF TYPHUS, AND
CONTRASTING THIS TO FAVORABLE RESULTS WITH RUSSIAN CIVILIAN WORKERS
FROM THE UKRAINE

[Handwritten] 3 copies. Complied with 18 February 1942
[Initial Illegible]

[Stamp] Received 18 February 1942
J. No. 14796

Ernst Buskuehl
Harpener Bergbau A.G.
Dortmund, Goldstrasse 14

16 February 1942

[Initials]
K [Kaletsch]
W [Weiss]
T [Tillmanns]
B [Burkart]
K [Kurre]

Dr. Fr. Flick,
Berlin W9
Bellevuestrasse 12a

Confidential

Dear Mr. Flick:

Enclosed I transmit to you a copy of a secret directive * from the president of the Regional Labor Office of Westphalia about employment of Russian PW's. Supplementing the contents of this directive, which scarcely needs explanation, I inform you that the employment of Russian PW's in the Freidrich Heinrich Mine has proved a *total failure* inasmuch as typhus has broken out among these PW's in spite of careful delousing and issuing of new clothing. The cases of illness and death have led to a quite extraordinary state of alarm among the employees.

[Marginal note] The contrary in Breslau.

As things stand, the employment of Russian PW's, *at least in the mines, is not warrantable*, and this method of employment of

* This directive was not a part of this exhibit as offered in evidence. Defendant Weiss testified that the enclosure "must have been" Document NI-5222, Prosecution Exhibit 126, reproduced immediately above. See extracts from the testimony of defendant Weiss reproduced later in section VII F.

labor will, a least for the time being, have to be discontinued.

The situation in the case of the employment of Russian civilian workers from the Krivoi-Rog and Donets area is different. So far, relatively favorable results were achieved by employing these people. No serious diseases were reported either.

Wishing you the best of luck, I am,

Yours very truly,
[Signed] BUSKUEHL

1 Enclosure

TRANSLATION OF DOCUMENT NI-5236
PROSECUTION EXHIBIT 159

LETTER FROM DEFENDANT WEISS TO BUSKUEHL, 18 FEBRUARY 1942,
REPORTING UPON FAVORABLE EXPERIENCES OBTAINED IN EMPLOY-
MENT OF RUSSIAN PRISONERS OF WAR AT THE LINKE-HOFMANN
WORKS IN Breslau, METHODS EMPLOYED TO IMPROVE
THE HEALTH AND WILLINGNESS TO WORK OF PRIS-
ONERS, AND RELATED MATTERS

18 February 1942
Str.

Director General R. Buskuehl
Harpener Bergbau A.G.
Dortmund

Subject: Utilization of Soviet prisoners of war.

Dear Mr. Buskuehl:

Your letter of the 16th of this month addressed to Mr. Flick,* enclosing a secret report from the president of the Regional Labor Office, Westphalia, was today forwarded by me to Mr. Flick, who is at the moment taking a short holiday at Toelz.

In this connection you will be interested to hear that we obtained excellent results with Russian prisoners of war at the Linke-Hofmann works in Breslau. To be sure, Dr. Putze first of all ordered all the men, who arrived in a completely starved and exhausted condition, to take an 8-day rest in bed, and during that time he fed them up fairly well under medical supervision. The Russians, of course, who generally make quite a good impression, are being treated with the necessary strictness, but also justly. All of them work willingly. In particular, an arrangement has proved of value which provides that those people who have especially exerted themselves during the day should obtain a special certificate from their foreman or master from time to time which entitles them to receive a double ration at supper.

Of course, I also think that one cannot generalize too readily about these favorable experiences. It is certain that there are many fanatical and misled elements among the prisoners. On the other hand, I am of the opinion that it is very regrettable from the point of view of the utilization of labor that the good elements

* Document NI-5207, Prosecution Exhibit 158, reproduced immediately above.

who were willing to work were not picked out earlier, so that they could be made available to industry, which has an urgent need for workers everywhere, especially after the recent inductions,

On the basis of my experiences at Breslau, I am inclined to think that in many cases it is easier to obtain suitable results with Russian prisoners of war, than with Italian, Spanish, or other civilian workers, who in addition have to be handled with kid gloves.

With kindest regards and Heil Hitler, I am

Yours,

[Stamp] Signed: B. WEISS

TRANSLATION OF DOCUMENT NI-3585
PROSECUTION EXHIBIT 172

NOTE BY DEFENDANT WEISS, 14 FEBRUARY 1942, CONCERNING IN-
CREASING OF FREIGHT CAR PRODUCTION AT Breslau IF ADDITIONAL
RUSSIAN PRISONERS OF WAR ARE MADE AVAILABLE, PROVIDED
CERTAIN FIRMS STOP RAILROAD CAR PRODUCTION TO
CONCENTRATE ON ARMAMENT PRODUCTION, AND
RELATED MATTERS

W/Str.

14 February 1942

Note

Subject: Linke-Hofmann Works [LHW]—Rationalization¹ in
Construction of Railroad Cars [Waggonbau].

On the occasion of my visit to Breslau on the 10th of this
month Mr. Scholl handed the enclosed list² over to me showing the
allocation of orders for freight cars [Gueterwagen] by the Reichs-
bahn in the years 1940, 1941, and 1942.

We agreed that an effort must be made to have all freight car
production concentrated in a few highly productive firms, and
that these firms must build standard types whenever possible.

Breslau supplies at present about 300 freight cars a month.
Within a few weeks Mr. Putze hopes to reach an output of 400
freight cars a month.

If about 800-1000 additional Russian prisoners of war would
be made available, Breslau could forthwith reach a production
of 800 freight cars a month. For this, it is true that the existing
welding installation would not be sufficient. A second welding
installation is planned, however. In the meantime one could help
that situation by welding underparts in workshop VI.

First of all, one would have to see that firms which are heavily
engaged in the field of armament production, as for instance,
MAN, Esslingen, Wismar, Elze, Gotha, Lindner, and Dessau will
stop the construction of railroad cars and concentrate on their ar-
mament production. Besides, a motive no longer exists for the
Reichsbahn to pay higher prices to firms in the Ostmark
[Austria].

As the Vorstand is scarcely in a position to do anything
in this matter, I have taken it upon myself to draw the attention

¹ The term "rationalization" [Rationalisierung] refers to efforts within German industry
to increase the efficiency of production.

² The enclosure was not a part of the document offered in evidence.

of the authorities concerned to these facts. Major Schaede in the Ministry for Ammunition and Dr. Oehlert of the Economic Group Steel and Iron Construction, are primarily concerned here. A plenipotentiary for the rationalization of railroad car construction has not yet been appointed.

General Leeb was, however, shown the list enclosed on occasion of his visit with us.

Enclosure

[Signed] B. WEISS

TRANSLATION OF DOCUMENT NI-3586
PROSECUTION EXHIBIT 173

LETTER FROM LINKE-HOFMANN WORKS TO MAIN COMMITTEE FOR RAIL
VEHICLES, 20 MARCH 1942, COPIES TO DEFENDANT WEISS AND
OTHERS, REQUESTING INSTRUCTIONS TO THE LABOR OFFICE TO
SATISFY LINKE-HOFMANN'S URGENT DEMAND FOR RUSSIAN
PRISONERS OF WAR TO INCREASE FREIGHT CAR
PRODUCTION

[Handwritten] Rationalization

20 March 1942

[Stamp]

Received 23 March 1942 [Initial] W [WEISS]

J. No.

To the Main Committee for Rail Vehicles [Schienenfahrzeuge]
with the Reich Minister for Armament and Munitions

Berlin-Charlottenburg
Bismarckstr. 112

In order to achieve the most necessary utilization of the large special workshop erected by us for the construction of freight cars, [Gueterwagen] we have applied to the authorities concerned to put additional prisoners of war at our disposal.

Upon our application the Command of the Armament Area of Liegnitz, which is the competent authority for us, has informed us by letter of 8 December 1941, file number 41 Z. Gr. I., that our demand for 350 Russian prisoners of war had been approved and that our request had been transmitted to the Armament Inspectorate VIII for final action.

Moreover we were informed by the same agency with a letter of 5 February 1942, file number 42 Z. Gr. Ib, that our demand for additional 400 Russian prisoners of war has been forwarded immediately to the Labor Office in Breslau, as requested, and that the Inspectorate had been informed accordingly.

We must state that in spite of our requests being approved by the Armament Command, or rather by the Armament Inspectorate, the 750 prisoners of war have not been made available by the Labor Office till now, although we had sufficient quarters for the first group of 350 men ready since the middle of December and quarters for the remaining 400 will be ready for use by the end of this month.

By this failure to make labor available, a considerable deficiency of production is caused in our works. Furthermore, our dis-

position of materials, especially our request for control stamps for the first and second quarter of 1942, are based on an early availability of these 750 additional workers.

As soon as the Russians are assigned to us, and as far as these Russians will immediately be fit for employment, we shall at once be in the position to increase our output of freight cars considerably, since quarters, workshops, material, and installations are ready.

We request you to give in your turn instructions to the Labor Office competent for us to satisfy, without further delay, our urgent demand which has been approved by the military authorities.

Heil Hitler!

[Stamp]

Linke-Hofmann Works
Aktiengesellschaft

[Signed] PUTZE [Signed] SCHOLL

Copies to—Directors Weiss
Flint
Henschel
Heubach

TRANSLATION OF DOCUMENT NI-3587
PROSECUTION EXHIBIT 174

NOTE FOR DEFENDANT FLICK FROM DEFENDANT WEISS, 29 APRIL 1942,
CONCERNING THE INCREASE FOR THE WAR PROGRAM OF RAILROAD
CAR PRODUCTION AT Breslau AND Bautzen, ARRIVAL OF
ADDITIONAL RUSSIAN PRISONERS OF WAR,
AND RELATED MATTERS

W/Ga.

29 April 1942

Note for Mr. Flick

Subject: Rationalization of car construction. War program [Kriegsprogramm] of the Main Committee Rail Vehicles.

As I have learned from Mr. Scholl, the war program of the Main Committee for Rail Vehicles has, in the meantime, been mapped out. According to this, the monthly production at Breslau will be increased to 650 Omm-cars and 250 Rs-cars—total, 900 freight cars. In addition 25 C4-uep express train cars should be built, and the program for dump cars should be maintained in its present form.

The balance of orders on hand must still be filled, generally, insofar as sufficient material remains. Where the material is not yet available and where for economic reasons it appears convenient, the orders are to be transferred to other car plants. This applies, also, in particular, to the present order placed with Breslau for 300 large tank trucks for the Economic Research Office [Wirtschafts-Forschungsstelle].

Identification numbers and distinguishing marks for this extended program will be required for the first time in the third quarter, i.e., the new production figures will be reached around the beginning of 1943.

Yesterday, at last, 170 of the 350 Russian prisoners of war, promised a long time ago, arrived in Breslau.

The chief of the Labor Office in Breslau told Mr. Scholl further that, according to his latest information, Linke-Hofmann Works [LHW] need not concern itself with the possibility of some of the registered technicians being called up by the Wehrmacht.

[Signed] B. WEISS

For *Bautzen* the war program provides for a production of 200 II-GRs-cars and 150 I-GRs-cars—total 350 covered freight cars monthly. For the rest nearly all other present orders are to be carried out at *Bautzen*.

TRANSLATION OF DOCUMENT NI-3617
PROSECUTION EXHIBIT 175

NOTE FOR DEFENDANT FLICK FROM DEFENDANT WEISS, 8 OCTOBER 1942,
COPIES TO DEFENDANTS BURKART AND KALETSCH, CONCERNING
DIFFICULTIES IN PROCUREMENT OF WORKERS FOR FLICK PLANTS
PRODUCING RAILWAY CARS, DISCUSSIONS WITH VARIOUS
AUTHORITIES, AVAILABILITY OF RUSSIAN AND FRENCH
LABOR, AND RELATED MATTERS

W/Ga.

8 October 1942

Note for Mr. Flick

Subject: Main Committee Rail Vehicles—Award of contract for
the manufacture of freight cars to the Linke-Hofmann Works
[LHW]:

Last night at 6 o'clock Dr. Putze and I had a conversation with
Mr. Degenkolb.* Mr. Putze submitted the delivery plan dated
5 October for the Ommru-cars to Mr. Degenkolb, according to
which the output of 1,500 freight cars should be reached for the
first time in August 1943.

He stated that the first condition for reaching this target is the
assignment of 2,000 additional workers who must be made avail-
able gradually from October 1942 till February 1943.

To our great surprise, Mr. Degenkolb said that under the pres-
ent conditions we could by no means expect an assignment of
workers. He called in Mr. Muecke, official for the allocation
of workers in the Main Committee Rail Vehicles. In the confer-
ence it became evident that the well-known letter of the Minister
for Armament and Munitions, dated 14 August, to the offices in
charge of allocation of workers, in which a priority schedule
for the individual programs was laid down, according to which
the locomotive and railway car program falls under group II,
has become obsolete through a new letter from the Minister for
Munitions, dated 2 October, this year. (Dr. Burkart will try
to obtain a copy of this letter from Mr. Pollack in the Ministry
for Munitions.) According to this letter only the programs of
the main committee for armored cars, arms, munitions, explosives,
and motor vehicles are supposed to be in the priority class II,
as far as the assignment of workers is concerned. The program

* Chairman of Main Committee Rail Vehicles.

for locomotives and railway cars has now been classified under group III, the next following group.

Of course Mr. Degenkolb is very disappointed about this development; he said however, that for the present he could not do anything about it. Due to the instability of the war situation, one can always count on it that the program might be changed from time to time. Should a relief on the eastern front take place during the next week it would be quite possible that additional workers will also be made available for the locomotive and railway car program. We pointed out to Mr. Degenkolb that under such circumstances long-term planning would of course be impossible.

A considerable increase of production of locomotives and railway cars, however, is not conceivable without long-term planning.

We told Mr. Degenkolb that we thought it possible to obtain at least part of the workers from the Regional Labor Office in Breslau if we would only be supported in this respect by the Main Committee. We referred to the recent speech of Gauleiter Sauckel, made before the advisory board of the Reich Group Industry, in which he pointed out that at present agriculture has over a million more workers than in 1939, and that this figure is so large that, after the gathering of the harvest and completion of the fall cultivation, additional workers could be made available to industry during the winter. Lower Silesia is predominantly an agricultural district, and we thought that the Regional Labor Office in Breslau would soon be in a position to make workers available to us. Mr. Degenkolb left it to us to try this way and to talk the matter over with Amtsrat Rozanski in the Ministry of Labor, Saarlandstrasse 95, room 361. Perhaps Mr. Rozanski could send an appropriate letter to the Regional Labor Office in Breslau.

Furthermore we called Mr. Degenkolb's attention to the fact that Mr. Streitz has not decided as yet as to how the war program will be distributed among the railway car plants. We informed him that in the forenoon Mr. Streitz had offered Mr. Putze a delivery of 1,200 cars a month, but that Mr. Putze had insisted on getting 1,500 cars a month as promised by Mr. Degenkolb, whereupon Streitz had said that in this case he must take an additional 300 cars a month from the Belgians. Mr. Degenkolb complained that Mr. Streitz was not very cooperative in regard to the concentration of production for the purpose of rationalization. During this week he will still be very busy with conferences concerning the war locomotive [Kriegslokomotive].* At the beginning of next week, however, he will force Mr. Streitz

* A specially designed locomotive in which the cab and the coal tender were in one piece, so that no glow was visible when stoking.

to submit, at last, his suggestions for the distribution of war orders for railway cars and will then confer energetically with Streitz about those matters. Mr. Degenkolb promised to contact me again with regard to this matter during the course of the coming week.

This afternoon I called on Amtsrat Rozanski in the Ministry of Labor. From him I learned that the Ministry of Labor is at present working mainly on the procuring of workers for the so-called "October Action Rue 42." This action, however, does not concern the locomotive and railway car program. Furthermore, Mr. Rozanski said that the Ministry of Labor cannot give any directive on its own initiative to the Regional Labor Office in regard to our case. A directive from the Ministry for Munitions to the Ministry of Labor is required in this case. This directive from the Ministry for Munitions must in turn be initiated by the Main Committee, i.e., by Mr. Muecke. If the Ministry of Labor gets such a directive the Regional Labor Office in Breslau will be instructed accordingly. Since we only need Russian prisoners of war, he believed that we could get the men in this case.

Following that, I conferred at length with Mr. Muecke. Mr. Muecke thought that Mr. Rozanski was apparently not quite informed yet about the latest state of affairs. Once more I have thoroughly explained the facts to Mr. Muecke. Mr. Muecke agreed to contact the Ministry of Munitions via the Main Committee on our behalf. However, he thought it doubtful whether the Ministry of Munitions would issue the directive to the Ministry of Labor. Upon my objections, Mr. Muecke finally promised to discuss the matter tonight with Lieutenant Colonel von Nikolai, the competent person in the Ministry of Munitions for the assignment of workers. In particular he will call Mr. von Nikolai's attention to the fact that we only need Russian prisoners of war and that, by making the Russian prisoners of war available to us, these railway car manufacturing plants would be enabled to employ corresponding numbers of highly skilled German workers for other armament work. This argument greatly appealed to Mr. Muecke. He will let me know by phone tomorrow morning as to what Lieutenant Colonel von Nikolai has decided.

Mr. Muecke did not want to do anything for the time being until the final distribution of war contracts for railway cars has been decided upon by Mr. Degenkolb. I have told Mr. Muecke that the final distribution will not be decided upon before next week, after Mr. Streitz has submitted his suggestions. However, I pointed out to him that Mr. Degenkolb has definitely decided that Linke-Hofmann Works should get 1,500 freight cars a month and that therefore there is no reason to postpone the matter in our case. Eventually Mr. Muecke agreed.

Furthermore Mr. Muecke told me that during the past months he had tried to import French civilian workers on a large scale for the locomotive industry.

Unfortunately the negotiations between the German authorities and the French Government concerning the making available of civilian workers have failed. At first the French Government had agreed on principle to make the workers available through conscription for labor if need should arise; the only condition they made was that the respective committees (corresponding to our economic groups) will be called upon when conscripting the workers, in order to make sure that they will really be used in similar industrial plants in Germany. Gauleiter Sauckel had apparently feared that through the intervention of the committees too great a delay could ensue, whereupon the negotiations had failed at first. Then the German authorities considered getting the French workers through some kind of recruiting. Mr. Muecke, who is very familiar with the conditions in France, said that he considers such proceedings basically wrong and that he does not believe that anything useful would come out of them. I have told Mr. Muecke that I absolutely agree with him and above all that I could not imagine that Frenchmen, shipped to Germany by force, would turn out to be willing workers.

Copies to:

Dr. Burkart

Mr. Kaletsch

LHW Management, Breslau

[Signed] B. WEISS

TRANSLATION OF DOCUMENT BURKART 668
BURKART DEFENSE EXHIBIT 36

EXTRACTS FROM "THE NEW GERMAN REICH LAW", A LEGAL COMMENTARY BY PFUNDTNER AND NEUBERT, QUOTING FROM TWO HITLER DECREES OF 21 MARCH 1942 ON PROTECTION OF ARMAMENT ECONOMY, AND ON OBLIGATIONS OF PLANT LEADERS IN CONNECTION WITH WAR ESSENTIAL TASKS *

Decree of the Fuehrer for the Protection of Armament Economy, dated 21 March 1942 (Reichsgesetzblatt, I, p. 165)

* * * * *

War essential requirements must be given absolute priority in the allocation of available manpower. The same applies to the distribution of raw materials, other materials and products essential for the armament economy. I therefore decree as follows:

Article I

1. Whoever intentionally makes false statements (1) on requirements or availability of manpower, (2) on requirements or stocks of raw materials, other materials, products, machines or equipment essential for the armament economy, and thereby endangers the procurement of supplies for the armament economy, will be punished with penal servitude, and in particularly serious cases, which are of considerable detriment to the armament economy, with death. In addition, unlimited fines may be imposed as penalty.

2. In less serious cases, the verdict is to call for imprisonment and unlimited fines, or for one of these penalties.

* * * * *

Article III

1. The People's Court is the competent authority for trying these cases. If the perpetrator is subject to Wehrmacht jurisdiction, the Supreme Military Court there is the competent authority in this instance.

* * * * *

Extract from the news bulletin of the Reich Minister for Armament and Munitions, series 1942, page 55.

* All the extracts included in the document offered in evidence by the defense are reproduced here.

*Extract from the Decree of the Fuehrer to Plant Leaders
[Betriebsfuehrer], dated 21 March 1942*

“In order to facilitate the plant leader’s responsible task, I have directed the Reich Minister for Armament and Munitions [Speer] to undertake stringent measures for the further restriction and unification of the entire reporting system.

“Simultaneously I have directed the Reich Minister for Armament and Munitions to simplify the quota system to the greatest possible extent, on the basis of an increased responsibility of industry itself.

“By decree of 21 March 1942 and in order to furnish Reich agencies the security which is indispensable for the allocation of materials, I have imposed most severe punishment for making false statements concerning requirements and available supplies of raw materials, other materials, machines and similar items.

“Even without constant supervision, the German plant leader will consider the interests of the Reich in war economy as if they were his own.

“With a minimum effort the maximum result has to be achieved.

“Considerations arising from personal interest or the desire for peace must be disregarded.

“I am confident that the German plant leader will carry out the war essential tasks put before him, unselfishly and will fully utilize all his reserves.

“Whoever disregards this trust and offends against the conduct expected of a plant leader will be subjected to unrelenting, most severe punishment, because by so doing he has, of his own accord, excluded himself from the national community.”

[Signed] ADOLF HITLER

TRANSLATION OF DOCUMENT NI-5604
PROSECUTION EXHIBIT 123

LETTER FROM MITTELSTAHL, SIGNED BY DEFENDANT BURKART AND
KUETTNER, TO THE REICH MINISTRY OF LABOR, 30 MARCH 1942,
NOTING PRIOR APPLICATION FOR ALLOCATION OF UKRAINIAN
CIVILIAN WORKERS FOR THE ELBINGERODE MINES,
AND RELATED MATTERS

30 March 1942

Kue/Bch
[Initials]
K [KALETSCH]

[Handwritten] Regional Labor Office Westphalia, Chief Inspector Schoen.
[Handwritten] Senior Government Counselor Cossmann represents Ministerial
Counselor Letsch.

To the Reich Ministry of Labor

Attention: Ministerial Counselor Dr. Letsch.
Berlin SW 11
Saarlandstrasse 96

Subject: Ukrainian civilian workers for our mine management
[Bergverwaltung] in Elbingerode.

With reference to today's telephone call of the right-hand signatory we inform you that our mine management Elbingerode in Elbingerode/Harz in the past 2 years has opened up a deposit of iron ore containing manganese and of pyrite which are extremely important for the war economy. The ore and pyrite output of Elbingerode is now to be increased with the greatest possible speed, since the iron industry's need for manganese ores and particularly the chemical industry's (explosives industry) need for pyrites and sulphuric acid cannot be met to the required extent. We need altogether 150 men, of whom at least 50 must be skilled miners. The rest could, if necessary, consist of unskilled labor. There is sufficient accommodation available, such as barracks, etc.

You have very kindly given us hope that 150 men will be allocated from one of the next transports of Ukrainian civilian workers for our mine management Elbingerode.

In this connection we would like to point out that according to regulations we sent an application a long time ago through

the appropriate Labor Office at Blankenburg to the Regional Labor Office in Hannover for an allocation of Ukrainian civilian workers.

Heil Hitler!

[Stamp]
Mitteldeutsche Stahlwerke
Aktiengesellschaft

[Stamp] [Stamp]
[Signed]: Burkart [Signed]: Kuettner

Copies to: MSt [Mittelstahl], Riesa
MSt, Elbingerode

TRANSLATION OF DOCUMENT BURKART 670
BURKART DEFENSE EXHIBIT 38

EXTRACTS FROM THE REPORT OF THE REICH MINISTER FOR ARMAMENT
AND MUNITIONS, 1942 ISSUE, PAGE 38, CONCERNING THE BAN ON
PREPARATIONS FOR PEACETIME PRODUCTION, AND PROMISING
RUTHLESS STEPS AGAINST PLANT LEADERS IMPROPERLY
EMPLOYING MANPOWER¹

Concerning the Prohibition of Peacetime Planning
[Zum Verbot der Friedensplanungen]

From a series of established facts it is apparent that even today, firms, constructors, technicians, draftsmen, and the like, have set themselves to prepare for peacetime production. Although, hitherto, the individual firms may have felt that even while the war is still on they ought to prepare for the change-over to peacetime production, yet such considerations must today be regarded as completely erroneous. Our sole purpose today must be to attain victory, and to direct all efforts towards this goal.

In his decree of 13 April 1942, the Reich Marshal forbade the continuation of peacetime planning and development (see report No. 2) in the plants engaged in work connected with war economy. Preparations for peacetime work must therefore be canceled completely. It is sabotage of the conduct of the war if plants ask for key men and expert workers to be exempted from military service, or make applications to the labor offices for highly skilled laborers, and at the same time employ other workers, who could best replace such key men and expert workers, on plans for peacetime.

I conclude from the employment of manpower of the above-mentioned kind on peace plans that false statements regarding requirements for and present numbers of workers are made within the meaning of the ordinance issued by the Fuehrer on 21 March 1942² for the Protection of the Armament Economy and, in view of this ordinance, I shall take ruthless steps against such plant leaders. * * * All plans and developments, which serve important war interests are not considered as peacetime planning even if their development will probably take a number of years.

[Signed] SPEER

¹ All the extracts included in the document offered in evidence by the defense are reproduced here.

² The extracts from this decree offered in evidence by the defense are reproduced earlier in this section as Document Burkart 668, Burkart Defense Exhibit 36.

TRANSLATION OF DOCUMENT NI-3166
PROSECUTION EXHIBIT 127

LETTER FROM FLICK'S MITTELSTAHL TO VARIOUS FLICK PLANTS, 26 JUNE
1942, REPORTING UPON INFORMATION OBTAINED FROM LEADING
OFFICIALS OF THE LABOR MINISTRY ON METHODS OF PRO-
CURING SKILLED LABOR FROM FOREIGN COUNTRIES

Mitteldeutsche Stahlwerke
Aktiengesellschaft

Berlin W9, 26 June 1942
Bellevuestrasse 12 a

Kue/Op

Cable address: Mittelstahl Berlin

For local calls: 21 93 11

For long distance: 21 95 66

Reichsbank-Giro-Konto-Berlin

Postal Checking account:

Berlin W9, 26 June 1942

Mitteldeutsche Stahlwerke AG
Riesa (Elbe)

Mitteldeutsche Stahl-und Walz-
werke Friedrich Flick K.G.,
Brandenburg (Havel)

Mitteldeutsche Stahl-und Walz-
werke Friedrich Flick K.G.,
Hennigsdorf near Berlin

Eisenwerk-Gesellschaft Maxi-
milianshuette

Sulzbach-Rosenberg Huette

Saechsische Gusstahlwerke

Doehlen A. G.

Freital in Saxony

To each one separately

Subject: Foreign workers

In connection with the urgent need of skilled workers for the Spandau plant we contacted the Labor Ministry today in order to ascertain in what manner skilled labor may still be procured from foreign countries. As is known, the huge transports of Russian civilians have proved satisfactory only in a very limited way, due to the fact that persons had been recruited indiscriminately and it had been impossible to sort them according to their background either on the way to or after their arrival in the Reich. Thus it happened frequently that farm workers were assigned to industry and qualified industrial workers to agriculture. Today's telephone conversation of the undersigned with Ministerial Counselor Letsch has brought out the fact that the prospect of selected skilled labor from the enormous number of Russian civilian workers is completely hopeless. Direct recruiting on the spot cannot be con-

sidered. The majority of the people arriving today are from rural districts, and as a consequence can be employed by industry only as unskilled labor.

The undersigned thereupon contacted Senior Government Counselor Dr. Hildebrandt, who is the authority on French workers. Dr. Hildebrandt first of all confirmed the fact that large contingents of skilled laborers from France are actually to be procured. He further related that the contingents were not yet exhausted and that, if it had the support of the Ministry of Munitions, our requirements would be given consideration, providing we filed our request immediately. Applications must be directed to the "Plenipotentiary General for the Allocation of Labor" and filed via the respective Regional Labor Office. Senior Government Counselor Dr. Hildebrandt advised the undersigned to refer directly to the discussion he had had with him. The applications would thus be submitted to him personally, and hence would probably receive early attention. However, we recommend to contact the Regional Labor Office with regard to this and to select the form preferred by it. For the purpose of ascertaining at the Labor Ministry whether applications have been received and if Mr. von Nicolai of the Ministry of Munitions, who examines all requests, had given his consent, a copy will be forwarded to us. Most likely the procedure will be worked out in such a way that, on the basis of applications, we will contact Mr. von Nicolai directly, in order to speed up approval.

Applications are to state in detail the purposes for which workers are needed and professional requirements expected of workers. As Senior Government Counselor, Dr. Hildebrandt emphasized expressly upon inquiry, there is no possibility for recruiting of workers by interested firms, since recruiting is done by employees of the Plenipotentiary General for the Allocation of Labor.

Since applications can be considered only if the particulars do not arrive too late in Paris, Dr. Hildebrandt advises us to file applications in the quickest possible way.

Mitteldeutsche Stahlwerke
Aktiengesellschaft

[Signed] KUETTNER
[Illegible signature]

PARTIAL TRANSLATION OF DOCUMENT NI-4552
PROSECUTION EXHIBIT 280

MEMORANDUM FOR DEFENDANT FLICK FROM DEFENDANT BURKART,
27 JUNE 1942, WITH COPIES TO DEFENDANTS KALETSCH, TERBERGER,
AND WEISS, CONCERNING APPOINTMENTS TO THE PRAESIDIUM
OF THE REICH ASSOCIATION IRON, AND RELATED MATTERS

[Red pencil note] To Mr. Kaletsch/Weiss.

[Initial] K [KALETSCH]
W [WEISS]

Bu/Sch.

27 June 1942

Memorandum for Mr. Flick

Subject: Reich Association Iron.

As I could not reach Mr. Roechling¹ yesterday, I spoke this morning to Dr. Langen and this noon to Mr. Rohland and von Bohlen² on the various problems which arose at the Reich Association Iron [RVE]. This afternoon I was again alone with Mr. von Bohlen in the Tiergartenstrasse. Summarizing I have to report as follows:

1. *Praesidium*.—Following the conference which took place yesterday between the Reich Marshal and Hermann Roechling at Karinhall, the Praesidium will be set up next week. It is intended to entrust several gentlemen of the Praesidium with special tasks, as for instance Mr. von Bohlen with the handling of raw materials, transportation, and syndicate questions. In addition the gentlemen want to divide the work up somewhat regionally so that you should take care of the area of central Germany, while Mr. Roechling will be in charge of southwest Germany, Mr. Rohland will be in charge of the Ruhr, and Mr. Pott of Upper Silesia. I told the gentlemen that I did not know yet whether you would be willing to take over that job; at least you would want to be sure from the very beginning that you would never be asked to act in this function against the Reichswerke.

Thereupon Messrs. Rohland and Bohlen stated that they would be ready to give you an assurance to that extent, since they themselves (Rohland and Bohlen) planned to deal with all the ques-

¹ Roechling's activities in the Reich Association Iron and other agencies were brought into issue in the Roechling case tried before a Military Tribunal in the French Zone of Occupation. The indictment, judgment, and judgment on appeal in that case are reproduced as appendix B, Volume XIV, this series.

² Alfried von Bohlen und Halbach, later called Alfried Krupp von Bohlen und Halbach.

tions concerning the Reichswerke centrally within the RVE. (It is very likely that the gentlemen have made such a compromise with Mr. Pleiger at Salzgitter.)

2. *District commissioners.*—It is intended to appoint the following gentlemen deputies of the members of the Praesidium in charge of the various districts as well as District Commissioners of the Iron and Steel Ring.

Mr. Hahl deputy of Mr. Roechling for southwest Germany.

Dr. Wesemann your deputy for central Germany.

Mr. Rohland and Mr. Bohlen ask for your approval.

I have stated that they can take it for granted that you will give your consent since in the interests of the whole you were ready to release Mr. Wesemann temporarily for a more important task. (Mr. Rohland would like to talk over the details with Mr. Wesemann in Berlin on 3 July.) I would further advise you to meet once more with Messrs. Rohland and Bohlen in the middle of next week perhaps.

3. *Management.*

* * * * *

4. *Committees.*—It is intended to organize two committees. One will be a committee for increase of output and the other a committee to deal with problems of raw materials, fuel, and shipping. Considering that the three chairmen of the Praesidium, especially Mr. Roechling, are only occasionally in Berlin, it is intended to organize these committees for the time being for certain districts—just as the individual districts are taken care of by various members of the Praesidium—and to combine the chairmen of the district committees in the central committee of the RVE under the chairmanship of Mr. von Bohlen.

I have explained my attitude that in my opinion it would be useful, for instance, in problems concerning fuel, to combine the Ruhr district with southwest Germany, if only because of the return deliveries of minette, and that it might be advisable also to combine the committee for raw material and shipping problems in central Germany and the East as long as we are coupled together in supplying scrap iron within the German Association for Scrap Iron. Both gentlemen agreed to this.

* * * * *

[Stamp] Signed: BURKART

Distribution list—

O. E. Flick

A. Hennecke

Dr. Menzel

Dr. Terberger

Bruns

Kaletsch/Weiss

TRANSLATION OF DOCUMENT NI-5234
PROSECUTION EXHIBIT 238

MEMORANDUM FROM DEFENDANT BURKART TO DEFENDANT FLICK,
23 JULY 1942, COPIES TO DEFENDANT TERBERGER AND OTHERS,
REPORTING UPON SAUCKEL'S PROMISE AT THE 11TH MEETING
OF THE CENTRAL PLANNING BOARD TO PROCURE 120,000
RUSSIAN WORKERS FOR THE GERMAN MINING INDUSTRY

Bu/U.

23 July 1942

Mr. Flick

Subject: Yesterday's meeting of the Central Planning Board. *

I have been informed by Mr. Sohl and Mr. Scheer that the main topics of discussion at yesterday's conference with Minister Speer were the food situation and the increase in coal production. Gauleiter Sauckel has now finally promised to procure 120,000 Russian workers for the mining industry, within the next 4 to 6 weeks, so that Mr. Pleiger can make available the necessary additional coal for steel production.

[Stamp] Signed: BURKART

Copies to:

Raabe
O. E. Flick
A. Hennecke
Dr. Menzel
Dr. Terberger
Bruns

* Extensive extracts from the official reports on the meetings of the Central Planning Board are reproduced in section IV A 2, Volume II, this series (materials on "The Central Planning Board" in the Milch case) and in section XI B, Volume XIII (contemporaneous documents on the slave labor charges in the Ministries case).

TRANSLATION OF DOCUMENT NI-4506
PROSECUTION EXHIBIT 289

NOTE FOR DEFENDANT FLICK FROM DEFENDANT BURKART, 14 AUGUST
1942, CONCERNING THE PROGRAM FOR THE FIRST MEETING OF THE
PRAESIDIUM OF THE REICH ASSOCIATION IRON

Bu/Bch.

Berlin, 14 August 1942

Note for Mr. Flick

[Initial] F FLICK

Subject: Program for the first meeting of the Praesidium of the
Reich Association [Iron].

Yesterday I asked Mr. Roechling, too, for the agenda of the
first meeting of the Praesidium. The main points so far are—

1. Report about the organization of the Reich Association as
well as the obligation on the part of the members of the Prae-
sidium to active cooperation. (Praesidium, Management, Central
Committees, relationship to the Economic Group and to the
Association, taking over of a substantial part of the functions
of the hitherto existing Control and Examination Office, and simi-
lar matters.)
2. Report about the intended raw steel program.
3. Report about the discussion with the Fuehrer.
4. Management of the Ukrainian foundaries.

[Illegible initial]

[Signed] BURKART

PARTIAL TRANSLATION OF NI-2522
PROSECUTION EXHIBIT 294

LETTER FROM REICH ASSOCIATION IRON TO VARIOUS OFFICIALS OF THE
ASSOCIATION, INCLUDING DEFENDANT FLICK, 17 AUGUST 1942,
TRANSMITTING DOCUMENTS TO BE USED IN PREPARING FOR
AN ASSOCIATION MEETING, INCLUDING ROECHLING'S
REPORT FOR JULY 1942 NOTING ARRIVAL OF PRIS-
ONERS OF WAR AND RUSSIAN CIVILIAN WORK-
ERS PURSUANT TO THE ASSOCIATION'S
REQUESTS

Copy

Reich Association Iron

Berlin NW 7, 17 August 1942
Unter den Linden 10

[Illegible initial and handwriting]

Secret

To—

Deputy Chairman of the Reich Association Iron,
Director, Certified Engineer, Alfried von Bohlen und Hal-
bach, Fried. Krupp Aktiengesellschaft, Essen/Ruhr.
Director Dr. Walter Rohland,
Vereinigte Stahlwerke A.G.

Also to the Members of the Praesidium of the Reich Association
Iron—

Director General Dr. Ernst Poensgen,
Vereinigte Stahlwerke A.G. Duesseldorf.
Director General Dr. Friedrich Flick,
Berlin W 8, Bellevuestrasse 12 a.
Director General Paul Pleiger,
Hermann Goering Works, Berlin-Halensee,
Albrecht-Achilles-Strasse 62/64.
Director General Dr. Pott,
Graf von Ballestrem'sche Gueterdirektion,
Gleiwitz O/S, Markgrafenstrasse 2.
Certified Engineer Schmid von Schmidfelden,
Rottenmanner Eisenwerke K.G., Schmid and Co.,
Vienna I, Parkring 16.

Director General Wilhelm Zangen,
Mannesmannroehrenwerke, Duesseldorf.
Walter Steinweden,
Leipzig C 1, Delitzscher Strasse 2-14.

In compliance with the request of Kommerzienrat Dr. Roechling I am sending you the following documents to be used in preparing for the meeting of the Praesidium to be held *on Friday, 21 August 1942*, 12 o'clock, in the conference hall of the Deutsche-Verkehrs-Kredit-Bank, Berlin NW 7, Unter den Linden 10, second floor:

1. Decree of the Reich Ministry of Economics of 29 May 1942 together with the statute [Satzung] of the RVE.
2. Report of the chairman [Vorsitzer] for June.
3. Report of the chairman for July. *
4. Copy of the letter written in agreement with the chairman by Dr. Rohland to Staatsrat Schieber and dated 12 August concerning preliminary estimate of quotas for the third and fourth quarters of 1942.
5. Organizational plan of the Main Rings Iron Production and Iron Processing [Eisenerzeugung und Eisenverarbeitung].

Heil Hitler

[Handwritten] Signed: LANGEN

* * * * *

Copy

Hermann Roechling, Chairman of the Reich Association Iron
Voelklingen, 15 August 1942

Report for July

* * * * *

3. As for the other *raw materials* I expect that the actions to save *scrap iron* (proclamation and decree by Reich Minister Speer of 11 July 1942, proclamation by the Reich Association Iron of 20 July 1942) will lead to satisfactory results. Favorable results have been achieved through the lighter build of chassis, but the constant air raid alarms in the West and the lack of gasoline, are very regrettable. For instance, only today are our regional representatives for the action to save scrap iron receiving their gasoline for personal use. The Ruhr received 357,000 tons of *minette* in July. Gauleiter Sauckel was informed of the extra need of 6,000 prisoners of war for the mining of *minette*. 1,263,000

* Extracts from this report are reproduced herein; the remaining enclosures listed are not reproduced.

tons of *Scandinavian ore* were received as against 939,000 tons in June. Future shipment of Swedish ore seems very questionable, because the transaction had to be postponed until the beginning of September and because the Swedes have declared that they will deliver ore only in the measure that they receive compensatory German products in exchange. Our exports to Sweden (gasoline, rolling mill products, machines) must be given priority consideration. 33,427 tons of *manganese ore* containing 11,300 tons of manganese arrived from Nikopol in June as against 35,300 tons containing 14,600 tons manganese in May 1942.

The necessary increase in production of *supplementary products* is still in the planning and organizational stage.

4. The first transports of prisoners of war as well as civilian Russians arrived in the last days of July in accord with the RVE *labor* requests. The 5,000 prisoners of war as well as the 45,000 Russian civilian workers ought to be available by the end of August. Considering that Plan II could not be executed without considerable increase in coal production, the RVE put her labor demands for the time being behind those of the RVK.

* * * * *

7. Questions of *organizational structure* were pushed vigorously. Appointments to the Administrative Council [Verwaltungsrat] and Praesidium were effected. Dr. Langen was appointed temporary business manager at the beginning of the month. Bergassessor, retired, Sohl, after having been appointed to the Verwaltungsrat, will temporarily participate in the management. In spite of existing difficulties the RVE will probably succeed to operate with all departments under one roof at the beginning of September, after having taken over the respective departments from the Reich Office for Iron and Steel, and after having designated the fields of work with other offices.

[Signed] H. ROEHLING

PARTIAL TRANSLATION OF DOCUMENT NI-4526
PROSECUTION EXHIBIT 295

LETTER FROM DEFENDANT BURKART'S OFFICE TO MAXHUETTE, 28 JANUARY
1943, TRANSMITTING COPY OF THE REPORT OF THE CHAIRMAN OF
THE REICH ASSOCIATION IRON FOR THE LAST QUARTER OF 1942

Berlin, 28 January 1943

To the Vorstand of the Eisenwerk-Gesellschaft Maximilianshuette
Sulzbach-Rosenberg Huette [Illegible initial]

Upon the order of Dr. Burkart we send you the enclosed photo-
stat of a report of Counselor of Commerce [Kommerzienrat]
Roechling of 15 January.

[Stamp] Sent: 29 January 1943 The Office of Dr. Burkart
[Signed] OPALKA

Hermann Roechling
[Stamp]

Voelklingen, 15 January 1943

Received, 25 January 1943
J. No.

[Initials] K [KALETSCH]
T [TILLMANN'S]
KUE [KUETTNER]
F [FLICK]

Secret

Report on the Fourth Quarter of 1942

* * * * *

The situation as to the allocation of labor in the sectors controlled by Reich Association Iron [RVE], such as iron ore mines, iron producing industry, lime, fireproof brick industry, and scrap iron plants, was unsatisfactory with the exception of the last one mentioned. Even though the worst bottlenecks in the iron producing industry and in the lime industry could be remedied by special allocations, we have received only about 9,000 workers of the 60,000 requested for the 4th quarter for the iron producing industry including the iron ore mines, thus leaving an open deficit of 51,000 workers as of 31 December 1942. The drafting of key personnel provided for the first quarter hits once more primarily the rolling mills, which makes the problem of increased production of rolling mill products considerably more difficult.

In spite of the difficulties mentioned we succeeded in reaching the afore-mentioned production figures. For the first quarter of 1943 all preparations were made to secure an increased pro-

duction of rolling mill products, especially in the industries where there were bottlenecks as far as the situation concerning gas and labor employment permitted. The plants have received appropriate instructions.

* * * * *

Reich Association Iron

Chairman

[Signed] H. ROECHLING

Distribution list—

Reich Minister Funk.

Reich Minister Dr. Speer.

Gauleiter Sauckel.

State Secretary Dr. Ganzenmueller, Ministry of Transport.

State Secretary Koerner, one copy to be passed on to the Reich Marshal [Goering].

State Secretary Schulze-Fielitz.

Reich Leader Martin Bormann, Reich Chancellery.

President Kehrl.

Staatsrat Dr. Schieber.

Inspector General of Motor Transportation with the Fuehrer, Berlin, Reich Chancellery.

Ministerialrat Solveen.

Dr. Mueller-Zimmermann, c/o Reich Plenipotentiary for Iron and Metals, Berlin SW.

Kommerzienrat Dr. Hermann Roechling, Voelklingen/Saar.

Director Alfrued von Bohlen und Halbach, Friedrich Krupp AG., Essen.

Director Dr. Ing. Walter Rohland, Vereinigte Stahlwerke AG, Duesseldorf.

Director General Dr. Friedrich Flick, Berlin W 9, Bellevuestr. 12.

Director General Paul Pleiger, Reichswerke H.G. Berlin-Halensee.

Director General Dr. Ernst Poensgen, Vereingte Stahlwerke AG, Duesseldorf.

Director General Dr. Alfred Pott, Graf von Ballestrem'sche Gueterdir., Gleiwitz.

Dipl.-Ing. August Schmid von Schmidfelden, Rottenmanner Eisenwaren, Vienna.

Bergassessor, retired, Director Sohl, Vereinigte Stahlwerke AG. Duesseldorf.

Walter Steinweden, Leipzig C 1, Delitzscher Str. 2-14.

Director General Wilhelm Zangen, Mannesmannroehrenwerke AG. Duesseldorf.

Enclosures.

TRANSLATION OF DOCUMENT NI-1960
PROSECUTION EXHIBIT 305

MEMORANDUM FOR DEFENDANT FLICK ON TELEPHONE CALL FROM THE
REICH ASSOCIATION IRON, 1 AUGUST 1942, STATING THAT THE
ASSOCIATION DESIRED STATISTICS FROM THE VARIOUS FLICK
PLANTS ON THE APPROXIMATE NUMBER OF FOREIGN LABOR-
ERS REQUESTED AND ALLOTTED FOR THE PERIOD 1 JUNE
TO 31 JULY 1942

Schl

Berlin, 1 August 1942
9:50 o'clock

Dr. Flick

[Initial] W [Weiss]

Telephone call from the Reich Association Iron [RVE]

RVE asks to be informed by Tuesday, August 4, by the various
plants on the approximate numbers of foreign labor requested and
how many of them were allocated from June 1 to July 31.

Reich Association Iron
DR. LANGEN

Copies to: Mr. Kaletsch
Dr. Burkart

[Handwritten] See special files [Sonderakte] with Mr. Kansy.

TRANSLATION OF DOCUMENT NI-5453
PROSECUTION EXHIBIT 308

NOTE FOR DEFENDANT FLICK FROM DEFENDANT BURKART, 7 OCTOBER
1942, CONCERNING PRODUCTION IN THE IRON INDUSTRY, LABOR
SHORTAGES, ADDITIONAL ALLOTMENT OF WORKERS, INCLUDING
RUSSIAN WOMEN AND JUVENILES, AND RELATED MATTERS

7 October 1942

Note for Mr. Flick

Subject: Production of crude steel in September.

As I learned from Dr. Beck of the Reich Association [Iron], September finally brought a little increase in the production of crude steel from 2.7 million tons to 2.8 million tons in Germany proper, including the areas occupied by us.

Considering the fact that the Reich Association Iron has promised a finished production of 2,650,000 tons,—that is at least 3,300,000–3,500,000 tons of crude steel—from November on, one must realize already today that this mass program cannot be adhered to, at least not in the next months.

I pointed out to Mr. Beck that we are still lacking a lot of workers. Mr. Beck told me that the Sauckel office has promised a total of 68,500 people to the Iron Producing Industry; of these, 16,000 workers are said to have arrived already. The remaining 50,000 people are being transported. Mr. Beck admitted, however, that there are probably 50 percent juveniles and women among them. But he states that in Russia women are being used to a very great extent for men's work, for instance as smelters [Schmelzer] and rollers [Walzer] in foundries. Mr. Beck therefore assumes that the employment of Russian women can be judged differently from the usual attitude.

[Signed] BURKART

Copies to Managing Board of:

Brandenburg
Riesa
Rosenberg
Rombach
Doehlen

TRANSLATION OF DOCUMENT NI-5493 ¹
PROSECUTION EXHIBIT 104

STATISTICAL FILE CARDS LISTING GERMANS, FOREIGNERS, PRISONERS OF WAR, AND CONCENTRATION CAMP INMATES EMPLOYED DURING THE PERIOD OCTOBER 1943 THROUGH FEBRUARY 1945 AT VARIOUS FLICK PLANTS, INCLUDING MITTELSTAHL, RIESA, GROED-ITZ, ELBINGERODE, LAUCHHAMMER, THE LAUCHHAMMER GROUP, BRANDENBURG, HENNIGSDORF, AND HAVEL GROUP ²

Mittelstahl/Flick Kommanditgesellschaft—Riesa Plant Workers

<i>Status as of</i>	<i>Germans</i> [<i>Inlaend.</i>]	<i>Trainees</i> [<i>Lehrl.</i>]	<i>Foreigners</i> [<i>Auslaend.</i>]	<i>Prisoners of war</i> [<i>Kriegsgef.</i>]	<i>Total</i> [<i>Sa.</i>]
1 Oct. 1943	2,806	164	830	279	4,079
1 Nov. 1943	2,801	152	919	396	4,268
1 Dec. 1943	2,772	144	888	390	4,194
1 Jan. 1944	2,715	140	907	469	4,231
1 Feb. 1944	2,714	138	891	502	4,245
1 Mar. 1944	2,681	135	913	500	4,229
1 Apr. 1944	2,682	132	870	475	4,159
1 May 1944	2,711	168	845	466	4,190
1 Jun. 1944	2,726	164	893	454	4,237
1 Jul. 1944	2,697	152	899	445	4,193
1 Aug. 1944	2,681	149	886	452	4,168
1 Sep. 1944	2,698	152	1,095	315	4,260
1 Oct. 1944	2,730	150	1,171	337	4,388
1 Nov. 1944	2,709	144	1,331	377	4,516
1 Dec. 1944	2,692	137	1,369	377	4,525
1 Jan. 1945	2,676	133	1,305	373	4,487
1 Feb. 1945	2,631	107	1,322	368	4,426
1 Mar. 1945					

¹ Since the column headings on these statistical cards were the entries mainly requiring translation, German copies of this document were presented to the Tribunal with an oral explanation of the German words in question. However, for purposes of clarity, the translations of the terms have been used herein.

² These statistical cards did not cover numerous Flick plants and mines.

*Mittelstahl/Flick Kommanditgesellschaft—Groeditz
Plant Workers*

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Auslaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	4,251	311	3,259	1,027	8,848
1 Nov. 1943	4,232	296	3,234	1,058	8,820
1 Dec. 1943	4,093	280	3,194	1,077	8,644
1 Jan. 1944	4,044	278	3,144	1,145	8,611
1 Feb. 1944	4,005	267	3,380	916	8,568
1 Mar. 1944	3,950	267	3,324	926	8,467
1 Apr. 1944	3,894	253	3,247	893	8,287
1 May 1944	3,911	279	3,250	866	8,306
1 Jun. 1944	3,890	278	3,231	853	8,253
1 Jul. 1944	3,831	260	3,231	808	8,130
1 Aug. 1944	3,793	257	3,191	939	8,180
1 Sep. 1944	3,813	248	3,510	935	8,508
1 Oct. 1944	3,806	245	3,698	926	8,675
1 Nov. 1944	3,744	233	3,975	905	8,857
1 Dec. 1944	3,706	204	3,609	919	8,933
1 Jan. 1945	3,668	195	495* 3,610	902	8,872
1 Feb. 1945	3,572	154	497* 3,546	915	8,781
1 Mar. 1945			594*		

[Handwritten] * Concentration camp inmates.

*Mittelstahl/Flick Kommanditgesellschaft—Elbingerode
Plant Workers*

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Auslaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	107		280		387
1 Nov. 1943	106		280	50	436
1 Dec. 1943	102		269	50	421
1 Jan. 1944	130		267	74	471
1 Feb. 1944	128		264	73	465
1 Mar. 1944	132		263	69	464
1 Apr. 1944	124		262	69	455
1 May 1944	120		260	69	449
1 Jun. 1944	120		258	67	445
1 Jul. 1944	119		253	64	436
1 Aug. 1944	113		253	62	428
1 Sep. 1944	126		316		442
1 Oct. 1944	124		315		439
1 Nov. 1944	125		314		439
1 Dec. 1944	125		314	80	519
1 Jan. 1945	124		314	68	506
1 Feb. 1945	121		311	68	500
1 Mar. 1945					

Flick Kommanditgesellschaft—Hennigsdorf Plant Workers

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Austaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	1,217	50	947	130	2,344
1 Nov. 1943	1,230	47	1,025	276	2,578
1 Dec. 1943	1,215	47	1,013	270	2,545
1 Jan. 1944	1,187	47	976	274	2,484
1 Feb. 1944	1,183	44	904	256	2,387
1 Mar. 1944	1,173	44	876	228	2,321
1 Apr. 1944	1,174	44	854	225	2,294
1 May 1944	1,171	71	897	221	2,360
1 Jun. 1944	1,162	71	1,015	220	2,468
1 Jul. 1944	1,159	68	1,124	210	2,561
1 Aug. 1944	1,145	69	1,116	195	2,525
1 Sep. 1944	1,120	66	1,086	305	2,577
1 Oct. 1944	1,065	66	1,244	269	2,644
1 Nov. 1944	1,065	63	1,346	257	2,731
1 Dec. 1944	1,053	57	1,343	250	2,703
1 Jan. 1945	1,050	52	1,321	279	2,702
1 Feb. 1945	1,006	51	1,331	278	2,666

Flick Kommanditgesellschaft—Havel Group Workers

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Austaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	2,721	142	2,055	213	5,131
1 Nov. 1943	2,739	143	2,280	592	5,754
1 Dec. 1943	2,673	141	2,215	581	5,610
1 Jan. 1944	2,605	141	2,166	618	5,530
1 Feb. 1944	2,583	129	2,085	581	5,378
1 Mar. 1944	2,562	129	2,073	548	5,312
1 Apr. 1944	2,566	125	2,033	544	5,265
1 May 1944	2,571	165	2,196	487	5,419
1 Jun. 1944	2,552	162	2,363	484	5,561
1 Jul. 1944	2,630	152	2,498	497	5,777
1 Aug. 1944	2,598	154	2,518	473	5,743
1 Sep. 1944	2,559	147	2,578	689	5,973
1 Oct. 1944	2,470	146	3,164	554	6,334
					65*
1 Nov. 1944	2,474	139	3,265	528	6,406
					67*
1 Dec. 1944	2,459	126	3,260	519	6,364
					67*
1 Jan. 1945	2,457	113	3,237	541	6,348
					69*
1 Feb. 1945	2,350	109	3,273	525	6,257
					64*

[Handwritten] * Additional inmates.

Flick Kommanditgesellschaft—Brandenburg Plant Workers

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Auslaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	1,504	92	1,108	83	2,787
1 Nov. 1943	1,509	96	1,255	316	3,176
1 Dec. 1943	1,458	94	1,202	311	3,065
1 Jan. 1944	1,418	94	1,190	344	3,046
1 Feb. 1944	1,400	85	1,181	325	2,991
1 Mar. 1944	1,389	85	1,197	320	2,991
1 Apr. 1944	1,392	81	1,179	319	2,971
1 May 1944	1,400	94	1,299	266	3,059
1 Jun. 1944	1,390	91	1,348	264	3,093
1 Jul. 1944	1,471	84	1,374	287	3,216
1 Aug. 1944	1,453	85	1,402	278	3,218
1 Sep. 1944	1,439	81	1,492	384	3,396
1 Oct. 1944	1,405	80	1,920	285	3,690
					65*
1 Nov. 1944	1,409	76	1,919	271	3,675
					67*
1 Dec. 1944	1,406	69	1,917	269	3,661
					67*
1 Jan. 1945	1,407	61	1,916	262	3,646
					69*
1 Feb. 1945	1,344	58	1,942	247	3,591
1 Mar. 1945					64*

[Handwritten] * Additional inmates.

Mittelstahl—Lauchhammer Group Workers

<i>Status as of</i>	<i>Germans [Inlaend.]</i>	<i>Trainees [Lehrl.]</i>	<i>Foreigners [Auslaend.]</i>	<i>Prisoners of war [Kriegsgef.]</i>	<i>Total [Sa.]</i>
1 Oct. 1943	9,278	637	4,681	1,779	16,375
1 Nov. 1943	9,234	608	4,761	2,172	16,775
1 Dec. 1943	9,005	579	4,707	2,202	16,493
1 Jan. 1944	8,872	573	4,668	2,487	16,600
1 Feb. 1944	8,781	554	4,883	2,317	16,535
1 Mar. 1944	8,696	550	4,845	2,375	16,466
1 Apr. 1944	8,634	529	4,768	2,302	16,233
1 May 1944	8,688	634	4,735	2,262	16,319
1 Jun. 1944	8,670	634	4,748	2,206	16,258
1 Jul. 1944	8,567	587	4,744	2,128	16,026
1 Aug. 1944	8,496	580	4,685	2,282	16,043
1 Sep. 1944	8,533	575	5,262	2,139	16,509
1 Oct. 1944	8,488	552	5,523	2,139	16,702
1 Nov. 1944	8,463	529	6,126	2,191	17,309
				2,277	
1 Dec. 1944	8,429	493	5,756	495*	17,450
				2,246	
1 Jan. 1945	8,362	484	5,742	497*	17,331
				2,340	
1 Feb. 1945	8,201	394	5,706	594*	17,235

[Handwritten] * Concentration camp inmates.

Mittelstahl—Lauchhammer Plant Workers

<i>Status as of</i>	<i>Germans</i> [Inlaend.]	<i>Trainees</i> [Lehrl.]	<i>Foreigners</i> [Auslaend.]	<i>Prisoners of war</i> [Kriegsgef.]	<i>Total</i> [Sa.]
1 Oct. 1943	2,114	162	312	473	3,061
1 Nov. 1943	2,095	160	328	668	3,251
1 Dec. 1943	2,038	155	356	685	3,234
1 Jan. 1944	1,933	155	350	799	3,287
1 Feb. 1944	1,934	149	348	826	3,257
1 Mar. 1944	1,933	148	345	880	3,306
1 Apr. 1944	1,935	144	389	865	3,333
1 May 1944	1,941	187	380	861	3,374
1 Jun. 1944	1,934	192	365	832	3,323
1 Jul. 1944	1,920	175	361	811	3,267
1 Aug. 1944	1,909	174	355	829	3,267
1 Sep. 1944	1,896	175	341	889	3,301
1 Oct. 1944	1,828	157	339	876	3,200
1 Nov. 1944	1,885	152	506	909	3,452
1 Dec. 1944	1,906	152	514	901	3,473
1 Jan. 1945	1,894	156	513	903	3,466
1 Feb. 1945	1,879	133	527	989	3,528

Mittelstahl—Flick Kommanditgesellschaft Workers

<i>Status as of</i>	<i>Germans</i> [Inlaend.]	<i>Trainees</i> [Lehrl.]	<i>Foreigners</i> [Auslaend.]	<i>Prisoners of war</i> [Kriegsgef.]	<i>Total</i> [Sa.]
1 Oct. 1943	11,999	779	6,736	1,992	21,506
1 Nov. 1943	11,973	751	7,041	2,764	22,529
1 Dec. 1943	11,678	720	6,922	2,783	22,103
1 Jan. 1944	11,477	714	6,834	3,105	22,130
1 Feb. 1944	11,364	683	6,968	2,898	21,913
1 Mar. 1944	11,258	679	6,918	2,923	21,778
1 Apr. 1944	11,200	654	6,801	2,846	21,498
1 May 1944	11,259	799	6,931	2,749	21,738
1 Jun. 1944	11,222	796	7,111	2,690	21,819
1 Jul. 1944	11,197	739	7,242	2,625	21,803
1 Aug. 1944	11,094	734	7,203	2,755	21,786
1 Sep. 1944	11,092	722	7,840	2,828	22,482
1 Oct. 1944	10,958	698	8,687	2,693	23,036
1 Nov. 1944	10,937	668	9,391	2,719	23,715
1 Dec. 1944	10,898	619	9,016	2,796	23,819
1 Jan. 1945	10,819	597	8,979	495 2,787 497	23,679
1 Feb. 1945	10,551	503	8,979	2,865 594*	23,492

[Handwritten] * Concentration camp inmates.

PARTIAL TRANSLATION OF DOCUMENT BURKART 673
BURKART DEFENSE EXHIBIT 41

EXTRACTS FROM THE REPORTS OF THE REICH MINISTER FOR ARMAMENT
AND MUNITIONS, 1943 ISSUE, REPRODUCING PARTS OF A SPEECH OF
REICH MINISTER SPEER TO THE REICH CHAMBER OF LABOR ON 29
JANUARY 1943, CONCERNING MANPOWER PROBLEMS AND
ARMAMENT PRODUCTION

Extract from the address given by Reich Minister Speer at the
meeting of the Reich Chamber of Labor in Berlin
on 29 January 1943

In his New Year proclamation the Fuehrer has declared that
in the year 1943 he expects and must demand from the German
armament industry an extraordinary increase in output.

* * * * *

The manpower required for the extension of our production
must therefore be newly provided by the German people, and must
pour into the factories in great quantities.

To attain this, it is above all necessary that the *entire com-
munity* support the armament industry in every way, and that all
production which can still in any way be dispensed with is can-
celed, and that our whole standard of living becomes more in
keeping with the necessities of war than ever before.

*The fulfillment of these requirements is a decisive factor in the
further increase of production in the year 1943.*

Therefore, every reserve of manpower still existing among the
German people must now be drawn into our armament program
so that the great production target for 1943 which the Fuehrer
has fixed may actually be reached.

TRANSLATION OF DOCUMENT NI-456
PROSECUTION EXHIBIT 154

COPY OF LETTER FROM SAUCKEL'S OFFICE TO TWO REGIONAL LABOR
OFFICES, 10 MARCH 1943, REPORTING RESULTS OF AN INSPECTION
AT EASTERN WORKERS' CAMPS OF RUHR FACTORIES, AND UN-
DATED MEMORANDUM FROM SAUCKEL'S OFFICE TO THE
REICH ASSOCIATION IRON, TRANSMITTING COPY AND
REQUESTING STEPS TO REDRESS GRIEVANCES
NOTED

Copy

[signature: Kalhert]

Berlin, SW 11, 10 March 1943
Saarlandstr. 96

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation
VIa 5783.28/1407/43 (g) Secret

To The President of the Regional Labor Office

- a. Rhineland, Cologne.
- b. Westphalia, Dortmund.

[Stamp]

Reich Association Iron
No. 9281

Received: 17 March 1943
KS

Subject: Continuous inspection of the allocation of eastern
workers.

Reference: Decree of 9 January 1943-Va 5780.28/90

In the period from 24 November to 25 December 1942, the Economic Staff East * together with a representative of the East Ministry, inspected large eastern workers' camps of factories in the Gaue of Duesseldorf, Essen, South Westphalia, and North Westphalia. Representatives of the German Labor Front [Deutsche Arbeitsfront, DAF], the Security Service [Sicherheitsdienst] and the Dortmund Regional Labor Office were called upon to aid in this inspection. Considerable shortcomings were dis-

* The Economic Staff East had extensive duties in connection with the exploitation of German-occupied Russia. See section X E, Volume XIII, this series, containing principally materials on the spoliation charges as to Russia in the Ministries case.

covered in some places, the immediate relieving of which is essential. The following objections were raised in particular:

1. The shelters are partly considered inadequate. In some cases the shelters were lousy and filthy. The Katharine Camp of the Essener Steinkohlen A.G. is still surrounded by barbed wire, and the windows of the camp are barred.

2. The food is largely poor and inadequate, due primarily, according to the reports, to poor kitchen organization. The kitchens of the eastern camps are in part operated as concessions, which give rise to considerable objections.

3. The medical care is largely inadequate. Systematic treatment of the sick is partly lacking. The cleanliness of the dispensaries often leaves much to be desired. In some cases the hospital barracks cannot be considered adequate. The same is true of the sanitary installations. In some cases a lack of medical supplies was found.

4. As for the treatment, it was learned that in spite of instructions issued from time to time, eastern workers are still being beaten.

5. Social care and arrangements for free time are in part still in the elementary stages or completely lacking. The question of days off has also not been settled satisfactorily everywhere. It was further learned that the camp leaders are often incompetent. On the other hand, the camp administration often has great difficulty in asserting itself against the factory authorities.

6. In several cases there were objections concerning the payment of wages in the case of the eastern workers. There is also confusion in the inspected enterprises about savings of eastern workers.

As a result of these objections in the allocation of eastern workers, very poor morale was found in several enterprises among the eastern workers, as well as a large number of escapes. The objections are primarily due to the fact that the plant authorities in many cases do not have the necessary understanding for the correct treatment of eastern workers and also lack the necessary insight and good will for a proper solution of all these questions. The inspection also showed, however, that in all the enterprises that recognize their task correctly a maximum of production and of satisfaction is reached with the eastern workers.

I enclose a copy of the report of the inspection for your information, and ask you to see to it that something is done immediately about the objections reported. I place special value on closest and most conscientious cooperation with the agencies of the Party, the German Labor Front, and industry. The Reich Minister for Armament and Munitions, the Reich Association Coal, the Reich Association Iron, and the Plenipotentiary General for Special Questions

of Chemical Production,* have also received copies of this decree, as well as of the inspection report, so far as the enterprises under their care are affected thereby.

In my above-mentioned decree of 9 January 1943 concerning continuous inspection of the allocation of eastern workers, I have already pointed out that in especially serious cases a removal of the workers from the factory can be ordered. Insofar as you encounter difficulties in the execution of your task which cannot be dealt with otherwise, I ask you to make use of this power if necessary.

I ask that you report to me by 31 March 1943 at the latest the satisfactory redressing of the above grievances, as well as special experiences or difficulties encountered.

Copy transmitted for information. Copy of inspection report enclosed. Please take whatever steps are necessary to redress the grievances found.

BY ORDER :

[Signed] DR. LETSCH

Certified.

[Illegible signature]

Employee

[Seal]

The Plenipotentiary for the Four Year Plan
The Plenipotentiary General for Labor Allocation
To the Reich Association Iron
Berlin-Wilmersdorf
Badensche Str. 24

* Carl Krauch, defendant in the I.G. Farben case, Volumes VII and VIII, this series.

PARTIAL TRANSLATION OF DOCUMENT NI-10058
PROSECUTION EXHIBIT 774

EXTRACTS OF A LETTER FROM FLICK'S MITTELSTAHL TO THE REICH MINISTER
FOR ARMAMENT AND MUNITIONS, 22 MAY 1943, PROTESTING A
PLANT INSPECTOR'S CONCLUSION THAT THE HENNINGSDORF
PLANT SHOULD CEASE PRODUCING CAST STEEL SHELLS, NOT-
ING DIFFICULTIES OF INSTITUTING A PIECE WORK SYS-
TEM IN VIEW OF THE CONGLOMERATION OF
NATIONALITIES WORKING ON SHELLS, AND
RELATED MATTERS

[Stamp]

Received 25 May 1943
J. No.

To the Reich Minister for Armament and Munitions
Group of Major Schaede
Attention: Engineer Groth

Berlin-Charlottenburg
Emergency Building at the Zoo

[Initial] B [BURKART]
[Illegible Handwriting]

Gr/B 8 April 1943
No. 851/43-263

Mo/Qu 22 May 1943

Production of Munitions—Plant Inspection

Concerning the report of your collaborator, Engineer Schmid, we feel compelled to answer in detail and above all to protest against his deduction, "*Hennigsdorf should cease producing cast steel shells* [Stahlgussgranaten]".

This deduction is even more difficult to understand in view of the opinion on page 18 that "working methods are satisfactory and simple", and on page 19 that "there is a very little waste at Hennigsdorf." The latter fact should be more decisive in a critical evaluation than our production method of Martin steel, which gives Mr. Schmid cause for criticism. To this and to a few other points we should like to answer as follows:

1. *Steel smelting procedure.*

* * * * *

2. *Steel requirements.*

* * * * *

3. *Fuse ring.*

* * * * *

4. *Sand blower.*

* * * * *

5. *Gas main.*

* * * * *

6. *Cleaning procedure.*

* * * * *

7. *Turning procedure.*

* * * * *

8. *Organization.*

The general reproach that the organization of the foundry in Hennigsdorf is not "modern" surprises us most. Mr. Schmid formed this opinion only from the point of view that we have no piece work agreement for all those who work on shells. According to Mr. Schmid we would have to have the same piece work rate for those who make the cores [Kernmacher] (eastern workers and Spaniards), the pattern makers (Germans), the kippers (Bulgarians), the cutters (Germans), the adjusters (Croatians), the polishers (Russian prisoners of war), the finishers (Croatian women), lathe operators (Russian prisoners of war and eastern workers) and the examiners (Germans).

Considering the conglomeration of nationalities, as well as different regulations concerning the pay for eastern workers, prisoners of war, and other foreigners, we would not know how to work out a unified piece work rate. Nevertheless, to describe the organization of our foundry as not modern is positively exaggerated.

We summarize:—We have followed the suggestions expressed in the opinion in a few important points (reduction of cleaning period and weight of crude steel) and shall continue to work on this matter. However, as to the conclusion drawn, we wish to contest energetically the necessity of our ceasing production of shells. We work with very little waste; our prices are those listed in Group I, and this arrangement is satisfactory to us; we deliver punctually and have few complaints from our customers; finally, we have increased production of our own volition from 5,000 pieces a month to 7,500 and recently to 9,000.

* * * * *

Heil Hitler!

Mitteldeutsche Stahl-und Walzwerke
Friedrich Flick Kommanditgesellschaft

[Signed] GOEBEL

[Signed] NOLL

TRANSLATION OF DOCUMENT NI-3613 *
PROSECUTION EXHIBIT 176

NOTE FOR DEFENDANT FLICK FROM DEFENDANT WEISS, 7 JULY 1943,
COPIES TO DEFENDANTS BURKART AND KALETSCH, CONCERNING
EFFECT UPON LABOR CONDITIONS OF TRANSFER OF KRUPP'S
PRODUCTION TO SILESIA, ALLOCATION OF FRENCH CIVILIAN
WORKERS FOR LOSSES OF RUSSIAN PRISONERS OF WAR
AT LINKE-HOFMANN WORKS, AND RELATED
MATTERS

W/Str.

7 July 1943

Note for Mr. Flick

[Initial] F [FLICK]

Subject: Transfer to Silesia of the firm Krupp.

With regard to Dr. Kuettner's note of the 6th of this month, I asked Dr. Putze today, how the large-scale transfers to Silesia of the Krupp firm would affect the allocation of labor.

Mr. Putze told me that he, as an armament supervisor, as well as on behalf of the Gau Economic Chamber, would of course urge the firms shifting their production from the West to Silesia to bring their own manpower for this production with them. He said that he found out, however, that in many cases the establishment of factories in Silesia was termed "transfer", while actually an extension of the works was being effected. During his next stay in Berlin he would give us more details about this subject.

At the Linke-Hofmann Works [LHW] labor supply is so far satisfactory. During the last days 260 French civilians have arrived. The allocation of French civilians is to be brought up to a total of 500 men. These allocations will make up for the losses, chiefly of Russian prisoners of war, we have suffered since the spring of this year.

Furthermore we shall receive additional personnel for the production of A 4 equipment and tanks.

[Signed] B. WEISS

Copies to:

Mr. Kaletsch

Dr. Burkart

* Photographic reproduction of this document appears in appendix A.

PARTIAL TRANSLATION NI-4736
PROSECUTION EXHIBIT 260

EXTRACTS FROM A LETTER OF BUSKUEHL, DIRECTOR GENERAL OF HARPEN,
TO DEFENDANT FLICK, 14 JULY 1943, REPORTING ON LOSSES AND
GAINS IN LABOR IN THE RUHR COAL MINING INDUSTRY, LISTING
"LOSSES DUE TO ESCAPE" BY EASTERN WORKERS, AND
RELATED MATTERS

Dortmund, 14 July 1943

Bergassessor Buskuehl
Director General of the
Harpener-Bergbau-Aktien-Gesellschaft
Residence: Dortmund, Stadtrat Cremer-Allee 22
Telephone: Dortmund 45191
Office: Dortmund, Harpener
Bergbau A.G.
Telephone: Dortmund 20541

[Stamp]
Received 16 July 1943
[Initials] K [KALETSCH]
W [WEISS]
B [BURKART]
F [FLICK]

Dr. Fr. Flick
Berlin W 9
Bellevuestrasse 12a

Dear Mr. Flick,

About the discussion at the advisory board of the Coal Syndicate and the general situation in the Ruhr mining industry in June 1943, the following can be reported:

The entire transactions of the Syndicate in June 1943 amounted to: 10,809,000 tons (10,879,000 tons) that is minus 0.65 percent. From this shipped to foreign countries 1,493,000 tons (1,364,000 tons) that is plus 9.5 percent, shipped to Germany 5,477,000 tons (5,624,000 tons) that is minus 2.61 percent.

* * * * *

From 1 January to 31 May 1943 the coal mining industries of the Ruhr furnished 13,594 men to the army and to the Reich Labor Service.

From 1 January to 31 May the additions to the total labor strength amounted to 48,068. However, this increase was not sufficient to compensate for the draftees, because within the same time 53,005 men, including the draftees, were lost, with the effect that the number of workers in May is far below the number in January. A close observation of the development regarding the

number of people employed shows that since the beginning of this year the losses, as such and compared with the recruitments, are far bigger than before. The same applies to the eastern workers and the Russian prisoners of war. The losses of eastern workers and the prisoners of war in May, for example, amounted to 5,551, in comparison with only 3,796 recruitments. The schedule of categories for labor allocation for 1943-44 provides for only 30 percent losses of the available foreign labor as an average per year. Even the allocation scheduled for the months April to June, cannot be kept up according to this plan. Experience has shown that it takes 3 months until the newly allocated prisoner of war has reached his full output capacity which is far below that of the German miner anyway. Decreased output due to insufficient and belated allocation of labor will, therefore, become even more evident.

The average number of losses among prisoners of war and eastern workers and Poles amount to about 5,000 according to the experiences of the previous months. As in May about 13,500 workers have been allocated; the result was that the labor allocation scheme for the month of May was not completed until June. Among the losses of foreigners, particularly the number of escapes [Fluchtfaelle] among the eastern workers is strikingly high.

Losses due to escape

In March	689 eastern workers
In April	961 eastern workers
In May	1,129 eastern workers

An important reason for escapes may be the fact that those eastern workers who had been employed in agriculture before had found considerably better conditions there as far as food is concerned. On the other hand, attempts to escape are helped by the fact that the eastern workers are free to leave their quarters. Due to these facts it will be more appropriate to allocate in future only Soviet Russian prisoners of war in the mining industries.

* * * * *

[Signed] BUSKUEHL

TRANSLATION OF DOCUMENT NI-10093
PROSECUTION EXHIBIT 785

NOTE FROM DEFENDANT STEINBRINCK, PLENIPOTENTIARY FOR COAL IN
OCCUPIED WESTERN TERRITORIES, TO SOGEMEIER OF THE REICH
ASSOCIATION COAL, 28 APRIL 1944, NOTING THAT 13,000 EAST-
ERN WORKERS AND PRISONERS OF WAR ARE AVAILABLE
TO STEINBRINCK'S AGENCY, HIS PREPAREDNESS TO BE-
GIN THEIR TRANSFER TO RUHR COAL MINES, AND
PROBLEMS INVOLVED

Duesseldorf, 28 April 1944
St/Ha

[Illegible Handwriting]

Note for Dr. Sogemeier

Subject: Transfer of Russians from the territory of the Pleni-
potentiary for Coal in the Occupied Western Terri-
tories [Bekowest] * to the Ruhr district.

At present Bekowest has approximately 13,000 eastern workers
and Russian prisoners of war available. No Italian internees,
Serbs, Poles, etc. are employed. I am prepared to transfer to the
Ruhr, by and by, the Russians and eastern workers employed,
starting with 1,200 men distributed as follows:

300 eastern workers from Beaumont near Henin-Liétard.

525 Russian prisoners of war from Bethune, Camp Bully-
Grenay.

375 Russian prisoners of war from the mine Noeux who are
dispersed at present.

[Handwritten] How many altogether?

Prisoners of war have to be distributed by the OKW [Armed
Forces High Command], while the transfer of eastern workers is
to be effected by the labor allocation authorities. The Stalag
commander orders the transport of prisoners of war. Under
present conditions the transfer of eastern workers has to be car-
ried out under guards, possibly from the labor allocation authori-
ties. Since the barracks occupied by Russians and eastern work-
ers are provided by the army and we are paying rent to the
superintendent for their use, such rent will have to be paid for in
the future by the Reich Association Coal or the mines taking over

* "Bekowest" was the familiar abbreviation for "Beauftragter Kohle West".

the workers and prisoners. The Mine Association [Bergbauverband] has to conduct the necessary negotiations with respect to that with OKW directly.

Regarding the nature of employment of the first Russians to be transferred I should like to recommend to you to contact Mr. Schensky in order to secure the highest possible utilization of the men. Since the transport cannot remain a secret and might possibly cause severe alarm among the remaining Russian, I would advise you to give it first a trial with those men and then to transfer further groups at fortnightly intervals. To transfer Russians from the Belgian area is out of the question at present. We are employing in the Campine approximately 7,000 Russians and eastern workers at present. These are the only support for the continuance of coal mining, since 50 to 60 percent of the Belgian miners are missing. A great part of them cannot be transported from outside to the mines because of the prevailing transportation situation. Another part is missing as a result of panics caused by bombings.

We have to wait and see whether the recent pressure methods [Druckmittel] initiated by the military commander will have a successful effect on the population. More details on that subject orally. If any military events should occur the withdrawal of Russians and eastern workers according to plans is prepared and secured. Since the Campine is the only area at the moment where coal can be mined, the Russians have to remain there for the time being. From the Charleroi/Mons area the Russians were already transferred to the Campine.

[Initials] St. [STEINBRINCK]

Copy to Senior Government Counselor Koska.

TRANSLATION OF DOCUMENT NI-5452
PROSECUTION EXHIBIT 38

MEMORANDUM FROM DEFENDANT FLICK TO TILLMANN'S OF FLICK'S CENTRAL OFFICE, 20 JUNE 1944, NOTING "DIRECT ARMAMENT" MANUFACTURED IN FLICK PLANTS, OVER-ALL ANNUAL PRODUCTION FIGURES OF COAL AND RAW STEEL, AND THE EMPLOYMENT BY THE FLICK CONCERN OF 130,000 WORKERS, INCLUDING PRISONERS OF WAR

20 June 1944 Fr/Cz

Memorandum for Dr. Tillmanns *

Subject: Armament production of the concern.

In our plants the following products for direct armament [unmittelbare Ruestung] are primarily manufactured:

1. *Mittelstahl* [MST].

Riesa Projectile winches, DO-cases (production stopped in April), submarine pressure bodies, torpedo ejecting tubes, command bridges.

Groeditz Shells, cannon barrels, completed cannons.

Lauchhammer Shells.

2. *Flick Kommanditgesellschaft*:

Brandenburg Armor plates, tank manufacture.

Hennigsdorf Shells, plates of refined steel for airplanes.

Spandau Parts for tanks, gun barrels, gun breeches, breech wedges.

3. *Maschvette*:

Rosenberg Projectile winches.

Unterwellenborn Same.

Presswerk Thuringen Shells.

Donauwoerth I Shells, fuses, gunsights, complete smoke-shell mortars.

Donauwoerth II Shells.

* Dr. Robert Tillmanns, a Prokurist (official having authority to sign on behalf of a company) of the central office of the Flick Concern in Berlin, was a trusted official who engaged in various special tasks on behalf of defendant Flick. His initials appear on a number of the contemporaneous documents reproduced earlier in this section.

4. *Rombach* * Projectile winches, shells.
5. *Doehlen* Shells, machine gun barrels, special compressed air tubes.
6. *Allgemeine Transport Anlagen* Airplanes.
G.m.b.H. [ATG].
7. *Linke* Tank hulls, armored trains, flat cars, A 4 equipment, and continuous special orders.
8. *Busch* Flat trailers, ambulance cars, equipment for removal of rails, and continuous special orders.
9. *Anhaltische Kohlenwerke* Motor fuels.
A.G. [AKG].
10. *Chemical Works Essener* Motor fuels.
Steinkohle.

Here are some figures of the annual production of the concern (1943):

Mining of soft coal	12,055,000 tons
Mining of lignite	29,819,000 tons
Production of lignite briquettes	9,226,000 tons
Production of crude steel	2,573,000 tons

The number of employees (including prisoners of war) within the concern is at the present more than 130,000.

[Initial] F [FLICK]

* "Rombach" was the familiar name for a French enterprise in German-occupied Lorraine which the Flick Concern administered as trustee for the Reich. Rombach is the principal subject of the materials reproduced hereinafter in section VIII (Spoliation).

TRANSLATION OF DOCUMENT NI-5598
PROSECUTION EXHIBIT 313

CIRCULAR LETTER FROM THE RIESA/ELBE BRANCH OFFICE OF THE REICH
ASSOCIATION COAL TO ITS MEMBERS, 25 AUGUST 1944, INITIALED
BY DEFENDANTS BURKART AND KALETSCH, ADVISING INDIVIDUAL
PLANTS TO DIRECT ALL COMMUNICATIONS CONCERNING
CONCENTRATION CAMP INMATES TO THE ASSOCIA-
TION'S APPROPRIATE BRANCH AND NOT DIRECTLY
TO CAMP ORANIENBURG

[Stamp] Received 28 August 1944
J. Nr.

[Stamp] Sent for information.

[Initial] K [KALETSCH]

[Stamp] Received 28 August 1944
Reich Association Iron, Branch Office Center [Aussenstelle Mitte]
[Initial] B. [BURKART]

Riesa/Elbe
Tel. 1382/83

Schlageterstrasse 38
Cable address: Eisenmitte

Teletype: 013 77 for Dr. Faulhaber

(10) Riesa/Elbe, 25 August 1944
Diary Nr. 4264/Wi/Hi.

To our members:

Subject: Concentration camp inmates from the east.

Circular letter of Reich Association Iron of 18 August

SS Oranienburg * is complaining that numerous plants are contacting them directly. Reich Association Iron points out expressly that all communications with Oranienburg, whether written or verbal, will be conducted by themselves.

The plants are to direct their wishes to the competent branch office which in turn will forward it to the Reich Association Iron.

Heil Hitler!

BY ORDER:

The manager:
[Signed] WITTING

* Oranienburg Concentration Camp was located near Berlin. It was one of the first concentration camps established by the Nazis.

PARTIAL TRANSLATION OF DOCUMENT NI-4735
PROSECUTION EXHIBIT 259

EXTRACTS FROM A LETTER FROM BUSKUEHL, DIRECTOR GENERAL OF HAR-
PEN, TO DEFENDANT FLICK, 31 AUGUST 1944, REPORTING UPON THE
WORKERS EMPLOYED IN THE RUHR COAL MINING INDUSTRY AND
NOTING SEPARATIONS BECAUSE OF DEATH AND SICKNESS

Ernst Buskuehl
Harpener Bergbau A.G.

Dortmund, 31 Aug. 1944

[Initials] F [FLICK] [Stamp] Received on
W [WEISS] 4 Sep. 1944
K [KALETSCH] J.Nr. 17135

To Dr. Fr. Flick
Berlin W 9
Bellevuestr. 12a
My dear Mr. Flick:

The following report is submitted concerning the conference held in the advisory board [Beirat] of the Coal Syndicate and concerning the general situation of the Ruhr mining industry during the month of July 1944.

* * * * *

Number of Employed Workers

<i>End of the month</i>	<i>Underground mining</i>	<i>Surface mining</i>	<i>Total number</i>	<i>Total number of prisoners of war and eastern workers¹</i>
<i>1943:</i>				
Apr.	268,606	101,845	370,451	71,253
May	264,992	102,845	367,837	69,498
Jun.	269,309	105,719	375,028	78,208
Jul.	270,666	107,849	378,515	83,571
<i>1944:</i>				
Apr.	267,789	116,804	384,593	117,318
May	267,648	116,012	383,660	117,689
Jun. ²	269,402	115,470	384,872	120,075
Jul. ²	269,004	116,507	385,511	121,484

¹ Including Italian military internees.

² Preliminary figures.

Newly allocated were 2,333 men (1,008 eastern workers, 950 Soviet prisoners of war and 375 Italian military internees). From January to June, 217 prisoners of war who were either sick with TB or in need of hospitalization were taken to "Stalag 16". Finally separated as unfit for mining are 8,922 men, including the dead, and among them 7,429 sick with TB.

* * * * *

With a hearty good luck and Heil Hitler

Yours respectfully,
[Signed] BUSKUEHL

PARTIAL TRANSLATION OF DOCUMENT NI-3026
PROSECUTION EXHIBIT 145

EXTRACTS FROM THE MONTHLY REPORT OF FLICK'S BAUTZEN RAILROAD
CAR FACTORY, AUGUST 1944, NOTING IMMINENT EMPLOYMENT OF
800 CONCENTRATION CAMP INMATES, THE CHANGE IN STATUS
OF ITALIAN MILITARY INTERNEES TO CIVILIAN STATUS, AND
RELATED MATTERS

Monthly Report, August 1944—Bautzen Railroad Car Factory.

* * * * *

c. Allocation of labor and time of work.—At the end of August no request for workers was submitted to the Labor Office Bautzen, because we are to get 800 concentration camp inmates very soon. The lack of workmen was overcome by suspending all leaves and by increasing the working time for part of the workers (about 140 professional workers to 72 hours weekly). Moreover, an agreement was reached with the Reichspost and the Transport Company [Kraftverkehrs-Gesellschaft] that bus schedules would be worked out to fit the working hours of our workers coming from other places.

* * * * *

g. Employment of concentration camp inmates.—SS Major [Sturmbannführer] Hassebrock from the headquarters of the Concentration Camp Gross-Rosen/Silesia visited us on 12 August. It was agreed that 800 concentration camp inmates were to be allotted to us. We also discussed the matters necessary for the erection of the barracks as well as allocation. We have ordered the barracks and the material for the fences and we are counting on starting to set things up by the end of September. The first echelon should also arrive here by the end of September.

* * * * *

h. Italian military internees.—The Italian military internees working for us, were taken on as civilian workers on 22 August. The Italians are at present still billeted in our plant, but they are to be transferred sometime in September to the community camp "Happy View" ["Heiterer Blick"].

* * * * *

TRANSLATION OF DOCUMENT NI-5204
PROSECUTION EXHIBIT 146

LETTER FROM THE BUSCH COMPANY TO DEFENDANT WEISS, 17 OCTOBER
1944, CONCERNING REDUCTION OF ADMINISTRATIVE PERSONNEL AT
THE BAUTZEN FACTORY, SUPERVISORY AND ADMINISTRATIVE
REQUIREMENTS FOR EMPLOYING 800 CONCENTRATION
CAMP INMATES, AND ARRIVAL OF THE FIRST 100
INMATES

Railway Car and Machine Company,
Formerly Busch
[Waggon-und Maschinenfabrik
Aktiengesellschaft vormals Busch]
Cable Address: Waggonfabrik
Telephone: 2051-2055

(10) Bautzen, 17 October 1944
PO Box 126
[Stamp] Received 19 October 1944
J.No.

[Initials] K [KALETSCH]
W [WEISS]
B [BURKART]
F [FLICK]

To Director Mr. Bernhard Weiss
(1) Berlin W 9
Bellevuestr. 12a

Dear Mr. Weiss:

In reply to your letter of 9 October dealing with the 30 percent reduction of the administrative personnel, I inform you of the following facts relative to this point:

Since clear-cut regulations about what [personnel] belongs to the administration are not yet existing and supplements to the publications concerned have to be awaited, we have, as a matter of precaution, got in touch with the Armament Command in Dresden which is competent for our plant, explaining to them the special conditions prevailing in our plant. The fact is that we, on the one hand, have set up our administrative machinery with a minimum of personnel, that is to say economically, and therefore should encounter considerable difficulties in conducting our business affairs if we laid off 30 percent of our staff. On the other hand we are just in the process of building up, as we expect

800 people from the concentration camps for whom technical, supervisory, and administrative personnel is required. Considering the present proportion of clerical workers to the total staff as 1 to 7, over 100 persons would theoretically be required for that. This is, of course, not actually the case, but we shall probably have to anticipate an additional increase of the administrative staff by 40 people. Now it would not be consistent to give up trained employees to production while carrying out the required 30 percent lay-off, and to engage untrained people shortly afterwards.

The armament command takes the view that a full reduction would cause difficulties in our plant under these circumstances, and suggested that we report the whole situation in a memorandum which could be produced in case of an inspection as evidence for the fact that we gave the question serious consideration.

On this occasion I should like to touch once more on the question already broached before, as to what extent the concern could dispense with our reports, or whether such reports may be made at longer intervals only, and whether the quarterly report we are to give to the joint supervisory board might be somehow condensed.

About 100 of the inmates have arrived so far as an advance party, who are engaged in setting up fences, huts, etc. The people are industrious and work 72 hours a week.

I remain with the best regards and

Heil Hitler!

Yours,
[Signed] F. REICHERT

PARTIAL TRANSLATION OF DOCUMENT NI-4185
PROSECUTION EXHIBIT 142

EXTRACTS FROM THE REPORT FOR DECEMBER 1944 OF THE CHIEF OF LABOR
ALLOCATION, BUCHENWALD CONCENTRATION CAMP, 6 JANUARY
1945, CONCERNING ASSIGNMENT OF CONCENTRATION CAMP
INMATES TO ARMAMENT PRODUCTION—TABULATING DAYS
AND HOURS WORKED AND CLAIMS AGAINST EMPLOY-
ERS FOR OVER 7 MILLION REICHSMARKS

Subject: Assignment of inmates for armament production
[Ruestungszwecke] during the month of December
1944, with indication of the actual working hours
[geleistete Arbeitsstunden].

<i>Firm</i>	<i>Number of days worked [Tagewerke]</i>	<i>Number of working hours</i>
1. a-C Bauleitung Werk Bu.	64,568	581,112
Bauleitung A-4	12,270	122,700
Bauleitung A-6	18,567	213,520
Bauleitung B-II	86,880	999,120
Kdo-Schwalbe V	23,125	208,125
Berta	12,210	122,100
BMW. Eisenach	8,999	103,489
BMW. Abteroda	4,819	53,812
Bochumer Verein	43,496	434,960
Bochumer Eisenhuetten	17,580	175,800
Brabag Magdeburg	23,665	201,153
Brabag Troeglitz	64,805	745,257
Bruns App. Bau Gandersheim	14,044	161,506
Erla Leipzig	23,691	260,601
Ford Koeln	1,380	12,420
Gazelle	10,788	124,062
Gustloff I Weimar	55,302	635,973
Gustloff II Buchenwald	39,887	378,927
Hasag Altenburg	1,306	13,060
Hasag Colditz	8,256	86,688
Hasag Leipzig	10,183	91,647
Hasag Floessberg	440	4,180
Hasag Meuselwitz	7,034	70,340
Hasag Schlieben	68,481	684,810
Hasag Taucha	11,902	130,922
Hecht	11,846	130,306
Junkerswerke Schoenebeck	32,266	354,926
Junkerswerke Muehlhausen	16,930	190,463

<i>Firm</i>	<i>Number of days worked [Tagewerke]</i>	<i>Number of working hours</i>
Junkerswerke Aschersleben	13,360	153,640
Junkerswerke Halberstadt	17,767	204,321
Junkerswerke Niedererschel	17,963	206,575
Junkerswerke Langensalza	40,499	465,737
Junkerswerke Westeregeln	1,445	16,618
Laura	12,728	117,331
Leopard Ploemnitz	33,218	365,398
Maifisch	2,645	30,418
Chr. Mansfeld-M. Wagner	857	9,856
Chr. Mansfeld-Kaliw. Georg.	22,296	256,404
Chr. Mansfeld-Rothenburg	2,190	19,710
Mittelbau Buchenwald	856	8,560
Mittelbau 7-E Weimar	1,681	16,810
Polte-Magdeburg	11,608	116,080
Rautal-Werke Wernigsrode	8,515	93,665
Rebstock	1,205	13,255
Reh. Stassfurt	12,783	121,439
RAW-Jena	19,859	218,449
RAW-Schwerte	9,913	109,043
Reinhardt Sonneberg	11,636	136,114
Rheinmetall Borsig	4,947	49,470
Ruhrstahl A.G.	15,384	169,224
Siebel Halle	15,124	166,364
Siebenberg	23,747	237,470
West Waggon Dessau	7,186	64,674
West Waggon Koeln	3,364	33,640
Wintershalle Luetzkendorf	9,793	88,137
Wernig-Werke Hasserode	4,935	54,285

War essential purposes.

1. b-C	Bauleitung Weimar		
	Buchenwald	45,991	409,959
	Pol. Offizer-Schule Weimar	726	6,534
	Reichsbahnbetriebsamt Weimar	2,333	19,831
	Sennelager	244	2,440
	Tannenwald	212	1,908
	DAW	31,674	285,066
	DESt. Berlstedt	5,493	57,677
	DESt. Duesseldorf	3,927	39,270
	DESt. Essen	4,233	33,864
	SS-Fuehrerschule Arolsen	3,003	23,529
	Bekleidungskammer Arolsen	620	5,890

<i>Firm</i>	<i>Number of days worked [Tagewerke]</i>	<i>Number of working hours</i>
SS-Trupp. Div. Nachsch.- Lager W.	2,240	20,160
Hoeh. SS-u. Pol. Fuehrer Duesseldorf	3,273	32,730
SS-Kraftfahr-Ausbesserungs Ers.R.	1,877	16,893
SS-Kraftfahr-Ersatz Abteilung W.	1,003	9,027
Napola Bensberg	310	3,100
SS-Standortverwaltung Weimar	6,051	54,459
Wewelsburg	976	9,760
Luftschutzbauten	884	7,956
Lager 29 Weim.	2,674	28,077
Muna-Oberndorf	3,656	34,732
<i>Assignment of women in the month of December 1944.</i>		
ATG. Leipzig *	12,279	147,348
BMW. Abteroda	5,401	60,311
Dortmund-Hoerder- Huettenverein	14,987	164,857
Geraetebau GmbH Muelhausen/Th.	16,011	165,447
Hasag Altenburg	64,789	712,679
Hasag Leipzig	122,633	1,348,963
Hasag Meuselwitz	33,368	367,048
Hasag Schlieben	7,134	78,474
Hasag Taucha	33,857	372,427
Heeres-Muna Torgau	3,761	41,371
I.G. Farben-Wolfen	10,169	111,859
Junkers Markkleeberg	31,669	348,359
Kabel-u. Leitungswerke Neustadt/C	8,487	96,186
Krupp Essen	10,841	84,018
Lippstaedter Eisen u. Metallwerke	18,983	213,559
Nobel Allendorf	23,065	219,118
Polte Werke Duderstadt	22,576	237,048
Polte Werke Magdeburg	69,743	767,173
Rheinmetall Borsig Sommerda	28,356	319,005
Verwert. Chemie Hess.- Lichtenau	16,453	172,757
Wasag Elsnig	17,935	197,285
Westf. Metall Industrie- Lippstadt	6,264	68,904

* "ATG" was the Flick firm "Allgemeine Transport Anlagen G.m.b.H."

Summary of Claims [Forderungsnachweise]—Month of December 1944 Buchenwald

<i>Working Place</i>	<i>Compensation 1</i>	<i>Skilled workers</i>	<i>Aux. Workers</i>	<i>Amount 2</i>
Office Group C. [Amstigruppe C].³				
Zentral-Bauleitung	6.00/4.00	19,985	76,384	425,246.00
Bauleitung IV	6.00/4.00	1,865	11,935	58,930.00
Poliz.Offiz.-Schule Weimar	6.00/4.00	245	481	3,394.00
Reichsbahnbetr.-Amt Weimar	4.00		1,060	4,240.00
Reichsbahnbetr.-fuer Apolda	4.00		1,273	5,092.00
"Sennelager"	6.00	244		1,464.00
Baumsp. "Rhein-West" (Tannenwald)	4.00		212	820.00
Fuehrungsstab A 4	6.00/4.00	465	11,805	50,010.00
Fuehrungsstab A 6	6.00/4.00	2,113	16,454	78,494.00
Bltg.Baustab Hesse-Halberstadt	4.00		86,280	347,520.00
SS Fuehrungsstab Berga/B	6.00/4.00	1,150	21,975	94,800.00
Schneider u. Schuhmacher	o.B. ⁴	513		
		<hr/> 26,580	<hr/> 228,409	<hr/> 1,070,010.00
W. Firms.⁵				
IV—DAW W./Buchenwald	5.00/2.50	6,474	25,200	50,957.00***
W I—DESt Berilstadt	2.00/1.00	398	5,095	5,381.00
W I—DESt Duesseldorf	6.00/4.00	180	2,553	11,292.00
W I—DESt Essen	6.00/4.00	330	3,903	17,592.00
W VIII—SS-Schule Ha.-Wewelsbg	0.30	160	141	90.30
W VIII—A.f.Sonderaufg.Bltg.	0.30	583	92	202.50
W I—DESt Berlist.u.D'dorf	o.B.		1,240	
W V—Angorazucht	o.B.		1,200	
W V—Heilkraeuterkultur	o.B.			
		<hr/> 8,212	<hr/> 39,424	<hr/> 85,515.80

SS Offices.

SS Fuehrerschule Arolsen	6.00/4.00	1,026	1,977	14,064.00
SS Bekleidungs-lager Arolsen	4.00		620	2,480.00
[Illegible] Div.-Wachschublager W./Bu.	6.00/4.00	1,716	524	12,392.00
H.SS u.Pol.F.'D'dorf.Bomb.Kalkum Louhausen	4.00		2,079	8,316.00
SS Kraftf.Ausbessrg.-u.Ers.Abt.W.	4.00	582	1,194	4,776.00
SS Kraftf.-Ers.-Abtlg. W./Bu.	6.00/4.00		471	5,076.00
Napola Bensberg	4.00		1,877	7,508.00
SS Standortverwaltung W./Bu.	4.00		310	1,240.00
Haefl.f.Versuchszwecke	6.00/4.00	2,510	3,541	29,224.00
Versuchszwecke-Virusforschung	o.B.	31	2,418	
Falkenhof-Zoo	o.B.	480	1,020	
	o.B.		124	

Armament plants.

Kdo. "BERTA"	6.00/4.00	6,295	16,155	85,076.00
BMW—Eisenach	6.00/4.00	2,972	9,238	54,784.00
BMW—Eisenach (Kdo. Anton)	6.00/4.00	7,874	1,125	51,744.00
Bochumer Verein	6.00/4.00	4,365	454	28,006.00
Eisen- und Huettenwerke Bochum	6.00/4.00	2,552	40,944	179,088.00
Braunkohlen-Benzin AG. Troeglitz	6.00/4.00	2,889	14,691	76,098.00
Braunkohlen-Benzin AG. Magdeburg	4.00		64,805	259,220.00
	4.00		23,665	94,660.00

Subtotal:

Subtotal:		20,652	154,922	743,600.00
Carry over:		20,652	154,922	743,600.00
Bruns-App.-Bau Gandersheim	6.00/4.00	11,711	2,333	76,378.00**
Erla, Maschf. Leipzig	6.00/4.00	2,445	21,246	99,654.00
Ford-Koeln	4.00		1,380	5,520.00
Einsatz "Gazelle"	4.00		10,788	43,152.00

See page 766 for explanation of asterisks in original document.

See footnotes on page 767.

<i>Working Place</i>	<i>Compensation</i> ¹	<i>Skilled workers</i>	<i>Aux. Workers</i>	<i>Amount</i> ²
Gustloff-Werke I Weimar	6.00/4.00	19,492	35,810	259,696.00
Gustloff-Werke II W./Bue.	6.00/4.00	4,873	35,014	168,582.00
Hasag, Altenburg	4.00		1,306	5,224.00
Hasag Colditz	4.00		8,256	33,024.00
Hugo Schneider, Floeßberg	6.00/4.00	38	402	1,836.00
Hasag Leipzig	4.00		10,183	40,782.00
Hugo Schneider, Meuselwitz	4.00		7,108	28,432.00
Hugo Schneider, Schlieben	6.00/4.00	4,119	64,362	282,162.00
Hugo Schneider, Werk Taucha	4.00		11,902	47,608.00
OT-Bltg. Hecht, Eschershausen	6.00/4.00	662	11,184	48,708.00
Junkers-Werke, Schoenebeck	6.00/4.00	10,571	21,695	150,206.00
Junkersw.Sch.f.Eins. Muehlhns.	6.00/4.00	2,728	14,202	73,176.00
Junkers-Werke, Aschersleben	6.00/4.00	3,708	9,652	68,916.00****
Junkers-Werke, Halberstadt	6.00/4.00	6,443	11,324	83,954.00
Langenwerke, Niedereschel	6.00/4.00	225	17,738	56,936.40*
Langenwerke, Langensalza	6.00/4.00	2,804	37,795	168,004.00
Junkersw.Sch.f.Eins.Maulwurf	4.00		1,445	4,559.20*
Ortelsbruch Bltg. Saalfeld	6.00/4.00	2,030	10,698	54,972.00
Ing.Buero Schlempp, f.Schacht Ploemn.	6.00/4.00	6,091	27,127	105,399.10*
OT-Sonderbltg.Langenstein	4.00		2,645	10,580.00
Kaliwerk-Georgi, Wansleben	6.00/4.00	19,760	2,536	128,704.00
M. Wagner, Wansleben	6.00/4.00	706	151	4,840.00
Chr. Mansfeld, Rothenburg	4.00		2,190	8,760.00
Mitteld.Baugem.Bu. Halle 4	4.00		856	3,424.00
Mitteld.Baugem. 7 E Weimar	6.00/4.00	481	1,200	7,686.00
Polte-Werke, Magdeburg	6.00/4.00	2,512	9,096	51,456.00
Rautal-Werke, Wernigerode	6.00/4.00	5,177	3,338	44,414.00
Wernig-Werke, Hasserode	6.00/4.00	357	4,578	20,454.00
Rebstock Fa.Gollnow & S. Cobl.	4.00		1,205	4,820.00
Ing.Buero Schlempp, Neustassfurt	6.00/4.00	761	12,022	52,654.00

R.A.W. Jena	6.00/4.00	8,250	11,609	95,986.00
R.A.W. Schwerte	6.00/4.00	868	9,045	41,388.00
G.E. Reinhardt, Sonneberg	4.00		11,836	47,344.00
Rheinmetall-Borsig, D'dorf	6.00/4.00	2,048	2,899	23,884.00
Siebel-Flugzeugwerke, Halle	6.00/4.00	10,159	4,965	80,814.00
[Illegible] benberg G.m.b.H. Hadmersleben	6.00/4.00	1,271	22,476	97,530.00
Dessauer-Waggonfabrik, Dessau	6.00/4.00	241	6,945	29,226.00
Vereln.Westd.-Waggonfabr.Koeln	6.00/4.00	887	2,477	15,230.00
Ruhrstahl AG. Annener-Gusstahl	6.00/4.00	2,568	12,816	62,032.75*
Wintershall-AG. Luetzkendorf	4.00		9,798	39,172.00
Polizeipr. Koeln	6.00/4.00	1,183	60	7,338.00
Polizeipr.Weim.als oertl.LS-Leit.	6.00/4.00	117	767	3,770.00
Leuna 5/IV, Oberndorf	6.00/4.00	275	8,381	15,174.00
[Illegible] tr.-Ersatzteil-Lager 29,W.	6.00/4.00	356	2,318	11,408.00
Schneider u. Schuhmacher	o.B.	1,631		
Private Firms.				
Fa. Dietrich & Hermann, Weimar	6.00/4.00	158,200	669,076	3,558,469.45
Reichstatthalter in Thueringen	5.40 [sic]	24	15	204.00
Bauleitg. Kuehlhaus Weymar	6.00/4.00	606	265	334.80
				4,696.00
Subtotal:				
Carry over:		692	280	5,234.80
Panzergren.Ers.Ausb.Abtig.Weim.		692	280	5,234.80
Poliz.Praes.Weim.(Schneid.u.Schuhm.)	4.00		61	244.00
Poliz.Praes.Weim.(Werkst.-K.-St.)	6.00	583		3,498.00
Fa.W. Staupendahl, Weimar	6.00/4.00	245	24	1,566.00
	4.00		120	480.00
Total:				
		1,520	485	11,022.80
		200,807	953,549	4,810,094.05

See page 766 for explanation of asterisks in original document.
See footnotes on page 767.

<i>Working Place</i>	<i>Compensation</i> ¹	<i>Skilled workers</i>	<i>Unsk. Workers</i>	<i>Amount</i> ²
<i>Also (Women).</i>				
A.T.G. Maschinenbau Leipzig	4.00		12,229	48,916.00
B.M.W.Eisenach f.Eins.Anton	4.00		5,401	21,604.00
Dortmund-Hoerder Huetteverein	4.00		14,987	59,948.00
Geraete-G.m.b.H. Muelhausen	4.00		16,011	64,044.00
Hugo Schneider AG. Altenburg	4.00		64,729	258,916.00
Hasag AG. Leipzig	4.00		122,243	488,972.00
Hugo Schneider AG. Meuselwitz	4.00		33,368	133,472.00
Hasag AG. Schlieben	4.00		7,134	28,536.00
Hugo Schneider AG. Taucha	4.00		33,857	135,428.00
Heeres-Muna, Torgau	4.00		3,761	15,044.00
I.G.Farben A.G. Wolfen	4.00		10,169	40,676.00
Junkers-Werke, Markkleeberg	4.00		31,669	96,356.00*
Kabel-und Leitungswerke, Neustadt	4.00		8,487	33,948.00
F. Krupp—Essen	4.00		10,783	41,830.40*
Lippst. Eisen- u. Metallw. Lippstadt	4.00		18,983	55,384.00*
Fabrik Allendorf G.m.b.H	4.00		23,017	92,068.00
Pelte-Werke, Duderstadt	4.00		22,527	90,108.00
Polte-Werke, Magdeburg	4.00		69,743	278,972.00
Rheinmetall-Borsig, Sommerda	4.00		28,356	113,424.00
Fabrik Hess.-Lichtenau, H.Lichtenau	4.00		16,453	65,812.00
Westf.Anh.-Sprengrst.AG. Elsnig	4.00		17,885	71,540.00
Westf. Metallindustrie Lippstadt	4.00		6,264	18,544.00*
Total:			578,056	2,253,542.40

* Rations which have been subtracted.

** Deficit, caused by air-raid alarms, which has been subtracted.

*** Compensation for clearing costs and deficit, caused by air-raid alarms, which has been subtracted.

**** Including compensation for skilled workers who have been subsequently acknowledged.

BY ORDER OF SS CAPTAIN

W[eimar] Buchenwald, 6 January 1945

Labor Allocation Leader
[Arbeitseinsatzfuhrer]

¹ The figures under "compensation" show the amount which the respective employers had to pay to the SS for the work of one inmate for one day. Most of the figures indicate 6 Reichsmarks paid for skilled and 4 Reichsmarks for unskilled workers.

² This column indicates the total amount due to the SS from the respective employers, determined by the number of days worked by the inmates and the "compensation" for the various types of inmates.

³ This refers to "Office Group C" of the SS Economic and Administrative Main Office, the WVHA, a main office of the SS charged, among other things, with financial and economic matters of the SS. The chief of the WVHA and a number of officials of the WVHA were tried in the Pohl case, Volume V, this series.

⁴ "O.B." abbreviation for "Ohne Bezahlung," meaning "without pay."

⁵ "Wirtschaftsbetriebe", various economic enterprises managed by the WVHA. See the materials on the Pohl case, Volume V, this series.

TRANSLATION OF DOCUMENT NI-5391
PROSECUTION EXHIBIT 140

LETTER FROM FLICK'S ANHALTISCHE KOHLENWERKE TO ENGINEER RIES OF
THE DISTRICT LABOR ALLOCATION OFFICE, 18 JANUARY 1945, COM-
PLAINING ABOUT THREE DIFFERENT TRANSPORTS OF EASTERN
WORKERS, NOTING INCLUSION OF AGED PERSONS AND
INFANTS, AND OTHERS INCAPABLE OF MINING WORK

[Handwritten] To be circulated among the managing board.

[Stamp]

22 January 1945

To the District Labor Allocation Engineer
Director Dr. Ries
Coal Mine Ilse N.L.

18 January 1945

[Initials]

T. [TERBERGER]

H. [HELLBERG]

Subject: Allocation of Foreigners Group Klettwitz Ia N/W. 61/45

We refer to your wish, mentioned at the meeting on 16 January 1945, to be informed of difficulties occurring in the allocation of foreigners and bring, therefore, the following to your attention.

On 26 February 1944 we received a transport of eastern workers, consisting of 20 men; 23 women; 13 children, 13 and 15 years old, who were considered capable to work; and 13 babies. Out of these 56 so-called workers only 31 could be employed, the rest merely filled up the camps and used up the already scarce supplies, without being of any help to us.

We contacted immediately the proper authorities concerning this transport, such as the Gau Labor Office [Gauarbeitsamt], the Reich Association Coal, and the Reich Labor Ministry, with the request not to send us in the future such transports, since we can use only people who are capable of working in mines.

On 12 May 1944 we received another transport of eastern workers, according to the Labor Office, 50 workers. This is what they consisted of: 17 men, among them one 60 years old, one 71 years, and one 75 years; and 34 women, one 71 years old, and two 75 years old; 22 children, in the ages between 1 and 14. Out of these 73 people only 12 men and 24 women were capable to work; for mining, for which they had been requested, only 9. We informed the Reich Association Coal of this at the time and asked to be spared further transports of this kind.

On 16 December 1944, we again received a transport of eastern workers, consisting of 15 men, 36 women, and 36 children; on the

whole 87 persons. Among the men there was an 80-year-old blind man, and several men were over 65 years old. The women were partly ill, or pregnant, or mothers of infants so that they also could not be used in mining work. There are quite a number of families among them, of whom no one is working at all and therefore they are not even earning living expenses. The men also, as far as they are in an age group capable of work, are ill or suffering from an ailment preventing their full employment.

We offered immediately to return some families, 15 people altogether, to the Labor Office, because not a single member of these families was working. Nothing happened though.

We also offered on 12 January 1945, to return the whole transport, if we could get the promised 100 prisoners of war. Our camps are not suited for family accommodations. The available sleeping place is needed urgently for other real workers so that we were forced already to use emergency camps for the lodging of so many people. We are burdened with the lodging and feeding of these many people who don't work and are not capable of working. The kitchen facilities, food, and clothing, matters that are difficult enough are being used much too much.

It has to be expressed clearly for once, that with these transports we do not get labor, but refugee families [Fluechtlings-Familien] who do not belong in industrial labor camps, but in refugee camps. We cannot be expected to accept continuously these transports without objections and to take care and provide for them. Governmental agencies ought to provide special camps for these refugees, since this condition does not only occur here but also in other firms. We are asking you therefore to draw the attention of the responsible agencies to these conditions and to urge help. It is indeed useless to provide the requested personnel if it is obvious from the start that only a small fraction of them are capable of performing any work.

Copy to—

RFAI. Director Kaiser
Pit Ilse, N.-L.
Director Hellberg, Berlin
Director Baselt, Halle

[Stamp]

Anhaltische Kohlenwerke
Aktiengesellschaft

[Signed] KNAUL [Signed] NERGER

C. Testimony of Prosecution Witness Rainer Brambusch

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS RAINER BRAMBUSCH *

DIRECT EXAMINATION

MR. STONE: Mr. Witness, will you please state your full name for the record?

WITNESS BRAMBUSCH: Rainer Brambusch.

Q. When were you born?

A. On 18 March 1911 near Erkelenz.

Q. Where were you born?

A. In Bahl.

Q. Where do you reside at the present time?

A. I live in Duesseldorf.

Q. What is your occupation?

A. At the moment, I am an engineer.

Q. And how long have you been an engineer?

A. Since 1933.

Q. Were you a member of the NSDAP?

A. Yes, since 1935.

Q. Were you a member of the Allgemeine SS? [General SS]

A. Yes, from 1933.

Q. Did you hold any official position in the SS, or any rank?

A. At the end I was a sergeant.

Q. Were you employed as an engineer by the Groeditz plant?

A. Yes. From 15 December 1940 until the end of the war, I was engineer in the Groeditz machine construction plant.

Q. Were any prisoners of war employed in the plant at Groeditz during those years?

A. Yes.

Q. When was the first time prisoners of war arrived at the Groeditz plant?

A. The first Russian prisoners of war came at the end of 1941.

Q. And were there other prisoners of war, other than Russian there?

A. There were also French and Belgian prisoners of war.

Q. How could you identify them as being prisoners of war?

A. The Russian prisoners of war had "RU" written on their backs.

Q. I don't quite understand. Did you say "RU"?

A. There was an "R" and a "U" in yellow writing.

* Complete testimony is recorded in mimeographed transcript, 29 May 1947, pages 2378-2430.

Q. Did some of them wear an "SU"?

A. Yes. Some of them wore an "SU" too.

Q. And what did the other prisoners of war, the non-Russian ones wear as identifying marks?

A. They had no special identification mark. They only had a colored stripe on their back; for instance, the French ones did.

Q. In what shops were these prisoners of war working?

A. The prisoners of war worked in all plants, not only in machine construction and in the smithy, but in the steel foundry and in shell production.

Q. What type of products were being produced at this particular plant, the Groeditz plant?

A. In the machine construction plant we made guns for the navy, 10.5 and 8.8. In the other plant they made shells.

Q. Is that all?

A. Then a limited number of mines were also produced, and component parts such as gun barrels for instance, which were then passed on to other assembly firms.

Q. What finished products were being made at Groeditz?

A. The only finished products were guns.

Q. Was it necessary as part of your official duty to be moving in and around the machines that were manufacturing these guns, gun barrels, shells and other munitions?

A. I was only in the machine construction plant as chief of the assembly department. The other plants I only visited occasionally. Perhaps I would pass through once a month.

Q. In the assembly plant, where you were stationed, what types of products were being produced?

A. Only naval guns, 10.5 and 8.8.

Q. Were any prisoners of war of any nationality being used in the manufacture of those naval guns?

A. Only prisoners of war. In the mechanical production or in assembly for this production there were only prisoners of war.

Q. Did you see prisoners of war being used in the other plants in the manufacture of other products when you did visit there?

A. Yes. Exactly as in the assembly plant prisoners of war were engaged in making shells and so on.

Q. Can you estimate the percentage of prisoners of war and other non-German labor that was used in the Groeditz plant for the manufacture of these instruments of war?

A. In addition, there were civilian workers, that is, Frenchmen, Belgians and Dutchmen.

Q. Were there any German workers in that plant?

A. The ratio up to 1943 was about 20 percent Germans and all the rest were foreigners and prisoners of war.

Q. Do you recall whether or not concentration camp workers were brought into Groeditz to be used in the particular plant in which you were located?

A. In the machine construction department, in autumn 1943, we got the first concentration camp prisoners, about 200 of them.

Q. Do you know where these concentration camp workers came from?

A. We knew that they came from Flossenbuerg.

Q. Were they sent by the Flossenbuerg camp to Groeditz or were they brought to Groeditz as a result of some official in Groeditz going to Flossenbuerg and picking them out?

A. We engineers were told at the time that Director Hoeger and Works Manager Weiser had been to Flossenbuerg and had selected these prisoners there. They then came with a guard led by an SS Second Lieutenant Koermann. The guard consisted of marines.

Q. Now, you say the engineers were told that Weiser and Hoeger had gone to Flossenbuerg to pick out these men. Exactly who told the engineers that?

A. The works manager, Weiser, said that at a meeting with the foremen and engineers.

Q. Did he describe the circumstances of his going to Flossenbuerg to pick up additional labor?

A. A few weeks earlier, during another meeting, he had said that in Thuringia he had visited a plant belonging to another firm which had been working with these concentration camp inmates and which had achieved very good production results; and this use of concentration camp prisoners would also be introduced in Groeditz.

Q. Were these concentration camp workers employed in order to increase the productivity of their plant?

A. Yes. At this time the orders were increased because in the west we had considerable losses by air raids and Groeditz had to increase its production; that is why it was necessary to get prisoners because with the people we had we could not increase our output. We just had to have more workers.

Q. Do you know whether or not Weiser discussed the question of acquiring concentration camp workers with men located in the Berlin office?

A. I only know that the various engineers put in for so-and-so many. They had to name the requisite number to fulfill the program. This total demand for the machine construction plant was, of course, passed on by the works manager to the Naval High Command and to the Berlin office. I often saw the reports, or rather the copies of reports which were sent around to the machine

construction plant; these were reports to the Naval High Command and to the Berlin office which had been sent there.

Q. Did you see the transport of workers—and I am referring now to the first transport—that arrived in 1943? Did you see those persons upon their arrival?

A. These people arrived at night. I saw them the next morning after they had been distributed to the various departments.

Q. What did they look like?

A. You might say that these people were in very good shape physically. They were properly dressed and wore their prisoner uniforms, but you could see that they had shoes and stockings and underwear.

Q. About how many persons were there?

A. The first transport consisted of about 200.

Q. When these people arrived in the plant where were they billeted?

A. In the machine construction plant upstairs on the first floor.

Q. And is that the plant in which they worked?

A. Yes, the same shop.

Q. How many more transports of concentration camp workers arrived in Groeditz until the end of the war?

A. If I remember rightly, there were three more transports of prisoners which arrived in Groeditz. The second and third transport consisted of fewer people, once perhaps a hundred and then again 150. The last transport which came in the autumn of 1944 consisted of about 450 or 500.

Q. So that by the end of 1944 and the beginning of 1945 there were how many concentration workers at the Groeditz plant?

A. Altogether I should think about 850 to 900 concentration camp prisoners were in the machine construction plant.

PRESIDING JUDGE SEARS: Mr. Stone, do I understand from this witness that according to his information the prisoners of war were kept in the concentration camps with other prisoners?

MR. STONE: No, Your Honor.

PRESIDING JUDGE SEARS: They were separate, weren't they?

MR. STONE: That is right.

PRESIDING JUDGE SEARS: But he calls them coming from concentration camps.

MR. STONE: No—well, there were two groups.

PRESIDING JUDGE SEARS: He doesn't say that.

MR. STONE: I will try to get that straightened out, Your Honor.

PRESIDING JUDGE SEARS: Please.

MR. STONE: How many encampments were located at Groeditz for various types of workers? Was there a separate barracks or encampment for concentration camp workers?

WITNESS BRAMBUSCH: After the arrival of the first concentration camp inmates all the Russian prisoners of war and prisoners of war in general had to be moved from the machine construction plants and transferred to the smithy and so on. These prisoners of war were never housed in the machine construction plant. They were always outside the plant in barracks and camps which were all fenced in. In the machine construction plant, after the arrival of the concentration camp people, only concentration camp people were billeted.

Q. But even though they had separate encampments and barracks, were both prisoners of war and concentration camp workers employed within the machine shop in the manufacture of these naval guns?

A. Yes. At first the prisoners of war worked on the production of the naval guns, and after the arrival of the concentration camp prisoners these people did that work.

Q. What happened to the prisoners of war? Where were they moved to?

A. The prisoners of war were moved to the other plants, as I already said—to the smithy, the shell production plant, and so on.

Q. Was there a third camp in which were housed foreign workers generally? By that I mean persons who were not concentration camp workers but so-called eastern workers and other people like that.

A. In Groeditz there was also a so-called open camp also consisting of barracks, which was not fenced in, in which these eastern workers, Ukrainians and Frenchmen and so on, were housed.

Q. Did they also work within the machine shop or were they employed elsewhere in other shops of the plant?

A. These people also worked in the machine shop just as in the other plants.

Q. After the arrival of concentration camp workers they were the only ones, were they not, who were housed and billeted within the machine shop itself?

A. Yes.

Q. Was the machine shop surrounded by barbed wire?

A. The machine shop, before the concentration camp prisoners arrived, was fenced in with a fence and barbed wire on top. It was about four meters high. At the four corners and in the middle of the long side, raised machine-gun towers were set up.

Q. Did you supervise the work of concentration camp workers employed in the machine shop?

A. Yes.

Q. Can you describe for the Tribunal, Mr. Brambusch, generally, the hours of work put in by concentration camp workers and the condition under which they were working with respect to food, medical attention, whether or not there were beatings or ill-treatment of any sort?

A. In the machine shop the work was done in two shifts. The working hours amounted to 11 hours, from six in the morning to six at night. In the morning there was an interval of 20 minutes, and at mid-day an interval of half an hour.

Q. Were they fed during the mid-day interval of half an hour?

A. During the noon interval the people in the camp itself got their bowl of food. I know that it was about one quart. It was usually soup.

Q. Is that all they received?

A. Yes. For breakfast the people themselves told me that they got two slices of bread with margarine.

Q. Do you know whether they received any additional food in the course of a day? After the completion of a workday, for example, were they fed?

A. During working hours the people did not get any extra food. Only in the morning, at mid-day, and in the evening they got soup as at mid-day.

Q. What provisions were made for medical attention for these persons?

A. We had no access to the camp, but it happened that if people fell ill at work and couldn't go on, the foreman wrote a slip of paper saying, "This man must go to the hospital." These people were then sent to the camp, and usually what happened was that after a very short time they were back at work. I once asked them and was told that there was some talk of a camp physician, but in actual fact, according to the prisoners, this man was a student who had only done two or three terms of his studies.

Q. Were complaints ever made to you about the food that the concentration camp workers received?

A. The people complained all the time that they couldn't work on that food; that it was too little. They begged to be allowed to stay later in the plant or in the evening to come back again and then they would do extra work if they could only get a second helping of food, if they had a slip of paper from the foreman or the engineer.

Q. How was it possible for these persons to come back and put in an extra shift of work if they were receiving so little food in the course of a day to begin with? Would they not be too weak

to put in an additional shift just to get a few extra crumbs of food?

A. The people had the good will to do something, and in point of fact, at the beginning they worked very well indeed, but that was only an arrangement of the foremen and engineers so that the people could get something extra. There was not much work done in this extra hour after the shift ended.

Q. Did these people ever complain to you personally about the food?

A. Yes. They told me, "We can't work on this food."

Q. What did you do when they complained to you? Did you carry those complaints on to anybody?

A. Yes. I passed on these complaints to the manager, and he rang up the management in my presence and complained. They always said a change would take place, but you know how it is; we aren't getting anything; we never get anything except this cabbage and a few turnips and potatoes. These were the excuses. We said, "We can't go on like this. These people aren't in a condition to do anything." And then the manager said, "I asked the directorate to buy more food, but nothing is coming in."

Q. Do you know whom Mr. Weiser called up in your presence?

A. He rang up the director, Dr. Hoeger. He was responsible for the whole plant.

Q. And then did a change ever take place at all at any time insofar as an improvement of food conditions was concerned?

A. I am not aware that any noticeable change ever took place.

Q. Was there a great deal of sickness among the concentration camp workers employed at Groeditz?

A. I didn't quite understand.

Q. Was there a high disease rate? Were many of the concentration camp workers ill during their stay at Groeditz?

A. At the beginning up to about autumn or winter of 1944 the cases of sickness were normal. After the arrival of the last transport there, the people were already sick on arrival in Groeditz. You may well say that the sick list rose every day. They grew to such proportions that even the Germans and everybody working the machines in the plant showed some symptoms of sickness, and Germans also had to be taken to hospitals.

Q. When you say toward the end of 1944, beginning of 1945, are you referring to an epidemic that took place at the plant?

A. Yes. After the arrival of the last transport which consisted of four to five hundred men, we discovered that these people who were supposed to arrive every day only came after 2 or 3 weeks. They arrived undernourished, very badly dressed.

They already suffered from frostbite and had open wounds, so that right away we said, "These are not laborers; this is impossible." I remember Director Kochkemper saying, "We can't use these people here. They must all be sent back. It's quite impossible. These are not workingmen."

Q. Were those people sent back or were they used at the plant?

A. I know that some of these people, perhaps a hundred of them, were sent back after about a week.

Q. And those who were kept, were they generally in the same condition as those who were sent back?

A. Those who were kept were considered capable of work by the foremen, but one can hardly say they were fully capable of work. They were much too weak for that. The foremen only accepted them because they weren't too sick, and they gave these people the easier work to do.

Q. Were they put to work immediately?

A. No. No. It was agreed between the management and the camp leader that all the people—these four or five hundred—should, after their arrival, have a week's rest first, so as to have some time in which to recover, and that they should then be put to work.

Q. Did you see these people after their week's rest when they were put to work?

A. Yes, I saw them.

Q. Do you think that they had fully recovered from whatever had been wrong with them?

A. One can't say that. The people were in such a bad state that not even in that week could they recover sufficiently. They could only drag themselves along. They could hardly speak or walk.

PRESIDING JUDGE SEARS: What is the nationality of these people, Mr. Stone? Let's find out from the witness.

MR. STONE: What were the nationalities of the concentration camp workers?

PRESIDING JUDGE SEARS: No, the last assignment of them, the last transport.

MR. STONE: That is, of the last transport.

WITNESS BRAMBUSCH: Nationality? The nationality of the last transport of these people was mainly Russian, but there were also a good many Jews. There were also children of 14 or 15, and Frenchmen and Belgians were among them.

Q. Were many of these people suffering from tuberculosis? I am referring, not only to those of the last transport, but gen-

erally concentration camp workers who were employed at Groeditz.

A. These people were, as a result of their journey and their inadequate clothing, very susceptible to this disease. They were always coughing which grew to such proportion that they were spitting blood. The complaints of the foremen which we passed on again went to the managers and the management and back again to the camp leader, and these complaints were answered with the statement that, "These are symptoms of a cold; they will pass." And so it happened that after quite a short time a typhoid epidemic broke out within the machine shop.

Q. I did not quite understand what the management said about these symptoms. Can you please repeat what the management said?

A. The foremen and the engineers reported that the people had some sort of a sickness, and that that had nothing to do with a cold. "They are spitting blood. It must be blood from the lungs." The manager and the director discussed the thing with the camp leader and he only said, "Oh, nonsense! Those are only symptoms of a common cold; nothing at all."

PRESIDING JUDGE SEARS: Does he mean typhoid fever or spotted fever when he says typhoid? The word is the same in German.

MR. STONE: Mr. Brambusch, when you use the word "typhoid" do you mean spotted fever or typhoid?

WITNESS BRAMBUSCH: I mean spotted fever.

MR. STONE: "Fleckfieber" is spotted fever.

PRESIDING JUDGE SEARS: There is frequently a confusion as to that word in German.

MR. STONE: During the years 1944 and 1945, did you ever see any beatings of concentration camp workers take place in the plant?

WITNESS BRAMBUSCH: I never saw that these people were beaten in the plant by the guards or by the Germans but I did know that the men were beaten in the camp itself.

Q. How did you know that, Mr. Witness? If you never saw any beatings how do you know that beatings did occur in the plant?

A. It happened that in the morning the people were sent to work from the camp and you could see—it was perfectly obvious—that they were not fit to work. I had one concentration camp prisoner called Rittenberg who brought these people to work in the morning. This man came to me and told me, "Mr. Brambusch, this or that man is not fit to work. He is sick. Look at him." Then I sent for these people and I saw that—even if they wanted to—they were not fit to work. I then said to Rittenberg, "Take

these people to the hospital. They must rest for a day or two." Usually it was like this—after 20 minutes the people came back again and begged and implored me, "Let us stay at the plant. If we go up there sick we will be beaten. Please let us stay here." Then we gave them some sort of work they could do in a corner sitting down because we felt sorry for them. It was much easier for them that way. That is how I know they were beaten in the camp.

Q. You say a man by the name of Rittenberg brought the workers to you every morning? Do you recall Mr. Rittenberg's first name?

A. I only know that he had a Slavic first name, but I can't recall it exactly.

Q. Do you recall his nationality?

A. I think he was a Frenchman.

Q. Mr. Brambusch, I want you to look at the defendants in this case sitting in the box and tell me whether or not you recognize any of them and can identify them?

A. I only know Mr. Flick.

Q. Did you ever see Mr. Flick before?

A. I saw Mr. Flick twice while I was working at Groeditz.

Q. Can you describe the circumstances of those two times?

A. The first time I saw Mr. Flick was in June or July 1941 when he inspected the machine shop. The second time I saw Mr. Flick was in the autumn if I remember right, October 1944, when he made Mr. Flick, Jr., a member of the Vorstand of the plant.

Q. Where did you see Mr. Flick the second time? In what building did you see him?

A. I saw Mr. Flick in the machine shop.

Q. And that was the building that was housing the concentration camp workers?

A. Yes. It was in the same building.

Q. Was he there during the time the concentration camp workers were actually working the machines?

A. No. While Mr. Flick was there the concentration camp workers were taken back to the camp.

Q. You say they were taken back to the camp. Weren't the concentration camp workers actually billeted in the same building?

A. They were in the same building, yes, but upstairs above the shop itself.

Q. Could you see their billets when you were standing in the shop itself, without going upstairs to their billets?

A. From the plant one could, of course, see the camp. The windows in the shop were about three or four meters high and one

could see the bunks through them. They were stacked up three above each other. That you could see quite easily.

PRESIDING JUDGE SEARS: Does he mean that the roof of the machine shop was higher than the floor on which the bunks were placed?

MR. STONE: I think not, Your Honor.

PRESIDING JUDGE SEARS: How would he see in the windows then from downstairs?

MR. STONE: There was a sort of balcony arrangement.

PRESIDING JUDGE SEARS: Let's find out about it. We haven't any idea about it. There's nothing about a balcony that I have heard.

MR. STONE: Can you describe for us the building known as the Machinenbau [machine shop] so that it would become clear how a person standing in the shop on the ground floor could see the barracks of the concentration camp workers?

WITNESS BRAMBUSCH: In the machine shop there was the camp of the concentration camp inmates. When you had the shop running in the same direction as this room it was on the left-hand side. This wall was a smooth wall and about half-way up there was a wall and above that there were these high windows which were about three or four meters high, and through these windows you could see the bunks because the bunks were standing behind these windows. In addition, along the staircase to these windows and outside the shop and inside the shop at every door there were guards—armed guards. All of these barriers were enough to show that there was some sort of camp there.

PRESIDING JUDGE SEARS: Now, these windows, I take it from this statement, were between the shop itself and the place where the bunks were, so that the shop must have been—the ceiling must have been higher than the floor on which the bunks were.

MR. ERVIN: That's correct.

PRESIDING JUDGE SEARS: That's what I asked before.

WITNESS BRAMBUSCH: Yes, the roof of the shop was higher than the floor on which the prisoners were housed.

MR. STONE: Do you recall what took place at Groeditz the last day or two before the arrival of the Russian Army at the plant?

A. It must have been about 3 or 4 days before the Russians marched in. We didn't know, of course whether the Americans or the Russians would get there first. The Americans were about 70 or 80 kilometers away on one side, and on the other side the Russians were about the same distance away. Then we learned in the machine shop that we must evacuate. It was an order, anyway. The prisoners must be sent away. Then, one Thursday, we learned in the plant at night that the first prisoners will be sent away to

Dresden and from there to Pirna. That was the only chance of getting out of this spot. Then we still worked on that day. Only the local people were still there. All of the others weren't coming any longer. Then the next morning we heard from various Germans and from the prisoners themselves who were still there—"Last night they shot prisoners." We didn't believe it. One Russian prisoner said that he had heard the shooting and the screaming perfectly well in the sand pit in the next village. That's where these people were shot. I didn't believe it. The other engineer didn't either. Of course they didn't know what to think. Then at mid-day I went home. My wife said: "What on earth is happening at your place? I was in the village this morning and the whole village is saying that in the next village the prisoners are being shot." I said I had heard that, too, but I couldn't believe it. Then after lunch I went to my boss and told him that at the plant and outside everybody is saying that the sick prisoners were shot during the night. He said to me that that had nothing to do with us. "That is purely a military affair. I have heard it too."

I told my foreman what I had been told. He was speechless. Then we talked to the prisoners. There were still 30 or 40 of them left. It seemed so incredible to all of us. We just could not explain to ourselves who had arranged that. The last 30 or 40 prisoners about Friday afternoon were also put into cars and taken away. On the way—I learned afterward—the whole thing was given up and they were just let loose, and some of these people came back to Groeditz after the end of the war.

Q. Were these people taken out of the plant the night that they were shot, in trucks belonging to the plant?

A. The people were taken away in trucks belonging to the firm.

Q. Do you know how they got these trucks?

A. I don't know. There was a motor pool where there were cars and trucks which were available when required.

Q. You stated that the following day you spoke to your boss, who told you that it was none of our business—it was purely a military affair. Do you recall who that man was who made that statement to you?

A. This answer was given to me by the Manager Weiser, to whom I made this report.

Q. Did you ever find out how many men were shot that evening who were formerly concentration camp prisoners at Groeditz?

A. They said the first few days after the shooting that there were 236; later, I heard the number 180, or something like that. Later the people were exhumed, and it was possible to discover the exact number.

Q. You say later you heard that 180 or so had been shot. When you say "later" do you mean during an investigation that took place after the arrival of the Russian armies?

A. Quite right. After the arrival of the Russian Army these engineers and foremen and workers who were still there were all interrogated and arrested for this purpose and they had to give evidence about what they knew. I was also under arrest, first for five days, and later again for a fortnight; after that I was under security arrest for 3 months because of these happenings in the Maschinenbau and after I returned from this internment, after 3 months, I then heard this figure of 180 and some.

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CROSS EXAMINATION

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DR. KRANZBUEHLER (counsel for the defendant Burkart): You said that the concentration camp prisoners were used because in the west there had been considerable production losses, and therefore production was to be continued in central Germany. Is it not correct that this production in the west had been lost as a result of the invasion of France?

WITNESS BRAMBUSCH: The loss was not directly due to the invasion, because the transfer took place before the invasion. In addition to this the Duesseldorf firm Rheinmetall, which had been working on the same production as we, had to discontinue, and that was the reason.

* * * * *

Q. You say that Director Hoeger and Manager Weiser had been to Flossenbuerg in order to select the first concentration camp inmates.

A. Yes.

Q. Did Mr. Weiser tell you that?

A. Yes.

Q. Do you remember, exactly, that he said Flossenbuerg?

A. He did not say it only to me but at a meeting of all the engineers and foremen, he said he had just been to Flossenbuerg with Dr. Hoeger where he looked at all the people and selected some. That is how I know he had been in Flossenbuerg.

Q. Were Dr. Hoeger and Mr. Weiser frequently absent for this purpose? Do you know anything about that?

A. I only know of this first occasion. Later the senior foreman of the machine shop went to another camp to select more people. Therefore it must be assumed that these two gentlemen did not repeat their journey.

Q. Did the senior foreman you mentioned go to select the last transport?

A. I cannot say whether it was the last one. There were only three or four transports altogether, but it was one of the last which was selected by the senior foreman.

Q. Did Herr Weiser tell you from what point of view he or Hoeger selected the prisoners?

A. He told us, "I have selected experts we can use here—locksmiths, turners, planers, and so on."

Q. In other words, the inspection was for the purpose of seeing that no unsuitable labor was sent to do this work?

A. Correct.

Q. You have said that the work of the concentration camp prisoners was connected with, and was the result of the need of increased production. For more guns, especially, had to be produced. Is that correct?

A. Yes.

Q. Who decided that more guns must be produced?

A. The commission presumably came from the Naval High Command which demanded that the monthly output should be increased. They laid down the figures.

Q. In other words, a State authority ordered the plant to produce more than they had produced before?

A. Correct.

Q. In your opinion, was it possible for a plant to say, "We do not want to produce any more. We are content with our present output?"

A. I cannot say anything about that. I worked in the plant. I do not know anything about the management.

Q. As an engineer, you must know the connection between national economy and production. Or did you not ever hear anything about that?

A. I did.

Q. How did that happen? Could a plant work as much and how it wanted, or was that laid down?

A. The orders about the production of a certain gun came from the Navy High Command to the firm. A certain number was given. After the firm had stated that it can produce and assemble so-and-so much per month, then the amount of the total order was given by the Navy High Command in accordance with these figures.

Q. If production had to be increased, who was responsible for that, the State offices or the firm?

A. The direct order came from the OKM.

Q. By OKM, you mean Navy High Command?

A. Yes, with its central committee which was responsible for the placing of orders.

Q. And by "central committee" you mean the Committee of the Armament Ministry which had to deal with the distribution of orders?

A. Correct.

Q. You have mentioned reports about the use of concentration camp prisoners which were sent to the Navy High Command, and the management. What was in these reports? Did you see them yourself?

A. The reports said nothing about the firm needing concentration camp people. The report only said that in order to produce a certain quota, we needed so-and-so many workers. The firm did not care from where these workers came. The plant reported to the management that they needed so-and-so many workers in order to fulfill the quota. Then, the management would procure the workers for the plant.

Q. Please differentiate between the reports to the navy and the reports to the directors. Were they the same reports or were they different ones?

A. The reports which I saw were the same. The letter went straight to the labor command, central committee, and the copy was sent to the Berlin office.

Q. Who made these reports? Was it the machine shop or Groeditz?

A. The reports were made by the manager of the machine shop via the Groeditz management, through Dr. Hoeger to the OKM and so on.

Q. A report to the Navy High Command surely had to be signed by the director of the plant?

A. That is correct. The director was Dr. Hoeger, and the report was sent via him.

Q. And these reports with the signature of Dr. Hoeger, went both to the management and to the Navy High Command?

A. Yes.

Q. * You spoke * about * food, the * feeding * of concentration * camp inmates. Who supplied and cooked this food?

A. I do not understand you.

Q. It was soup, was it not? Who cooked it?

A. Inmates who were employed in the kitchen cooked the food.

Q. And who supervised them?

A. The guards supervised them, the men who were in charge of them, nominated by the camp leader.

Q. Who was the camp leader?

A. SS First Lieutenant Koerrmann.

Q. Where was the food given out?

A. In the camp itself.

Q. Was the food a matter of the plant itself, or was it the camp who supplied it?

A. The food had to be supplied by the plant through supply department Groeditz and was put at the disposal of the camp by Groeditz.

Q. How did you know that the plant supplied the food?

A. Because the man who was in charge of buying the food, Mr. Doerster, negotiated with the SS lieutenant himself, and when the SS lieutenant complained, it went to the man in charge of food purchasing, as all the food stuffs were purchased by Mr. Doerster.

Q. You were speaking about complaints on the part of the commandant.

A. Yes.

Q. How did you know about these complaints?

A. In the plant itself we suddenly had no rags for cleaning. It was found out that these rags were taken by the inmates: they had put them round their feet or their legs. In any case, suddenly they weren't there any longer. I myself complained to the SS lieutenant and said, "All these rags have disappeared." "Well," he said, "I applied to the management, and I asked for these things, stockings and that kind of thing, but the management would never buy anything at all"; so the people helped themselves.

Q. You were speaking about the food, and now you speak about rags.

A. Well, the same way it was also with food, potatoes and vegetables which were supplied to the camp by the purchasing department.

Q. Please answer my question again. How is it that you know about these complaints of the camp commandant to a certain man, Mr. Doerster?

A. That was as follows: every week on a certain day certain conferences were held within the plant at which besides the chief and the manager also the foremen and engineers convened. In these conferences all the shortcomings and complaints were discussed. Everybody could complain, and in these discussions the bad conditions of the concentration camp inmates were mentioned and pointed out to us—lack of clothing, bad food, etc. Also SS Lieutenant Koerrmann was sometimes present at these discussions. These complaints were accepted and were passed on by telephone, and they were dealt with by the plant chief or, at least, by the man who was competent to deal with these matters. Hence I know that the purchasing department was responsible for the buying.

- Q. Do you know who fixed the rations for the concentration camp inmates? There were rules in existence, were there not?
- A. That I do not know. It was a matter of the camp itself.
- Q. Would you say that these fixed rations were not distributed properly through the fault of Doerster?
- A. That I cannot say at all. Everything that arrived was cooked. Why there was not more, I don't know. Perhaps they could not obtain any more.
- Q. Why do you think that they could not obtain any more.
- A. There was the difficulty of bad train connections at the time. Also there was nothing left.
- Q. You told us that the inmates received soup in the mornings and at lunch time and in the evening.
- A. No. I said that only at mid-day and in the evening they received soup. In the morning they only got bread.
- Q. In the morning two slices of bread with margarine. You saw it yourself that there was margarine on the bread, did you?
- A. Yes.
- Q. What cold food was given out to the inmates?
- A. I know nothing about it.
- Q. Do you know whether they received anything at all in the evenings apart from the soup?
- A. That I did not see.
- Q. Where did they receive that soup?
- A. Also in the camp.
- Q. Did you see whether they received anything else?
- A. No, I did not see anything.
- Q. Witness, you said that Mr. Weiser telephoned Director Hoeger in your presence and complained about the food which the inmates received, is that correct?
- A. Yes. That is correct.
- Q. When was that?
- A. That was in early 1944 and also in 1945.
- Q. Can you tell us a little more, exactly what month, perhaps, in 1944 or 1945?
- A. It was once a week, if not more. There were constant complaints from the plant.
- Q. And at least once a week you said Weiser telephoned Hoeger in your presence, is that it?
- A. Not always in my presence, but there were weekly complaints to the plant, and I also heard quite often that Weiser talked to the management by telephone.
- Q. By "management" you mean Dr. Hoeger, is that right?
- A. Yes.
- Q. And what did he tell him?
- A. That these conditions were too bad, that the people could

not possibly work, that the lieutenant had told him that the supply of food was insufficient and something had to be done about it.

Q. And what did Hoeger say?

A. That I cannot say. I didn't hear.

Q. Didn't Weiser tell you?

A. He said, "I made a report about it, and we should try to obtain more supplies."

* * * * *

Q. You spoke about the transport of inmates from the camp in April 1945, and that the carriers belonged to the firms

A. Yes. That is quite correct.

Q. And apparently a number of sick inmates of this transport were shot. Do you know whether the firm ordered these trucks for the purpose of having these inmates carried to the place where they should be shot, or simply as transport?

A. I do not know who ordered the trucks. I only saw myself—the next day—that a number of inmates, 30 or 40 men, were taken away in trucks furnished by the firm. Who ordered these trucks, whether it was the then deputy of the camp leader, whether he had asked for them or somebody else, I do not know.

Q. But you say that all the inmates, also those who were not shot, were taken away by these trucks.

A. The first inmates who were shot were taken away at night, after we had left the plant and had gone home. They were taken away at night between 2000 and 0200 or 0300 in the morning. The next day there were only these 30 people left whom we actually saw.

Q. But on the whole there were more inmates. What happened to the first 100 who were there?

A. They were taken away in the evening at 2000 in various loads.

Q. In truck, belonging to the firm?

A. Yes.

Q. And part of these 100 or 200 were actually shot?

A. I have already said the figure was estimated at about 187.

Q. You say 187?

A. Yes.

Q. And the other part—those who were not shot—they were just taken somewhere?

A. One part was taken to Dresden at night and the other part, about which you spoke, was taken away only 20 or 30 kilometers from the camp and then set free.

Q. What do you think would have happened if the firm had not supplied the trucks for the transport of these inmates?

A. In that case the camp would probably have marched them away on foot.

Q. Have you ever heard anything about the "death marches" which on occasions were arranged by the concentration camps?

A. Yes, I have heard about that through newspapers.

Q. Is it not quite probable that such a death march would have taken place at Groeditz if in this case the trucks had not been supplied by the firm?

A. Yes. That might have been possible.

Q. When you reported about the rumor of the shooting of prisoners to Weiser, he told you that it was a military matter with which he had nothing at all to do?

A. Yes. That is correct.

Q. Do you think at that moment Weiser lied and he had actually given the order to have these prisoners shot?

A. That I cannot believe. It was the only answer which I received from Weiser after these happenings and he said "We have nothing to do with it—it is merely a military matter." Those were the last words which I ever heard from Weiser. I did not have the impression myself that he had given the order personally or would have been in a position to give this order, although somebody must have been responsible for it and it could not have been the lieutenant because he was no longer there.

Q. Rumors, you say, had it that the lieutenant had shirked the issue?

A. Those were not rumors. Second Lieutenant Koerrmann, 3 weeks before the end of the war, fell ill and was taken to the hospital Lauchhammer in a hospital car, and there he died. The population assumed somebody of the plant must have given the order.

Q. In the meantime have you heard that in many concentration camps ill inmates were also shot by order of Himmler?

A. No. That is not known to me.

Q. Did you not read that in the papers?

A. No.

Q. But you do know that the GPU, the Russian police, tried to investigate this matter and find out about these shootings?

A. Yes.

Q. You also know that in the course of these investigations Kochkemper was arrested?

A. Yes.

Q. As a result of these investigations, was he ever free again?

A. Yes. He was set free again and he was then employed by the Russians in Thuringia.

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D. Testimony of Defense Witness Albert Speer

TESTIMONY OF ALBERT SPEER BEFORE A COMMISSIONER OF THE TRIBUNAL
AT SPANDAU PRISON IN BERLIN, 8 AND 9 OCTOBER 1947 *

Transcript of the testimony of Albert Speer, on 8 October 1947
at the Spandau Prison in Berlin.

Present:

Mr. John H. E. Fried,
appointed as commissioner by order of
Military Tribunal 4 dated
10 September 1947.

Dr. Hans Flaechsner, attorney,
as representative for all defense counsels
acting for the defendants on trial in this
case.

Mr. Norbert G. Barr,
representative of the prosecution.

Mr. Henry H. Frank,
American representative, Spandau Prison,
secretary.

In addition, the following persons are present as representatives
of the prison administration:

Administrator Darbois, French representative,
M. Gerthoffer, French interpreter,
Major Politov, Russian representative,
Lieutenant Garschin, Russian interpreter,
Lieutenant Colonel Bayer, British representative,
Mr. Smart, British guard.

Brought in from custody at 11 o'clock:

Albert Speer, born on 19 March 1905 in Mannheim,
Last occupation—Minister.
At present in custody at the Spandau Prison.

COMMISSIONER FRIED: Upon motion by the defense counsel of
the defendant Steinbrinck, Military Tribunal 4 has decided, in
the case against Friedrich Flick and others, to hear you as a
witness. Since your attendance before the Military Tribunal in
Nuernberg is not practicable, the Tribunal, upon motion made
by the defense counsel of the defendant Steinbrinck which the
prosecution acceded to, has decided to have you examined here as
a witness, I shall now administer the oath to you. Raise your

* Speer, a defendant in the IMT case, was confined in Spandau Prison along with other defendants in the IMT case who were sentenced to imprisonment for life or for a term of years. By order of the Tribunal on 24 October 1947, the record of Speer's testimony was incorporated into the transcript where it is recorded on pages 9126-9153.

right hand and repeat after me: I swear by God the Almighty and Omniscient to speak the pure truth and will withhold and add nothing, so help me God.

(Albert Speer takes the oath).

Dr. Flaechsner, will you please begin with the examination.

DR. FLAECHNER (counsel for the defendant Steinbrinck): Mr. Speer, I would like to question you about the organization of the German economy during the war as far as it was under your jurisdiction. First, I have some preliminary questions. When did you take over the office of a Minister?

WITNESS SPEER: In February 1942 as Minister for Military Armament with the title Reich Minister for Armament and Munitions; beginning September 1943 I was given the title Reich Minister for Armament and War Production for the entire production with the exception of the airarm.

Q. Will you please give a description as to how the direction by the State of the economic branches under your supervision was developed, especially to what extent the freedom of the industrialists was restricted as a result of this. Please distinguish between the following:

- a. Coal.
- b. Iron producing industries.
- c. Iron consuming industries.

A. First, the direction of the coal industry by the State. The Reich Association Coal was established for the purpose of direction by the State. This Reich Association Coal was competent for all commercial questions, the allotments of coal as well as for the extraction of coal. Business and distribution was supervised by the Reich Ministry of Economics; beginning September 1943 production was under the supervision of the Ministry I headed. To my knowledge the rate of production for the individual major enterprises was determined by the President of the Reich Association Coal. The President of the Reich Association Coal, Paul Pleiger, carried out his task with great independence. Consequently I do not know in particular how far Pleiger went into details in his instructions regarding questions of production, that is, to what extent Pleiger left it to the discretion of the industrialists to draft his plan for extraction independently.

[Second] Iron producing industries. In the iron producing industry there was also the Reich Association Iron which had the same powers as the Reich Association Coal with its tasks divided in the same manner as to the authority of the two Ministries. In addition, however, there existed the Main Ring [Haupttring] Iron Production which was exclusively subordinated to my Ministry and which determined the manner in which the

production program was to be carried out in the individual iron producing plants. Although the Reich Association Iron, as far as I remember, was founded in July 1942, and therefore the decisions with regard to production up to 1943 apparently had to be made by the Reich Ministry of Economics, this was actually not the case. For the Main Ring Iron Production had already assumed these production problems in the spring of 1942.

Third: Beginning in the spring of 1942 the production in the iron consuming industry was determined by various main committees subordinated to my Ministry.

Q. Did these main committees have executive powers in the iron consuming industries, that is, were they entitled to give binding instructions to the individual industrialists?

A. Only in the course of proceedings before the International Military Tribunal has it become clear to me that until September 1943 these main committees did not have any possibility of enforcing a given instruction. The main committees, therefore, worked merely on the basis of the authority given them as subordinated offices by my Ministry. They had no possibility to refer to any decrees in case of opposition against the execution of orders given by the main committees. The main committees, however, had such great authority that I do not know of any case where a plant had opposed an instruction given by a main committee.

Q. Will you please inform the Court in detail as to how the activity of the main committee affected the individual industrialists. Who was the recipient of instructions given by the main committee—the individual plant or the owner?

A. The main committee determined the production program. Owing to the fact that several main committees generally dealt with a large enterprise it was necessary that the main committee in question give its instructions, as far as possible, directly to the respective department of the enterprise. This I would like to explain by an example. The firm of Krupp had a plant in Magdeburg, the so-called Krupp-Gruson plant. This plant was directed by Krupp from Essen; my Main Committee Tanks, however, gave its instructions directly to the plant management in Magdeburg. It was considered important that as far as possible, these instructions were submitted to the individual plant departments in a still more subdivided manner, so that the production of tank hulls in Magdeburg, for example, could be discussed and set up by a special committee of the Main Committee Tanks with the department manager in Magdeburg directly.

Before a plant received its production allotment by the main committee, investigations were made in joint discussions with the

directors of the plants concerned about the production capacity of the plant, that is, as to the sufficiency of machine tools and factory premises on hand, and whether additions to machine tools and new constructions are necessary.

COMMISSIONER FRIED: Was the situation such that a main committee took a piece of paper and laid down a specific production task for a plant, or were the plants, before receiving instructions, given the opportunity to discuss the matter with the main committees?

WITNESS SPEER: A program could by no means be laid down unless the head of the main committee had conducted extensive individual discussions with the directors of the plants concerned, since otherwise the program would have been a matter taking place in a vacuum. Actually it was the very intention, by appointing the best experts from the industry as members of the main committees, to achieve success from these technical discussions with the directors of the individual plants. The main committees, however, used to enter higher figures into the directives which, following these discussions, were eventually issued to the plants.

DR. FLAECBSNER: Mr. Speer, do I understand you correctly when you say that the task of the main committee is considered to consist of finding out from the individual plant manager the production capacity the plant in question had, and determining, again in discussions with the plant manager, the product which could be manufactured in the plant. Is my interpretation correct?

WITNESS SPEER: This comprised only one part of the task of the main committee with regard to the plant. It had to make arrangements for the rationalization of the plant, for economizing of materials, and modern production methods in the plant; it is obvious in this connection that whenever the head of the main committee is mentioned, this applies not only to his person but also means his subordinates.

COMMISSIONER FRIED: What do you mean by saying that the main committees had to make arrangements for the rationalization, etc.?

WITNESS SPEER: For example, in the production of tank hulls a specific plant was leading all other plants in output. Thereupon, the manager of this plant department was appointed head of the Special Committee Tank Hulls and then had to inform the other plants of his experiences gained in the plant.

DR. FLAECBSNER: You have therewith given an example of what otherwise has been called self-responsibility of the industry. But didn't the function of the main committees go still further?

For instance, didn't they also include the discontinuation of certain productions and control of orders? To make myself clear: I remember an order decreed in 1942 according to which the production of machines, not completed on 2 January 1943 at the latest, was prohibited. Wasn't that also one part of the task to be carried out by these main committees?

(The interrogation is discontinued at 1300 and is resumed at 1420)

WITNESS SPEER: The main committees, as I stated before, determined the production in the plants. This also included that the main committee could order the discontinuation of productions. One of the main effects of rationalization was achieved by the fact that the production program was, as far as possible, limited to one or two types of production.

It was not possible for the plant manager to draw his production program on his own responsibility. In view of the fact that this was not possible for the managers of the individual plants, it was of course entirely impossible for the management of a large enterprise which consisted of various plants with various productions to draw a production program independently.

The particular example chosen by you is not characteristic since the conditions of machines changed so quickly that this decree, for instance, would not be carried through.

Q. But wasn't a special approval required if a plant intended to carry out such an order in spite of the decree which I mentioned before?

A. Yes. The contract allocation office for machines was established in my Ministry for this purpose in the summer of 1942, which gave its approval by individual instructions.

Q. My question as to who was competent for the closing of plants or productions has not yet been answered. May I ask you to come back to this point?

A. This question was answered as far as the discontinuation of productions is concerned. The closing of plants was carried out by me after September 1943, in which connection, however, the Gauleiter denied me the right to order the plants shut down.

COMMISSIONER FRIED: Were your instructions with regard to the closing of plants complied with or not?

WITNESS SPEER: Only if an agreement with the Gauleiter was made which, however, was achieved in most cases.

DR. FLAECHSNER: Is it correct that the production programs were drawn up in the Ministry for Armament and that it was the task of the main committees to apply the program to the individual plants?

A. It is difficult to define the respective competence for all main committees to the same degree, since the circumstances varied according to the persons involved. However, your question is to be answered with "yes", since the programs of the main committees were drawn up by the heads of the competent offices of my Ministry following discussions which took place between the main committee and the head of the office of my Ministry involved.

Q. Was the relationship between the enterprise and the ring [Ring] the same as between the plant and the main committee?

A. Broadly speaking, yes.

Q. In addition to the main committees, were the plants also subordinated to the Regional Armament Offices [Ruestungskommandos]?

A. The main committees and the Regional Armament Offices had different tasks; the plants, therefore, were subordinate to both offices. The Regional Armament Offices were a part of my Ministry. Until my Ministry took over the Armament Department from the High Command of the Armed Forces in spring of 1942, the Regional Armament Offices had tasks which were later given to the main committees. The task left to them after being taken over was the so-called supervision of the plants. They had to allocate motor fuels, grease, and other operating material (coal) and release men eligible for military service from induction into the armed forces. Moreover, the Regional Armament Offices had to support requests for workers made by the plants to the labor offices. The Regional Armament Offices were composed of professional officers.

Q. When a plant received a production quota and in order to fill it, either needed new workers or other workers as replacements for workers who had been drafted, then I ask you—To whom could the plant apply for the solution of this problem?

A. The plant requested the workers from its labor office and notified the Regional Armament Office of this request.

Q. What did the Regional Armament Office do with this information?

A. It was the duty of the Regional Armament Office to plead the urgency of this request with the labor office, and furthermore to forward the requests collectively to the Armament Department of my Ministry.

Q. Now, did the armament department of your Ministry deal directly with the Plenipotentiary General for Labor Allocation, Sauckel?

A. Yes. The requests of the armament industry, which were sent in together through the reports of the Regional Armament Offices to the Armament Department, were compared with the demands received at Sauckel's office. An attempt was made to

straighten out existing differences. Sauckel had reserved to himself the right that he and his offices should specify which workers would be assigned to the plants. The labor offices were also subordinated to him.

Q. In your answer you mentioned differences between your offices and those of Sauckel—of what did these consist?

A. Sauckel was often unwilling to recognize the urgency of my requests, since his office also received extensive demands from other essential fields, such as agriculture, the Reich Railroad, the armed forces, etc. It also often happened that the statistics of Sauckel's office differed considerably from those of the Armament Department concerning the total figures of the workers assigned to the armament industry at a specific time. Thus, for example, a document exists, according to which Sauckel procured over 2,000,000 workers for the armament industry from the spring to the end of 1942, whereas the statistics of my Ministry showed only allocations of a few hundred thousand workers during the same period of time.

Q. I am now placing before you Reich Law Gazette, Part I, No. 82, of 9 September 1943, containing the first implementation order of 5 September 1943 for the Decree Concerning the Concentration of the War Economy. Is this the order which gave the main committee the legal basis for their directives to the plants?

(The witness is handed a photostatic copy of pages 531 and 532 of the Reich Law Gazette, Part I, 1943. After examining this document—)

A. Yes.

Q. Now, if an industrialist should have said, before the promulgation of this law: "The main committee has no legal basis, I shall do what I please," what would have happened then?

MR. BARR: I object to this question. The witness cannot know what might have happened in a hypothetical case. I would not object to the following question: "Do you know of a case where an industrialist refused to obey a directive by a main committee before the publication of this order?"

COMMISSIONER FRIED: Dr. Flaechsner, are you willing to have the witness answer the question formulated by Mr. Barr?

DR. FLAECHSNER: No. For I put my question quite deliberately.

COMMISSIONER FRIED: I admit your question.

WITNESS SPEER: The industrialist would have lost his plant. He would have lost every possibility of exerting any influence in his plant. Such cases did occur, but not because of a refusal by the industrialist, but merely brought about by the fact that a plant regularly failed to achieve the production required of it. As an example I might mention the replacement of the plant

manager of Krupp-Markstaett, whose position was filled against Krupp's wishes by a Hamburg plant manager. Moreover, I also know that in the United States the Production Minister threatened to take Ford's Willow Run airplane factory away from him, since he often did not meet the production required of him.

Q. Do you know of a remark which Saur¹ is supposed to have made during a meeting of several industrialists in the Ruhr when the latter raised objections, "Gentlemen, do you know what a concentration camp is?"

A. No. I first heard this remark from you during the IMT trial²

COMMISSIONER FRIED: Your example of Krupp-Markstaett does not seem to support your assertion concerning the consequences of a refusal, for in the Krupp case only an employee seems to have been changed.

A. The Krupp case did not involve any direct refusal which could have been put on a par with wartime sabotage. As a matter of fact the orders did not go to the industrialists, that is, for example, to the managing board of a combine, but rather were sent directly by the main committee to the director of the plant, while deliberately avoiding the top of the combine. However, it is certain that if an industrialist had refused, he would have lost his enterprise because of wartime sabotage; I do not know of any concrete case.

(15 minutes intermission from 1600-1615. Mr. Smart, British observer, leaves the room; M. Gerthoffer is relieved by M. Pierre.)

DR. FLAECHSNER: Mr. Speer, you said before that the production quota was always somewhat higher than had been decided upon in the conference with the plant managers itself; now, what steps were taken so that the plant could meet this quota?

A. By virtue of its program the plant requested the necessary machine tools and semi-finished products and raw materials. The different offices of my Ministry were instructed in inter-office conferences in the Ministry to fulfill the requests which had arisen from the program as much as possible.

Q. If additional workers were needed in connection with this, could the employer pick out the workers whom he wanted to have for this purpose, or did he have to take what the labor office offered him?

A. He had to take what the labor office assigned to him, unless the plant had requested workers with special qualifications.

¹ Karl Otto Saur, Chief of the Technical Office in the Speer Ministry. Saur testified as a prosecution rebuttal witness in the Krupp case principally on the question of compulsion in the use of slave labor. Walter Schieber, chief of the Armaments Delivery Office in the Speer Ministry, testified as a defense witness on the same question. Extracts from the testimony of Schieber and Saur in the Krupp case are reproduced in section VIII B, Volume IX, this series.

² Dr. Flaechsner was defense counsel for Speer in the IMT trial.

Q. I would like to draw your attention to the fact that the prosecution in the Flick trial has submitted copies of applications to the labor office in which it is requested that workers of specific nationalities be assigned.

A. I do not know the details about the process by which a plant requested workers from the labor office. I only know that it was one of Sauckel's basic demands to have complete freedom of choice on the part of the labor office in assigning workers to the plants, and that he refused to permit the plants to examine the workers as to fitness. I do not know whether this was merely a jurisdictional dispute at the top, which did not exist on the lower levels. If I said before that the plants had to accept workers who were assigned to them by the labor office, then I chiefly had in mind the fact that the plants also had to accept unskilled workers as replacements for skilled workers in case the training period had the usual length of two to three months. In this connection the question of nationality was of minor importance.

Q. Do you know whether the industrialist was compelled to accept workers of a specific nationality assigned to him by the labor office?

A. No.

Q. Can you give any information about when the employment of concentration camp prisoners in industry was begun?

A. Not in detail, since I did not become Minister until 1942 and I now know that workers from concentration camps were employed even earlier in industry.

Q. Who assigned prisoners of war to industry as workers?

A. The assignment was made by the prisoner-of-war camps [Stalags] in cooperation with the labor office.

Q. Do you know anything about whether there was a regular supervision of the allocation of prisoners of war for labor by the competent offices of the Military Area Headquarters, or did the Stalag itself supervise the allocation of prisoners of war?

A. I don't know the details about this. I only know that when the Armament Office was under my Ministry, "problems of the war economy" remained with the High Command of the Armed Forces. For carrying them out the High Command of the Armed Forces set up a War Economy Office, the lower echelons of which were the War Economy Inspectors. As far as I know, the latter also had the task of superintending the allocation of prisoners of war for work connected with the war economy.

Q. I have no further questions.

COMMISSIONER FRIED: Mr. Barr, have you any questions to put to the witness?

MR. BARR: We talked at first about the foundation and functions of the Reich Association Coal. Did you know, Witness, that before the foundation of the Reich Association Coal, Mr. Walter, who was then Coal Commissioner, wanted to bring the entire German coal economy under State control?

WITNESS SPEER: No. I only knew that Walter was in charge of coal.

Q. Did you know of whom the Praesidium of the Reich Association Coal was composed?

A. Yes, I knew this. It was composed of the heads of the largest German coal enterprises.

Q. What forms did the cooperation between the Reich Association Coal and your Ministry take?

A. After September cooperation with the Reich Association Coal was guaranteed by a mining section in the newly founded Raw Materials Department in my Ministry. However, since Pleiger had my confidence as well as that of Kehrl, the head of the Raw Materials Department, the functions of the Reich Association Coal and the Chief Mining Officer [Oberberghauptmann] at the Reich Ministry of Economics remained undisturbed. As far as I know, therefore, this mining section consisted of only three assistants.

Q. Is it your opinion that Pleiger also had the full confidence of the coal industry?

A. According to what Pleiger told me he had the absolute confidence of the coal industry, especially in the Ruhr region. He appears to have had sometimes disagreements with the Upper Silesian territory. I have no knowledge of this from the coal industrialists themselves, since these questions were discussed by them directly with Pleiger.

Q. Did you ever receive a complaint against Pleiger from persons in a position of authority in the coal industry?

A. No, certainly not.

(Adjourned at 1730 until 0900, 9 October 1947.)

(Continuation 9 October, 0900)

Present:

Mr. Fried
Mr. Flaechsner
Mr. Barr
Mr. Frank

Also present:

Administrator Darbois, French
M. Boyard, French
Lieutenant Colonel Bayer, British

Major Politov, Russian
Lieutenant Garschin, Russian

(The witness Albert Speer is produced.)

COMMISSIONER FRIED: Mr. Speer, I remind you of your oath sworn yesterday. Your examination will be continued now. I also remind you that, as I told you yesterday, you can refuse to reply to questions the answering of which would incriminate you or expose you to criminal prosecution. Mr. Barr, please continue.

MR. BARR: Witness, yesterday you said that the Main Ring [Hauptring] Iron Production was placed exclusively under the jurisdiction of your Ministry. You said further that this Main Ring decided the production program of the individual enterprises. Who were the men who belonged to this Main Ring?

A. The Main Ring Iron Production was headed by Roechling, who also headed the Reich Association Iron [in Personalunion * mit Roechling]; the work in the Main Ring Iron Production was chiefly executed by Dr. Rohland. At that time Dr. Rohland was the leader of a plant of the Vereinigte Stahlwerke. Rohland and the other collaborators of the Main Ring Iron Production were, as far as possible, leading experts in iron production, with a technical education.

Q. Yesterday you said that the Reichsvereinigung Eisen [Reich Association Iron] had been organized according to the model of and in a similar way as the Reichsvereinigung Kohle [Reich Association Coal]. Is it correct that the management of the Reich Association Iron was also in the hands of leading men of the iron and steel industry?

A. Yes. But contrary to the Main Ring Iron Production the management of the Reich Association Iron was composed of the leading personalities of the managements of the companies.

Q. If I have understood you rightly it was the Main Ring Iron Production which decided on the production programs of the individual plants. On the occasion of invitations to meetings of the Central Planning Board you invited members of the Reich Association Iron as well as the leaders of the main committees and main rings. Is it correct that normally this was a circle of 40 to 60 persons?

A. The representatives of the Reich Association Iron and those of the main rings and main committees were needed at the meetings of the Central Planning Board when the production of iron and its distribution had to be decided on. Hereby it is not clear whether Roechling and Rohland, who mostly represented the in-

* The German word "Personalunion" denotes simultaneous direction of separately administered offices by one man (e.g., Bismarck was Reich Chancellor and Minister President of Prussia).

terests of iron production at these meetings, participated in their capacity as leaders of the Reich Association Iron or of the Main Ring Iron Production. If this question had come up for discussion, I would have decided that they participated as members of the Main Ring Iron Production. In these meetings 40 to 50 persons participated; the less important, however, only in part of the meetings.

Q. Is it right that among other things it was the aim of these meetings to get a clear conception in an open discussion of the problems and happenings in the individual sections of the armament economy?

A. No. It was the aim to carry out the tasks assigned to the Central Planning Board concerning the distribution of different materials. For this, however, it was necessary to fix the quantity of iron production before the plan of distribution could be drafted. Therefore it was necessary that the difficulties which stood in the way of an increase in iron production in the different spheres should be submitted to the Central Planning Board at these meetings by the Main Ring Iron Production. I always considered it very important that the participants stated their difficulties openly to the Central Planning Board at these meetings.

Q. Is it correct that often the personalities invited by you to these meetings received instructions from you before the meeting as to the way in which they had to put forward their demands?

A. That is, in principle, true. As it was the task of the Central Planning Board to guarantee the demand of the armament industry before the rest of the war economy, preliminary discussions were often arranged at which the possibilities of the fulfilment of the demands of the armament industry were discussed. Before we held the meetings of the Central Planning Board the point had to be cleared up as to whether, for instance, the necessary quantities of armored steel could be produced for the intended increase in the allotment of steel for the production of tanks. Without such confirmation the increase would have been an illusion. For reasons of secrecy I regarded it as not expedient to discuss these themes within the plenum of the Central Planning Board.

Q. Yesterday you said that the main committees addressed themselves directly to the individual plants or sections as far as possible. Why was it not always so?

A. For reasons of organization; for instance, if an efficient organization existed for a part of a task of a main committee. There existed already organizations which embraced plants of the same type of production and if the leader of the main com-

mittee was of the opinion that such an organization could be used for his work, I had no objections to delegate the task.

Q. Was it not so, that before a main committee issued a production quota, discussions took place between the works in question and the leaders or members of the main committees?

A. Yes. However it was extremely complicated until a program could be finally laid down. Numerous preliminary discussions were necessary in which the supply of different semi-finished articles and similar products was to be made certain. In order, for instance, to establish the program for tanks, the Main Ring Iron Production had to ensure the supply of high alloy steels and the rolling of the armored sheets. The supply of gear units, motors, electrical accessories, castings, and forgings had to be ensured by other main committees. Only after these separate discussions which had to be carried to the length of securing crankshafts and ball bearings, could the drafting of the proper program be taken up.

Q. Was it not indispensable already for considerations of management and for commercial considerations which are, after all, important, that the individual plants arranged the quotas allotted to them with the entrepreneur or, as the case may be, the heads of the company?

A. I can only assume that the leaders of the individual plants discussed these questions with the leaders of their company.

Q. Did you regard Mr. Rohland more as your representative or as the representative of the interests of the industry? Or was it a Personalunion?

A. In my opinion it was Rohland's duty to differentiate sharply between his activity in my department and the interests of the industry.

Q. You stated yesterday that department chiefs of your Ministry fixed the schedules of the main committees. Who were the men who held these chief positions in your departments?

A. This concerned mainly the Technical Department the chief of which was Mr. Saur, and the Armament Supply Department the chief of which was Dr. Schieber.

Q. Are you aware of the fact that both of these men came from private industry?

A. Yes, that corresponded to my Ministry's personnel policy.

Q. Have not technical positions of the Regional Armament Office, too, been held by men who had originally not been members of the army?

A. Yes, many of the officers of the Regional Armament Office had originally been active in subordinate positions of industry before they chose the career of an officer.

Q. If I understood you correctly yesterday, then the Regional Armament Office's competency was restricted to caring for the plant in such a manner that obstacles in the way of intended production were removed.

A. Yes. The direction of armament was originally decentralized. Due to the extension of self-responsibility of industry, the Regional Armament Offices were deprived of their main task, since I considered central direction better.

Q. We spoke yesterday of the armament industries' demands for workers. How were these demands for workers satisfied by main committees and rings?

A. Provisions had been made that these main committees and main rings collected these demands for workers in order to present them at my Ministry. But as this turned out to be unsuccessful it was given up after the first attempt in September 1943. For, the attempt showed that with this system, too many duplications of demands for workers resulted. In contrast to this, the Reich Association Coal collected demands for workers.

Q. Did your Ministry not endeavor to receive the right of disposing of concentration camp inmates as workers?

A. That is incorrect in this form. At first there was Himmler's plan to make use of the increase in the armament program by building large factories in the concentration camps of which he would be in charge. This plan was opposed by me and brought about the conference with Hitler, the result of which is contained in the well-known Fuehrer memorandum of August 1942, if I remember the date correctly.

Q. And how were you able to control utilization of concentration camp inmates in the armament industry?

A. There was no possibility for me to undertake a control of this kind.

Q. Did a concrete case ever come to your knowledge where a plant was forced to employ concentration camp inmates as workers?

A. No.

Q. I have no further questions.

COMMISSIONER FRIED: Dr. Flaechsner, do you wish to question the witness further?

DR. FLAECBSNER: Herr Speer, did you take part in any meeting of the Praesidium of the Reich Association Coal?

A. No.

Q. Do you know how often meetings of the Praesidium took place?

A. That is unknown to me.

Q. Are you acquainted with the Praesidium's method of procedure?

A. No, because Pleiger presented all problems of the Reich Association Coal to me directly, bringing along his collaborators for this purpose according to his own selection.

Q. Yesterday you said that the bylaws of the Reich Association Coal were unknown to you, but is it not actually known to you that Pleiger's position was dominating?

A. That is correct. But Pleiger took the greatest pains to carry out his work on good terms with the members of the Praesidium.

Q. You spoke of the meetings held by the Central Planning Board and a large number of participants in same. Is it correct that these members were only able to offer suggestions and make proposals but that the resolutions were only passed by the three, later four members of the Central Planning Board (Milch, Koerner, Speer, and Funk) ?

A. Aside from suggestions and proposals they made demands. They did not participate in the resolutions passed by the Central Planning Board.

Q. In regard to the preliminary discussions mentioned before by you for the drafting of a program, as for instance in tank construction, I would like to ask you whether these preliminary discussions were of a purely technical nature concerning production, and were, therefore, restricted to production possibilities, or did financial, commercial or other economic considerations play a part?

A. Only considerations of a technical nature concerning production were allowed to play a part.

Q. You answered "no" to the question whether you knew of a case where an industrial plant had been forced to employ concentration camp inmates. Do you want to say that such a case is impossible or did you only wish to say that such a case had never been reported to you?

A. I only wished to say that such a case was never reported to me.

Q. I have no further questions.

COMMISSIONER FRIED: Mr. Barr, do you wish to question the witness?

MR. BARR: If I understand the decree dated 6 September 1943 correctly, which was shown to you yesterday by Dr. Flaechsner, it does not express any additional competency on the part of the main committees and rings. I quote: "Up to the time that these regulations are issued these agencies will continue their activity in the same manner as before." Was it therefore not a misunderstanding that it was already the decree dated 6 September 1943 which gave to your Ministry the additional competency?

WITNESS SPEER: That is correct. Not by the decree dated September 6th, but by an executive decree issued by me a few weeks later, did the main committees receive the right to make use of the commodity exchange regulations. If I am not mistaken this decree was published in the bulletin of my Ministry, which was delivered to all plant managers.

MR. BARR: I have no further questions.

COMMISSIONER FRIED: Witness, you stated that at the discussions preliminary to the fixing of the production schedules only technical considerations in regard to the production could play a part. How was it if, for instance, provision had been made that a certain plant was to construct a new building for an increase of production, and the employer said: "I am unable to pay for this"?

A. It was not necessary that the main committees dealt with these problems. The armament and procurement divisions [Waffenämter] of the individual armed forces units were responsible for the financing, the allocation of orders, the fixing of prices, and taking over the finished instrument. These divisions also had the necessary funds to grant subsidies.

Q. On 19 June 1946 in your own trial before IMT, you testified—this statement is in the English Court records on page 11983—that you (I am retranslating into German) "made up my Ministry * * * you cannot really consider my Ministry as set up along normal lines."¹ On the same day your defense counsel, at that time, Dr. Flaechsner, submitted a document to the International Military Tribunal in which you state: "These honorary coworkers, drawn from industry, carry the responsibility to the last detail for what is manufactured in the various enterprises and industries * * *."² (English Court records, page 11984). Are these statements you made at the time correct?

A. Yes, as far as technical matters were concerned. When I made those statements I did not refer to financial and economic problems, as I had no jurisdiction in such matters.

Q. You said yesterday that the production quotas for the individual plants were usually fixed somewhat in excess of what had been agreed upon in the preceding discussions. Do I understand correctly that, by doing so, the main committees intended to allow some margin to the individual factories? Would the factories have been called to account for not completing the imposed production quota?

A. Yes. This was a margin which the factories were to be allowed. If the production quota was not reached, the factory manager, at the meetings of the main committees, recounted the reasons which prevented him from fulfilling the plan. The factory

¹ See Trial of the Major War Criminals, *op cit.*, Vol. XVI, p. 433.

² *Ibid.*, p. 434.

manager was not called to account, say in the sense of being liable to punishment or that court-martial proceedings would be initiated against him. But the factory manager was severely reprimanded, in order to make him complete his program for the following month, if possible. At such meetings the chairman of the chief committee, according to his temperament, often used unmistakably blunt words. To return to the raising of the compulsory production quota. Usually, those increases were in the region of approximately 20 percent, i.e., 20 percent in excess of the deliveries which had been ascertained to be possible. It was not assumed that these 20 percent would be reached; this is also borne out by the fact that all those increases were not contained in the production prognostications which were submitted to the various army departments. I can remember that in airplane factories, before my Ministry took over, court-martial proceedings were started against factory managers who did not meet their delivery quotas. For instance, a court-martial trial was contemplated against the manager of the Bochumer Verein, Alberts, because he failed to deliver semifinished products. Proceedings were dropped, however, after I intervened.

Up till the spring of 1944, approximately, the production programs, i.e., the programs minus the 20 percent increase, were not only fulfilled, but actually exceeded. After the spring of 1944, the programs were not completed any more, partly on account of effects of the air raids, partly because Saur, in conjunction with Hitler, worked out production schedules which could not be materialized. Because of this the representative of industry protested against those programs.

Q. Did you know, Mr. Speer, that the foreign workers, who were employed in Germany, in their overwhelming majority did not come to Germany voluntarily?

A. Yes. That can also be seen from my testimony before the IMT.

Q. Did you know that those workers came from countries which were occupied by Germany at that time?

A. Yes.

Q. Were these two circumstances generally known in Germany, according to your opinion?

A. The fact that the workers came from occupied territory was, of course, bound to be generally known. But it appears doubtful to me that the consequences in regard to international law connected with a transfer of workers to Germany were known. However the fact of the obligation to serve could naturally have been known in wider circles, considering the close contact the workers had among each other in their shops.

COMMISSIONER FRIED: Dr. Flaechsner, do you have another question?

DR. FLAECBSNER: No, thank you.

COMMISSIONER FRIED: Mr. Barr, do you have another question?

MR. BARR: No, thank you.

COMMISSIONER FRIED: The interrogation is interrupted now and tomorrow at 0930 the minutes of the interrogation will be presented to the witness Speer for his signature.¹

E. Testimony of Defendant Flick

EXTRACTS FROM THE TESTIMONY OF DEFENDANT FLICK ²

DIRECT EXAMINATION

* * * * *

DR. DIX (counsel for the defendant Flick): I now pass to count one of the indictment and will first deal with the so-called foreign labor. May I ask you, Mr. Flick, did you know anything about any form of compulsion used in the recruitment of these foreign civilian workers in their homeland?

A. Well, one might say, what does "know" mean? When it started, I assumed that the workers came of their own accord and that they were voluntarily recruited. Formerly, before Sauckel's appointment, it was a fact that the industrial enterprises themselves recruited privately on a large scale and most successfully. I had to believe that because in the press and elsewhere it was made to appear as though it were voluntary and for the time being there was no reason to doubt the correctness of this statement. Moreover, in many cases, Polish and Ukrainian women worked as domestic servants and often told their employers that they had been glad to come to Germany and of their own accord. In any case, I can report that from my own experience. In my house in Toelz a Ukrainian was employed and she told us and assured us again and again that she had come entirely of her own accord to Germany, that she liked it very much in Germany, and that she intended to stay in Germany. I had other farm properties, too. Poles were employed there for the harvest as a matter of course. They always came voluntarily. This was already shown by the fact that the following year the same harvest workers came back whom we had used for seasonal labor on the farm concerned. Even in old Imperial Germany, Polish harvest workers were a regular feature, and in industry at that time the employment of Polish labor played such a large part that in the Ruhr there were

¹ The next day Speer signed the minutes of the interrogation.

² Further extracts from the testimony of defendant Flick are reproduced earlier in sections IV H, V G, VI D, and later in section VIII D.

whole communities, the population of which consisted in the main of Poles. Through my owning real estate I often met farmers and found that in the farmers' families foreign workers lived as the family did, and I can only say when I looked around there was no question of slave labor. As time went on—

Q. May I interrupt you for a moment? At the moment I am less concerned with the good, patriarchal treatment at home in Germany. That will come later. But at the moment I am concerned with the kind of recruitment, whether voluntary or otherwise, and you have given us exhaustive statements about the time of your complete confidence in the correctness of the press; but perhaps it may help your memory if in this connection I give you the cue—your journey to Lwow. If you would rather tell about that later it is all the same to me but I think in this connection, namely your knowledge of compulsion, the impression you got in Lwow at that time is important; but I leave it to you. It is only that you must not forget it.

A. When in the late summer of 1942 I went to Lwow, on the edge of the Ukraine, for private reasons, I saw trains of foreign workers on their way to Germany. I also saw many posters, recruiting posters, and the impression I gained of these trains on their way to Germany and of the eastern workers in them was indeed to the effect that they were freely recruited workers. I did not see anything to suggest a different impression. The people were cheerful; they were singing; they were playing musical instruments. I often passed the transports traveling in an express train, and I never got the impression at that time that there was any question of compulsory deportation.

Q. That was in 1942 if I understand correctly?

A. Yes, it was.

Q. Please continue.

A. As time went on, of course I noticed that the number of eastern workers continued to grow, that one could perhaps imagine that not all of them came of their own accord; but at the same time I learned that in France there was a "call-up" of labor—universal labor compulsion—introduced by the French Government. Therefore, I assumed there was something of a similar nature in the East, arranged by the German occupation authorities. I did not know that, but I assumed it. It was an unclear situation. Later, I don't know exactly when, it was when the number grew bigger and bigger, perhaps toward the end of 1943 or the beginning of 1944, I gained the feeling and the moral conviction that not all of them—that it was unthinkable that all of them had come voluntarily to Germany. But that was my own surmise. I had no knowledge to this effect.

Q. In this trial and probably through the press reports on the big IMT case, you have learned a few things about the methods used in this compulsory recruitment—allegedly used. May I ask you, did you ever, perhaps later on when, as you say, you were more or less morally convinced that there was obviously some sort of compulsion involved, did you ever, with regard to these methods, that is, for instance, picking up the people outside the cinemas and similar things we have heard about here—did you ever know anything about this? Did you suppose anything? Had it been told to you? Had you heard rumors to this effect—up to the time I have just mentioned—of the press reports on the IMT case?

A. I never had any knowledge of that.

* * * * *

Q. Very well. Now there is another report here about Krivoi Rog. What about that?

A. Krivoi Rog was dealt with in the report of a sociological nature of the Reich Association Coal. I believe this is the first document or the first copy of the reports on social policy of the RVK,¹ and this report is thirty pages long. It is initialed by myself, but I have already explained in another connection what this initialing on my part means. I initialed every document that came to my desk, without regard to whether I had read it or not. I also stated the significance of my initialing documents. This was that I had had the opportunity of making myself acquainted with the document. And voluminous treatises of the department for social policy of the RVK, amounting to 30 pages and more—to study those was neither my job, nor did I have the time to do it. I therefore assume with certainty that I did not read this document either. Moreover, since the document has been submitted here, I would like to point out here that it refers to a time—I believe the summer or autumn of 1941—when as a rule nobody in Germany ever thought of forcible deportation. The contents of the document are convincing. They were miners from the Krivoi Rog area. That is the Russian mining district, the major part of which the Russians had destroyed with its installations before their retreat, and there obviously resulted a considerable amount of unemployment.

Q. Then we must mention a report from the Anhaltische Kohlenwerke² containing complaints and laments about the in-

¹ Document NI-4104, Prosecution Exhibit 267, RVK report of 1 November 1941, reproduced in part earlier in section VII B.

² Document NI-5391, Prosecution Exhibit 140, letter of 18 January 1945, the last document reproduced in B above.

capability of workers who had arrived. What about this report in the sense of my question?

A. That is not a report to me. That is no report to Mittelstahl. That is a report from a plant of the Anhaltische Kohlenwerke to a labor allocation engineer competent for the district concerned, and a copy of it was sent to the Anhaltische Kohlenwerke in Berlin, not to Mittelstahl and not to myself. What I saw from it here is that it dealt with an exceptional case, where obviously whole families of refugees had been assigned to the plant, and where the plant complained about this to the competent authority. One probably has a completely false picture about what we in Berlin learned about matters concerning labor. All documents which are submitted here are internal documents of the plants. That is not how our organization worked. If correspondence is submitted here between Essener Steinkohle and the District Group Ruhr in labor matters, then I am seeing that here for the first time in my life. That is not how our organization worked. In Berlin there was a small office. In Berlin no plant was managed. In Berlin there was not even one percent of the total number of officials of the concern, and the principle was—the greatest possible decentralization. This can be explained partly by historical reasons, from the development of the concern as it took place in our firm. When I gained influence in a plant I changed as little as possible in the existing conditions and organization, etc. The second reason was—my conviction that decentralization and decentralized management were the best and most suitable form. Of fifty Vorstand members of the concern, only two were in Berlin. Forty-eight were in the various plants. The Berlin gentlemen, as well as myself, had not the task to direct the plants directly. The management of the plants lay in the hands of the Vorstand member located at the plant. He had all rights and all duties connected with the daily management of the plant: Production, sales, syndicate questions, supply questions, accounting, and in particular the questions of the workers. The question of labor is so closely connected with the day-to-day management of the plant, that only that man can lead and solve it as it should be solved, who is present every day in the plant among the workers. It was like that in all the plants with which I was closely connected, that the technical management of the enterprise, the technical Vorstand members, had to deal with all labor questions. They had to handle them to settle them, and they were legally and actually responsible. On this point I would not like to be misunderstood, and I am making this statement here not in order to free myself from responsibility, but, I would like to say these things in order to clarify the situation. I would like to explain how things were. I repeat

—the actual authority, the actual possibility of interference did not exist for us in Berlin and in practice it would have been impossible for us to carry it out. It would have been impossible for 75 plants, with 50 Vorstand members. I repeat—I am only saying that in order to make clear the actual conditions, and not in order to shift the responsibility from myself.

DR. DIX: I would ask the Tribunal to permit me to ask the interpreter how the word “Beamtenschaft” came through. Mr. Flick said one percent—not even one percent of the officials were employed in Berlin. I am a little afraid that this may not have been correctly interpreted. May I ask now how it was interpreted?

THE INTERPRETER: “Officials.”

DR. DIX: My anxiety was unfounded.

Well, of course, you were quite right, Mr. Flick, that you mentioned this here. It belonged absolutely to the field touched upon by my question, which implies a certain amount of responsibility for you with respect to the possible use to be made by you of reports which may have come to your notice. But I am afraid I must bother you with one more report, a report which I admit the psychologically trained reader may appraise with a certain amount of care. But be that as it may, I am thinking of the Faulhaber report.* I need only give you that cue. Please tell the Tribunal briefly whether you had any knowledge of it and if so, what your opinion of it was, and so on. We would like to have everything complete.

DEFENDANT FLICK: I can't say today whether I did see the report at the time or whether I read it, but I did read the report here after it had been submitted in this Court. It's also a very long document of many pages. I could not find anything about compulsory labor in this report.

Q. You are quite right. Now, I would like to come back to my original question and the answer you gave. You told the Tribunal *sub linea* “In the course of time—of course I cannot give any date—I came to the moral conviction that some sort of compulsion in the sense you mean, legal compulsion, was used.”

Did you ever—it doesn't matter whether it was your duty or not to do so—but did you ever think about the legal admissibility, the admissibility under international law, of a compulsion of this kind, even if it took a legal form as issued by the legislative powers at the time or the legislative authorities of that time, or did you just accept it as a divinely imposed fact?

* Faulhaber's report of the “End of October 1941” was sent to various leaders of the Economic Group Iron Producing Industry, including defendant Flick, and described Faulhaber's observations on his tour in German-occupied Russia. See Document NI-5253, Prosecution Exhibit 323, reproduced in B above.

A. I certainly did think about it and it depressed me. That is why I would like to say what my thoughts were, but first, I must point out that I am no student of international law and that legal problems of this kind were not clear to me. Perhaps you might tell me, "You could have asked for an expert opinion." But then I would have to reply that this would represent a conception which would not take the actual conditions into account such as they existed in the Third Reich. It is completely impossible that in the Third Reich, and in particular in wartime, an attorney would have dared to give a written statement to the effect that a measure of the German Government was contrary to the provisions of international law.

In addition I did not know any expert in international law personally with whom I might possibly have discussed the matter confidentially. Dr. Dix himself, in his opening statement, mentioned the case of Count Moltke who, as a member of the High Command of the Armed Forces, said something to the effect that it was of doubtful legality to employ such people in Germany, and he had to pay for it, as far as I know, with the loss of his life. But even if I had obtained an expert opinion—I considered that too at the time—what could I have changed? If I had objected and then would have tried to prevent the employment of such workers, I think every man in Germany knows what the consequences would have been. They would have been that I would most certainly have been liquidated for sabotage and the undermining of military morale. If perhaps, from the safe harbor of today, one says that I was morally compelled to undertake such a risk, I would have to object to that, too, because a martyr's death of this kind would not have changed the slightest thing in any of these matters. Quite to the contrary, everyone knows from experience that after events of this kind the wind as a rule blows even more strongly.

* * * * *

Q. Did industry, and the armament industry in particular, lose many workers through the call-up of the armed forces?

A. Yes, to a very large extent.

Q. But the production quota demanded by the government remained, did it not? Or was it decreased accordingly?

A. Of course, it remained; in fact, it was usually increased.

Q. Then I would like to ask in this connection, what about the production of coal and steel during the war? Did it remain the same or did it rise?

A. One must differentiate there between the different kinds of production. In the case of soft coal, our production on the whole showed a decrease during the war. This is connected with the fact that soft coal requires particularly intensive work. That is,

of all the branches of industry with which we are concerned, it required the largest numbers of workers, and the longer the war lasted, the more production decreased. In the lignite industry and in the steel industry, during the first part of the war, production remained at approximately the same level as before the war—approximately. During the last phase of the war, however, in lignite and the foundries too, a retrogressive movement in the production figures had to be noted.

Q. The authorities now forced you, did they not, to employ foreign workers? I would like to ask what were the results of the employment of foreign workers on production costs?

A. The production costs continued to rise, in particular in the soft coal industry. In the soft coal industry the number of workers rose and the output dropped. In the case of the other industries, for the reasons I have already mentioned, this did not happen to the same extent, but here too in the smelting works, the steel and rolling mills, a continuous rise of production costs could be noted.

Q. May I conclude from this that these foreign workers were anything else but cheap labor for industry, and therefore for you?

A. There can be no talk of cheap labor. I was told that in the soft coal industry in pit mining, that is underground, in general two foreign workers had to be considered equal to one skilled German miner; but there were also concerns where open-pit mining was practiced where they were considered more favorably. But what matters is that the wages per ton of finished product rose all along the line. To give an example, if I suppose—I do not have the figures on hand and I do not remember them exactly—but suppose that before the war the wages per ton of soft coal amounted to perhaps six marks, then in wartime it would have risen to eight marks and perhaps in some cases even to nine marks. And from the reports, which probably the prosecution too has at its disposal, it is seen that especially with regard to the industry where wages were highest, that is in coal mining, various mines which before the war showed a credit on their profit and loss account were working at a loss during the war.

Q. May I conclude from that that industry would rather have kept its free German miners instead of having to employ these foreign workers?

A. Of course.

Q. Now, the prosecution has submitted some documents here, where not only the plants in themselves but also in some cases, although rarely, the Berlin office took a part in asking for labor, that is in the case of foreign labor. You have testified that in itself this allocation of labor in no way belonged to the authority

and sphere of activity of the Berlin central office. How do you explain that these cases, although rare, exist, where the demand for foreign workers came from your Berlin office?

A. As for the so-called Berlin central office which in this sense was no central office at all, it is possible that my Berlin collaborators were told by their colleagues in the plants who were *ipso facto* alone responsible for obtaining labor, and who remained exclusively responsible for this, that they were asked occasionally to help. But these can only have been exceptional cases where the threads ran to the Berlin authorities, and my collaborators in Berlin were asked by their colleagues at the plant to take over some function for them occasionally as happened in all concerns that had an office in Berlin, to represent their distant plants, and where the plants outside Berlin had their own administration.

I can't find out any greater details about this. My collaborators themselves will have to explain this. I myself only know about the outward fringes of all such affairs, and I can't say any more about it.

PRESIDING JUDGE SEARS: May I ask a question or two? During the war was there an exemption from military service granted to Germans who were employed in such fundamental enterprises as the mining of coal and the smelting of iron, the making of steel? Were there exemptions from military service granted to such workers?

DEFENDANT FLICK: In principle there was such an exemption. The longer the war went on the more difficult it became, of course, to get the number of workers who were desired to be exempted. The inductions became more and more extensive the longer the war lasted, and there were directives concerning the kind of workers and employees who could still be eligible for exemption from military service. These were among the workers; in particular, skilled workers, foremen, superior workers, workers who, in the nature of their function and their qualifications could not simply be replaced by a foreign worker; locksmiths, electricians, repair mechanics, and similar categories.

One must visualize that the foreign workers and prisoners of war who were assigned to the plants as replacements for the German workers withdrawn from them and called up for active service, had not prior to this assignment been classified according to their professions. You must imagine that in a camp there are several thousand prisoners of war. Maxhuette has lost 500 German workers by call-up for active service. Maxhuette is supposed to get other workers, in this case prisoners of war, as replacements. Then they said, "Here are 500 prisoners of war or 500 foreign workers." Nobody asked beforehand, "Has the person con-

cerned ever worked in a smelting plant? Has he ever seen a coal mine?" They were just taken as they were, without classification, without regard for their profession and ability, and allocated to the plants.

Q. Did you at the time that you yourself engaged in some recruitment of foreign workers, did you have the power to do that and enter into contracts with them independently of the labor bureau, or did it all have to go through the official labor office? You said that early in the war the industry did some recruitment itself in foreign countries. Now, was that all supervised by the labor office, or could you enter into contracts with these laborers voluntarily?

A. The details, before Sauckel took over, as they were in the case of private recruitment, I cannot unfortunately describe as I myself had nothing whatever to do with these things, but I believe that in the case of private recruitment a certain amount of contact existed with the local labor offices, but from my own knowledge I cannot say anything about that.

For the rest, to my knowledge, the plants directly and on principle primarily dealt only with the competent local labor offices. If, therefore, a plant had 300 of its workers called up, and the plant then pointed out that the production quota set up by an official source could not now be met in view of the shortage of sufficient labor, then the instruction was, "Go to your labor office, to your competent labor office. There replacements are available for you." The labor office then allotted to the plant concerned whatever they happened to have available, whether they were prisoners of war or foreign workers or even Germans in labor service who were drafted to a considerable extent later in the war. All this was a function of the labor office and in this way the labor was allotted to the plants as replacements for these German workers inducted for military service.

Q. Assuming then that all the workers that you could get were those who were allotted to you by the labor office or the labor administrators, whatever their name may be, why should you have made a request for any particular kind of labor—eastern workers, or prisoners of war, or Italian internees, or anyone else? Why wasn't that something over which you wouldn't have any control? Do you understand? I am trying to ask why you specified or why the Berlin office specified on these somewhat exceptional occasions the kind of labor which you desired, if the allotment was really made without any influence on your part by the public officials?

A. In detail I am really not informed about these matters and their detailed organization, but I assume that when a few hundred

people were inducted, the plant, of course, got in touch with the labor office in order to get replacements. I believe, and I think I have seen that in the documents here, that if the labor office, that is the local labor office, could not make available a definite category without going to Berlin for authorization, that then the local plant leaders got in touch with my Berlin collaborators and said, "In this special case the local labor office cannot decide alone. In this case the superior office in Berlin must make the final decision." And I suppose that is why my Berlin collaborators in these exceptional cases, where the threads ran to Berlin, were asked by their colleagues in the plants, "Be kind enough to go to this or that office and take care of this so that I don't need to take a trip to Berlin." But it always remained a matter of the local plant management, and within the plant management it was always the task and the responsibility of the technical section of the Vorstand, because the question of labor was so immediately and inseparably connected with the running of the plant that one could not in practice have settled these matters from anywhere else. In practice, it is impossible for one person to sit in Berlin when the workers are in Breslau or in Munich and manage them from there.

Q. One more question which perhaps you can't answer; it may be a somewhat illegal question. Could you decline to take concentration camp workers who were allotted to you as workers?

A. Well, this question is one I really cannot answer, Your Honor.

PRESIDING JUDGE SEARS: I thought perhaps you couldn't.

DEFENDANT FLICK: I have only been able to establish partially from the documents that concentration camp inmates were employed by us at the very last phase of the war when symptoms of disintegration were in general existing, and the first ones must have come—that was Bautzen and Groeditz—as far as I can establish in October 1944; and the number of concentration camp inmates according to my estimate at this last phase, too, amounted at the most to one percent of the total number of workers. I am quite certain of that, but my colleagues will be able to explain this better than I. I heard once that, for instance, for the over-all railroad car manufacture, that is for the whole of German railroad car production, a figure was used which was distributed among the various plants according to a definite key.

I paid one visit to the Groeditz plant at about the time when the concentration camp inmates were first employed there, but this was part of a big ceremony with Gauleiter Mutschmann. At least, he was there. That was when I handed over the management of the firm to my son in the presence of the employees. The

witness, Karl Brambusch—or whatever his name was*—a foreman at Groeditz, said here that on that day no concentration camp inmate was at work, and that on that occasion I did not see any there, but whether we could have refused on legal ground to take them, I cannot judge. I am firmly convinced that it would not have been possible.

DR. DIX: May I continue?

PRESIDING JUDGE SEARS: You may proceed, Dr. Dix. These were some matters which were running through my mind and which I wanted to have clarified as far as possible from the witness' memory.

DR. DIX: With regard to this clarification now which is of importance to me, too, Mr. Flick, the next to the last question of the President—if you will excuse me—you did not answer quite precisely and not quite to the point. I don't know whether you can answer it, but then we must at least express the fact at this point that you cannot answer because you don't know about it. If the president will permit, I will, therefore, take up this question once again.

The president asked how it came about that the Berlin office on one of these occasional interventions expressly put in for certain groups of workers, for instance, Italian workers or Ukrainian workers, and tried to get these in particular when you said a while ago that if, for instance, 300 workers had been taken away from you, 300 foreign workers would without examination of their professional qualifications be allotted to you; and it is absolutely appropriate and logical to ask: Yes, but if they were just allotted to you like that as mere groups, how is it that not only the Berlin office on occasional intervention but also the plants, according to the documents, occasionally asked for quite definite groups of workers usually divided according to nationality, Ukrainians or Italians? I know that you will not be able to answer this from your own knowledge, you will only be able to explain it from supposition. I could do so, but I have not been asked and I would prefer you to do it.

I, therefore, ask you to think over how in view of your general experience of life and your experience in dealing with public offices, which is quite a special branch of experience—not always a very pleasant one either—how you explain this?

A. In order to avoid creating a completely false impression here, I must state clearly that I never learned anything about it at all whether, when, and how, and to what extent the plants asked for workers from the labor offices concerned or the superior labor offices. All these were internal events within the plants with which

* Rainer Brambusch. Extracts from Brambusch's testimony are reproduced in C above.

my Berlin office in principle had nothing to do, and I myself nothing at all. All this took place as the documents submitted here show, which I am seeing for the first time in my life, but if you ask me: Why did you say you wanted 200 Russians, my supposition to that is that probably the labor office told the plant which said it needed workers: At the moment we only have Russians; I have got this or that, French prisoners of war or foreign workers. Therefore the plant could only in individual cases concern itself with the special category which the official source had told them was alone at the moment available. That is the explanation which I make, not from experience and knowledge, but I assume that it must have been like this.

* * * * *

Q. Now, we come to the concentration camp inmates. In this field you have already answered a question by the president that only in September and October 1944 had you heard about the employment of such inmates. I don't have to put that question to you now. I don't think you have to add anything to this question, or do you?

A. No.

Q. Referring to the concentration camp inmates I would like to ask you, from your layman's point of view, what's your attitude to the legal justification of employment and assignment of concentration camp inmates at all?

A. I don't think I have understood this question.

Q. Do you think that it was permissible at all to employ concentration camp inmates in the plants?

A. Yes, I thought it was permissible because I thought it was normal that prisoners should work, and I think that they had better conditions in our enterprise than they would have had in the camps, and I think the witness Brambusch, who has been examined before this Tribunal, has confirmed that also.

Q. Now, the question, when you were in doubt about the admissibility of employment of workers, for instance, in the case of foreign workers, would you have had the possibility to do anything against it? This question, I may say, has been dealt with satisfactorily to the effect that you had no possibility whatsoever either to do anything yourself or to influence the various managing boards. You could not change anything in Germany in that matter even if you had risked your life. I don't think that would have been of any avail. I think the other gentlemen on your managing boards were in the same position. I at least do not want to illustrate this impossibility of helping by examples, but I should like to deal now with the Reich Association Coal and the

Reich Association Iron, because the prosecution is of the view that these two associations, especially through their various offices, would have had the possibility to object to these measures, and only because of this they play a part in this trial. Before we deal with this question, it is necessary for you to explain to the Tribunal, as you are the first witness to testify as to these two organizations, how did these two organizations come into existence? What was their task? I think we had better start with the Reich Association Coal. I would like you to give a history of this organization for the guidance of the Tribunal.

A. The Reich Association Coal started its activity in 1941. The origin of its foundation was mainly the following: Goering had appointed a commissioner for coal. His name was Mr. Walter, a man who wasn't really an expert and who sponsored socialistic tendencies. Thus, one day, for instance, he drew up a decree, or at least a draft, and in it he made suggestions to nationalize the coal industry, and he even added that this should be basically without indemnification. At least as far as I know. This whole activity of Mr. Walter caused unrest within the German coal industry. The coal industrialists convened and considered what could be done in this matter. It was very difficult to do anything direct against Mr. Walter because he was a sort of favorite with Goering, who had appointed him. Therefore, the coal industrialists in this case tried a detour, successfully, through Minister Funk. They told Funk their worries and their opposition to Walter. As a result of this action Goering called a big meeting in which soft coal and lignite industries were represented according to their various districts, and also the State Ministries and the Reich Ministries, among others Minister Funk. Walter was present, too. And in this meeting the whole subject, which was the problem of coal supply, was discussed, and the industrialists demanded Walter's resignation, but at the end of this meeting it was not known whether or not Goering would comply with this wish on the part of the industrialists. Only after the meeting, sometime later, it was made known that Goering had dismissed Walter, and that in the place of this organization which had existed so far, a new organization would have to be created, and therefore the Reich Association Coal was founded by a government decree, and of course under government influence.

It was an official compulsory organization in order to guide the coal industry. That is what I have to say as to the foundation of the Reich Association Coal.

Q. Concerning Walter, you used the expression "organization." In order to prevent any misunderstanding, the office of Walter as Reich Coal Commissioner was not a compulsory economic or-

ganization, not a forced organization either. Was it a government office?

A. Yes. I should think so. In any case the Reich Association Coal was a new organization which was now in charge of the whole industry under the control of the government. That was the result.

Q. Yes. I think we ought to go parallel here. Perhaps you will now give us the story of Reich Association Iron.

A. The Reich Association Iron began a year later, in 1942. At that time, there was a lot of ill feeling against the steel industry among official circles in Berlin. Conditions were more or less the same as they were in 1937 before the Reichswerke Hermann Goering were founded. The steel industry was constantly charged by government offices, especially by the Speer Ministry, with unsatisfactory production figures. Discussions started with the then leader of the German steel industry. That was Dr. Ernst Poensgen. In the documents which have been submitted here, there is one particular document which throws a light on the meeting which took place between General von Hanneken, official deputy for the steel industry, and Poensgen, the chairman of the Economic Group, and his business manager, Reichert.* The conditions at that time were described in this document very clearly. The government wanted to go new ways. The steel industry was of the opinion that the organization should be left as it had been. I believe that if at that time within the steel industry one had voted whether it should remain the same or whether a Reich association should be founded also in the steel field, 95 percent of the German steel industry would have been against the foundation of a Reich Association Iron, if not even 100 percent.

But it was demanded, and especially by the circles around Speer. Roechling was asked to go to see Hitler at Headquarters. He was the man whom the State considered as the future person in charge of this task. There was a meeting and a discussion between Hitler and Roechling. Formally through Goering, he was given the assignment to found the Reich Association Iron. Then it was carried out.

Q. The legal status of these two Reich associations becomes quite clear from the documents of the prosecution which have been submitted so that you do not have to give us details about this. We know from the documents that a president was elected and I think three deputy presidents or two, and a so-called Praesidium.

It furthermore becomes evident from the statutes that the leadership of these two organizations was to be carried out

* Document NI-2556, Prosecution Exhibit 287, report on conference of 1 May 1942, not reproduced herein.

according to the leadership principle [Fuehrer Prinzip]. The president in question, the leader as it were, had to be the Fuehrer according to the principles of the National Socialist State. We do not have to talk about that. We do not have to discuss it, but I would like to ask you this. Roechling became president of the Reich Association Iron. Who became the president of Reich Association Coal?

A. That was Pleiger.

Q. You also mentioned the conversation between Roechling and Hitler from which it becomes evident that Roechling was nominated to this position through the influence of Hitler although he was appointed formally by Goering. How was it with Pleiger?

A. He was selected by Goering. He was Goering's man, as it were.

Q. May I draw a conclusion from that? If somebody wanted to become the leader of such an organization, he had to have help and support at the top level, or at least connections. May I conclude from that that Pleiger's support came from Goering and Roechling's from Hitler?

A. Yes. I believe that must have been so.

Q. Now those were the two leaders, and then there was the other institution, the two Praesidia. Would you give us, briefly, an idea about the whole Praesidium, its composition, its membership, and principles, and so on?

A. The Praesidium was appointed by Goering himself. That can be understood, because the meeting I just mentioned was the immediate origin of the Reich Association Coal. At this meeting Goering said, "All right. We shall put something else in its place." Those gentlemen who were present were appointed to be members of the Praesidium. I do not know whether all of them were, but at least most of them were. I was also appointed. That was not my plan.

I was in touch with a leader of the opposition in the coal industry. I talked to him against Walter. I told him that my activity would come to an end through this meeting with the aim to force Walter to resign. I did not know before that my nomination and election as a member of the Praesidium of the Reich Association Coal had been a consequence of the participation in this meeting. From the documents which were submitted here, it becomes quite clear what the position really was. I discussed with Wisselmann, who was the leader of the opposition, that with this meeting at Goering's my task would come to an end. I had difficulties because of my election, and because of Goering. I was in a dilemma as to whether I should resign from Goering's appointment. I did not think that I could do that. It was submitted here in the documents,

through the correspondence between Pleiger and myself.¹ Thus, I was elected to the Praesidium although my group was already represented by Tengemann, and in spite of the fact that Buskuehl² had been added. The latter was mainly appointed in connection with his capacity as President of the District Group Ruhr of the German mining industry. That was the Reich Association Coal.

Q. Would you give us now the same information about the Reich Association Iron?

A. In the Reich Association Iron the Praesidium was elected by Roechling or at least he made the proposal to the Reich Ministry of Economics. I think it was so. I am not quite sure. The staffing of the Praesidium was to be done according to regional principles; apart from the three chairmen who really filled the function of the president and the deputy presidents, seven more members were elected, so that the Praesidium eventually consisted of 11 members, I think. In the Reich Association Coal there were 20 people or even more; but the formation of the Reich Association Iron followed, as I have already said, regional principles, and it had to be done in a way so that every German industrial district, according to its importance, was represented in the Praesidium. Since the group Mittelstahl in central Germany was the most important in the field of the steel industry apart from the Reichswerke, which were just in the process of growing, and as they represented the principal part of the central German steel industry, it was a matter of course that I should be elected into the Praesidium of the Reich Association Iron as the representative of central Germany. For the president, Roechling, there was another reason to appoint me for this particular task. The reason was that he was on very bad terms with Pleiger, who was the president of the Reich Association Coal, and he knew that I had had discussions with Pleiger on former occasions and as he also saw in me a man who could balance matters between him and Pleiger, and that was a special reason for him to elect me into the Praesidium. Admittedly, I did not give Roechling many hopes. Roechling's intention had been originally to give me a special task in the Reich Association Iron. The taking over of such a task I refused most strenuously and on this score I disappointed Roechling very much. He said so in his own affidavit,³ which is contained in the documents. He says that I did not accept the task which he had meant for me and that now the whole organization

¹ Letter from Pleiger to Flick, 17 May 1941, Document NI-5554, Prosecution Exhibit 228, and letter from Flick to Pleiger, 22 May 1941, Document NI-5553, Prosecution Exhibit 229, both reproduced in B above.

² Ernst Buskuehl was chairman of the managing board of Flick's Harpen firm.

³ Document NI-5549, Prosecution Exhibit 273, not reproduced herein.

had to be created in a different way and that was carried out practically in a way so that now, for the individual districts, West, east, center, southwest, southeast, district deputies were appointed who took over these tasks and as a consequence I had just the office of a regular member of the Praesidium in the Reich Association Iron.

Q. Before we come to your specific activity, or shall we say non-activity, in these two directing organizations, it is necessary for you to explain to us what the subject, the economic political task of these two organizations was. I would like you to take care to tell us whether these two organizations were competent in questions for allocation of labor.

A. No, they were not competent for those matters. I never knew anything about it. As far as I know, these organizations, as such, were competent for meeting the production requirements contained in the government programs.

Q. For the work requirements and not for the allocation?

A. Yes, I think for the requisitions, for the statistical compiling of figures and their passing on to the competent authorities, but these are matters with which the Praesidium, as such, did not deal.

Q. Well, we will come to the Praesidium later, Mr. Flick. But let us talk now about the organizations themselves—the task of these organizations. For instance, of the respective leaders. If I understand you correctly, they were responsible for the fulfillment of the production assignment of the State to which belonged also the requesting of the necessary labor. Did I understand you correctly?

A. Yes.

Q. Now we have talked about the president. His position becomes evident from the statutes. I could only ask you, although the answer is absolutely self-explanatory, of course, did these two presidents act according to the leader principle and were they actually in charge, as leaders?

A. Of course.

Q. Now, what was the task of the Praesidium? Now we are coming to the Praesidium as a whole, not yet to your own activity within the Praesidium.

A. According to the bylaws of the Praesidium, it had the character of an advisory council, as it were, but it could give no orders. We can see that from the many legal expert opinions which are contained in documents; for instance, of the Stahlwerksverband, by the legal advisers of the Vereinigte Stahlwerke; expert opinions which I had not known before and which I only saw here but which all give evidence that the president had even

disciplinary powers over the members of the organizations according to the leader principle which had been introduced everywhere in Germany. The Praesidium as such had, as I say, the character of an advisory council. I am altogether of the opinion that "Praesidium" in this particular case is an unfortunate term; it is a term which does not express the full significance of it. A company or an organization can not possibly have 20 presidents. The president and his deputies assumed authoritarian leadership. The presidents of the Reich Association Iron convened normally every 8 days. The president of the Reich Association Coal conducted the business management of the Reich Association Coal in his private offices and I assume that they were in touch with the business management if they were in Berlin. The meetings of the Praesidium in the Reich Association Coal took place every 6 months; in the Reich Association Iron approximately about three times a year on the average, I think. If I count the number of meetings in which I myself took part, I come to the conclusion that in the Reich Association Coal, in all these years, I was present at about five or six meetings altogether and in Reich Association Iron I was present at about eight. There were only about ten meetings and the meetings were generally meetings of about 1 to 2 hours and the subjects that came up in these meetings can be seen best from the minutes which we have about these particular meetings. In none of these minutes on meetings of the Praesidium, as far as I can see, at least, is there anything about the allocation of labor.

* * * * *

Q. Mr. Flick, today toward the end of this morning's session you told us that these two Reich associations were competent for the fulfillment of the production quotas of the State and at the same time, of course, for the requesting of labor required to fulfill these production quotas. Now, please tell us who on the other side was responsible for the allocation of labor.

A. The question in essence was one of the competency of the Labor Office, of the Ministry of Labor, and of the Central Planning Board. The plants primarily always dealt with the labor offices, the local ones, which were competent for them, but in the different industrial districts there were local differences; for instance, in the Ruhr the District Group Ruhr was concerned in these matters. It also appears in the documents available here repeatedly. As far as I knew it, within the Ruhr there was first of all the District Group Ruhr in Essen which was a sort of collecting point for the plants, of a statistical nature. They passed these statistics on to the other agencies concerned, also, of course, to

the Reich Association Coal, to the business management of it. But this was no question in the meetings of the Praesidium.

Q. Very well. Competent for the allocation of labor were, according to you, only the State agencies mentioned, under which you include also the Central Planning Board. Now, we know from the prosecution's documents that the President of the Reich Association Coal, Mr. Pleiger, on at least several occasions was present at meetings of this Central Planning Board.* And I would like to ask you, do you know that Mr. Pleiger with regard to the negotiations carried out there and the decisions taken there informed the Praesidium or the members of the Reich Association Coal, including yourself?

A. I don't remember anything about that. The records were not dispatched by the Reich Association Coal, records of the meetings. I remember nothing about that.

Q. Now, we have still to consider your personal part in the Praesidium. First of all, I believe you had already said this. How many members were there in these two Praesidia, the number of members?

A. In the RVE there were eleven or twelve including the chairman and his two, and later on three, deputies. In the RVK I think there were about twenty altogether. The meetings of the RVK, however, were on a much larger scale. As far as I remember, there were usually thirty people there, perhaps even more.

Q. Did the various members of the Praesidium have special departments, spheres of interest, where they were authoritative in their work?

A. In the RVK once in a while one member or another would be given a special task. He would be asked to prepare a report for the next meeting, for instance, concerning an acute matter of the association, about a certain question or dispute in the Rhenish-Westphalian Coal Syndicate. Apart from that there were also a number of committees which were responsible for such matters and their special handling, as the need arose. There was a legal committee, a committee for association questions, and other matters. That existed to a certain extent within the RVK. This was not the case in the RVE.

Q. What about you? Did you ever make such a report or did you take over special tasks? What was your part in general at these meetings?

* A substantial part of the Slave-Labor charges against Paul Pleiger in the Ministries case involved his participation in the meetings of the Central Planning Board. See the materials in section XI, Volume XIII, this series, which includes both contemporaneous documents and testimony of Pleiger and others on the Central Planning Board.

A. As to the interests of my group in the RVK, I can refer to Pleiger's own words in his affidavit,* which are that the interests were satisfactorily represented by the two active executive managers, Tengelmann and Buskuehl. These two were also members of the Praesidium so that I, in practice, played the part of a guest in the RVK. These were the active general managers who were immediately responsible for the management of the plants and well acquainted with the affairs. As far as coal was concerned, I did not deal with these matters because I was never at home in soft coal. I only got into that later. My subject was steel, so I didn't do anything much there at all. The only function I ever exercised was that I once helped look through the yearly budget of administrative expenses. I think that was my only function and the only task I ever took over in the RVK. I never spoke in the RVK, and although I did speak in the RVE, I didn't have any special tasks there either. I was a regular member of the RVE, a regular member of the Praesidium, but I knew the subject better—the subject was more complicated and more difficult but I was better acquainted with these things, and in particular with the question of raw material supplies which played a considerable part. Concerning the allocation of scrap and ore and these things, I repeatedly commented on acute questions and I was considered an expert on the subject of scrap iron. That was the opinion of others. I won't say myself whether I am one or not but these matters—production matters, raw material matters, sales matters, patent matters, introduction of new technical processes—all these things came up at the meetings of the Praesidium of the RVE and were the main subjects discussed and took up most of the time. As the records of the RVE are available here, contrary to those of the RVK which we did not get ourselves, I have looked through these records and I believe there is only one record where the labor question was discussed at all. This was in connection with the fact that the increase of production depended on a sufficient quantity of minette, that is, ore from Lorraine, and that this again depended on having sufficient labor.

Q. Well, if one considers your activities, or your passivity as you described it, one must bear in mind that there are quite a number of people who believe that one ought to believe everything that appears in the papers, and I have read in the *Stars and Stripes* a description of you as a leading National Socialist and general manager of the RVE. In fact, as I think one says in America, you are described as a "big shot" of the RVE. Now, who is right, you or the *Stars and Stripes*?

* Document NI-8342, Prosecution Exhibit 218, not reproduced herein.

A. I can only say that I was never general manager of the RVE. That was quite clearly and definitely Mr. Roechling. He had three deputies: Mr. von Bohlen, Mr. Rohland, and Melzacher. To describe me as the general manager of the RVE must be a mistake:

* * * * *

PRESIDING JUDGE SEARS: Well, may I ask just a question? In the Praesidium of the RVK and the RVE was there ever any discussion?

DEFENDANT FLICK: Apart from the official ones?

Q. Yes.

A. Yes.

Q. There was a report made, we would say, and then was the report approved or criticized even though no official votes were taken? Was it discussed?

A. Yes. One could speak and explain one's opinion if one wanted to, no doubt. When a report was made about a special question, shall we say there was a dispute in the coal syndicate about the percentage of participation, then perhaps a committee would be appointed. The three gentlemen, so-and-so, were to examine the question and one of them had then to make a report. When the report was made every member was at liberty to comment upon it, to ask to speak and to say what he thought.

Q. Could independent matters not on the agenda be brought before the Praesidium in either case?

A. Yes, this possibility existed.

Q. But was it done?

A. Yes. That happened when somebody made a suggestion. This was quite possible. If it was not on the agenda, you could say at the end, "I have noticed this or that. It might be interesting to hear what the gentlemen think about it." Yes.

PRESIDING JUDGE SEARS: I merely asked those questions to find out how independently or how thoroughly the Praesidium could express its views. That's all. That's all I have in mind.

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CROSS-EXAMINATION

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MR. ERVIN: Did you ever discuss with any of the Vorstand members in any of your plants the questions of foreign workers?

A. In regard to questions about foreign workers, we often had conversations on the occasional visits to the plants in the sense in which I already talked about it during my examination by my defense counsel.

Q. How often did you visit your firms?

A. That varied. The smelting plants were visited on more frequent occasions because they were closer to Berlin. As a result of my entire development I was much closer to the smelting plants. From the point of view of assets they played a much bigger part. As I said before that, apart from later visits prompted by personal reasons, I considered that I visited Maxhuetten three times a year; Mittelstahl, three to four times a year but not more. I think that before the war, I paid two or three visits per year to the coal fields.

Q. Did you visit the coal fields during the war?

A. I hadn't quite finished.

Q. I beg your pardon.

A. In the case of soft coal, the Aufsichtsrat meeting took place in the morning, and then on that same day I always made a visit to one pit in the afternoon. The same was true in the case of the general meeting. I think that in addition to that, there may have been one more visit during the year. During the war, I think that there was not as much as one visit per year. To be quite clear, I don't think I visited the mines as often during the war as there were years of war in the case of soft coal. In the case of the railroad car factories and finishing plants such as ATG, Linke-Hofmann, and Busch, this holds true to a much greater degree. I think that I did not see these factories more than twice throughout the entire war. Indeed, there are plants which I saw only once during the war. And certainly there are some which I didn't see at all, for instance, the Fella Works. I think I saw that on one occasion when I made a private visit in February, 1945, but that was all.

Q. At some time during the war you did visit the soft coal pits? What did you do on this trip? Did you go down a shaft? Did you see the mining conditions at all?

A. No. I did not.

Q. Did you see any workers at the camps?

A. No, it was merely a superficial visit which followed the Aufsichtsrat meeting and the Aufsichtsrat dinner. It was a very sketchy visit which covered a large area. I think we saw something interesting there above ground in the sphere of new buildings. That especially held true at the Essen Soft Coal Works, which were then extended by a new gasoline factory. Then we went there or to the plant Hugo where new buildings were just being erected. These buildings were shown to me and to the other Aufsichtsrat members by way of demonstration.

Q. Did you see any workers at all?

A. Certainly I saw workers on the surface. Some did ore washing work; some were down the shafts.

Q. Were they foreign workers?

A. Really, I cannot tell you that.

Q. Were these prisoners of war?

A. I don't believe that they could be recognized as such. The number of those who worked on the surface and who could be found during a superficial visit is only very small.

Q. Then you didn't see anything but surface workers.

A. Yes, that was during the war.

Q. Did you see any prisoners of war that you recognized?

A. Do you mean prisoners of war working at the pits? I really can't remember that. In order to correct myself, I must say that on one occasion I visited the subterranean installations of the Hugo pit and I cannot tell you now exactly whether that was before, during, or at the end of the war. It is quite possible that this took place in the year 1939, and it may also have taken place in the year 1940.

* * * * *

MR. ERVIN: Did you ever visit a worker's camp in any of your plants, a camp for foreign workers?

DEFENDANT FLICK: I inspected the kitchens in Riesa and in Groeditz. I do not know whether I was ever in the camp at Riesa. I cannot say for certain. I expect I was. Usually the camps were some way from the plant installations. In the case of the mines, I did not do so. After all, I scarcely ever got there.

Q. Did you know that there were different types of camps and a different type of treatment based on nationality?

A. No. I did not know that. The Stalag had its own camps and the foreign workers had their camps, as far as I know. These are internal matters. I cannot say.

Q. Did you ever speak to one of the foreign workers?

A. I cannot say at the moment. Most of the foreign workers did not understand German. I do not know. I cannot remember. I do not think it is very likely, but it is not impossible.

Q. Did you ever look into the sick bays, hospital facilities for foreign workers?

A. I did not inspect the facilities but as for the hospitals, where they were housed in 1943, I gave a million marks for these in 1943. I think that helped them more than if I had gone through the individual wards.

Q. What hospital was that?

A. In 1943, I gave one million marks for the hospitals of the smelting works of my plants around Riesa, Maxhuetten, Groeditz, and so on. I gave a million marks where there were separate hospitals; otherwise it was for the communal hospitals in the

districts of the smelting plants. The witness Brambusch and others from Groeditz gave evidence here that the foreign workers were taken into the Riesa hospital. The Riesa hospital was among those which benefited by the donation. I think I did more for the people that way than if I had walked through a ward without seeing anything. Surely it depends more on deeds and I considered it more important to have given this million than to have said a few friendly words to a foreign worker without doing anything for him.

Q. As I understand it, this hospital was for all the workers in the plant, not just for the foreign workers?

A. Of course, for all of them. One could not build a special hospital for the foreign workers. The Germans themselves were glad to have one.

Q. During these visits, when you walked through the plants, did you ever see these foreign laborers at work in other plants, other than the coal plants?

A. I cannot tell you at all whether I noticed any difference at work between the foreign workers as a whole and the others. Of course, foreign workers were working there. But I did not specially notice, nor did I make special investigations, whether this was a foreign worker or this was not a foreign worker. That is not the way an inspection of a factory takes place. It usually takes place with a fairly large entourage.

Q. Did you ever discuss on these occasions with your Vorstand officials whether or not these foreign laborers were coming voluntarily?

A. Such a discussion with the Vorstand of the companies concerned I cannot remember.

Q. You told us, I think, that you arrived at a moral conviction that considering their large number not all of them had have been so. After having arrived at this moral conviction did you then try to verify what you had come to believe in any of your enterprises?

A. I have said that at a later date I arrived at the conviction that considering their large number not all of them had come voluntarily and that I suppose that in the east there was a compulsory labor scheme such as it was known from the west, but there were also signs that they had come voluntarily. I refer here to my trip to Lwow and my experiences in Toelz. In many respects the whole situation was unclear. But I no longer had the conviction that all these workers had come voluntarily.

Q. You were prepared to rely on your impression from a moving train rather than try to find out from any of your enterprises?

A. I don't know what I could have done about this. I think

I have already said that here. I couldn't have changed anything. What could I have changed? What could I have changed?

Q. Defendant, when the government was about to take a step which would hurt you personally—and I am referring now to Walter's draft on socializing the coal industry—you and the other members of the coal industry not only complained; you took it all the way up to the top and you got Goering and other high party officials to set up the RVK. That was when it was going to hurt you personally. You could do something then, couldn't you?

A. We turned to Goering in order to complain against the measures of Walter. The RVK was not founded by us. That is not correct. If you want to submit that it would have been possible for the industry to go to the big shots of the Third Reich with a demand "no foreign workers to be brought to Germany any more," then you certainly fail to recognize the situation as it was in the Third Reich.

Q. Well, about the legality or illegality of the use of foreign workers, you told us that you had some general impressions about prisoners of war from the knowledge you gained during the last war. Do you recall the occasion in the last war when there was an attempt to deport some Belgian workers to Germany, civilians?

A. No, I know nothing of that. I have also said I knew from the last war that prisoners of war may not be used for the manufacture of armaments, but as far as I know with the exception of the Russians. And I said that was all I knew.

Q. Well, your labor force increased considerably during the war. Were you compelled—forced—to take all these additional laborers?

A. Of course, the plants were forced to do this in order to fulfill their production quotas, and as replacements for the drafted Germans. Every day more and more were drafted into the armed forces, and the obtaining of replacements in the main was done through prisoners of war, foreign workers, and partly also through German compulsory labor—not only by foreign workers.

Q. Did you ever try to get an increase of a quota during the war, of a production quota?

A. In this respect I did not cause anything to be done. It was not my job. This was one of the tasks of the managing boards and the management of the works. I did not fix any production quotas, nor did I estimate any nor did I ask for any.

Q. Is it possible that you—

A. But in general these quotas were higher than the industry could meet. I don't think that there was a single industrialist in Germany, in the steel or coal industries, who tried to raise his

production quota, because the quota which was imposed on him was already 50 per cent above what anybody could meet. May I remind you of the foundation of the RVE in 1942? Why was it demanded? Because the industry was reproached with producing too little, and the transcript of the first session of August 1942, shows that they expected the steel industry in 10 weeks to increase its output by 33 percent. In such a situation it is surely out of the question for any industrialist to try to increase his production quota. Everyone would have been in the position to sell several hundred percent of his capacity. The production quotas were unlimited upward.

Q. You think that there is no possibility that any of your Vorstand went to Speer Ministry officials and asked for an increase in quota on any kind of product?

A. I do not believe that. I believe that they would have laughed at that person if he had gone there and said he wanted to make more steel. After all, that was what they wanted. They reproached us with producing too little.

Q. Now, how about other products? How about railroad cars?

A. In the case of railroad cars, there is one exception. That is the Breslau plant, a special case. From the documents here, I have again become acquainted with these things. The Breslau plant had started an extension—an annex—before the war. They were trying to become the biggest railroad car factory in Europe and during the war this new building was completed, and when it was finished the new factory stood there without work, and then Weiss and the Vorstand of Breslau discussed how this new department could best be employed. And for this, among other things, they needed workers. And in this connection the question of obtaining labor for Breslau was discussed between Weiss and the Vorstand, and Weiss sent me one or two memos on the subject. That is what I know, what I have again discovered about this, and the details will best be explained by Herr Weiss who conducted the discussion.

MR. ERVIN: If Your Honor please, the defendant's testimony apparently refers to Prosecution Exhibit 175—that is in book 5-B, pages 14 to 16. The discussion that Weiss had was with the Armament Ministry representative, wasn't it?

JUDGE CHRISTIANSON: What Exhibit number was that?

MR. ERVIN: Prosecution Exhibit 175, Document NI-3617.*

Q. Would you say that this one instance where the Vorstand insisted on raising the railroad car quota from 1,200 to 1,500

* Note of 8 October 1942 from defendant Weiss to defendant Flick, reproduced in B above.

a month was the only instance in which you tried to get an increased quota, or anybody in your firm did?

A. I am of the opinion that this affair was closely connected with the question of rationalization in railroad car building, because Breslau through its new installations—which were more modern than those of the old plants—was in a position with the same number of workers to produce far more railroad cars than the out-of-date railroad car factories; as far as I remember the affair, I can testify that the question was one of a rationalization measure undertaken with official assistance, with the final aim among others of saving labor, that is, for the same number of railroad cars a far smaller number of workers would be needed. I suppose the Main Committee Railway Vehicles played a large part in this connection. I don't know anything more about it. I have already said that the railroad car factories were not my special field. I bothered very little about them.

Q. Now perhaps you will answer my question. Do you think this instance was the only instance which occurred in your concern of asking for an increase in the production quota?

A. From memory I cannot give you any other example.

* * * * *

Q. Do you remember any occasions where companies of your concern complained about having their production quota lowered?

A. That the production figures were too low?

Q. Or having a production quota taken away completely?

A. Do you mean that the production was made impossible for them entirely on account of labor? I don't quite get your question.

Q. No, my question is, were there ever any occasions where the Munitions or Armaments Ministry decided to remove from a company in your concern a particular production quota and that you protested about this, you or your company?

A. You mean that we protested against having orders being taken away from us?

Q. That's right.

A. I don't know anything of that and I really cannot imagine it.

Q. Do you think it could have happened?

A. I could imagine that a production assignment was taken away from a plant because the plant was considered to be incapable of carrying out that particular order, because it was too far behind in its production. I know of no specific cases in that regard. At any rate I remember none.

Q. I would like to have you look at this letter.

MR. ERVIN: If Your Honor please, the letter is dated 22 May 1943, addressed to the Reich Minister of Armament and Muni-

tions, attention Engineer Groth. It is signed by the Mitteldeutsche Stahl- und Walzwerke, Friedrich Flick Kommanditgesellschaft. I ask that it be marked as Document NI-10058, Prosecution Exhibit 774 * for identification.

PRESIDING JUDGE SEARS: It may be so marked for identification.

MR. ERVIN: If Your Honor please, the letter begins: "Concerning the report of your collaborator, Engineer Schmid"—this is being written to the Speer Ministry—"we feel compelled to answer in detail and above all to protest against his deduction, *'Henningsdorf should cease producing cast steel shells'*." Then on page 4 near the close of the letter, after a detailed discussion, it reads: "We have followed the suggestions expressed in the opinion in a few important points (reduction of cleaning periods and weight of crude steel) and shall continue to work on this matter. However, as to the conclusion drawn, we wish to contest energetically the necessity of our ceasing production of shells."

Q. Do you find those sentences in the letter, Defendant? Did you know anything about the incident other than what—

A. I know nothing at all about this incident. I have no knowledge of it whatsoever, nor can I define my attitude toward the contents of that letter. I would have to be able to read through it in peace. As far as I can see now the management of Henningsdorf protested against their shell production being reduced because they were accused of not producing shells in sufficiently good quality and having too much wastage. I assume that, but I would have to have an opportunity to read the letter quietly in order to define my attitude toward it. But that seems to be the case.

It says here: "We have followed the suggestions expressed in the opinion in a few important points (reduction of cleaning period and weight of crude steel)"—well, one criticizes, too much steel is being used, the cleaning time is too long—"and shall continue to work in this manner. However, as to the conclusion drawn, we wish to contest energetically the necessity of our ceasing production of shells. We work with very little waste." Here again appears the question of reproaches about good or bad work. In this case it means bad work. "Our prices are those listed in Group I and this arrangement is satisfactory to us; we deliver punctually and have few complaints from our customers." But I really would have to look that letter through in detail, but be that as it may, I refuse to accept any responsibility for this letter whatsoever.

* Reproduced in part in B above.

On repeated occasions, I have stated here that the daily mail of a concern with about 12,000 employees had thousands of letters, and I saw none of them. I didn't see any one of these letters and none of these letters touched Berlin at all. If suddenly one of these thousands of letters is submitted to me, I must refuse to accept any responsibility for it. It is absolutely impossible to maneuver me into an affair with which I had nothing whatsoever to do. I declare once more, I was no plant manager I was not the director of Mittelstahl-Henningsdorf. I was not the director of Maxhuetten. I was the chairman of the Aufsichtsrat which had to carry out supervisory duties, and certainly had nothing to do with every day business. That is why I cannot bear responsibility for all of these matters. Apart from all that, it wouldn't have constituted a crime if these people, for reasons of prestige, had protested against being accused of not having delivered good quality shells. At any rate, I must most decisively refuse to accept responsibility for internal matters within a plant management which did not touch me at all and of which I did not know at all. After all, there were 75 plants in Germany. I couldn't possibly accept the responsibility for every letter and for every little incident.

Q. Defendant, I am not interested in your particular responsibility for this one letter. We have had several letters here and there on the subject. What I am trying to find out from you is whether for matters of prestige of the concern, for protecting your competitive position, or for whatever reason you were interested in keeping your production quotas allotted to you by the Ministries, whether your companies would try to get increased quotas and whether they would protest against decreases of quotas. I use this letter merely as an example. Was that the way it operated or wasn't it, in general?

A. I cannot tell you that. Generally, I wouldn't assume so at all. I think that we are here concerned with a special case and I have already explained that. There was no longer a general reduction of quotas in the year of 1943. I cannot believe that. That was the end of 1943. Everyone could produce as much as he wanted to.

* * * * *

Q. I would like to have you tell me now about the concentration camp workers that worked in plants of your enterprise. How many plants employed concentration camp workers?

A. I recently stated—and it still holds true—that generally there could be no mention of any employment of concentration camp inmates in our plants. I have ascertained here that the first

ones only arrived in October, 1944; that was at a time when the first signs of collapse appeared.

Q. Did you know in October 1944 that they were being hired?

A. That the war, at the end of 1944, couldn't last much longer was very clear to me—

PRESIDING JUDGE SEARS: Dr. Dix—

DR. DIX (counsel for defendant Flick): I should like to come back to this letter from Henningsdorf during my reexamination. Since I believe to have observed that this letter was returned by the defendant, I would ask that the letter be handed to me either in its original or else that I be given a copy of that letter.

MR. ERVIN: I will make available to Dr. Dix all the documents that I have referred to in cross-examination, including this letter, prior to his redirect. Defendant, what I would like to know is if at the time these concentration camp workers were hired—which is in October 1944—you knew about it.

A. I cannot say that. I don't believe it. I have seen here that report from Busch-Bautzen of this period, according to which concentration camp inmates were to be employed in the railroad car industry by way of a total assignment. Whether these concentration camp inmates actually arrived, I cannot say; nor can I say whether I learned that concentration camp inmates were sent to Groeditz in October of 1944. It is possible that I obtained knowledge of it, and it is also possible that I did not. The witness Brambusch, who appeared here, has stated expressly, and I quote: "When Flick came along, no concentration camp inmate was visible."

My visit took place in the course of the big demonstration which Gauleiter Mutschmann carried out at that time on the occasion of the management of the plant being handed over to my son. At any rate, a completely wrong impression would be gained if it was tried to demonstrate here that the employment of concentration camp inmates was a regular matter in our plants. That certainly was not the case. If, in October 1944 concentration camp inmates arrived at two plants, that certainly was not initiated by me. I certainly did not do that. Second, I don't know whether I learned of that matter. Third, I must maintain that this was in the last stage of the war.

MR. ERVIN: If Your Honor please, the Busch-Bautzen report to which the defendant was probably referring in his last answer is Document NI-5204, Prosecution Exhibit 146,* which is in document book 5-A, page 52. It is another one of the exhibits with an initial of the defendant on it.

PRESIDING JUDGE SEARS: What number is the exhibit?

* Letter from Busch Company to Weiss, 17 October 1944, reproduced in B above.

MR. ERVIN: The Prosecution Exhibit is 146, Your Honor; page 52, document book 5-A.

MR. ERVIN: Defendant, you referred to the trip to Groeditz, and the testimony of the witness Brambusch. Do you suppose they were trying to hide these concentration camp workers from you when you were down there?

A. No. I have stated that the ceremony took place in the very shop where they were working as the witness here stated, "that the shop had to be evacuated before Flick came along" in order to be able to prepare for that ceremony. The hall was not evacuated in order to hide these concentration camp inmates from me, but there was quite a different reason. It is quite possible that I learned about their existence there, I don't deny that—but I can't say. I think I wouldn't have thought very much of it at that time if I had been told that they were there. At any rate, I didn't initiate their being sent there in the first place, and I don't suppose the plant did either.

JUDGE RICHMAN: Didn't you see the rooms where they were kept?

DEFENDANT FLICK: No, certainly not.

Q. Did you see the guards at the door leading up to the rooms?

A. No. I told you there was a big ceremony; there were about a thousand people present who were all in that hall. This took place in the evening, at 1730, and it was already dark. The witness Brambusch also testified that "Flick really couldn't have seen them."

Q. What time of the year was this?

A. As far as I remember, it took place either at the end of October or the beginning of November.

PRESIDING JUDGE SEARS: You may ask the next question, Mr. Ervin.

MR. ERVIN: You heard the testimony of several witnesses about the arrangement of this machine hall. Didn't you notice when you went into the building the extra barbed wire fence, machine gun towers that had been constructed since your last visit?

DEFENDANT FLICK: No. It was dark and I didn't see anything of that.

Q. Machine gun towers? The type of expenditures that you might discuss with the Vorstand?

A. No. To erect a machine gun tower in a Concern which has 130 thousand workers or more is such a trifle that they certainly wouldn't have talked to me about it. After this inspection there was a dinner at the Casino where about 40 or 50

persons attended. This dinner lasted for a considerable time, and we certainly didn't discuss the question of machine gun towers there. Nobody certainly approached me with this matter.

Q. Did anybody mention concentration camp workers at that dinner?

A. I am quite sure that this was not so. At any rate, I can't remember it.

Q. What time of day did you get to Groeditz?

A. Shortly before the beginning of that ceremony. I think the time was 1730. At any rate, it was dark, and I am quite positive about that.

Q. Had you come from Berlin, or had you been inspecting other plants that day?

A. I can't tell you that exactly. It must be assumed with certainty that I went to Groeditz in order to attend this ceremony. It is quite possible that I combined another inspection with that ceremony. However, I am no longer sure about that.

Q. Did you stay the next day at Groeditz?

A. No. I did not stay in Groeditz that evening. I certainly didn't spend the night there. I went to Lauchhammer that night.

Q. Which members of the directorate did you talk to during this trip, can you remember?

A. The entire directorate was present. The Vorstand was there. The departmental directors were there, and even persons who were subordinate to the departmental directors. It was indeed a large circle. I think there were about 12 persons from the plant—perhaps even more. I can't tell you that exactly.

Q. Director Hoeger? Was he there?

A. I can't tell you that with certainty. I am sure he was there unless he was ill. But I think that he was ill around that time. He, of course, was the competent man there. But I don't remember whether he was there or not.

* * * * *

F. Testimony of Defendant Weiss

EXTRACTS FROM TESTIMONY OF DEFENDANT WEISS ¹

DIRECT EXAMINATION

* * * * *

DR. SIEMERS (counsel for defendant Weiss): Now I would like to pass to Document NI-5207, Prosecution Exhibit 158 ² in document book 5—A, page 92 of the English document book and pages 100 and 101 of the German. This is a letter which we have re-

¹ Further testimony of defendant Weiss is reproduced earlier in section. VI. Concerning Weiss' position in the Flick Concern, see his affidavit reproduced in section IV F.

² Reproduced in B above.

peatedly discussed, from Buskuehl to Dr. Flick, dated 18 February 1942, wherein he mentions typhus and says that the result of the use of Russians was a complete mistake in the mining industry, and there is a marginal penciled note by Dr. Flick "The contrary in Breslau." According to Document NI-5236, Prosecution Exhibit 159,¹ on page 94 of the English, you replied to this letter. What do you remember about these events which you obviously dealt with yourself in Berlin?

DEFENDANT WEISS: Perhaps, first of all, I might mention that I noted that the prosecution, when submitting this document, said that they were unable to find the enclosure to it, that is the enclosure to Buskuehl's letter. I think I can help here. It seems to me that the enclosure must have been Document NI-5222, Prosecution Exhibit 126,² which appears as the first exhibit in this document book.

MR. ERVIN: I think that is probably true, Your Honor. When I stated we could not find it I meant that the files we found did not indicate which was an enclosure and which was not. Independently we found this other letter which I think, from its context, very probably is the enclosure. I believe that was pointed out in defendant Burkart's testimony too. By comparing the two letters I think it is very probably so.

DEFENDANT WEISS: In itself, this confidential letter from the president of the Regional Labor Office Westphalia, addressed to the District Group Ruhr, was not intended for us and its contents concerned neither Flick nor myself directly. Buskuehl, as head of the District Group Ruhr, however, I suppose, felt that he was justified in sending a copy of it on to Mr. Flick in confidence, for his information, because of its importance and terrible contents. The report shows that deaths among Russian prisoners of war who, during the first month of the campaign against Russia fell into the hands of the Wehrmacht in hundreds of thousands and millions, had taken on a catastrophic figure. The cause of these many deaths was typhus, which, as we know, is caused by lice, and which had hardly been known in Germany before this time. To what extent the responsible Wehrmacht offices were guilty of negligence, I, of course, am not in a position to judge, but I suppose the sudden streaming in of such large numbers of prisoners must have caused very difficult problems. At any rate it is certain that industry was in no way responsible for these events. Buskuehl, in sending this copy to Mr. Flick, obviously wanted to point out the reasons to the responsible men in the Ruhr mining industry at the time, in order to say that the

¹ Letter of 18 February 1942, reproduced in B above.

² Report of 3 February 1942, reproduced in B above.

employment of Russian prisoners of war in the mining industry in any large numbers could hardly be considered at all at that phase. In this letter, that is Exhibit 158, he mentions an attempt made at the Friedrich Heinrich mine, which belonged to the de Wendel concern but of course lay in the Ruhr, and said that this experiment had been a complete failure, insofar as, in spite of careful delousing and issuing of new clothing, typhus had again broken out.

When this letter arrived in Berlin, Mr. Flick was not there. He was in Toelz at the time. I was horrified at the contents of the letter, and, moreover, surprised because shortly before I had heard—I think I received a report from the Linke-Hofmann Works which showed that the Vorstand in Breslau had been very pleased with results of employing Russian prisoners of war. The first Russian prisoners of war who were assigned to the railroad car factory of the Linke-Hofmann Works had also arrived in a very bad state. The Vorstand of Linke-Hofmann looked after them in a very careful and humane manner. Director Scholl of the Linke-Hofmann plant, who was the business manager, had worked for many years in Soviet Russia at one time, and his wife was Russian and he knew the language and he knew the mentality of the Russians. The Linke-Hofmann Works reported to me that, first of all, they thoroughly deloused the prisoners of war as they arrived. They had all been medically examined and then all of them had been put to bed and fed well for a week. Then, gradually, they had been put to work, in accordance with their state of health. This report from the Linke-Hofmann Works unfortunately has not been submitted here, nor have we been able to find it in the documents anywhere. At any rate, the Russians were exceedingly grateful to be treated in this manner and they became willing and most usable workers in Breslau.

I called up Mr. Flick and told him about having received this letter. Mr. Flick thereupon asked me to draw Mr. Buskuehl's attention to our Breslau experiences and to tell him that perhaps if the people were properly treated quite a lot could still be salvaged. Later on I sent on Mr. Buskuehl's letter to Mr. Flick in Toelz so that he could read it for himself and then, I suppose, Mr. Flick must have added this marginal note "The contrary in Breslau," which he had already told me on the telephone.

DR. SIEMERS: Your Honor, this marginal note was, by mistake, omitted in the English copy.

PRESIDING JUDGE SEARS: We have made a note of it, however, when it was referred to before.

DR. SIEMERS: Thank you.

DEFENDANT WEISS: In accordance with Mr. Flick's request to inform Mr. Buskuehl accordingly, I wrote the letter dated 18

February 1942. That is Document NI-5236, Prosecution Exhibit 159.¹ Today I cannot remember why I wrote to Mr. Buskuehl instead of just calling him up. Perhaps I could not reach him by phone, or he might have been away, or I might have wanted to go away. At any rate it was a rather delicate affair at that time to write a letter and advocate the good treatment of Russian prisoners of war. I think that is how you have to understand the wording I used in this letter. For instance, when I say here—when I first mention our experiences in Breslau and then say the people must be treated with the proper severity but justly, I used such phrases because I could not know in what hands the letter could fall with the censorship or in the Harpen office. Mr. Buskuehl knew me very well indeed and I am quite sure that he understood the letter properly the way it was meant. Then at the end of the letter there is another turn of phrase which I would like to explain since the prosecution even quoted it in the opening statement as being particularly characteristic of me. I said here that it might be easier to obtain suitable results with Russian prisoners of war than Italian, Spanish, or other civilian workers, who, in addition, have to be handled with kid gloves. There was a very concrete incident at the bottom of this. Herr Buskuehl had told me that Spanish and Italian workers had been used in the Ruhr mines, that is, nations with whom we were at the time on very friendly terms, and that they were having tremendous difficulties with these people. As southerners these people were not satisfied with the food; they wanted white bread, they wanted red wine and such food as they were used to at home. In addition, they were frightfully lazy. It is this knowledge which is responsible for this turn of phrase, that these people did not have to be handled with kid gloves. Buskuehl could not possibly have misunderstood this remark at the time.

Q. Did Buskuehl specifically discuss these questions any further with you, or don't you remember?

A. I don't remember. No doubt, when we were together he told me about the foreigners who were with Harpen; and so on, but not specifically about these questions, I think.

* * * * *

Q. The ATG,² document is Document NI-4185, Prosecution Exhibit 142³ on page 39 of the German and on page 37 of the English document book. It is a list from Buchenwald, dated 6

¹ Reproduced in B above.

² Defendant Weiss was chairman of the Aufsichtsrat of Flick's ATG firm in Leipzig. See affidavit of defendant Weiss, section IV F, above.

³ Reproduced in part in B above.

January 1945, signed by an SS captain. Did you know this document?

A. This document does not come from the ATG files nor from our Berlin files. Of course I did not know it. I think—

Q. Excuse me—document book 5-A, Your Honor, page 37.

JUDGE RICHMAN: What is the number of the document?

SECRETARY GENERAL: 142.

DR. SIEMERS: Exhibit 142, on page 37. The last page of this document shows its origin, that is, the Buchenwald camp.

Mr. Weiss, here are listed the firms to which concentration camp inmates were allocated. There was a very large number of firms on this list. On page 2, ATG is mentioned, and the month of December 1944 is mentioned. Consignment of women from concentration camps—was that known at the time—that they were employed there?

DEFENDANT WEISS: That ATG got concentration camp inmates in the very last months of the war I do not think I ever heard; I did not know it. Once I made a calculation—there must have been about 400; if one divides the 12,000 days worked [per month] by 25 or 30 working days, one arrives at about 400.

Q. Now I would like to pass to the two big railroad car factories, Busch-Bautzen and Linke-Hofmann. What was your position in Busch-Bautzen?

A. In Busch-Bautzen too I was chairman of the Aufsichtsrat.

* * * * *

Q. Now I would like to come to the prosecution's documents concerning Busch-Bautzen which I must talk over with you and which, as I remember, also concerned you personally, because I am not producing any witness about Busch-Bautzen. There are four documents. First of all let us take Document NI-3194, Prosecution Exhibit 143,* in document book 5A. It is page 43 of the English and 46 of the German. It is a memorandum from you for Mr. Flick. It concerns the fact that again employees have been drafted and that Dr. Reichert hoped to get a number of Russian prisoners of war assigned.

A. This document is dated January 1942. It may have been the first Russian prisoners of war which Bautzen received, but I do not know for certain. At any rate the document shows that Dr. Reichert had called me up in order to get my permission over the phone for the building of huts. I subsequently informed Mr. Flick.

* * * * *

* Reproduced in B above.

Q. We now come to the next document, Document NI-3026, Prosecution Exhibit 145.¹ I would be most grateful to the Secretary General if I could now or possibly later, after the recess, see the original document in this case. It is a monthly report, on page 50 of the English and page 52 of the German book, and only an excerpt is submitted—parts of pages 7 and 8. It says in the report for August 1944 that concentration camp inmates are to be employed. That is the reason why the prosecution submitted this excerpt. Do you remember this? I am asking, although perhaps it is not so important. I am only asking you because in your affidavit,² when you hadn't seen any documents at all and were asked about concentration camp inmates, you only mentioned the inmates in Linke-Hofmann and said for the rest that you didn't think you knew of any more, without being able to be quite definite.

A. The fact that at the time I had heard of concentration camp inmates in Linke-Hofmann I remembered when I was interrogated here on 16 January and I stated that I had forgotten about Bautzen, but I think it is quite possible that I had learned of it before the collapse, although I do not know when I heard it. This report here covered the period of August 1944, but in the last half of 1944 the firms were months behind with their reports and it would be quite interesting if one could find out when it was received in Berlin and whether I actually initialed it. I think it is possible that I did not even see the report because at that time I had already returned to the west and, as I said, in January 1945 I was in Berlin for the last time; but it is possible that I saw it at the time.

It's also quite significant that it is not a case of a question being asked whether concentration camp inmates are to be used, but the Aufsichtsrat is just informed of the fact that the people are to be expected.

Q. This affidavit about Linke-Hofmann mentions the Main Committee Rail Vehicles. Did you ever discuss these things with that committee?

A. No. I did not discuss these things with the Main Committee, but I knew that the concentration camp inmates, who in the middle of 1944 arrived at Linke-Hofmann, had been allocated at the instigation of the Main Committee Rail Vehicles and I think I stated that in my affidavit.

Q. Mr. Weiss, now the prosecution makes special reference in this document to the fact that a 72-hour week is provided for. Can you say anything about that?

¹ Reproduced in part in section VII, above.

² Document NI-6015, Prosecution Exhibit 230, not reproduced herein.

A. The so-called 72-hour week was introduced in the second half of 1944 at the orders of the Ministry for Armaments and Munitions in a number of war essential enterprises. In actual fact, however, it was not a 72-hour week. There was a lot of propaganda in it. I think the witness Simon¹ here testified that in these 72 hours the intervals were counted in and that the 72-hour week in Groeditz, for example, in actual fact amounted to 62½ working hours, if I remember rightly. In general usually one gives the working week without the intervals, that is the net working hours.

Q. Mr. Weiss, if I understand correctly, the 72 hours aren't mentioned in connection with the concentration camp inmates and foreigners at all, but apparently it's the working hours for German employees or do I misunderstand?

A. No. The 72-hour week applied naturally to all the employees of an enterprise. I even know that it was prescribed in the ATG for the technical offices, that is, for the white collar workers too. I think it was laid down for Siemens too.

Q. Yes.

A. It was nonsense.

Q. Both may be true, Mr. Weiss, that it was widespread and that it was nonsense, because in practice nothing came of it at all. But here I would just like to clear things up. Is Dr. Reichert giving it with reference to concentration camp inmates or not, because he expressly here only mentions some of the employees with regard to blocked leave?

A. This statement can only refer to the 140 German employees mentioned here because concentration camp inmates hadn't yet arrived as far as I can tell. They are only supposed to be on the way.

Q. It is clear, the text speaks for itself. We now come to Document NI-5204, Prosecution Exhibit 146,² English document book page 52, German page 53, a letter from Dr. Reichert to you from 17 October 1944. It has been submitted because there again concentration camp inmates are mentioned. It states that 100 have arrived.

A. This letter is also connected with the 72-hour week. The Speer Ministry at that time had ordered that in all industrial administrations 30 percent of the officials were to be saved; that is, taken off the job and transferred to the workshops in order to do productive work. The loss was to be made good by going over to the 72-hour working week in the offices too. In the case

¹ Ernst Simon testified as a defense witness. His testimony is recorded in the mimeographed transcript, 8-10 September 1947, pages 6902-7011.

² Reproduced in B, above.

of this order, if I remember rightly, especially stringent penal provisions were made, and so I wrote a letter to the gentlemen of Linke-Hofmann and Busch-Bautzen who were concerned and asked them to let me know whether it was possible to carry this out at all, and I presume that this is the answer which Dr. Reichert sent me.

In it he explains that he has already gotten in touch with the armament division in order to get an exception, an official exception approved for Busch-Bautzen. As reason he said it was impossible to cut down the administrative staff because the Bautzen plant has received additional production quotas, that is, they were to increase production, and I suppose that this was connected with the loss of railroad cars in the western territories, and here he also mentions at the end the allocation of concentration camp inmates which had been announced. He said that an advance detachment of a hundred men had arrived.

Q. Mr. Weiss, I think that's just a statement but more important in this connection I think is his remark on the first page. Have you got it?

A. "On the other hand we are building up"—

Q. And this makes the connection about the Groeditz railroad car factory understandable?

A. You mean this sentence, "On the other hand we are just in the process of building up, as we expect 800 people from the concentration camps for whom technical, supervisory and administrative personnel is required." That is for the additional production these people were to produce.

Q. Is it correct that he means that more administrative personnel is needed because of the additional burden created through the allocation of concentration camp inmates?

A. Yes, and I understand it like this: an increase in production.

Q. That was the other reason that you already mentioned.

A. Which I already mentioned, yes.

Q. The secretary has been kind enough to let me have the original of Exhibit 145 and I would like to show it to you, Mr. Weiss, to see if you can tell from it when it was received and whether you initialed it?

A. First of all, I would like to say that this is the monthly report such as we received every month from Bautzen. There is no stamp to say when it was received. I don't think it is possible to tell when it came in.

Q. It is initialed by anybody?

A. No, it is not, even by me; it is not initialed by anybody.

MR. ERVIN: If Your Honor please, there are no initials on the cover page. There are some notes in handwriting throughout

various pages of the report. While the exhibit is here we might have these identified. I don't know what importance it has.

PRESIDING JUDGE SEARS: What is the number of this document?

DR. SIEMERS: Exhibit 145, a long report—

PRESIDING JUDGE SEARS: We have it.

DR. SIEMERS: Where only excerpts from seven and eight pages are given. That is why I asked for the original.

DEFENDANT WEISS: I see here that I must have seen the report because on page 4 there is a note in my handwriting, but one can't tell on what date it was received, and I know at that time reports came in several months late.

* * * * *

Q. Then we come to three exhibits in document book 5-B, Document NI-3585, Prosecution Exhibit 172, Document NI-3586, Prosecution Exhibit 173, and Document NI-3587, Prosecution Exhibit 174,¹ on pages 9 and following in the German and page—excuse me please, but I can't give you the page numbers in the English document book. It must be fairly near the beginning, probably in the neighborhood of page 9.

PRESIDING JUDGE SEARS: It seems to be page 8. Is it Exhibit 172?

DR. SIEMERS: Yes.

PRESIDING JUDGE SEARS: That is on pages 8 and 9.

DR. SIEMERS: Exhibit 172 is a file note written by you, Mr. Weiss, and it concerns Linke-Hofmann Werke, the rationalization of railroad car construction. I think you ought to explain this document. There is a certain connection with the next document, that is Exhibit 173, and so on.

DEFENDANT WEISS: In order to save as much time as possible, it would be best to discuss Exhibits 172 to 175 inclusive.² These documents refer to a single case when I took part in negotiations about labor assignment for a plant in the Concern, and I myself conducted them. It is an exceptional case here, about which I'd like to say the following. Linke-Hofmann in 1936 and 1939 had built a large new work shop, the so-called Shop 7, which was to be used specifically for the assembly line production of railroad freight cars. There was nothing like it in Europe. The shop could turn out one hundred railroad freight cars per day, so that is about 30,000 per year. The building of this shop had been carried out at the strong recommendation of the Reich Railways. The

¹ These documents are reproduced in B above.

² The last mentioned exhibit, Document NI-3617, Prosecution Exhibit 175 is also reproduced in B above. It is a file note of 8 October 1942 from defendant Weiss to defendant Flick and the last of four documents reproduced herein on the question of expansion of the production of the Linke-Hofmann plant and related manpower requirements.

Reich Railways had even in part supplied the materials to build the shop from their own quotas. When I took on my job in Berlin this shop was about to be completed. Production was started then, the summer of 1940, and suddenly it turned out that the Reich Railway, contrary to its former policies, was not in the position to give orders for production in this shop; that is, orders which would have enabled us to use the capacity of this shop.

Q. Why weren't they in the position?

A. The Reich Railways during the first years of the war only received a very limited iron quota, and in addition it distributed the few orders it could place among all the many railroad car factories which had been supplying them for many years, although a greater concentration of production among a few efficient factories would certainly have meant economizing in labor and lowering of costs to the advantage of the Reich Railways. During the first winter of the war in Russia it turned out how fateful the neglect of replacement parts over many years in the way of locomotives and railroad cars was to be. Minister Speer and Saur in the Armaments Ministry set up the Main Committee Rail Vehicles, with the help of a very energetic man, Director Degenkolb. The whole of the locomotive and railroad car industry was thereby put under the dictatorship [Diktat] of this man who was not an expert, but who had the confidence of Speer and Saur. Accidentally I had happened to meet Mr. Degenkolb earlier on some sort of negotiations concerning machine construction. The first document, Exhibit 172, is the extract of a discussion which I had with the Vorstand of Linke-Hofmann in February 1942. It shows that we agreed that the Reich Railways must be persuaded to issue its orders only to the most efficient firms, and so create prerequisites for rationalization. It was a little difficult for the Vorstand to propagate the idea among the government agencies in Berlin because the economic interests and business interests of competitive firms were strongly affected by this idea, and so I undertook to approach these agencies with our idea.

The second document, Exhibit 173, is a copy of a letter of 28 March, 1942, written by the Linke-Hofmann firm to the Main Committee which was passed on to me by the Vorstand because I happened to meet Degenkolb for lunch. We often ate in the same hotel. I was able to draw his attention to certain unbearable conditions described here. This document shows that planned economy is a very difficult sphere and that it can lead to serious errors if any one of the agencies concerned lets the thing down. In this case the labor office had not provided the labor it had promised in time. As a result danger arose that the manufacturing program of the Main Committee would not be fulfilled and enormous

quantities of raw material would be collected at the Linke-Hofmann Werke. Both could have very bad consequences for the Vorstand if they could not prove that they had done everything possible to remove this state of affairs. Just as it was punishable to request too many workers it was also punishable to order more material than one could use. One always had to order material 6 months ahead, because that was the delivery schedule of the rolling mills. The orders for material and the requests for labor had to be in line with the production quota of the Main Committee, respectively the Ministry. If there was too much material and no workers, or no material and too many workers, both of these cases were severely punished if the Vorstand could be shown negligent. And, in addition, the main committee or Herr Saur himself would make them personally responsible for any loss of production.

Q. Before we go to the next document, I suggest to the Court, that we recess.

PRESIDING JUDGE SEARS: It is time to recess and we will recess until Monday morning at 0900.

(Recess)

PRESIDING JUDGE SEARS: Dr. Siemers, you may proceed.

DR. SIEMERS: Thank you. May it please the Tribunal, I would like to continue discussing documents with the witness Weiss, the documents which concern the Linke-Hofmann Werke. These are in document book 5-B, Exhibits 172 to 175, page 8 of the English book and page 9 of the German.

Mr. Weiss, the prosecution has submitted these documents in order to show that in this case you were personally active in trying to get Berlin agencies to allocate workers to you and in getting orders for railroad cars; that is, the workers were also for railroad car building. I would like you to tell us how you came to be doing this and what your reasons were.

DEFENDANT WEISS: I have already explained the reasons why the Vorstand of the Linke-Hofmann Werke sent me a copy of the letter of 28 March 1942.

Q. Excuse me, this is Exhibit 173?

A. Yes, 173.

Q. Page 10 of the English book.

A. This is a letter from the Vorstand of the Linke-Hofmann Werke to the Main Committee Rail Vehicles. The next document, Exhibit 174, shows the laying down of the first so-called war program. It gives the figures both for the Breslau plant of Linke-Hofmann Werke and for Bautzen. For Breslau it provides for 900 freight cars per month. This quota in no way corresponded to

the capacity of the Linke-Hofmann Werke. It did not suffice to make economic production possible. It was a special case, which Herr Flick has already mentioned in his testimony; that is, the plant was not suffocated by the wartime orders of the Armament Ministry, which was usually the case, but here the order was too small, because the planning office had not taken into consideration the new capacity of the plant. Herr Flick has already pointed out that in such exceptional cases we considered it our duty to press for additional orders, just in order to make possible the economical exploitation of the capacity available. The monthly supplies provided here corresponded to the capacity of nine working days. In addition, the labor office had sent only half the prisoners of war they had promised us for a long time. This unsuitable program had been set up by a certain Herr Streitz. He was the head of the Special Committee for Railroad Cars in the Main Committee for Rail Vehicles; that is a suborganization of the Main Committee.

Now Degenkolb himself had set up a new subplan. This is Document NI-3617, Prosecution Exhibit 175; that is the next document. According to this, now, Linke-Hofmann Werke were to supply 1500 freight cars per month instead of the 900 previously mentioned. Dr. Putze, technical head and manager of Linke-Hofmann, came to Berlin in order to discuss the subprogram and its details with Degenkolb. As I knew Degenkolb personally, I accompanied him on this visit in order to make the discussion a little easier for him. On this occasion we were told, and it was a surprise for us, that suddenly the Munitions Ministry had decided to put the building of railroad cars in the lower priority rating, that is, it was given rating III instead of rating II. As a result, the dispositions of the Vorstand were reversed to a large extent. If one reads through the document one will find that the further negotiations described in it only serve to clear up the important question whether, in spite of the priority rating III, it was still possible for the Linke-Hofmann Werke to get the labor that was supposed to have been allocated and that it needed for a production of 1500 freight cars per month. The Vorstand had to know this in order to make corresponding arrangements.

On the evening after the discussion with Degenkolb, Dr. Putze had to return to Breslau. At his request I attempted, on the next day, to clear up this question. As far as I know this is the only occasion when I had any dealings connected with labor questions or the allocations of labor and where I negotiated for the Concern with any Berlin agencies and, as I said, this was a special request of the Vorstand. The purpose of the negotiation was the rationalization of the building of railroad cars or, tentatively to establish

whether it would be possible to do this at all; so there was a well-founded commercial interest for us in clearing this matter up and this was something we had to do. Both the Vorstand and myself only considered the assignment of Russian prisoners of war. That is what we had in mind because, as I have already said, we had had very good experience with them in Breslau. The prosecution, in submitting this document, also pointed out that one could assume from it that I knew for certain to what agency it was necessary to turn in order to discuss labor questions in Berlin. With reference to this point I would like to say that Herr Muecke was a colleague of Degenkolb, whom Degenkolb himself had called in on these negotiations and I got to know him through Mr. Degenkolb. Amtsrat Rozanski was in the Labor Ministry, and the expert to whom Degenkolb then referred me. He asked me to go to see him in order to clear up the question and Herr Rozanski too I only met on this occasion.

* * * * *

Q. Have you ever thought whether compulsory labor conscriptions are admissible?

A. I have already said, if you had asked me whether I considered them admissible, and whether I approved, I would certainly have said that personally I did not approve simply for practical reasons as well as for humanitarian ones; but nobody ever asked me. Whether they are legally admissible, I don't know. I am not a lawyer, but I would have had to assume this if the German Government or the German agencies had carried them through and published them in the form of laws.

Q. Mr. Weiss, this subject is not without importance, and so I'd like to ask you to go into a little more detail and to tell the Tribunal whether, shall we say, the workers came voluntarily, and what, if one thought over the question carefully, seemed to indicate that they did not. Perhaps, you'd first of all briefly describe what things seen from your viewpoint seemed to indicate that foreigners came to work voluntarily?

A. There were no doubt quite a number of circumstances and reasons which made it seem perfectly reasonable that the foreigners from the occupied territories, too, had come to Germany voluntarily. With the beginning of the Russian campaign the war had taken on a completely different aspect. Extensive circles in the occupied territories in Norway, in Denmark, in Holland, in Belgium, and France seemed, during the years 1942 and 1943, after all, to feel that to support the German war against Russia was a European affair. For instance, we heard that Danish, Belgian, and Spanish volunteers were fighting with the German troops on the eastern front. It was a well-known fact that the French Gov-

ernment was working in close collaboration with the German Government. In Latvia, Lithuania, and Estonia the German troops had been greeted as liberators, and they fought on together with them. From the Ukraine one also heard of a great sympathy on the part of the population in favor of the war against Soviet Russia. May I remind you of the name of General Vlassov. A school friend of mine, who came home on leave from the eastern front and who was serving with a cavalry regiment, told me that he was now in charge of a brigade of Cossacks who had reported voluntarily to fight against the Soviet Russians. The second reason was that I was told especially by Dr. Kuettner and Walter Tengelmann that the Russians before their retreat had to a large extent destroyed the industrial plants or dismantled them, so that in the industrial areas there was in actual fact a considerable amount of unemployment. The third reason was that Sauckel and Ley again and again announced that these people were coming to Germany voluntarily in order to get to know German conditions and in order to work in Germany, and one also read in the publications, for instance, in the social-political information bulletins of the Reich Association Coal [RVK], that provision had been made for the families of these workers in cases where the families remained behind. Roughly, I could say that the foreign workers got leave in Germany. They could go out when they wanted. You saw them all over the place, on the street, and everywhere they were active at work; every builder, every gardener had foreign workers. A few were employed as barbers, you were quite often attended by a foreign assistant, the sleeping car attendants, the waiters in the restaurants and hotels, even domestic servants in private households were foreign workers; and in the case of all these people one did not have the impression that they considered themselves slaves. I talked to the foreign workers occasionally who were employed in my plant, and not one of them ever told me that he had been under any duress.

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CROSS-EXAMINATION

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MR. ERVIN: Now, in connection with your testimony on Linke-Hofmann, you mention several times that Dr. Putze * had some connection with the Speer organization. What was that connection?

DEFENDANT WEISS: Dr. Putze had quite a reputation in the Speer Ministry. On the one hand he was an Armament Chief

* Putze, member of the Vorstand of Flick's Linke-Hofmann firm, signed Document NI-35686, Prosecution Exhibit 173, reproduced in B above, one of four related documents involving the Linke-Hofmann expansion discussed during the direct examination of defendant Weiss.

[Ruestungsobmann] for Lower Silesia which was one of the many local positions established by the Armament Ministry. What were the tasks of the Ruestungsobmann I could not explain to you now, because the organization of the Speer Ministry was rather complicated; but as far as I know his duty was to supervise in some manner the armament plants of the whole district and perhaps to support their claims towards the Speer Ministry and to represent them, but I don't know any details about that. Furthermore, Dr. Putze had a certain part in the Main Committee Rail Vehicles. He had introduced himself very well with Degenkolb by the fact that he had taken a very decisive influence on the construction of the so-called lightweight war freight car which I have already mentioned here once. The construction for this freight car largely came from the Breslau plant, that is from Dr. Putze, and Degenkolb at the time was very happy to have this active support, and Putze in the subcommittees of the Main Committee had a certain part to play; and when later Degenkolb also became chairman of the so-called Special Committee A-4, that was the committee dealing with the production of the V-2 weapons, well then, he also had Mr. Putze join this committee.

Q. Were there other officials, employees, or engineers of Busch-Bautzen or Linke-Hofmann who served similarly on these committees and subcommittees?

A. I wouldn't know that. Dr. Reichert of Bautzen was very reserved in this respect, and he was only interested in his own plant; and toward the outside and in things of a general economic nature, he did not play a large part. Of course, I deem it possible that Dr. Putze would use one or the other of his coworkers for these tasks, but I couldn't give you any details.

Q. Is this subcommittee of which Dr. Putze was a member the committee which laid down the plan for the use of concentration camp workers in railroad car building?

A. No. I don't think that this special committee had anything to do with this, or the subcommittee. At the time I only heard that the Main Committee Rail Vehicles had dealt with a general allotment. Today I know a little more with respect to that question because now here I have got some information on how the whole matter developed. There I heard that the suggestion had been made by the Reich Railways at the time. May I repeat that these subcommittees and so on, and Putze's work in these subcommittees, dealt only with technical matters, matters of constructive nature, that is, matters of the designing work, and also questions of process of production and methods, etc.

* * * * *

VIII. SPOILIATION—COUNT TWO—THE ROMBACH CASE

A. Introduction

All the defendants except Terberger were charged under count two of the indictment (sec. I, above) with war crimes and crimes against humanity by criminal participation in plunder of public and private property, spoliation, and other offenses against property in countries and territories under Germany's belligerent occupation after 1 September 1939. The specifications of the charges involved the Rombach enterprises in Lorraine, France; the "Vairogs" plant in Riga, Latvia; and other properties in both occupied western Europe and occupied eastern Europe. The Tribunal, in its judgment (sec. XI), acquitted all the defendants under count two except Flick, and Flick was convicted only upon the charges with respect to the Rombach plant in Lorraine.

This section contains selections from the evidence offered principally in connection with the charges concerning the Rombach plant. This evidence is arranged as follows: extracts from the deposition and testimony of prosecution witness Laurent (sec. B); contemporaneous documents (sec. C); and extracts from the testimony of defendants Flick and Burkart (sec. C and D, respectively).

Extensive evidence concerning charges of spoliation in various parts of occupied Europe is reproduced in later volumes of this series devoted to other trials; the Farben case (vol. VIII, sec. VIII); the Krupp case (vol. IX, sec. VII); and the Ministries case (vol. XIII, sec. X).

B. Deposition and Testimony of Prosecution Witness Laurent

PARTIAL TRANSLATION OF DOCUMENT NI-5396 PROSECUTION EXHIBIT 512

DEPOSITION OF JACQUES LAURENT, DIRECTOR GENERAL OF THE "SOCIÉTÉ
LORRAINE DES ACIÉRIES DE ROMBAS", 21 DECEMBER 1946 *

Deposition [Procès Verbal]

In the year one thousand, nine hundred and forty-six on 21 December.

We, Charles Gerthoffer, Deputy of the Public Prosecutor at the Tribunal de la Seine [Tribunal, Department Seine] detailed to the International Military Tribunal for War Crimes, assisted by Mr. Laurent Clement, age 25, on official duty with the above Tribunal, who has sworn to carry out faithfully the duties of court recorder with which we have entrusted him, being on official duty in Paris;

In view of the investigations which are taking place for the purpose of discovering the actions of the directors and managers of the Flick firm;

Summoned one Jacques Laurent, age 56, administrator and Director General of the "Société Lorraine des Acières de Rombas," residing in Paris, 23 Rue D'Aumale, to appear before the Tribunal, who, having sworn to tell the whole truth and nothing but the truth, deposes as follows:

By the Treaty of Frankfurt, victorious Germany had cut off from France, Alsace and a part of Lorraine, but had left her the regions of Longwy, Briey, and Nancy, whose riches in iron ore were not yet known.

After 1871, with the development of their heavy industry, the Germans suffered inconvenience from the insufficient reserves of iron ore in that part of the iron fields which they had allocated to themselves (Department of the Moselle). It is public knowledge that one of the war aims of Germany in 1914 was the annexation of the mining district of Briey. The defeat of 1918 put an end to these ambitious aims, and instead deprived Germany of any share at all in the ores of Lorraine.

In June 1940, thinking herself victorious, once and for all, Germany immediately took up her plans again; she considered the Department of the Moselle (together with the two departments of Alsace) as simply reincorporated into the Reich. It is to be

* Extracts from Laurent's testimony concerning this deposition and related matters are reproduced immediately below.

noted that the steel production of this department represents approximately one-third of the total steel production of France.

The Department of the Moselle with the adjacent German territories formed a "Gau" under the direction of Gauleiter Joseph Buerckel in Saarbruecken, who urged on the assimilation with all his might.

The big industrial companies were dispossessed of all their movable and immovable property situated in the Moselle, without receiving any compensation. Their personnel suffered numerous forms of ill-treatment, e.g., expulsion, arrest, imprisonment, seizure and sale of their movable property, etc.

The Société Lorraine des Aciéries de Rombas" was organized on 26 November 1919, at the liquidation of German property, to act as purchaser of the mines and factories of the German company Rombacher Huettenwerke [Rombach Steel Works]. The property of the latter, situated in the Department of the Moselle and liberated by the Allied victory in November 1918, had been sequestered by the French Government in January 1919.

By virtue of Articles 74 and 243 of the Treaty of Versailles, the proceeds of the liquidation of German property by the French Government were credited to Germany at the Office of Private Property and Interests. The German citizens who were dispossessed by this measure of liquidation were to receive an indemnity directly from their government.

The capital of the new French company (150 million Francs) was subscribed almost entirely by the French metallurgical companies which had suffered losses as a result of the war 1914-18: Société Aciéries de la Marine, & d'Homécourt, Aciéries de Michelle, blast furnaces of Pont-à-Mousson, etc.

The new company took possession of the plants on 1 January 1920 and exploited them until June 1940.

The company exploited the mines of Rombach, Sainte-Marie and Rosselange whose areas cover 1,764, 645, and 252 hectares, respectively, and contain reserves of approximately 150 million tons of ore. It exploited the Rombach Steel Works comprising 8 blast furnaces with a daily production from 220 tons to 380 tons of cast iron. It exploited one Thomas oven, one open hearth oven, one electrical steel oven, and ten rolling mills. It also exploited a steel work at Mezières-les-Metz containing four blast furnaces.

The total production of the plant was approximately 1 million tons of steel per year, that is to say, approximately 8 percent of the total French steel production. It employed normally from six to seven thousand workers and some six hundred [office] employees.

Furthermore, the company had participations in several enterprises both in France and in other countries; it was thus enabled

to secure for itself sources of supply and outlets for the export of its products. Its chief participations were in the Société des Ciments Portland de Rombas at Rombach (Moselle); Société des Constructions Métalliques de la Vallée de l'Orne, at Maizières-Metz (Moselle); Charbonnages de Faulquemont (Moselle), at present nationalized, Société des Mines d'Anderny-Chevillon, (Meurthe-et-Moselle), etc.

During the occupation these companies suffered the same fate as the Société Lorraine des Aciéries de Rombas.

By order of the French military authorities, the iron and steel plants of Lorraine were evacuated on 14 June 1940 before the advance of the German armies. In order to prevent their exploitation by the Germans, the most important parts of the principal machines of Rombach were transported to Saint-Chamond (Loire).

I returned to Rombach in July 1940 to see what had happened to the plants. I found my office occupied by German soldiers and I was kept a prisoner for some time until the material which had been evacuated to Saint-Chamond was brought back to Rombach. I left Lorraine, and I only went back there for a few brief visits until I was expelled once and for all at the beginning of 1942.

During the occupation, the condition of the establishments of the company was as follows:

With respect to the iron mines, at the beginning of July 1940, the German Government designated Mr. Raabe as Plenipotentiary General for the Mining of Iron and Ore [Generalbeauftragter fuer Eisen-und Erzgewinnung].¹ Actually Mr. Raabe had under his jurisdiction all the iron mines of the Moselle, and in particular the mines of Rombach. This organization did not experience any further change until the liberation.

With respect to the plants, at the beginning of July 1940, Mr. Hermann Roechling was designated by the German Government as Plenipotentiary General for Iron and Steel [Generalbeauftragter fuer Eisen und Stahl] and he administered the Rombach plants in the capacity of appointed administrator [kommissarischer Verwalter].² At the head of the plant he placed a deputy commissioner who directed it.

From 1 March 1941 on, the management of the plants was withdrawn from Mr. Hermann Roechling by the German Government, and was given to Friedrich Flick, 12 Bellevue Strasse, Ber-

¹ Karl Raabe was chairman of the managing board of Flick's Mazhuetta and a member of the managing board of Flick's Mittelstahl firm.

² Roechling was tried as a war criminal before the General Tribunal of the Military Government for the French Zone of Occupation in Germany. The indictment, judgment, and judgment on appeal are reproduced as appendix B, Volume XIV, this series.

lin. The latter organized under the name of Rombacher Huettenwerke a company which took over the exploitation of the Rombach plants. This step was given a legal form by means of a lease contract [Betriebsueberlassungsvertrag], made by Regierungsrat Wenner, general sequestrator of enemy industrial property, with Rombacher Huettenwerke. This organization lasted until the liberation.

A letter of General von Hanneken, who was attached to the Reich Ministry of Economics, stipulates that at the time of the signing of the peace treaty companies like the Rombacher Huettenwerke will be given the opportunity to acquire the factories, the administration of which is entrusted to them,* which clearly shows the intention to appropriate these industrial enterprises definitely for the profit of Germany.

As for the French personnel, and chiefly the engineers and supervisory personnel, the Germans expelled all French persons who were not originally from the Department of the Moselle, and also those inhabitants of Lorraine who were suspected of French sympathies and replaced them by an exclusively German managing and supervisory personnel.

In this way, 48 engineers who were mobilized in June 1940 were not able to return to Lorraine. From 1940 to 1944 the Germans expelled 266 persons who were employed in the plants. They deported to Germany 327 of whom 174 have not come back; finally there were 818 enlistments in the Wehrmacht, and of these enlisted men 105 did not return.

The Rombacher Huettenwerke utilized as workmen in its plants 697 Ukrainian men, 1,152 Ukrainian women, and 193 Russian prisoners of war.

At the time of the liberation, the damages in the installations were considerable, not only because of the destruction wrought by the war, but also because of the wear and tear on the materiel which was used heedlessly by the Germans, and because of the removal [enlèvement] of ore from the mines.

The damages sustained can be evaluated (according to their values at the end of 1945) as far as actual war damages are concerned, at 280 million Francs; in respect to spoliation, including the deterioration of buildings and equipment, unpaid wages, discrepancies in inventories, the prevention of utilization, at approximately 490 million Francs.

As I have already pointed out, the ownership of the installations of the Établissements de Rombas had been transferred to the French Government in proper legal form by the German Government in execution of the clauses of the Treaty of Versailles.

* See Document NI-049, Prosecution Exhibit 534, reproduced in part in C below.

Under these conditions, Germany is not entitled to avail herself of a dispossession which is claimed to have been imposed on her arbitrarily after the war of 1914-18, in order to justify the measures of spoliation which she used in 1940 with regard to the Société des Aciéries de Rombas.

I have never had any contact with Friedrich Flick, and so I am unable to state precisely what part he played in this spoliation. It is known to me, however, that the installations at Rombach had been assigned to him during the month of March 1941 and that his son [Otto Ernst Flick] played an important part there in the management. The latter was billeted at Rombach in the house of the director general of the steel works.

On interrogation.—After a few hesitations on the part of the military administration at the beginning of the occupation, the civil administration was set up just before the end of 1940. The intention of the Reich to effect a deliberate annexation was now manifest, and so far as the Rombach Steel Works were concerned, I had the definite impression that a dispossession in favor of the Reich was the plan contemplated. This conviction was gained from the wholesale expulsions of engineers, employees, and workmen of French nationality, and from the appropriation of their movable property by the administration of the Reich.

The management of the Société des Aciéries de Rombas was sent away from the establishment without any orders being drawn up or financial statements transmitted. It is true that the Germans made an inventory, but they did so unilaterally, and as soon as its findings were made known to us, we made a protest.

The Société des Ciments Portland de Rombas, which was distinct and separate from the Société Lorraine des Aciéries de Rombas, underwent the same fate and its plants and factories were deliberately amalgamated with those of the Rombach Steel Works; although, I repeat, two distinct companies were involved.

On interrogation.—In my deposition I alluded to the letter of General von Hanneken, addressed to Ernst Poensgen, according to which the Rombach Steel Works were to be sold at the time of the future peace treaty to the Flick Concern.

I have never had the original of this letter in my hands, nevertheless, during the occupation one of my employees had this copy sent to me in order to keep me informed of what was going on in the plants of which I am in charge. I have no reason to doubt the truth of the facts described in this letter. I will submit to you a copy of the copy which I received myself.

On interrogation.—When I arrived in Lorraine, at the beginning of July 1940, with the intention of seeing what was going on and of paying the workmen who had not been paid on account of the

events of the preceding month, I was arrested and guarded for 3 days by armed men. I was reproached with being a French officer, with having removed from Saint-Chamond some pieces of machinery which were essential for the operation of the plant, and with not having been able to pay all the workmen on account of the closing of the banks during the previous month.

After 3 days I was brought to Saint-Chamond in a German military automobile and under the guard of armed soldiers. They forced the managerial staff of the plants of Saint-Chamond to hand over those pieces of machinery which were indispensable for the operation of the Rombach steel works. I was set at liberty only upon the delivery of these pieces of machinery.

On interrogation.—Saint-Chamond at that time was in the unoccupied zone, and I was brought there under the escort of armed German soldiers.

On interrogation.—It is true that the Société des Aciéries de Rombas had in its possession 10 barges as part of its transportation matériel. A short time before the approach of the Germans, these barges were loaded with material and were sent out on various French canals. A little later, in order that they should escape from the Germans and with the approval of the French Administration of the Ponts et Chaussées,* I caused the names of these barges to be changed. They had been called Rombas 1, 2, 3, etc.—I gave them the Christian names of my ten children. It is possible that these barges would have escaped completely from the Germans, but one of the company's employees, a naturalized Frenchman of German origin, who wanted to stand well with the German authorities who had just set up their administration in Lorraine, took it upon himself to have the barges handed over, and he made every effort to find them. The man in question was Kruse. The military commander in chief in France gave us the order to send back the barges to Rombas. We did not carry out this order and we argued the point alleging that the barges were not essential to the operation of the factory and that they were not located in Lorraine at the time of the arrival of the Germans.

The Armistice Commission was notified of the incident. It ordered the delivery of the barges which had been discovered in the meantime, thanks to the activity of the said Kruse, and which were being held up by the military police. In the face of compulsion we were obliged to give way, and thus on 23 July 1942 (after approximately 2 years of negotiations), we were forced to surrender the barges.

I submit to you furthermore a photostat of the deposition [Procès-verbal] in both French and German which was made out

* Bridges and highways.

on 23 July 1942 between my legal representative, M. Loisy, on the one hand, and on the other by the representatives of the Rombacher Huettenwerke including the above-mentioned Kruse, a representative of the Wehrmacht and a representative of the National Office of Navigation.

In the *procès-verbal*, in accordance with my precise instructions, M. Loisy stated that the barges were delivered only by virtue of force and coercion, as a result of the order emanating from the Wehrmacht.

The *procès-verbal*, of which I submit a copy to you, refers only to three barges. I have been unable to find the *procès-verbaux* which were drawn up for the others, but I can state affirmatively that their delivery was effected in the same manner.

We will add that after comparing the photostat of the *procès-verbal* with the original, we find that it gives a correct statement of the facts, and we return the official report to M. Laurent in order that he may use it as he thinks fit.

On interrogation.—Our company had a certain number of bonds in circulation (approximately one hundred million). The payment of interest on these bonds was guaranteed by certain big French banks, whose head office is located in Paris. After the *de facto* annexation of Lorraine, our company, which, although dispossessed of its installations, continued to attend to its affairs in France, had guaranteed the payment of interest on its bonds. But with respect to the bonds located in Lorraine, we were unable to guarantee their payment of interest. Besides this, the Germans had taken those which they had been able to seize as enemy property and had transferred them into Germany, as certain bondholders have informed me.

On interrogation.—Although our company was dispossessed of its principal establishments in Lorraine, certain plants of lesser importance still belonged to it in other parts of France, a fact which enabled it to continue to operate and not to become completely dormant like other Lorraine companies which had no properties in other parts of France.

Reads, confirms, and signs.

[Signed] LAURENT

[Signed] C. GERTHOFFER

[Signed] ALLEMAND

EXTRACTS FROM THE TESTIMONY OF PROSECUTION WITNESS
JACQUES LAURENT *

DR. SIEMERS (counsel for defendant Weiss) : May it please the Tribunal. Today I had intended to continue with my document

* Complete testimony is recorded in mimeographed transcript, 14 October 1947, pages 8696-8748.

book but in the meantime Mr. Ervin and Dr. Kranzbuehler have asked me to call the witness Laurent this morning, if the Tribunal approves. M. Laurent has arrived and has comparatively little time and in view of this fact I have, of course, agreed. If the Tribunal pleases, I will withdraw and let Mr. Ervin and Dr. Kranzbuehler continue.

PRESIDING JUDGE SEARS: Mr. Marshal, will you summon the witness Laurent?

Mr. Interpreter, will you raise your right hand? Do you solemnly swear in the presence of the everliving God, that you will truly interpret between the witness, the defendants, the counsel, and the Court?

INTERPRETER FREDERICK TREIDELL: I so swear.

(Jacques Laurent, a witness, took the stand and testified as follows.)

PRESIDING JUDGE SEARS: Mr. Witness, will you raise your right hand and repeat the oath after me? You swear to speak without hate and without fear, to say the truth, all the truth, only the truth, and so you swear?

(The witness repeated the oath.)

PRESIDING JUDGE SEARS: Now you may be seated. The questions will be translated to you by the interpreter.

*CROSS-EXAMINATION*¹

DR. KRANZBUEHLER (counsel for defendant Burkart): Mr. Laurent, you made a deposition² before M. Gerthoffer. Did you volunteer to make this deposition, or how did it come to be made?

A. I was asked to make this deposition.

Q. And did M. Gerthoffer tell you at the time that current investigations were being made about the activities of the leaders [Leiter] of the Flick enterprise—is that correct?

A. I think that that is correct.

Q. Were you further told what the real aim was—that the point at stake was a war crimes trial, where a death penalty could be imposed?

A. I was informed that it was an investigation against German industrialists. However, I did not know at the time that the possibility of a death penalty existed.

Q. In your deposition you said that you did not know Mr. Friedrich Flick. Do you know any of the other gentlemen sitting opposite you in the dock here?

¹ There was technically no direct examination in this instance where the witness appeared for cross-examination with respect to the deposition mentioned in the first question of the cross-examination. This was often the case in the Nuernberg trials, although many times the party which had offered the deposition did ask questions on direct examination concerning the accuracy of the deposition and any additions or modifications which the witness desired to make in his deposition.

² Document NI-5396, Prosecution Exhibit 512, reproduced in part immediately above.

A. No; and I confirm again that I have never seen Mr. Friedrich Flick.

Q. If I understand you correctly, you had dealings only with Mr. Otto Ernst Flick whom you do know personally, is that correct?

A. I did have connections with Mr. Otto Ernst Flick. The relationship between us both was absolutely proper. I would not say that they were exactly friendly; they started through our common work at the factory of Rombach.

Q. Can you tell me in more detail of what these proper contacts consisted? For instance, did you visit Otto Ernst Flick at Rombach or did he visit you at Paris?

A. I have had the opportunity of seeing Herr Otto Flick at Rombach when I had the opportunity of going there to the factory from which I had been ousted. I also saw him in Paris several times when he came to discuss matters with me there.

Q. These were business matters that you discussed together?

A. Yes, those were business matters.

Q. Otto Ernst Flick, therefore, kept in touch with you, as former general manager of Les Aciéries de Rombas.

A. That is correct. However, I have to rectify that it is not correct, at any period, to call me the "former" general manager of the Rombach steel works because I have always been general manager of the Rombach Steel Works and of the Société.

Q. I am grateful to you for this correction. You therefore agree with me that you were never released from your job as general manager of Les Aciéries de Rombas?

A. It is quite correct if you say that at no time was I dismissed from my position as general manager of the company of the Rombach Steel Works. I was just ousted from the Rombach Steel Works.

Q. I will come to this point in more detail later, but first of all I would like to hear from you more about your relationship with Otto Ernst Flick who was the representative of Rombacher Huettenwerke as far as you were concerned. Did Otto Ernst Flick ever talk to you about the inventory that was made of the stocks which he found in Rombach?

A. I cannot remember having had any discussions with Mr. Otto Ernst Flick concerning this inventory of the stocks they found when they came. I know that this question was debated when the Germans first came to Rombach with the persons administering confiscated property at that time; but I have no recollection of having discussed it with Mr. Flick.

Q. By administrators I suppose you mean Mr. Roechling and Mr. Jakobs, who was appointed by him?

A. That is correct. I am, first of all, referring to Mr. Goedecke,

who was one of the assistants of Mr. Roechling and who was mainly in charge of administrative matters.

Q. So you discussed the inventory with these gentlemen?

A. That is correct. We talked about it with them.

Q. Is it not also correct that later on, too, under the administration of the Flick company, your bookkeeper, M. Remond, was in Rombach several times and examined papers there and discussed inventory matters?

A. If I remember rightly, that is correct.

Q. So one cannot say that the Rombacher Huettenwerke refused in any abrupt way to maintain connections with you or that they refused to inform you about the state of affairs, in the knowledge of which you had a justified interest?

A. That is quite correct.

Q. M. Laurent, in your deposition before M. Gerthoffer, you list a series of measures which at first sight appear to be measures taken by the German Government. I would like to discuss these various points with you in order to see to what extent the Friedrich Flick Kommanditgesellschaft or the Rombacher Huettenwerke participated in these measures. I will, therefore, discuss the various points of your deposition which I believe lies before you in the French language. In your deposition you start with a historical introduction which goes back to the Treaty of Frankfurt of 1871 and then continues, by way of 1918, up to 1940. I suppose you will agree with me that these historical questions are things with which the Friedrich Flick Kommanditgesellschaft had nothing to do.

A. I certainly agree.

Q. You then continue to say that the big industrial companies in the Moselle district were expropriated without any sort of compensation. I would assume that the expression expropriation is not understood in its correct legal sense by you, because in actual fact no decree of expropriation was ever issued. Do you agree with me there?

A. I couldn't tell you exactly whether I have been using a strictly legal term or not, but anyhow what I can say is that if I say that the large industrial companies in the Moselle district have had their property taken away from them, then that is quite correct, because they actually were chased out of their property and they couldn't even have the benefits of usufructuaries.

Q. Is it not true to say that it was only a matter of confiscating this property, but that as far as the further fate of the property was concerned, no decision had been taken at all, or have you any other information on the subject?

PRESIDING JUDGE SEARS: We understand very well, Dr. Kranzbuehler, that there may be inaccuracies in the use of judicial

terms and no weight will be put, of course, on a layman's use of those words when he frankly states that he does not fully understand the juridicial interpretation of the terms.

INTERPRETER TREIDELL: Excuse me, Your Honor, may I translate the witness' answer for the record?

JUDGE RICHMAN: He hasn't translated the witness' answer.

PRESIDING JUDGE SEARS: Did you translate the answer?

INTERPRETER TREIDELL: No, I did not translate.

PRESIDING JUDGE SEARS: I beg your pardon. I got interested in what the witness had said.

JUDGE RICHMAN: You understand French and the rest of us don't.

PRESIDING JUDGE SEARS: I beg your pardon.

INTERPRETER TREIDELL: The witness' answer was, "I don't know whether we had actually lost the title of property to this company, but if I try to visualize our viewpoint, our impression in 1940, then we really felt that we had lost our property at that time."

PRESIDING JUDGE SEARS: I will be careful not to get ahead of the interpretation again.

DR. KRANZBUEHLER: M. Laurent, is it not correct to say that your impression in Paris, too, was to the effect that as far as the final fate of L'Acieries de Rombas was concerned, a final decision was only to be taken when the armistice was concluded?

WITNESS LAURENT: During the 4 years of the occupation there was nothing that could make us believe that if Germany ever should win the war the seizure of the Rombach Steel Works would not be permanent, but we always had the hope that Germany would not win the war and therefore we always had the hope also that one day the Rombach Steel Works would be returned to us.

Q. It is then correct to say that the fate of Les Acieries de Rombas was to depend on the conclusion of the peace agreement between France and Germany?

A. I think so.

* * * * *

Q. In your deposition you then mention some other measures, expulsions, arrests, imprisonments, confiscation, and sale of furniture, and so on. Can you tell me whether, according to your knowledge, either the Roechling administration or the later administration of the Rombacher Huettenwerke was in any way concerned with these measures?

A. I never heard that Mr. Roechling's or Mr. Flick's administration had anything to do with these expulsions or with these sales of furniture.

Q. Can you not, on the contrary, confirm, M. Laurent, that

Mr. Roechling's administration as well as Mr. Flick's administration made every effort to prevent the expulsions?

A. I owe it to truth to state that at the beginning of their administration Mr. Goedecke and also Mr. Jakobs made every effort in order to either avoid the expulsions or to keep them on the lowest possible scale. I think that that was for reasons of fairness and perhaps also because these people were favorably inclined toward us, but it is also possible that their attitude was dictated by the anxiety lest key workers and key personnel of which they had considerable need in the factory might be taken away from them through these expulsions.

Q. Do you know anything about the personal attitude of Mr. Otto Ernst Flick with regard to these expulsions and the efforts he made to have the number of expellees reduced?

A. I have to say first of all that when Mr. Otto Ernst Flick became the director of the Société L'Acieries de Rombas the big tide of expulsions had already passed and therefore I cannot remember any notable cases of expulsions where the administration would have had the possibility of intervening and of preventing these expulsions. However, when I talked with Mr. Otto Ernst Flick—I have talked with him also with regard to these expulsions—I gained the impression that he was opposed to them and that, had he had the possibility of making efforts to prevent any such expulsions, he would have done so.

* * * * *

Q. Then in your affidavit you mention the founding of the Société Lorraine des Acieries de Rombas, and the acquisition of the Rombacher Huettenwerke by the Société Lorraine in 1919 and 1920. Would you once again list all the plants which belonged to the Société Lorraine?

In your deposition the date of founding is given as 26 November 1919. I would like to get this straight so we don't have any mistakes.

A. That is quite correct. It is true that the Société Lorraine des Acieries de Rombas was founded on 26 November 1919; however, they only took possession of the Rombacher Huettenwerke in January 1920. At that time we only owned the Rombacher Huettenwerke, but as time went on the Société Lorraine des Acieries de Rombas acquired other factories, as for instance, the Société de Franche Comté (wire works) and also holdings in other factories, as for instance, the concrete works of Rombach, the factory for Metallurgic Construction of Faulquemont, the coal mines of Faulquemont, and the Société des Mines of Anderny-Chevillon.

Q. You said in your deposition that these other companies suffered the same fate as the Société Lorraine des Aciéries de Rombas. Do you mean to say by that that they too came under the administration of the FFKG [Friedrich Flick Kommanditgesellschaft], or under the administration of the Rombacher Huettnerwerke, or what do you mean by this same fate?

A. What I meant to say when I said that they shared the fate of the Rombach steel works, was that the first three of these companies, that is the Rombach Concrete Works, and the factory for metal construction of the Rhône Valley, and also the Faulquemont mines, all three of which were in the Moselle Department, were administered by the German authorities; while the fourth company, the Société des Mines of Anderny-Chevillon, which was in the Department of Meurthe-et-Moselle were not actually expropriated in the sense I am giving to this word, but were only placed under German Government control and could not sell their ore to whomever they wanted.

Q. The fate of these other factories and mines was therefore different from the Rombacher Huettnerwerke according to the decision the German Government agencies had taken in each case?

A. That is correct, but if you take, for instance, the concrete works, then it was also the Friedrich Flick Kommanditgesellschaft which took over the administration in exactly the same way as the Meurthe-et-Moselle works.

Q. These are the Rombach concrete works which to all intents and purposes were merged with the steel plant in Rombach?

A. This is quite wrong because the Portland cement company at Rombach, before the German administration, was quite independent of the Rombach steel works, and it is only under the administration of the confiscating authorities, to wit Mr. Flick, that this company was incorporated into the complex of the Rombach Steel Works; but now after the liberation this company has regained its complete independence, and the shareholders of this company are also different from those who held the shares in the Rombach Steel Works.

Q. Is it not correct, M. Laurent, that, for instance, the workers in the concrete factory were always paid wages by the offices of the Aciéries de Rombas?

A. That is not correct.

Q. You said just now this concrete factory had not been incorporated into the Rombacher Huettnerwerke. I was not aware of that. As far as I know they were only administered together?

A. I understood the concrete works had been incorporated, but I had no proof for it.

JUDGE RICHMAN: Were these plants close together?

WITNESS LAURENT: They are very close together, and they are connected by a privately owned railway.

DR. KRANZBUEHLER: It is true, isn't it, that the concrete factory is dependent on the slag of the smelting works?

A. The concrete works are dependent, of course, on the Thomas slag of the steel works, and it would be incorrect to say that these are just waste products of the steel works because this Thomas slag is calculated in the expense of the steel and has a certain value. It is accounted for as such.

* * * * *

Q. In your deposition, M. Laurent, you say that on 14 June 1940, the steel and iron plants of Lorraine were evacuated at the orders of the French military authorities. In the course of those operations, parts of machinery were taken away to Saint-Chamond in order to prevent the Germans from running the plants. Were these parts of machinery also taken away at the orders of the French military authorities, or did you do that on your own initiative?

A. At the time when France was invaded, the French mining authorities issued very detailed instructions with regard to the sabotage of the iron mines and their electrical installations. However, the metallurgical authorities issued only instructions of a very general nature with regard to our task in preventing that, at least for a certain period of time, the factories be used by the Germans; therefore I, on my own initiative, decided not to commit any destructive work in the factory, but rather to take along an important part of an engine which activates the furnaces by blowing hot air into them, and by taking these parts along I actually prevented the furnaces from being reactivated.

Q. You said just now that French agencies issued fairly accurate instructions about the destruction of the mines. These mines were the private property of the Société de Lorraine, weren't they? Did you feel compelled to carry out these instructions given by the French authorities?

A. It is quite correct that the mines belonged to the Société and were private property; however, first of all, you have to realize that in France, already before that period, the iron mines were submitted to a much more severe control than the factories were and are. After some time the mining authorities told us, "If you don't prevent every reactivation of the mines by the Germans, then the engineers will blow it up. They will do it in a little more professional manner, as they are properly trained."

* * * * *

Q. M. Laurent, you thus remained in the Lorraine until, at the beginning of 1942, you were expelled. Do you know whether the

administration of the Rombacher Huettenwerke was in any way concerned or responsible for your expulsion? May I repeat the question? In your statement you said that you remained at Lorraine until, at the beginning of 1942, you were expelled. Do you know whether the Rombacher Huettenwerke were in any way concerned or participated in this expulsion?

A. I think there is another mistake here. I never stated that I stayed in Lorraine until the beginning of 1942. At the time I was at Rombach for a couple of days only with a residence permit, but they did not fail to make me understand quite clearly that my presence not only was not desired but was even prohibited. I wasn't even allowed to enter the factory. Later on I received several permits to go back to Rombach in order to discuss matters with the authorities there and to settle questions of salaries in arrears. Every time I would get a pass to go to Rombach, for instance, I had to talk mainly with Mr. Goedecke who was in charge of the questions of the administrative transfer. Also I went there in order to show my presence to the staff, to our workers, because they seemed to desire it and they wanted to feel that we had not simply given them up.

Q. You are perfectly right when you say that you did not say that you remained in Lorraine until 1942. You only stated that until 1942 you occasionally came back there, but I don't think my question has been answered quite clearly. Were Rombacher Huettenwerke in any way responsible for your final expulsion? Do you know anything about that?

A. I said already that I have no knowledge of any part taken directly in the expulsion but when, on 1 July 1940, I came back to my office, I found in this office two gentlemen. One of them was Goedecke. At the time, as I said, I had already had negotiations with Goedecke and Jakobs. One of the two, as I said, was Goedecke while the other one was a director of Roechling, but I don't know his name anymore, and they told me that they had the duty to inform me that I had no longer a right to enter my factory. Otherwise no document from any authority at all was ever issued to me prohibiting my presence in Lorraine.

What I do know is that all the inner French, as we called the Frenchmen from the non-Lorraine territory, who wanted to keep their jobs were told to just pack a suitcase, and I am not trying to convey anything wrong when I say just pack a suitcase. They actually were only allowed to take along one suitcase of 20 kilograms and 2,000 French Francs, and they had to go. I also know that my colleagues, the directors of the other factories who wanted to come back and see their own factories were just chased away. I think I remember that the de Wendels, who were indus-

trialists and owned large factories at Aionne, tried to come back and see their factory, and that Roechling himself went to see them and told them he was giving them just 24 hours.

JUDGE RICHMAN: The witness hasn't answered the question at all.

DR. KRANZBUEHLER: M. Laurent, can you make your answer more precise, whether Rombacher Huettenwerke were in any way concerned with your expulsion from Lorraine in 1942?

WITNESS LAURENT: As I am of the opinion that in fact and *de facto* I was already expelled in 1940, I don't consider that I could possibly have been expelled in 1942, and I don't think that the administration of the Rombacher Huettenwerke had anything to do with the expulsion. I think that answers the question perfectly.

JUDGE RICHMAN: Well, that answers the question but the other answer didn't.

DR. KRANZBUEHLER: M. Laurent, I came to put this question because of a sentence in your affidavit which I will quote. It's on page 3 of the original. "I then left Lorraine and only returned there a few times until, at the beginning of 1942, I was finally expelled." Do I understand correctly that this was not a formal expulsion but that you yourself just had the feeling that after 1942 it was no longer indicated that you should return to Lorraine?

WITNESS LAURENT: I can now understand why matters got mixed up a little bit, and I also understand the reason for counsel's question. I will specify that when I said that I was definitely expelled in 1942, I actually meant that I was no longer able to get passes to return to Rombach.

* * * * *

DR. KRANZBUEHLER: M. Laurent, you spoke in your deposition about differences which arose over ten barges which belonged to the Rombacher Huettenwerke. Is it correct that these ten barges belonged to the Rombacher Huettenwerke?

WITNESS LAURENT: These ten boats belonged to the Rombach Steel Works, that is to the Rombach company.

PRESIDING JUDGE SEARS: That's Société des Aciéries de Rombach?

WITNESS LAURENT: Yes.

DR. KRANZBUEHLER: And these ten barges were vacated when the German forces invaded?

WITNESS LAURENT: It is correct that these river boats were part of the transport material of the Rombach works and when the Germans arrived, that is a few days before we left Rombach, we loaded these boats with stocks which were to be taken away and we sent them away.

Q. When and by whom were you instructed to return those ten barges to Rombach?

A. The German management of the Rombach works asked these river boats to be returned.

Q. Did the German administration approach you directly?

A. What German administration are you speaking of?

Q. I mean the German administration which you mentioned just now, that is, the administration of Rombacher Huettenwerke.

A. Yes, I think that I remember that. It is the German administration of the Rombach works who demanded that the river boats be returned.

Q. And what was your reply to this request?

A. I refused.

Q. And what happened then?

A. After a long series of discussions and negotiations, the ten river boats were eventually seized by the German military authorities, and the river boatmen on the boats got the order to bring them back to Rombach.

Q. Therefore, the German military authorities had interfered in order to achieve that these ten barges were returned?

A. On the strength of a request made by the German management of the Rombach plant—and I think at that time the group Flick had already taken over—the German military authorities intervened in order to get the ten river boats back.

Q. Did you not try then to prevent the German authorities from seizing the barges, for instance, by pretending that you did not know their location, or that you gave them a different name?

A. That is all quite correct. I was of the opinion that the German management had no right whatsoever to claim the return of those river boats. They had as little right to do that as ask me to surrender my personal car which also belonged to the transport section of the Rombach plant.

Q. I can understand your point of view perfectly, M. Laurent, and I believe that there will always be a difference of opinion between occupation forces and the members of an occupied country with regard to the acts which may be allowed to occupation forces and what they should not do; however, what I would like to ask you in this connection is the following. I think you tried to mislead the occupation forces with good reason from your point of view. You had every right and reason to do so, but as far as the occupation force is concerned, you would have been wrong in doing so. Did you have, in any way, to face legal consequences for the reason that you misled the occupation forces?

A. I have to say that for 4 years we tried and we did deceive the occupation authorities, most of the time successfully, sometimes

without success. In this particular case I was without success, and you can believe me that I was very sorry for it. I had to yield to military pressure put on me, but as I said before, this military pressure was caused by the management, the German management of the Rombach plant. There must have been an intervention. It is quite obvious; as proof you can see that an employee of our Rombach plant for months and months tried to find these river boats and eventually succeeded in tracing them. Therefore, there must have been an intervention. They found them in spite of the fact that the names were changed, and I don't think that the military authorities on their own initiative would have taken the trouble of trying to have these boats traced. Incidentally, the boats were not worth all the trouble taken for them.

JUDGE RICHMAN: Doesn't that answer about the whole controversy then?

PRESIDING JUDGE SEARS: Mr. Ervin, do you see any materiality in this? Wouldn't you be willing to admit that the authorities of the—I mean of the French society represented by this witness tried to conceal these boats?

MR. ERVIN: Yes, Your Honor.

PRESIDING JUDGE SEARS: And only brought them back under the compulsion of military force of Germany?

MR. ERVIN: Yes, Your Honor.

PRESIDING JUDGE SEARS: That is what I thought, Dr. Kranzbuehler, the fact would be admitted.

DR. KRANZBUEHLER: Yes, Your Honor, but I had asked the witness whether he had to bear any legal consequences for the fact that he deceived the occupation forces.

PRESIDING JUDGE SEARS: Yes, of course.

WITNESS LAURENT: I have not been prosecuted.

DR. KRANZBUEHLER: Therefore, I conclude from your reply that you take great pride in having fulfilled your duties as a Frenchman in that you always deceived the occupation forces whenever you had a chance to do so?

PRESIDING JUDGE SEARS: You see, we all become confused in our language.

WITNESS LAURENT: Yes, certainly.

PRESIDING JUDGE SEARS: Not much controversy on this subject.

DR. KRANZBUEHLER: M. Laurent, therefore, I would like to leave the topic of those ten barges where we have ample explanation now. I would like to ask you whether you received current information about the administration of the Rombacher Huettenwerke?

WITNESS LAURENT: I have some varied sort of information with regard to how the plant worked, what they were producing,

and so on, but I had no information whatsoever with regard to the question of how the management was carried on.

Q. Did you know to what extent the Rombacher Huettenwerke had invested money in order to improve the installations and to keep them in running order?

A. Again I have only dim information with regard to that question. I had some information that the Germans had installed a lift; they used an old one and put in a new one; and that they also were building a new machine to break the ore and also an ore deposit machine; but as far as the funds which were invested are concerned, I don't know exactly what amount that was.

JUDGE RICHMAN: Dr. Kranzbuehler, before we leave this subject altogether I'd like to ask a question. Witness, are you operating the plant at the present time?

WITNESS LAURENT: Yes, I am. I am general manager of the Rombach plant, and I have a director who is in charge of the factory itself.

Q. Were those 10 barges there when you came back?

A. Some had been sunk with hand grenades, others were lost. We couldn't use any of them immediately.

Q. Were they there?

A. They were not at Rombach, all of them. Three or four were at Rombach where they had been sunk in the canal; about one or two were near Nancy in one of the canals down there; one was lost in the Rhine, and it took us about 2 years to retrace them all, and another year to get them going again.

Q. Do you know who sunk them?

A. As far as the indications I received go, they were sunk with hand grenades when the Germans withdrew. The Germans first used them to cross the canal, and then they sank them with hand grenades.

Q. That was the military forces?

A. Yes, those were the German military forces.

JUDGE RICHMAN: That's all I want to know.

* * * * *

DR. KRANZBUEHLER: If we want to continue to use this term spoliation which has been explained once in your testimony, I would like to start from the traditional term spoliation, which means that objects are taken away without being paid for. Therefore, when the German administration of the Rombacher Huettenwerke left the plant in 1944, did they then dismantle machinery, take furniture, etc., or did they leave those behind, and did you find those articles in Rombach when you got there on 8 November?

WITNESS LAURENT: I have to say that we actually found everything. Now I don't want to make any "bad cracks" but I have to say that the personnel, that is, the German administration and staff in 1944, made such a quick departure that I hardly think they had time to think about destruction or dismantling or anything of the kind; but I will add that I personally do not think that Mr. Otto Ernst Flick had the intention of destroying or dismantling anything.

Q. M. Laurent, from various witnesses' testimony we know that the intended evacuation had been announced some time previously. We also know that the order existed to destroy all installations. I suppose you can confirm that as the witnesses Roechling and Otto Ernst Flick have testified here,—contrary to existing orders, no destruction was carried out.

A. I am very glad to hear that this failure to carry out destructions was against the instructions of the German Government; I am very glad that neither Mr. Roechling nor Mr. Otto Ernst Flick had these orders carried out.

DR. KRANZBUEHLER: Thank you. I have no further questions.

C. Contemporaneous Documents

PARTIAL TRANSLATION OF NI-048
PROSECUTION EXHIBIT 516

CORRESPONDENCE AND DISCUSSION INVOLVING CLAIMS OF GERMAN
IRON AND STEEL MANUFACTURERS WITH RESPECT TO THE OWN-
ERSHIP AND OPERATION OF MINES AND STEEL WORKS IN
AREAS OF WESTERN EUROPE NEWLY OCCUPIED BY
GERMANY, JUNE 1940¹

1. Letter from Poengen ² to Maulick and Reichert ³ 10 June 1940, Transmitting
Written Report on a meeting of the Small Circle ⁴

Vereinigte Stahlwerke Aktiengesellschaft [United Steel Works,
Inc.] Duesseldorf

Attention: Messrs. Maulick and Dr. Reichert

In reply, mention Secretariat E. Poengen

Our phone	Our reference	Duesseldorf
2470	Pg/T	10 June 1940

Subject: Meeting of the Small Circle of 7 June 1940

Herewith a written report on this meeting. You will see from
it those points which should be dealt with further by you. I would
ask you kindly to define your attitude to the various questions.

[Signed] POENGEN

Enclosure

2. Extracts from Poengen's written report on the Small Circle meeting of
7 June 1940, which included discussions of the policy of Minister Funk and
the private iron and steel manufacturers regarding ownership and operation
of enterprises in newly occupied western European areas (defendant Flick
attending)

Conference of the Small Circle on Friday, 7 June 1940, Duessel-
dorf, Stahlhaus-Sued [Steel Building—South], 8th floor.

Present were the following gentlemen: Dr. Flick, Dr. Kloeck-
ner, Dr. Loeser, Luebsen, E. Poengen, Tgahrt, Dr. Voegler, Zan-
gen, Dr. Winkhaus.

¹ This document was also introduced in the Krupp case as Prosecution Exhibit 643.

² Ernst Poengen was chairman of the Vorstand of the Vereinigte Stahlwerke A.G., one
of the largest German steel combines, and chief of the Economic Group Iron Producing
Industry until 1942.

³ Reichert was manager of the Economic Group Iron Producing Industry.

⁴ The Small Circle (Kleine Kreis) was a loose association of the six largest privately
owned iron and steel enterprises for such matters of joint concern as production, price,
and wage policy.

I. Mr. Zangen¹ gave an account of his conversation with Minister Funk.²

a. Mr. Funk referred to the fact that he had given considerable assistance to business [Wirtschaft], particularly as regards the problem of taxation, and he now asked in return that he should receive assistance by a reasonable attitude in the future, and that care be taken that no excesses occur, which might give an opening to the opponents of private enterprise to make accusations against business; particularly one should seek now to repress all *desire for annexation*, etc.

* * * * *

II. Minette.

Mr. Poensgen gives a picture of the task of Steinbrinck and discusses the situation in the several countries.

a. *Holland*.—On Mr. Poensgen's suggestion the economic group adopted the attitude that the *Ijmuiden blast furnace works* cannot be usefully taken over. In that connection it was stated that the water piping used for the transformation of sea water into fresh water had been destroyed by the British, and that it would take at least 1 year to repair the plant. Also the entrance to the harbor was blocked by a sunken ship. He did not know if it was possible to transport ore inland.

b. *Belgium*.—Those present took note of the sending-out of the *Bulle Commission*, and of the future *Schwede Mission*. The unanimous opinion of those present was that one should avoid to break up plants in Belgium. Those plants should remain intact except for removal of individual pieces of machinery which were lacking here.

c. *Luxembourg*.—In this connection information was received on previous discussions of Mr. Steinbrinck in Luxembourg, and of the appointment of *Mr. Berve, for Arbed*³ and *Mr. Meier, for Differdange*.

d. It is reported that *confiscation commissions of the Wehrmacht* have secured the supplies and in part are removing them. It is our unanimous opinion that the materials which have been removed should be assigned to the Steel Works Association [Stahlwerksverband] for further distribution in Germany.

f.⁴ Because of the *alleged tendencies on the part of heavy industry toward incorporation* [Einverleibungstendenzen] and their claims for former property, it has been decided to address a joint

¹ Zangen was chairman of the Vorstand of the Mannesmannroehren-Werke, Duesseldorf, and president of the Reich Group Industry.

² Funk, Reich Minister of Economics, was a defendant in the case before the IMT See Trial of the Major War Criminals, op. cit. Volumes I-XLIII.

³ Acieries Reunies de Burbach-Eich-Dudelange largest steel plant in Luxembourg.

⁴ There is not a paragraph e in the report.

letter to the Reich Minister of Economics (see enclosure). Whether further claims shall be represented by the old community of interests [alte Interessengemeinschaft], that is something we shall have to resolve at a future date. In any event, it appears expedient that this community of interests be reactivated *under the appointment of a new business manager (Regierungsrat Schoen?)* In this letter *claims for minette supplies* are also to be stated unless they are required for the Saar and Luxembourg, whereby the principle is to be applied that the Ruhr plants will have to pay at once for all ore which they may obtain from there.

Mr. Flick points out that in the *east the former owners* have been eliminated. Although he does not in any way wish to contest the claims of the Ruhr plants regarding former property in Luxembourg and Lorraine, he could, nevertheless, only agree to the letter to Mr. Funk subject to the *reservation that under certain circumstances he would assert claims in the east.*

III. The firms are prepared to provide officials, engineers, and business men upon the request of Mr. Steinbrinck, the salaries of which officials, etc., will continue to be paid by them and they are also prepared to meet expenses such as travelling and accommodation allowances.

* * * * *

Copies to—

Lamarche
Maulick
Dr. Petersen
Dr. H. Poensgen
Dr. Reichert
Scheifhacken
Schwede
Dr. Sempell
Dr. Spaeing
Dr. Steinberg
Steinbrinck
Dr. Voegler
Dr. Wenzel
Dr. Flick
Dr. Kloeckner
Dr. Loeser
Luebsen
Tgahrt
Zangen

[Signed] POENSGEN

3. Proposed letter from Poensgen to Reich Minister of Economics Funk concerning the question of German iron and steel manufacturers' claims for possession of mines and steel works in the minette ore district (Alsace-Lorraine)

To the Reich Minister of Economics
Berlin W 8
Behrenstr. 43

On the occasion of a conference with Director General Zangen, you touched upon the question that the German steel firms were even today making claims, in order to obtain possession of mines and steel works in the minette district which may possibly become subject to the jurisdiction of the German Reich on a permanent basis.

May I permit myself to inform you that this matter was discussed in detail among the circle of the following firms during recent days, that is to say:

Gutehoffnungshuette Oberhausen AG, Oberhausen/Rhld.
Hoesch-Aktiengesellschaft, Dortmund.
Kloekner-Werke A.G., Duisburg.
Fried. Krupp A.G., Essen.
Mannesmannroehren-Werke, Duesseldorf.
Vereinigte Stahlwerke A.G., Duesseldorf.

May I report to you the agreed view of the above-mentioned firms with regard to this question in detail.

1. As long as the war lasts, i.e., until peace is signed, the above-mentioned firms will refrain from making any claims regarding the transfer of ownership or of usufructuary supply rights in respect to minette mines in the minette district or to steel works in Luxembourg or Lorraine, in which connection they make the provision that no claims possibly made by other sources will in future be held against them and given preference.

2. If, still during the war, ore (minette) is supplied from the war zone or from Luxembourg either from stocks or from newly produced material, then the [above-mentioned] firms will recognize unconditionally the rights of firms which are possibly being put in operation in occupied territories, or of the steel works in the Saar territory with regard to these quantities. Should ore in amounts above the requirements of these firms be available, then the above-mentioned [German] firms will claim that they are given usufructuary rights.

3. The above-mentioned firms reserve for themselves the right to state their claims after the end of the war which will have the object of giving them the possibility of having returned to them those mines and steel works (buying them?) which had

been partly or fully their property before the World War and had been operated by them.

Apart from the afore-mentioned firms, other German companies have held shares and property in Alsace-Lorraine before the World War; naturally, the above-mentioned firms are of the opinion that this reservation applies in the same manner to other German companies.

4. Over and above the former property of the above-mentioned firms there are in existence in Lorraine further important ore deposits. Should their transfer to Reich German owners be planned then it would appear suitable to the above-mentioned companies, as far as the situation can be judged today, if these ore mines were formed into a joint holding in the hands of all German plants which produce raw iron.

Regarding the purchase of this ore and a share in this company and the share in the costs of financing it, a suitable key would have to be sought, which it would, no doubt, be easy to find.

[Initial] P. [POENSGEN]

TRANSLATION OF DOCUMENT NI-3516
PROSECUTION EXHIBIT 517

MEMORANDUM BY DEFENDANT BURKART, 11 JUNE 1940, CONCERNING A
DISCUSSION WITH GENERAL VON HANNEKEN ON THE OWNERSHIP
AND OPERATION OF PLANTS IN LUXEMBOURG AND LORRAINE,
THE HERMANN GOERING WORKS OPERATIONS AT SALZ-
GITTER, AND RELATED MATTERS

Bu/U¹

11 June 1940

Note

Subject: Discussion with von Hanneken² on 10 June.

1. *Opinion concerning the property situation [Besitzverhaelt-nisse] in the Luxembourg-Lorraine plants*—Von Hanneken said that the final decision regarding ownership had to be delayed until after the war. The Reich Ministry of Economics was solely concerned with the restarting of those plants which were not employed at the moment in order to place their products at the disposal of the armed forces or utilize them for other purposes. It was further von Hanneken's opinion that, when eventually the regulation of ownership was undertaken, one would in the first place discuss the matter with the previous owners; he did not, however, believe that the plants would simply be donated to their previous owners³ but that a suitable price for them would have to be agreed upon as the owners had, after all, received a certain compensation. To my objection that this compensation had, as far as I was informed, been very low in most cases, von Hanneken replied that one might be somewhat generous towards the former owners as regards establishing the price but that, in his opinion, it was necessary to take into some consideration the present value of the plants.

Regarding the utilization of ore pits, Hanneken seemed to agree that a distinction had to be made between those pits which were connected with steel works and so-called "free" pits. However, he did not want to recognize this difference until *after the war*. At present the only matter of importance, according to Hanneken, is to take up work in the pits once more and to deliver the ore

¹ "Bu" was defendant Burkart's dictation symbol.

² Von Hanneken was at this time Plenipotentiary General for Iron and Steel Allocation and chief of Main Department II in the Reich Ministry of Economics.

³ "Previous owners" refers to Germans or German firms which had owned plants in Lorraine and Luxembourg before 1918.

to the blast furnaces, which have only been damaged slightly or not at all. Von Hanneken also seemed sympathetically inclined toward the proposal of later on uniting the "free" pits in one company in which the whole German iron producing industry would participate.

Hanneken finally recommends that the letter proposed by Mr. Poensgen ¹ on the fundamental view taken by the former owners should be sent to Field Marshal Goering as well as to the Reich Ministry of Economics.

2. *Reich Works [Reichswerke]*.²—I attempted to make von Hanneken understand that the extension of Salzgitter, at least as far as the steel and rolling mills are concerned, is superfluous now that the steel works of Lorraine, Luxembourg, and Belgium are part of the German economy. I pointed out to him the enormous reserves of rolling machinery for rough, medium, and fine sheet iron here and in other plants and, most important, the unused capacities of Dinslaken and Upper Silesia. Hanneken admitted that this objection seemed perfectly justified from our point of view; he could not, however, imagine that Mr. Pleiger would confine himself to the first stage in the extension of Salzgitter, especially as he had planned and extended the subsidiary installations at Salzgitter for a larger production of unprocessed steel. I pointed out to von Hanneken that the Reich plants would never be able to earn the actual expenditure incurred by the extensions at Salzgitter even with a larger production and that, for this reason alone, a considerable cut in capital would have to be undertaken at some time. In that case, however, any further extensions at Salzgitter could be dispensed with.

Von Hanneken then came to speak of the Salzgitter rolling mill for wide sheet metal which had been closed for the duration of the war, but which would probably be reopened after the war by the Reichswerke. The Reichswerke are alleged to give the following reason for the necessity for the manufacture of broad sheet metal. They say that only this quality of sheet metal allows additional use to be made of Banda-material, as the normal quality of thin sheet metal is not adequate for this vast moulding. (Last year I heard exactly the same statements from Dr. Hoffmann of the Reichswerke, who worked on the metallurgical development of broad sheet metal in America for about 7 years.) I replied to von Hanneken that according to my knowledge, the difficulties encountered in the manufacture of broad sheet metal are found not so much in the rolling mills but rather in the blast furnaces and the steel works. According to the American ex-

¹ Reproduced above as a part of Document NI-048, Prosecution Exhibit 516.

² "Reichswerke" here refers to plants of the State-owned Hermann Goering Works in the Salzgitter area of Germany.

perience only the purest ores and scrap can be employed for the basic material. But these important prerequisites are not available at Salzgitter.

It will be necessary, with regard to the Dinslaken rolling mill, for all quarters, such as the Feinblech Verband, Verein Deutscher Eisenhuettenleute, and the leading men of the Stahlverein, to continue to draw attention to the large reserves in the German sheet metal production capacity so as to avoid a limitless expansion of Salzgitter.

[Stamp] Signed: BURKART

Copies to:

Hanneken

Goebel

Menzel

Terberger

TRANSLATION OF DOCUMENT NI-3513
PROSECUTION EXHIBIT 518

LETTER FROM DEFENDANT FLICK TO BUSKUEHL, DIRECTOR GENERAL OF
THE HARPEN MINING COMPANY, 23 JUNE 1940, ANALYZING THE
PROSPECTIVE ACQUISITION OF VARIOUS PLANTS IN GERMAN
OCCUPIED WESTERN EUROPE, STATING FLICK'S POINT OF
VIEW THAT HARPEN SHOULD HAVE PRIORITY OVER THE
ARBED AND ROMBACH PLANTS, AND RELATED
MATTERS

At present Marienbad, 23 June 1940
Hotel Esplanade

To: Director General Ernst Buskuehl *
Dortmund

Personal

Strictly confidential

Dear Herr Buskuehl,

Although in view of the importance of present day events it hardly seems suitable for me or for you to consider new business transactions, I nevertheless think it appropriate for us to turn our attention in good time to the important changes which are being prepared in the German mining industry in the West. We should be able to reckon without any doubt whatsoever that the industry of Lorraine and Luxembourg and, probably, that of the Briey basin as well will one day return to Germany.

I hear that on principle the former owners in this area are to get back their plants; this means that—the Vereinigte Stahlwerke would get Differdingen, Kloeckner would get Kneuttingen, Roechling would get Carlshuette near Diedenhofen which has been extended in the meantime, the firm Stumm the plant Ueckingen, and the Dillinger Steel Works the Redingen plant.

It is reported, in addition to this, that the Reichswerke [Hermann Goering Works] are interested in the tremendous possessions of de Wendel (Hayingen, Gr. Moyeuivre, Joeuf) and all the coal mines of de Wendel in Germany, Lorraine, and Holland. They are obviously interested also in Hayingen (as successors of Thyssen).

If one only takes the former district of German Lorraine including Luxembourg, there would still be the whole of Arbed

* Buskuehl was director general of the Harpen Mining Company in which the Flick Concern held a majority participation.

and further the former Rombacher Huettenwerke at the disposal of other people who were interested. My point of view is that the Harpen Company really has a moral right to priority of consideration, for the following reasons:

The Harpen Company was once badly hit in its former production centers in connection with an action which was taken in the interest of the Reichswerke, and consequently in the interest of the Reich. The compensation [Gegenwert] received by Harpen in return in the form of a participation in lignite stock certainly has its value, but is, nevertheless, an affair which after all can have no fundamental appeal for Harpen if only for geographical reasons. I can remember in this connection that a year ago State Secretary Landfried * himself, in connection with a discussion on this transaction made the remark that he could not imagine that Hibernia, for instance, would stand such interference [Eingriff] as Harpen had to suffer.

When last year the transaction with the Reichswerke was being worked out, in order to maintain his standpoint that he expected the sacrifice primarily from the Harpen Company, P.P. [Paul Pleiger] brought forward the fact that the Harpen-Essener Steinkohlen Konzern was the second biggest coal producer in the west, but that after all it had no very great obligations as regards self supply and in consequence had a considerable surplus of coal, which could not be justified by any considerations of political economy. Mr. P.P. pointed several times to the fact that Harpen had only Maxhuetten to supply, and that 1 or 2 pits were sufficient for this. It is a fact too, that all the Rhenish and Westphalian concerns refused to hand over coal mines on the grounds—in themselves perfectly correct in the majority of cases—that they had no surplus of coke. This is true in the case of the Stahlverein which has had to buy an additional supply of coke. In my opinion it is also more or less true for Hoesch and Kloeckner (the latter certainly, if it has to supply Kneuttingen). Gutehoffnungshuetten should not have any surplus either, and there is no need to speak of Krupp and Mannesmann which, as everybody knows, have a particularly poor coal basis in comparison to their needs. We know that Krupp set up the joint sales agency with our group because it had not enough coal of its own.

The facts are that for the Lorraine plants, which are all based on ore, a sufficient supply of coke is an imperative necessity, and as things stand, I think I must repeat what I said before, that we have a claim which is both moral and founded on fact to be considered in the distribution of property. For if the other western concerns, in addition to the plants they owned formerly,

* Friedrich Walter Landfried, State Secretary in the Reich Ministry of Economics.

were considered at the partition of the steel industry of Lorraine and Luxembourg, even if last year already they had no coal surplus as they declared in their statements—it might happen to us again next time the occasion arose that we should be faced with the problem of giving away some of our mines on the grounds that we have not a very big home consumption and that there is consequently no necessity for our large coal production. Therefore, I have come to the conclusion that the Rombacher Huettenwerke—the history of which I attach in a sketch (which only goes, it is true, up to 1910) taken from the Handbook of German Corporations—is a suitable object for Harpen.

To the best of my knowledge the steel production in the last years before the World War amounted to approximately 630,000 tons; Rombach had joint interests with Concordia and owned probably the greater part of the shares of Concordia. It has never come to a complete fusion of interests, however, as far as I know. The Rombacher Huettenwerke themselves were liquidated as a legal entity, I believe, when they had got into difficulties with their payments in 1925 and sold the remainder of their plants, namely Westfalen-Stahlwerke Bochum and Eisenhuetten Holstein to the Vereinigte Stahlwerke in 1926, and gave up the majority of their stock in Concordia to the Oberschlesische Kokswerke. In my opinion there are no legal successors, as there are no Rombach shareholders left.

Apart from this, I believe that even before the war a closer union was planned between the Harpener Bergbau A.G. and the Rombacher Huettenwerke. As a preparatory step for such cooperation a mutual supervisory board committee [Aufsichtsratsdelegation] had already been formed, by means of which Geheimrat Mueser entered the supervisory board of Rombach and Geheimrat von Oswald the supervisory board of Harpen.

Apart from the above considerations there seem to me to be other reasons which make it worth while mentioning that the Harpen-Essener Steinkohlen Konzern is preoccupied with the question, whether in view of the size of its coal production even now, it is right for it to continue to operate as purely a soft coal concern. Only a few weeks ago I read the life history of Kirdorf, and I was impressed by the fact that the prewar Gelsenkirchener Bergwerkes Gesellschaft (approximately in 1908) which had a production of less than 10 million tons of soft coal at the time found it suitable to engage in a cooperative enterprise. The renewal of the coal syndicate took place about that period and on this occasion for the first time the special right of mixed foundries was stipulated with respect to self-consumption. Kirdorf used this as a pretext for arguments in preparation of his announce-

ment that Gelsenkirchen as a pit enterprise would be compelled to take the step which would engage it in a mixed enterprise. Soon after this followed the affiliation of Schalke, Aachener Huettenverein, and the Luxembourg acquisitions with the extension of the Adolf-Emil-Huette. I have the feeling that we are in the same situation. When the Ewald-Koenig-Ludwig, which after the Harpen concern was the biggest purely mining enterprise up to then in the Ruhr, had joined up in a mixed combine, there were actually—apart from the Haniel family's pits—no proper pit enterprises of any importance left in the Ruhr. In any case the Harpen-Essener Steinkohlen Concern in its entirety with its participation of 10 million tons stands so high in the soft coal production that it would not do it any harm if it were supplemented by participation in a mixed combine with a view to a partial safeguarding of its fuel output. If they get a good coal supply, the Lorraine steel works have, in my opinion, very good foundations for their existence. Provided that one possess good minette mines one can say that the steel production can be ensured in this territory with the cheapest prime costs in the world.

The question will be raised, and quite rightly, as to where Harpen is to get the funds, should the affair take a serious turn. Our program for development is well known. I believe that together with Essener Steinkohle we could carry it out in the space of 4-5 years from surpluses or tax-free amortizations, assuming that by this means we could raise 12-15 million marks a year for new installations. We could hardly build any more quickly than this for reasons of time. If I assume that a sum of 30 million Reichsmarks in cash would have to be raised for the acquisition of Rombach, including 20 millions which I plan to borrow, I see no other solution for Harpen than to give up its participation in the brown coal concern. Whether the Mittelstahl group could take over the whole thing, I cannot judge at the moment.

Today I only wanted to communicate this trend of thought to you with the request that you inform me of your attitude to this problem. May I ask you not to speak to anyone about these questions for the time being.

I expect to stay here in Marienbad until 3 July. Till then, I remain, with best regards,

Yours,

[Stamp] Signed: FLICK

TRANSLATION OF DOCUMENT NI-3526
PROSECUTION EXHIBIT 519

CIRCULAR LETTER FROM ECONOMIC GROUP IRON PRODUCING INDUSTRY
TO INDUSTRIAL LEADERS, INCLUDING DEFENDANTS FLICK AND
STEINBRINCK, 26 JUNE 1940, REQUESTING THEIR WISHES FOR
THE COMING PEACE TREATY AND REORGANIZATION OF
ECONOMIC RELATIONS IN EUROPE, AND THEIR STATE-
MENTS OF LOSSES AND CLAIMS ARISING FROM
THE VERSAILLES TREATY

Economic Group Iron Producing Industry
Unter den Linden 10

Berlin NW 7

Phone No: 14 57 75

[Illegible initials]

Telegraphic address: Verdeuteisen

26 June 1940

Teletyper: K 1 286

Circular: File No. 9 642 R/W

Subject: Wishes for the peace treaty and the reorganization of
European economic relations.

To— *Strictly confidential!*

Director General Dr. Ernst Poensgen
Director General Dr. Borbet
Director General Dr. Daub
Director General Dr. Flick
Director Dr. Gehm
Director Dr. Freiherr v. Gemmingen-Hornberg
Professor Dr. Goerens
Director Bergassessor ret., Kellermann
Geheimrat Dr. Peter Kloeckner
Director Dr. Loeser
Director General Dr. Malzacher
Director Maulick
Counselor of Commerce Gerhard Meyer
Director Dirksen
Dr. Buchmann, Engineer Menke
Director Henseler, Dr. Hartig
Dr. Kossmann
Dr. O. Petersen
Director Dr. Helmuth Poensgen
Counselor of Commerce Dr. Beusch
Counselor of Commerce Dr. Hermann Roechling

Director Dr. Rohland
Dr. Philipp v. Schoeller
Director Dr. Sempell
Director Dr. Spaeing
Director Otto Steinbrinck
Director General Tgahrt
Director General Dr. Voegler
Director General Dr. Wagner
Director General Wittke
Director General Zangen
Dr. Niebuhr, Capt. ret., Martin
Director Nyssen, Dr. Graber
Director Dr. Scheer-Hennings
Dr. Steinberg
Dr. Kemmer
Director Gisner
Director Muthmann

We have been requested by official quarters, through the Reich Group Industry, to ascertain immediately, what wishes for the coming peace treaty and the reorganization of economic relations in Europe have been expressed. In this, particular consideration is to be given to the following countries: Norway, Denmark, Sweden, Finland, Holland, Belgium, Luxembourg, France, England, and also the Balkans.

We consider it expedient that in suggesting your wishes you should point out the losses which your company suffered in foreign countries in consequence of the peace treaty of 1919, e.g., mines, blast furnace plants, factories of the manufacturing and finishing industry, means of communication and commercial institutions, such as concessions for mineral deposits, licenses for production or manufacture, etc. Besides this we ask you to inform us of claims, which,—in your opinion—might be taken into consideration, and which concern the recent development, whether it be a case of collaboration with individual European countries or abolishment of certain obstacles, e.g., in respect to commercial and trade policies or other measures, which may be of benefit to the new organization of economy in Europe.

This request of ours, which we forward to you with the approval of the Chief of the Economic Group, does not aim at fully comprehensive representation, but at a short preliminary report, which should be in our hands, if possible, by 1 July 1940.

We thank you in advance.

Heil Hitler!

Chief Manager:

[Signed] REICHERT

TRANSLATION OF DOCUMENT NI-3531
PROSECUTION EXHIBIT 520

LETTER FROM RAABE, CHAIRMAN OF THE MANAGING BOARD OF MAX-
HUETTE, TO DEFENDANT FLICK, 2 JULY 1940, INFORMING FLICK OF
THE CONDITION OF ROMBACH AND KNEUTTINGEN PLANTS

Karl Raabe
Chairman of the Vorstand of Maxhuetten
Member of the Vorstand of Mittelstahl

Sulzbach-Rosenberg Blast Furnace
Bavarian Ostmark
2 July 1940

To Dr. Fried. Flick, at present Marienbad

Dear Mr. Flick,

When Mr. Kaletsch informed me of your wish to get particulars about Rombach and Kneuttingen ¹, I at once got in touch with the German Machine Construction Company [Demag] ², as I had not seen Rombach for 31 years and Kneuttingen for 21 years.

Rombach has been extensively developed in the meantime. Most of the building work was done by Schloemann. The Demag, however, is informed about the construction jobs of her competitors and is also in possession of the new plans of Rombach.

Kneuttingen has always been a backward plant. I do not know, either, of any extensive building program that has been carried out there.

Yesterday I asked the Demag once more for particulars, and I hope that within a short time I will be able to let you have more detailed information.

From my own experience I like to tell you this. The normal monthly output of Rombach and Kneuttingen up to the end of the World War was 50,000-60,000 tons of raw steel. This was about equal to the productive capacity of the Saar plants, Neunkirchen, Burbach, Voelklingen, and the Differdange Blast Furnace in Luxembourg. The blast furnaces at Rombach and Kneuttingen are about equally good, the mixture of coke and ore remaining constant; the ovens work without any substantial disorders.

The Thomas ovens were to be regarded as modern in both blast furnaces, considering conditions at that time. The output

¹ The site of a steel mill belonging to the Société Métallurgique de Knutange, a mill later operated by the Kloeckner Works, Duisburg, as trustee for the Reich. Both Kneuttingen and Rombach are in Lorraine.

² Deutsche Maschinenbau A.G.

of the blast furnaces could be brought to the melting point without difficulties. The Rombach furnaces have an open hearth plant (3 ovens) at their disposal, large enough to use up all their own scrap metal. Scrap metal from other sources was procured only in exceptional cases.

At Rombach there were 2 rolling installations for blocks, whereas Kneuttingen had only one, which was sufficient for the rolling out of raw steel.

There was a great difference between the rolling mills. In this respect the superiority of the Rombach plant was evident. The Rombach installations were planned in a model way, built in one line. They consisted of 2 rolling installations for heavy materials, 3 installations for rods, and one for wire. The necessary implements for retooling were built well and met all requirements.

The electrically powered rolling installations for heavy rods and the rolling installation for wires deserve special mention.

In the Kneuttingen plant the two rolling installations for heavy materials and the installation for medium materials were situated separately, whereas the three rolling installations for rods were situated in different parts of the plant and laid out in a similar way as the installations II, III, and IV at Haidhof.

During the war we sought to improve the rolling mill for rod iron by dismantling the modern installation for rods at Mont St. Martin and transferring it to Kneuttingen. It was not set up there, however, because after the collapse at the end of 1918 we had to return this installation again.

The steam-boiler installation at Rombach was good; at Kneuttingen altogether insufficient so that there was a continuous shortage of steam.

In summing up I want to stress once more that the Rombach blast furnace has been planned and built up well and can be easily made a prospering enterprise, whereas the Kneuttingen works can be also characterized as good, but only up to the rolling mill; from there on we have to regard it as a second-rate plant.

With German greeting,

Very truly yours,

[Signed] RAABE

TRANSLATION OF DOCUMENT NI-3522
PROSECUTION EXHIBIT 521

MEMORANDUM BY DEFENDANT BURKART FOR DEFENDANT FLICK, 4 JULY
1940, CONCERNING A CONVERSATION WITH POENSGEN ON A
MEETING OF THE SMALL CIRCLE AT WHICH DEFENDANT STEIN-
BRINCK WAS TO REPORT ON BELGIUM AND LUXEMBOURG,
DISTRIBUTION PLANS FOR LORRAINE AND LUXEMBOURG,
AND RELATED MATTERS

Bu/U.

4 July 1940

Memorandum for Mr. Flick

Subject: Lorraine—Discussion in the Small Circle.

Mr. Ernst Poensgen has just rung up from his Berlin office to tell me that the meeting of the "Small Circle" which was planned will take place today in Duesseldorf, and that Mr. Steinbrinck will report on his impressions and experiences in Belgium and Luxembourg. Mr. Poensgen regretted that we were not informed in time; he said he had only just heard about it himself. I told Mr. Poensgen that it did not matter this time, as I had met Mr. Steinbrinck here in Berlin 2 days ago and Mr. Steinbrinck gave me a broad idea of what he knew about Belgium and Luxembourg. As for that, Mr. Flick, too, would only have come to Duesseldorf if he (Poensgen) himself had been present at the discussion.

Mr. Poensgen told me also that up to now he had only taken von Hanneken's order to work out a suitable plan for distribution in Lorraine and Luxembourg to mean that he should give von Hanneken a comparison of the former and present situation of ownership. But he had been informed by Steinbrinck, who had met von Hanneken 2 days before that he (Poensgen) should prepare a plan of distribution of all the property in Lorraine and Luxembourg, including Briey and Longwy. Thereby he should not only take into consideration the former conditions of ownership but should also include in his remarks some other interested groups, as for instance, the Reichswerke.

Mr. Poensgen is of the opinion that he can hardly do this in such a manner, especially as far as the Reichswerke are concerned, but in the meantime he will have all the documentary material gathered together by a small commission composed of Dr.

Reichert, Dr. Scholz, and Regierungsrat Schoen, with possibly the cooperation of a miner [Bergmann]. Moreover he assumes that the Flick group, too, is interested in some acquisition in the west. I told Mr. Poensgen that you wished to speak to him again in any case on this subject, either at the next meeting of the Small Circle or when Mr. Poensgen happened to be in Berlin the next time. Mr. Poensgen wishes me to tell you that he is always at your disposal. He himself has not made any engagement in Berlin for the middle of July but wishes to inform you that the big meeting of the Stahlverein [Vereinigte Stahlwerke] which was to take place in Duesseldorf on 25 July will probably be transferred to Berlin, so that he will be here again by the 25th at the latest.

For the rest, he asked me expressly to assure you that he will not pass on any projects before discussing them with you. I did not mention Rombach but merely explained that you have certain wishes, and only asked him not to take any steps before he has had a conversation with you, and Mr. Poensgen immediately promised me that.

[Signed] BURKART

PARTIAL TRANSLATION OF DOCUMENT NI-3518
PROSECUTION EXHIBIT 522

EXTRACTS FROM A MEMORANDUM CONTAINING THE PROPOSALS OF THE
REICH OFFICE IRON AND STEEL *, 26 JULY 1940, CONCERNING THE
DISTRIBUTION OF THE IRON INDUSTRY OF LUXEMBOURG
AND FRENCH-LORRAINE

Berlin, 26 July 1940
Kr bk

Proposals made by the Reich Office [Reichsstelle] for Iron and
Steel for the Distribution of the Iron Industry of Luxem-
bourg and French-Lorraine

Introductory Note

The distribution includes all the plants in Luxembourg and in France, the plants of former German-Lorraine, as well as the plants situated in French-Lorraine, near Longwy, Briey and Nancy. Consequently all the smelting plants located in the minette district are included in the distribution, independent of the plants situated in the former German territory or customs district.

These plants have a total monthly capacity of approximately 1.1 million tons of pig iron. It must be borne in mind that the productive capacity of the plants could be calculated for pig iron only, as there are no dependable and complete records concerning the production of raw steel. Even in the case of pig iron the capacity of some of the plants had to be estimated.

Three enclosures accompany the elaboration of the proposals for distribution.

1. *Summary of the proposals for the distribution of the Luxembourg and Lorraine smelting industry.*—In this summary the present-day associations of the various plants with concerns is shown—also the association they had in 1914—the proposal for their allocation, their pig iron capacity and the minette fields they owned in 1928.

2. *Summary—diagram showing the allocation according to the receiving concerns.*—In the horizontal line the German concerns are listed, in the vertical line the Luxembourg-French plants. The “total” column shows which total capacity of pig iron of French plants is to be taken over by the various German concerns. For comparison the possible pig iron production capacity of the German

* This agency was under the jurisdiction of the Reich Ministry of Economics.

concerns is quoted, which would theoretically result by taking as a basis the present day pig iron output in the German total production capacity in relation to the total pig iron production capacity of the Luxembourg-French plants which are available for distribution. Another "total" column shows the present total pig iron production capacity of the various German concerns, including the French plants which are to be taken over.

1. Principles according to which the distribution was effected

The distribution to the German plants, or concerns, was effected on the following principles:

(1) Taking into consideration ownership conditions before 1914-1918.

(2) Relation between the coal basis of the German concerns and the pig iron basis.

(3) Harmonizing the production schedules of the plants to be transferred with the production schedules of the plants taking over.

(4) Avoiding the splitting up of French and Luxembourg plant groups when allocating them to the German concerns.

Furthermore it was taken for granted that those German plants, or concerns which cannot claim any titles, will also benefit by the distribution, without however, the Reich Office knowing details about the wishes these plants are likely to put forward regarding their participation.

(*Re: 1.*) There are old titles of German concerns to the larger part of the Luxembourg plants and to the plants situated in former German Lorraine. But it is not permissible to effect the distribution only from this point of view, as this would cause an unjustifiable predominance of the Vereinigte Stahlwerke. They would not only predominate in respect to the pig iron production capacity of the plants to be taken over, but especially in comparison with the value of the different plants, as the most important and modern operations are in the Luxembourg and the former German-Lorraine territory. It was therefore possible to consider only part of the former ownership conditions.

(*Re: 2.*) The second principle for the distribution, the coal-coke basis of the German concerns, shows that especially those concerns which can prove old titles on a large scale, are rather restricted in respect to their coke basis (Vereinigte Stahlwerke and Kloeckner). The coal basis itself is represented by the proportion of coke produced by the concerns in 1939 in relation to the production of pig iron as in the beginning of 1940. (In this connection a partial estimate of the coke production of the RHG [Reichswerke Hermann Goering] was necessary).

For every ton of pig iron which it is possible to produce, an average of 1.52 tons of coke is produced.

Above the average are—

Flick with 2.70

Hoesch with 2.08

Mannesmann with 1.72

Below the average—

Vereinigte Stahlwerke with 1.30

Kloeckner with 1.24

While the concerns of

Krupp

Gutehoffnungshuette, and

RHG

correspond approximately to the average.

(*Re: 3.*) The principle of harmonizing the production schedules of the plants that are to be transferred with those of the concerns which are taking them over, is only in some cases of decisive influence in connection with the distribution. The reason being that the Luxembourg-Lorraine plants have practically the same rolling program comprising mainly coarse and heavy production. There are no plants making special qualities (with the exception of some fine steel branches as well as girders made by Differdange).

Greater differences exist only in the production schedules for pig iron, as a relatively great number of plants are exclusively producing pig iron, chiefly for casting purposes, (Lorraine).

(*Re: 4.*) The application of this principle has caused some disparities, as in some cases the bulk transfer of existing plant groups to a German concern increased the production capacity of this concern to a greater extent than over-all considerations and its present-day share in the total German pig iron production capacity would warrant.

Nevertheless, this fact was accepted, as a splitting up of plant groups (consider for example the 5 plants of Arbed) would have destroyed so many established connections of a technical and economic nature that the damage caused by this would as a whole be greater than the advantages or disadvantages which the concern making the acquisition would incur by a greater or lesser participation, as compared with the other German concerns.

II. Actual proposals for distribution according to plants

The ultimate purpose of this distribution was to ensure that each of the German concerns should have a share in the acquisition of the Luxembourg-Lorraine pig iron production capacity

in the same proportion as their share in the pig iron production capacity of the total German iron industry. The pig iron production capacity of the individual German plants was established according to the present ownership or participation ratio in the Greater German Reich, including the Protectorate and Government General [Poland].

In the case of the parent plant in the Hermann Goering Works the first stage of extension of Wattenstaedt (8 blast furnaces) was taken fully into account, although the plant itself is only just starting up.

The Krupp and Mannesmann concerns were neglected in the distribution.

* * * * *

FLICK

Rombach equals 75,000 tons per month pig iron production capacity.

No direct titles exist on the part of the Flick Concern. However, during negotiations taken up in 1913-1914 between Harpen and Rombach it had been considered to let the latter benefit by the coal basis of Harpen. Owing to the outbreak of the war the negotiations could not be concluded.

Two further reasons speak in favor of the assignment of a big plant to the Flick Concern.

(1) The exceptionally large coal basis of the Flick Concern, being far above the average (see beginning of the document).

(2) The fact that regarding its raw material basis the Flick Concern has been developed very one-sidedly by use of scrap.

Even in respect to the theoretically scheduled quota, the concern would be entitled to an increase of 62,000 tons of pig iron which—when considering the raw steel basis, which is larger in the Flick works than the pig iron basis—would be 20 per cent higher still.

* * * * *

TRANSLATION OF DOCUMENT NI-3529
PROSECUTION EXHIBIT 526

REPORT OF DEFENDANT BURKART ON A DISCUSSION WITH GENERAL VON
HANNEKEN, 28 AUGUST 1940, CONCERNING THE ALLOTMENT OF
IRON FOUNDRIES IN UPPER SILESIA AND LORRAINE

Ga.

28 August 1940

Discussion with Mr. von Hanneken on 27 August.

Hanneken is pessimistic about the Bismarck Foundry

Burkart: All the official authorities supported our moral claim. It seems, however, to hinge on the Field Marshal's word given in September of last year. We have also already discussed the question among ourselves as to what we are to do if the Bismarck Foundry business is frustrated by the promise the Field Marshal gave at that time.

An idea of ours.—Another plant near Rombach, possibly Homécourt, which adjoins Rombach.

Hanneken: "I do not *rightly understand, what you as Mittelstahl people are looking for in Lorraine anyway*"—"Look, good things lie so near at hand."

Burkart: "What good things in the neighborhood are you thinking about?"

Hanneken: "For example about Upper Silesia."

Burkart: "You said just now that the Bismarck Foundry is apparently lost to us."

Hanneken: "But there are other things in Upper Silesia."

Burkart: "The I.G.'s [I.G. Farben's] coal has already been distributed, namely to the Reichswerke, and the Koenigs-Laura Foundry cannot be maintained without their own coal supply."

Hanneken: "To be sure, you can get coal in Dombrova."

Burkart: "The Koenigs Foundry needs coke and not the usual industrial coal. The Koenigs Foundry has always lived on its own coal supply from the very beginning. Dombrova coal is no definite compensation for the coal formerly owned by the Koenigs-Laura Foundry."

Hanneken: "It is strange, though, that nobody wants the Koenigs Foundry and that they are all fighting for the Bismarck Foundry."

Burkart: "If we were interested in the Bismarck Foundry, that was only because it was Mr. Flick's first property in Upper

Silesia. Besides that, the Bismarck Foundry suits us much better as regards our program than does the Koenigs Foundry."

Hanneken: "And in spite of this, I do not quite understand why you want to come to Lorraine."

Burkart: "For two reasons. First, the consideration that Mittelstahl has hitherto been developed too much on a scrap basis and that the general desire aims at building up iron production more on an ore basis. In Germany, however, new ore deposits are only to be found in Lorraine. The second consideration—Harpen! Last year we lost 30 percent of our coal from Harpen and we do not want to experience the same fate in 1940, too."

Hanneken: "Do not misunderstand me. Personally, I do not grudge you your increased property in Lorraine at all. But think it over once more whether it would not be better for Mittelstahl to expand in Upper Silesia."

Burkart: "General, you will see that in dividing the property in Lorraine you will have to look around for purchasers with a great deal of capital. There are so many things there that it will be difficult to find enough purchasers in Germany."

Hanneken: "We are now going through exactly the same business in Lorraine as we did in Upper Silesia. Everybody is scrambling after Rombach, Hayingen, and Differdange, and in a little while the other plants will be offered like sour beer."

Burkart: "We are proceeding from the consideration that the plants in Lorraine must not be given away, but must be paid for on appropriate conditions, according to their actual value. This, however, will concern only a very small number of interested persons. For this reason alone the Reich Ministry of Economics will certainly find it to its advantage that large groups of plants, such as Harpen and Mittelstahl, are also interested in prospects in Lorraine."

[Signed] BURKART

TRANSLATION OF DOCUMENT NI-3548
PROSECUTION EXHIBIT 531

LETTER FROM DEFENDANT FLICK TO GOERING, 1 NOVEMBER 1940, SETTING
FORTH REASONS IN SUPPORT OF FLICK'S APPLICATION FOR ROMBACH
AND REQUESTING THAT GOERING ALLOT ROMBACH TO FLICK
"IN THE APPROACHING FINAL SETTLEMENT"

1 November 1940
Kl.

To the Plenipotentiary for the Four Year Plan,
Minister President, Reich Marshal Goering

Berlin W 8

Subject: Steel works in Lorraine.

Dear Reich Marshal:

Since the problem of dividing the mine and steel works possessions [Gruben-und Huettenbesitze] in Lorraine has now become acute, I take the liberty of informing you that my group has moved for the allotment of the Rombach Steel Works. I wish to point out the following reasons for this step:

(1) In 1937-38 my group (Maximilianshuetten) turned over to the Reichswerke Bavarian ore deposits (Pegnitz) which had been opened up.

In 1939 large groups of soft coal mines with extensive deposits suitable for the establishment of a soft coal basis for the Reichswerke were turned over by my group.

The East Upper Silesian works Bismarckhuetten, Katowice, etc., formerly belonging to my group, which had to be turned over in accordance with the demands of the Reich government, were given in part to the Reichswerke and in part to the Krupp firm, after the reconquest of Upper Silesia.

(2) My group appears to be specially suited for the management and starting of a Lorraine plant because it fulfills the two important prerequisites in question:

(a). With regard to personnel. I have at my disposal experts who for years were active in higher positions in industry in Lorraine, in the mining as well as in the steel works, who can be released for the immediate starting of work and the management of the factories.

(b) With regard to fuel supply: My group—and it is probably the only one in Germany—should be in a position to provide the

entire needs of steel works the size of Rombach by increasing production without sinking a new shaft. We have agreed to produce this within a year and will be in a position to provide an additional supply of 1 million tons for the general market during the 2d year.

(3) With regard to the distribution of the new works added in the east and west, the Reich Minister of Economics in agreement with State Secretary Koerner * and in connection with a proposal made by us has ordered that the newly acquired eastern and western properties be distributed on a uniform basis. The Reich Minister of Economics thereby expressly acknowledged the moral right of our group "in view of its former achievement in the eastern Upper Silesian territory"—just as did the other authorities in question. The group directed by me has lost a quantity of steel in the east, which equals the production of the Rombach Steel Works, along with an amount of coal which exceeds the steel in its vital importance.

This matter, which I discussed some time ago with Minister Funk and repeatedly with General von Hanneken, I also presented to State Secretary Koerner a few days ago. No objections were raised by anyone.

I would be greatly obliged to you, dear Reich Marshal, if in the approaching final settlement you would decide to allot the Rombach Steel Works to my group.

With my best compliments and Heil Hitler!

Yours sincerely,

[Stamp] Signed: FLICK

* Koerner was Goering's permanent deputy for the Four Year Plan. See Volume XII, the Ministries case, section VI-B, "Military Economy—The Four Year Plan—The Financing of Armament."

TRANSLATION OF DOCUMENT BURKART 821
BURKART DEFENSE EXHIBIT 180

DECREE OF GAULEITER BUERCKEL, 24 JANUARY 1941, FOR THE PROTECTION
OF PROPERTY OF THE PEOPLE IN LORRAINE

Decree for the Protection of the Property of the People in
Lorraine, 24 January 1941, 1941 Ordinance Gazette for
Lorraine, Page 47.

Pursuant to the authority vested in me by the Fuehrer, I decree:

Article 1

(1) Anyone who purloins goods from buildings or rooms, the former occupants of which have been evacuated or have left of their own free will or have not returned to Lorraine from the refugee areas, will be punished by a term in the penitentiary and in particularly severe cases with death.

(2) In less severe cases, a term of imprisonment can be passed.

Article 2

Anyone who, as a trustee, commissioned administrator, settler, or in a similar capacity embezzles or commits frauds on property in the manner described in the Decree on the Registration of Property belonging to anti-Germans or Enemies of the State, dated 6 November 1940, will be punished in the same way; the same applies to the property of persons who have not returned to Lorraine from the refugee areas.

Article 3

A German Special Court with prosecuting authorities will be set up at Metz to pass judgment on the criminal acts described in Articles 1 and 2. The Special Court will apply German penal law and penal procedure.

Article 4

This decree becomes effective on this day.

Criminal acts committed before this Special Court came into force will be judged by the Special Court described in Article 3.

Saarbruecken, 24 January 1941.

The Chief of the Civil Administration in Lorraine

[Signed] BUERCKEL

PARTIAL TRANSLATION OF DOCUMENT NI-049
PROSECUTION EXHIBIT 534

LETTER FROM VON HANNEKEN TO POENSGEN, 31 JANUARY 1941, SHOW-
ING GERMAN CONCERNS ASSIGNED TO OPERATE IRON SMELTING
WORKS IN LORRAINE AND LUXEMBOURG ON BEHALF OF THE
REICH WITH CONDITIONAL OPPORTUNITY TO PURCHASE
AFTER THE WAR, ALLOTMENT OF ROMBACH TO FLICK,
AND RELATED MATTERS *

Copy Ki.

The Reich Minister of Economics
II EM 3 No. 31132/41

Berlin, W 8, 31 January 1941
43 Behrenstrasse
Telephone: No. 16 4351

To the Chief of the Economic Group Iron Producing Industry
Generaldirektor Dr.-Ing. eh. Ernst Poensgen
Duesseldorf
Stahlhof

Subject: Iron smelting works in Lorraine and Luxembourg.

The Reich Marshal ordered upon suggestion that the smelting works located in the districts of Lorraine and Luxembourg should be cared for, directed and managed on their own account by individual persons or enterprises suited to manage concerns, on behalf of the Reich. After the return of peacetime economic conditions these trustees, unless conditions are changed by circumstances, are to be given an opportunity to purchase the plants which they have administered. They must obligate themselves, in acquiring the property which they have taken over, not to sell directly or indirectly to third persons in whole or in part, without the approval of the Reich.

The following are appointed trustees:

In Lorraine

<i>Works</i>	<i>Previous Owner</i>	<i>Trustee</i>
1. Karlshuette	Hauts Fourneaux et Aciéries de Thion- ville	Roechling'sche Eisen-und Stahl- werke, G.m.b.H. Voelklingen/Saar

* Another item of correspondence which was contained in this document shows that copies of this letter were sent on 5 February 1941 to various subdivisions of the Economic Group Iron Producing Industry and to various officials and industrial leaders.

<i>Works</i>	<i>Previous Owner</i>	<i>Trustee</i>
2. Kneuttingen	Société Métallurgique de Knutange	Kloecknerwerke A.G., Duisburg
3. Ueckingen	Forges et Aciéries de Nord et Lorraine	Neunkircher Eisenwerk A.G., formerly Gebr. Stumm, Neunkirchen/S.
4. Rombach	Société Lorraine des Aciéries de Rombas	Friedrich Flick, K.G., Berlin W 9, Bellevuestr. 12 a
5. Machern		
6. Hayingen	Les Petits-Fils des F. de Wendel et Cie.	Reichswerke Hermann Goering—formation of a special Lorraine section.
7. Moevern-Rosslingen		
8. Hagendingen	Union des Consommateurs de Produits Métallurgiques et Industriels (UPMJ)	
9. Saft		
<i>In Luxembourg</i>		
1. Rodingen	Société Anonyme d'Ougrée-Marine-haye	Dr. Faust and Hahl, jointly
2. Differdingen	Hadir Société des Hauts Fourneaux et Aciéries de Differdange-St. Ingbert-Ruemelingen	Vereinigte Stahlwerke AG, Dueseldorf AG der Dillinger-Huettenwerke, Dillingen/Saar.
3. Oettingen		
4. Ruemelingen		
5. Rolling Mill		
St. Ingbert		
6. Esch-Schifflingen	Arbed Aciéries Réunis de Burbach-Eich-Dudelange	The corporation remains an independent corporation with its seat in Luxembourg, retaining the designation Arbed, but a German firm name will be introduced. The Burbach foundry becomes an independent subsidiary corporation with its seat in Saarbruecken-Burbach.
7. Belval		
8. Rote Erde		
9. Duedelingen		
10. Deutsch-Oth		
11. Dommeldingen		
12. Burbach		

I asked the chiefs of the civilian administration in Lorraine and Luxembourg to install the trustees. I reserve the right to take further measures for the establishment of conditions for the administration of the concerns and their later taking over.

The plenipotentiaries for the iron industry in Lorraine and Luxembourg, Kommerzienrat Roechling and Korvettenkapitaen (ret.) Steinbrinck, who were appointed by the Plenipotentiary General for Iron and Steel, have been released from their assignment in connection with the immediate administration of the works, and in Lorraine and Luxembourg retain their activity insofar as it is necessary for the joint administration of the plants of the iron producing industry in Lorraine, in Luxembourg, in Belgium, and in northern France, and for the joint representation of the interests of these works.

The ore mines belonging to the previous owners of the works are not affected by the above order. The activity and responsibility of the deputy for ore mining, Generaldirektor Raabe, suffers no change.

I ask that the steel works mentioned be taken into your organization as soon as possible and that you take over the representation of their interests.

BY ORDER:

Signed: VON HANNEKEN

TRANSLATION OF DOCUMENT NI-2508
PROSECUTION EXHIBIT 535

LETTER FROM THE TRUSTEE FOR ENEMY PROPERTY IN LORRAINE TO THE
FLICK CONCERN, 20 FEBRUARY 1941, CONCERNING FLICK'S TAK-
ING OVER THE OPERATION OF ROMBACH AND MACHERN

Copy KG. of the copy Ho.
Chief of the Civil Administration, Trustee for Enemy Property,
Group Industrial Economy

Metz, 20 February 1941
Hermann Goering Str. 34

Friedrich Flick K.G.
Subject: Société Lorraine des Aciéries de Rombas, Rombach, and
Machern.

The Reich Minister of Economics communicates by his decree of 31 January that by virtue of the order of the Reich Marshal the iron smelting works located in Lorraine are now being put in responsible hands in order to be taken care of, directed, and managed on their own account by individual persons or enterprises of the iron producing industry suitable to manage them on behalf of the Reich. According to the above instructions the Chief of Civil Administration requests you to take over the *Société Lorraine des Aciéries de Rombas, Rombach, and Machern*, and I herewith inform you of the same. According to the decree of the Reich Minister of Economics the management contracts [Betriebsvertraege] will be concluded subject to the approval of the Reich Minister of Economics. The Reich Minister of Economics decided that in order to work out the text of these contracts and future evaluations of the plants, a commission of experts will be established with the participation of the authorities concerned under the chairmanship of a trustworthy and eminent expert of the iron producing industry. After the return to peacetime economic conditions the ownership of the plants will be transferred to German enterprises which will pledge themselves not to sell the plant they have taken over to a third party either directly or indirectly or in whole or in part without the consent of the Reich. It is left to the trustees to make their application at the given date for the purchase of the enterprise.

[Signed] DR. SCHIETTINGER

TRANSLATION OF DOCUMENT NI-1644
PROSECUTION EXHIBIT 536

LETTER FROM DEFENDANT FLICK TO THE TRUSTEE FOR ENEMY PROPERTY
GROUP INDUSTRIAL ECONOMY IN LORRAINE, 1 MARCH 1941, CON-
CERNING THE ASSUMPTION OF TRUSTEESHIP OVER THE ROMBACH
AND MACHERN PLANTS, FORMATION OF A SPECIAL COM-
PANY TO MANAGE THE PLANTS, AND RELATED MATTERS

[Handwritten] To Dr. Streese

1 March 1941
Ho.

To: Chief of Civil Administration,
Trustee for Enemy Property,
Group Industrial Economy
Metz

Hermann Goering Str. 34

Subject: Steel works Rombach and Machern.

We thank you for your letter of 20 February 1941 * which we have just received. According to your communication, which had already been transmitted to us by the Reich Ministry of Economics and by the Plenipotentiary General, Kommerzienrat Roechling, we are taking over, effective today, the trusteeship [Truehand-schaft] of both steel works, Rombach and Machern, on the conditions established by the commission of experts regarding the plant management contract [Betriebsfuehrungsvertrag].

In order to carry out the functioning of the above-mentioned plants, we established an industrial company yesterday under the firm name Rombacher Huettenwerke G.m.b.H. with a temporary capital of RM 500,000. Originally we intended to establish the company in Rombach, as in principle our point of view is that this kind of industry only can be properly managed on the spot, and therefore the offices of the company should be established in the same locality as the main plant.

Nevertheless, as the French legislation is at the moment still in force in Lorraine, we have decided in agreement with the Gau administration, to establish the company in Saarbruecken, with the intention, however, of transferring the company immediately to Rombach when suitable legal provisions are granted in Lorraine. During the telephone conversation on 27 February, Dr.

* Document NI-2508, Prosecution Exhibit 535, reproduced immediately above.

Schiettinger referred us to the Reich Ministry of Economics as regards the setting up of the company and the interior distribution of capital among the companies belonging to our group: Eisenwerk-Gesellschaft Maximilianshuetten, Rosenberg; and Harpener Bergbau A.G., Dortmund. We then contacted State Secretary General von Hanneken who in principle agreed with us. We immediately sent a written application to the Reich Ministry of Economics and will take the liberty of informing you about this question as soon as we have received a written confirmation.

We considered that our affiliated company, Harpener Bergbau A.G., should participate to the extent of at least 51 percent in the new company as that would give us the possibility of supplying both plants Rombach and Machern with coke coming straight from Harpen, as the production of both Rombach and Machern depends exclusively on the coke supply. The other 49 percent of the company has been taken over by the Eisenwerk-Gesellschaft Maximilianshuetten (which also belongs to our group) because Maxhuetten has exactly the same production plan as Rombach and, besides, the market areas of Maxhuetten and Rombach often overlap so that we can place a large part of our business connections in southern and central Germany at the disposal of Rombach in order to further the marketing of its products.

Heil Hitler!

FRIEDRICH FLICK
Kommanditgesellschaft

[Signed] FLICK

Copies to—

Mr. Kaletsch
Mr. Weiss
Dr. Stresse
Managing Board Harpen
Management Rombach
Steel Works

PARTIAL TRANSLATION OF DOCUMENT NI-5487
PROSECUTION EXHIBIT 539

EXTRACTS FROM THE REPORT OF THE KLEIN COMMISSION, MARCH AND
APRIL 1941, ON THE EVALUATION OF THE ROMBACH AND
MACHERN PLANTS AND RELATED MATTERS

Report

Concerning the Expert Opinion [Gutachten] on the Plants in
Luxembourg and Lorraine

According to the letter of the Reich Minister of Economics dated
21 February 1941

March/April 1941

Concerning—the works at *Rombach* and *Machern*

Functions and Composition of the Commission

By a letter of the Reich Minister of Economics dated 21 February
1941, the commission was given the following task:

To work out the draft of the plant management contracts to be
submitted for approval and to evaluate the Luxembourg and Lor-
raine steel works.

The commission was composed as follows:

- Klein, Hugo, Dr., Foundry Manager, Siegen (chairman),
- Durrer, Robert, Dr. Ing., Professor, Berlin-Charlottenburg,
- Geldmacher, Erwin, Dr., Professor, Cologne,
- Herle, Jakob, Dr., Berlin (Main Trustee Office East),
- Koob, Karl, Dr., Government Counselor, Saarbruecken (head
of Civil Administration Lorraine),
- Kuettner, Carl, Dr. Ing., Berlin (business manager of the
Export Corporation [Ausfuhrgemeinschaft] of the Trade
Group Refined Steel),
- Mueller, Heinrich, Dr., Ministerial Counselor, Berlin (R.F.
M.),
- Reichert, J. W., Dr., Berlin (Economic Group Iron Producing
Industry),
- Reitboeck, Gottfried, Director, Berlin (Reich Commissioner
for the Establishment of Prices),
- Rummel, Kurt, Dr., Professor, Duesseldorf (Association of
German Foundries [Verein Deutscher Eisenhuettenleute]),

Schmitt, Heinrich, Ministerial Counselor, Berlin (Reich Ministry of Economics),
Simmer, Nikolaus, Dr., Lord Mayor, Koblenz (head of Civil Administration Luxembourg),
Skrodzki, Bernhard, Dr., Berlin (Reich Group Industry [Reichsgruppe Industrie]).

In addition, the following took part in the discussions of the commission:

Dichgans, Hans, Dr., Berlin (Reich Commissioner for the Establishment of Prices),
Ganster, Franz, Dr., Government Counselor, Berlin (Reich Ministry of Economics),
Rieck, Wendel, Dr., Berlin (Reich Commissioner for the Establishment of Prices),
Spannagel, A., Director, Berlin (Economic Group Iron Producing Industry),
Farsch, Peter, assisting the chairman.

The commission began its work on 19 March 1941 in *Luxembourg* with an introductory discussion.

After this, there was an inspection of all the Luxembourg and Lorraine plants and further discussions which lasted from 19 March until 2 April 1941.

There was a final discussion in Goslar from 21 April 1941 until 23 April 1941.

* * * * *

III. Evaluation

a. Evaluation on the basis of the value of the different plants of the enterprise.

(1) *Machern*.—We rate the value of the blast furnace Machern at RM 60 per ton of yearly output. In view of the fact, however, that two furnaces are only fit for demolition, the actual value of the Machern plant with its four blast furnaces can only be reckoned at 10 percent of the original value. The normal output was estimated at 100,000 tons times RM 60, the value per ton of yearly output, times 10 percent actual value at RM 600,000.

(2) *Rombach*.—The blast furnace Rombach with 580,000 tons of normal yearly output and a value of RM 60 per ton of yearly output, together with an actual value of 20 percent is estimated at RM 7,000,000.

A part of the blast furnace has been badly neglected and the installations are not modern. Three of the furnaces have to be stoked by hand. Considerable investments will be necessary.

(3) *Thomas Works*.—The Thomas works which have only been in operation since 1941 and have very good installations, can be estimated with an output of 590,000 tons and a value of RM 20 per ton of yearly output and an actual value of 50 percent of the original value at RM 6,000,000.

(4) *SM [Siemens-Martin] Works*.—The SM works with a yearly output of 85,000 tons are obsolete and of little value. With a value of RM 20 per ton of yearly output and an actual value of 15 percent they can be estimated at RM 250,000.

(5) *Rolling mills*.—The rolling mills have a raw steel [Rohstahl] capacity of 680,000 tons. They are estimated at the rate of RM 45 per ton of yearly output and an actual value of 25 percent at RM 7,650,000.

(6) *Cement works, cinder stone works, harbor*.—The cement works, cinder stone works, and additional harbor installations were estimated at RM 1,500,000.

Summary.—

Blast furnace Machern	RM 600,000
Blast furnace Rombach	RM 7,000,000
Thomas Works	RM 6,000,000
SM Works	RM 250,000
Rolling mills	RM 7,650,000
Cement works, cinder stone works and harbor installations	RM 1,500,000
	<hr/>
Total	RM 23,000,000

b. Evaluation according to value per ton of yearly output of raw steel as compared with plants in Germany.—As regards its installations, the plant, like Kneuttingen, can be considered a normal Lorraine steel work in which no “corrections” are needed either to increase or decrease the value.

The value of the Rombach plant has been arrived at by using RM 35 as the comparative German value per ton per annum of raw steel which results in 680,000 tons multiplied by 35, equaling RM 23,800,000.

The total value of the plant is set at RM 23,400,000.

TRANSLATION OF DOCUMENT NI-2507
PROSECUTION EXHIBIT 538

MEMORANDUM OF HERMANN ROEHLING AND KARL RAABE, 1 MARCH
1941, CONCERNING THE FORMAL TRANSFER OF THE TRUSTEE
OPERATION OF ROMBACH TO THE FLICK CONCERN

By virtue of the decree by the chief of the Civil Administration of Lorraine of 20 February the activities of the Plenipotentiary General for Iron and Steel in Lorraine ceased on 28 February 1941.

In conformity with this decree the plant [handwritten] *Rombacher-Huettenwerke*, including the Cement Works, will be put on 1 March 1941 under the trusteeship of the [handwritten] *Friedrich Flick Kommanditgesellschaft*; on this date the plant will be transferred from the Plenipotentiary General to the representatives of the [handwritten] *Friedrich Flick Kommanditgesellschaft* and taken over by them.

The Plenipotentiary General for Iron and Steel transmitted to the rightful representative the necessary instructions. In those instructions the Plenipotentiary General gave them information concerning their duties connected with the administration of the plants taken over by them.

At the time of transfer the Plenipotentiary General explained that the order given to him by the Reich Marshal in his capacity as Plenipotentiary for the Four Year Plan contained the following:

In consideration of the war necessities the utmost production should be secured from the steel works in Lorraine without consideration of any other viewpoints. In execution of this order no consideration could be given to the interests of the individual plants. It specially concerns the moment the individual plants started production as well as the establishment of the production program—this concerns the quantity as well as the type of production. Besides, this task makes it necessary to transfer stocks on hand from individual plants to the place where production is the most advantageous.

Furthermore, the Plenipotentiary General insisted on the point that the trusteeship of the steel works in Lorraine apart from the self-evident task of national economy is first of all a political task to secure the production of the largest possible quantity of steel in using as little labor and fuel as possible, and with the utmost care in the use of irreplaceable reserves of ore. The aim established by the Fuehrer to be achieved by the Chief of the Civil

Administration is that the whole district should be absolutely united with Greater Germany and therefore the whole population and especially the working population should be won for the Fuehrer and the German working people. Therefore, again, it is the will and the desire of the Chief of Civil Administration that the appointment of all the key employees should be carried out in agreement with him and every appointment of a foreman or engineer should depend upon the political information of the district leader.

With the signature of this transfer document the responsibility for the [handwritten] *Rombach Steel Works and its staff* is transferred to the trustee.

[Handwritten] Rombach, 1 March 1941

Plenipotentiary General for Iron and Steel in Lorraine and Meurthe-et-Moselle

[Signed] H. ROEHLING

Those entrusted with taking over the plants [Die mit der Uebernahme des Werkes Beauftragten]

[Signed] KARL RAABE *

* Raabe, chairman of the managing board of Flick's Maximilianshuetta, was made a director of the newly formed "Rombacher Huetttenwerke", all the shares of which were held by two Flick firms, namely, Harpen and Maximilianshuetta.

PARTIAL TRANSLATION OF DOCUMENT NI-1887
PROSECUTION EXHIBIT 541

EXTRACTS FROM A MEMORANDUM OF A CONFERENCE OF ROECHLING,
PLENIPOTENTIARY FOR IRON AND STEEL IN LORRAINE, AND REP-
RESENTATIVES OF THE KLOECKNER AND FLICK CONCERNS IN
THE FLICK OFFICES IN BERLIN, 27 MAY 1941, CONCERNING
THE OPTION TO PURCHASE LORRAINE PLANTS UNDER
TRUSTEE ADMINISTRATION, AND RELATED MATTERS

Berlin, 27 May 1941

Memorandum on today's conference in Berlin, Bellevuestr. 12 a.
Present:

Dr. Hermann Roechling
Dr. Henle
Dr. Pinkernelle
Dr. Burkart
Hahl.

Messrs. Roechling and Henle informed us that they, like our-
selves, had been ordered to report to Mr. Koob¹ at Saarbruecken,
last Monday, 26 May, each one at a different hour, however.

The gentlemen welcomed our meeting and proposed that we
should talk again, after the discussion with Koob, about the
question of the Lorraine agreement. At first the time and place
contemplated was Wednesday, 4 June, at Saarbruecken (or
possibly Metz). In the meantime, the discussion had to be post-
poned to *Friday, 6 June*,² because Mr. Koob was away until
the 5th.

The existing contract does not come up in any way to the
expectations which one had in regard to the elaboration of the
agreement which was to be concluded with the foundries by
reason of the letter of the German Ministry of Economics of 31
January 1941.³ It was agreed to point out during the negotiations
with the national offices that—

a. It would be suitable to conclude a workable preliminary sales
contract. Mr. Roechling confirmed that in Alsace such contracts

¹ Government Counselor Dr. Karl Koob, Chief of Civilian Administration in German occupied Lorraine.

² Extracts from a Flick memorandum concerning the meeting in Koob's office on 6 June 1941, Document NI-2502, Prosecution Exhibit 542, reproduced immediately below.

³ Letter from von Hanneken of the Reich Ministry of Economics to Poensgen, Document NI-049, Prosecution Exhibit 534, reproduced in part earlier in this section.

had been already concluded, not only with Mannesmann, but also in other cases, according to Mr. Hahl, in Luxembourg, between I. G. Farben and the company Air Liquide.

b. If it is not possible to obtain a preliminary sales contract, it should be particularly mentioned in the present agreement that the right of option originally established in the letter of the Ministry of Economics of 31 January 1941 will be fully maintained, which will best be done by inserting a corresponding clause. Further it should be established that the present agreement only represents a *partial* execution of the decree of the Reich Marshal.

c. A second agreement (with the Ministry of Economics) by which this option would be made secure, could perhaps be taken into consideration.

In regard to the industrial plants to be taken over, it was agreed that, in any case, the real property in its widest sense must also be transferred, as, e.g., the land and forest property. Besides, the gentlemen of the firm of Kloeckner as well as ourselves were of the opinion that all company dwellings, viz, for employees *and* workmen, belong absolutely to the plant and must be transferred for this reason.

* * * * *

In regard to paragraph 3 a longer discussion arises. Mr. Pinkernelle is of the opinion that this paragraph should express distinctly that the payment of the yearly sum for rent per ton of pig iron or steel represents a first payment on the purchase price, in order to express thereby that the mentioned value represents the purchase price.

* * * * *

Copy to—

Mr. Kaletsch
Mr. Raabe
Dr. Streese
Mr. Weiss

NOTES OF THE FLICK CONCERN ON A CONFERENCE BETWEEN A REPRESENTATIVE OF THE OFFICE OF CIVILIAN ADMINISTRATION IN LORRAINE, DEFENDANT BURKART, AND RAABE, CONCERNING THE ROMBACH PLANT LEASE CONTRACT

[Handwritten] 6 June 1941

Notes

On the conference at the Office of the Chief of the Civilian Administration for Lorraine, Hindenburgstr., Saarbruecken, on 5 June 1941,* at 1730 hours, concerning the Rombach plant lease contract.

1. *Participants* from Office of the Chief Civilian Administration Regierungsrat Dr. Koehler; from the Friedrich Flick K.G. Director Dr. Burkart, Dr. Streese; and from the Rombacher Huettenwerke G.m.b.H. the undersigned Generaldirektor Raabe.

2. *Preamble to the contract.*

(a) Dr. Burkart first raised the question of whether the contract should be concluded with the Friedrich Flick K.G. or with the Rombacher-Huettenwerke G.m.b.H. Dr. Koehler could not answer the question himself.

(b) Dr. Koehler considered as acceptable our proposal that it should be stated in the preamble that after the return of normal peacetime conditions the trustee be given an opportunity to purchase the plants.

Article 1

3. The most important part of article 1 is appendix 1. Our proposal in effect is that the title to real estate established by the Trusteeship Association A.G., Frankfurt on the Main, as of 1 July 1941 be transferred to us without reservation for industrial exploitation. As we had to point out to Dr. Koehler, the total area of 18,411,023 square meters, included the land belonging to the plants, the area of which was estimated in the above-mentioned survey report at 2,906,263 square meters, the remainder of 15,504,760 square meters does not represent the final figure, as the extent to which estimates made at the time by the property department of the Rombach plant require correction must still be determined.

According to the Rombach plant, the St. Paul stone quarry at Montingen am Berg and the mine railroad are to be added to the

* It is believed that the conference was actually held on 6 June. Note the handwritten note in the upper right hand corner and the fact that the conference was scheduled for 6 June. See second paragraph of Document NI-1887, Prosecution Exhibit 541, reproduced immediately above.

plant holdings; the ground belonging to it, however, is listed in the above-mentioned 2,906,263 square meters (since a new survey would certainly entail great difficulties it might be advisable to avoid making precise estimates of the area). Property listed in appendix 1, according to the wording we propose: "Ornehafen Reichersberg with portal lorries from Rombach to Reichersberg, connecting railroad from Rombach to Machern", involves property already included in the above-named areas.

The gas mains from Homécourt to Rombach—according to information received from the Rombach Technical Bureau—did not belong to the Société Lorraine des Aciéries de Rombas, but was constructed by Homécourt about 10 years ago at its own expense.

Auxiliary materials are to be regarded as part of the leased plant installations.

Article 2

4. We propose that the plant installations to be treated carefully by us refer *only to those taken over in running order*.

Article 3

5. In order to prevent the finance office from using the wording proposed for article 3, paragraph 1 as a pretext for regarding the compensation of RM 0.90 per ton of pig iron and steel ingots as sufficient to balance the depreciation of the Rombach plant, we propose to omit the introductory clause: "in consideration of plant depreciation due to industrial exploitation." Dr. Koehler will support our proposal.

The amount of net profit can be arrived at only after *all taxes, export subsidies and compensation for plant depreciation* (RM 0.90 per ton of pig iron and steel ingots) have been written off.

With a depreciation quota of 4 percent, the new estimate of the value of the plant, as stated in the Klein Commission's report * would provide for the following depreciation:

	<i>Cost price</i> RM	<i>4 percent depreciation</i> RM
Machern	6,000,000	240,000
Blast Furnace Rombach	35,000,000	1,400,000
Thomas Works	12,000,000	480,000
Martin Works	1,700,000	68,000
Rolling Mills	30,600,000	1,224,000
Cement Works Cinder Stone Works, Harbor	3,000,000	120,000
Total	88,300,000	3,332,000 [sic]

* This refers to document NI-5487, Prosecution Exhibit 539, reproduced in part earlier in this section.

Housing and property are not included in the foregoing estimates. In article 3, paragraph 2, of the contract proposed on 21 April 1941 and now under discussion, the amount payable in dividends to the Reich as compensation for the net profit from the plant is left open.

We proposed that the amount, in addition to being stated as an exact figure, should be still further defined, e.g., value of plant on a certain date, etc. Rombach's initial proposal that the net profit on which the dividend is based should be fixed at RM 1.20 per ton [handwritten] *was dropped*, because it is proposed to insert a clause in the lease providing that losses incurred by reductions in plant production owing to lack of coke and minerals, are to be borne by the Reich.

For the new article 3 we suggest a passage contained in an earlier draft, according to which the sums paid to us as compensation ("sums of RM 0.90 paid as compensation") are to be deducted from the sales price.

Article 4

6. For the amount stipulated in article 4, paragraph 1 in the case of new investments we suggest a dividend of 4 percent of the sales price, instead of the 2 percent proposed.

A supplementary clause is to be added to paragraph 2, article 4, to the effect that, apart from investments which are to be refunded, expenditure chargeable to operations, e.g., housing repair or purchase of office equipment, are also to be borne by the Reich should the plants not be taken over.

Article 5

7. For the sake of clarity it appears appropriate that the words "auxiliary materials" be inserted in article 5, paragraph 1. The regulations for evaluation indicated in article 5, paragraph 2 and attached to the contract as appendix 4, are obscure and contradict the draft contract forwarded to us by the Economic Group Iron Producing Industry. We propose to value raw materials, including coal, briquettes, and coke at the original prices; * * * to compensate for the storage risk * * * we propose a reduction of 25 percent. *

Paragraph 3 in appendix 4 should read: "The stipulated prices * * * are valid for semi-finished and finished *as well as by-products*. As the Thomas-slag, in consequence of being stored for years, cannot be considered as new, the price of RM 17.00 including the reduction of 15 per cent, RM 14.00 per ton, is too high for Rombach.

* The ellipses in this and the following sentence are contained in the original.

Article 6

8. Paragraph 1 is to be supplemented as follows:

Taxes based on plant property, *especially property tax, contributions, real estate tax, and operating capital tax* are excepted.

We shall propose an appropriate wording in order to be sure that no obligation to ourselves arises through claims made on the former French owners.

Article 10

9. Article 10 makes mention of an economic price for ore. An effort will be made to prevent a further rise in prices by establishing a price ceiling at the price level of 1 March 1941.

TRANSLATION OF DOCUMENT BURKART 823
BURKART DEFENSE EXHIBIT 182

DECREE OF GAULEITER BUERCKEL, 1 DECEMBER 1941, CONCERNING THE
SEQUESTRATION AND UTILIZATION OF FRENCH PROPERTY IN LORRAINE

Decree concerning the Sequestration and Utilization [Verwertung] of French Property in Lorraine, 1 December 1941, 1941
Ordinance Gazette for Lorraine, page 1044

Pursuant to the authority vested in me by the Fuehrer I decree as follows:

Article 1

The Chief of the Civil Administration is authorized to sequester for the Reich the French property which within the meaning of the ordinance of 24 November 1941 (Ordinance Gazette, p. 1010) is to be considered as enemy property and the property of enterprises which are, directly or indirectly, under predominant enemy influence (art. 11 of the above-mentioned ordinance). The sequestration is effected by order of the Chief of the Civil Administration or by the agency commissioned by him.

On sequestration, the value of the sequestered property is to be determined on principles laid down by the Chief of the Civil Administration.

Article 2

The sequestered property may be utilized. Utilization is effected on the principles of proper commercial management, giving due consideration to the special interests of the war economy and the new order in Lorraine.

Article 3

The legal and administrative regulations necessary for the implementation and supplementation of this ordinance are issued by the Chief of the Civil Administration Lorraine.

Saarbruecken, 1 December 1941

The Chief of the Civil Administration in Lorraine

[Signed] BUERCKEL

TRANSLATION OF DOCUMENT BURKART 824
BURKART DEFENSE EXHIBIT 183

EXTRACTS FORM THE REGULATIONS OF 22 DECEMBER 1941 CONCERNING
THE SEQUESTRATION AND UTILIZATION OF FRENCH PROPERTY
IN LORRAINE *

Regulations concerning the Decree of 1 December 1941 concerning the Sequestration and Utilization [Verwertung] of French Property in Lorraine, 22 December 1941, 1941 Ordinance Gazette for Lorraine, page 1077

In accordance with Article 3 of the Ordinance of 1 December 1941, I decree:

Article 1

Motion for sequestration and utilization

If the French property administered by Groups I to IV of the Transfer Agency (Ordinance Concerning the Treatment of Enemy Property, dated 24 Nov. 1941—Ordinance Gazette p. 1010—) is to be utilized, these groups submit the motion for sequestration of the property involved to the Chief of the Transfer Agency for him to pass it on at once to the Chief of the Civil Administration.

Likewise, lease agreements containing a preemption clause or any other obligation regarding a later purchase by the leaseholder are to be submitted to the Chief of the Civil Administration.

The sequestration of the enemy property is effected by written order of the Chief of the Civil Administration. On the strength of this order the Transfer Agency in its individual groups utilizes the property involved.

* * * * *

Article 4

Sale Value

The sale value is the value of a property, or part of a property, at the time of its sale.

If a property is transferred to its previous administrator or leaseholder, its condition at the time of the transfer for administration or tenure by lease is to be taken into consideration in determining the sale value.

The assumption of debts inside Germany is to be settled by the contract of sale. Debts, unless they are assumed by the acquirer,

* The extracts reproduced here are all the extracts which were contained in the document offered in evidence.

are guaranteed only by the paid price of acquisition. Claims and debts, recoverable from or payable in France, are not assumed unless a buyer of the property enters into the commitment involved.

According to requirements, norms of evaluation are laid down by the Chief of the Civil Administration.

* * * * *

Article 7

Corporations, Limited Partnerships [Kommanditgesellschaften] and Limited Liability Companies [Gesellschaften mit beschränkter Haftung]

In the event of an enemy investment existing in a corporation, limited partnership or limited liability company, either the investment or, if the company involved is under French influence (article 11 of the Ordinance Concerning the Treatment of Enemy Property, dated 24 November 1941, Ordinance Gazette, p. 1010), the company's property may be utilized.

If it is proposed to utilize an investment confirmed by deeds (shares, share-certificates, etc.) such deeds may be voided and replaced by new deeds in conformity with detailed directions to be issued by the Chief of the Civil Administration. Such deeds are available for utilization.

If the approval of the company or of the partners is required for the transfer of the investment, it is to be considered as given, if the transfer is effected by the Chief of the Civil Administration in the course of the utilization.

Article 8

Management of Purchase Amounts

Purchase amounts will be remitted to the Main Finance Office of Lorraine. The latter will make separate entries of the transfer and additional prices comprised in the purchase amounts. Entries in other places or on other accounts are not permissible.

Likewise, the Main Finance Office of Lorraine will enter as received the current proceeds from enemy property in conformity with special directives.

After the utilization, the documents will be forwarded to the Chief of the Transfer Agency who will take charge of their further management in particular with regard to the purchase prices.

* * * * *

Saarbruecken, 22 December 1941.

The Chief of the Civil Administration in Lorraine.

BUERCKEL

PARTIAL TRANSLATION OF DOCUMENT NI-1988
PROSECUTION EXHIBIT 544

PLANT LEASE CONTRACT FOR THE ROMBACH AND MACHERN PLANTS,
15 DECEMBER 1942, SIGNED BY THE ADMINISTRATOR OF THE IRON
FOUNDRIES OF LORRAINE AND DEFENDANT FLICK, WITH EFFECT
AS OF 1 MARCH 1941

[Stamp]

Rombacher Huettenwerke
Diary No.
Rec'd 17 December [1942]
Answered :

Plant Lease Contract [Betriebsueberlassungsvertrag].

By virtue of the order of the Reich Marshal, the Plenipotentiary for the Four Year Plan, to the effect that the steel works situated in the districts of Lorraine and Luxembourg are in the name of the Reich to be controlled [betreut], managed, and operated by single individuals or enterprises on their own account, the firm of—Friedrich Flick Kommanditgesellschaft, Berlin W 9, Bellevuestrasse 12 a, has been appointed trustee of the plants of Rombach and Machern, i.e., of plants belonging to the Société Lorraine des Aciéries de Rombas, the Société Anonyme des Ciments Portland de Rombas, the firm Sawmill and Timber Trade, formerly Mundinger in Rombach; and has taken possession of these plants subject to a subsequent settlement of ownership rights.

In execution of the above-mentioned order the following agreement is hereby made between Regierungspraesident Friedrich Wenner of Metz acting in his capacity as Administrator of the property situated in Lorraine of the Société Lorraine des Aciéries de Rombas, of the Société Anonyme des Ciments Portland de Rombas, of the Sawmill and Timber Trade, formerly Mundinger in Rombach; appointed by the Chief of the Civil Administration of Lorraine by virtue of paragraphs 11 and following of the Ordinance Concerning Enemy Property, dated 24 November 1941 (Verordnungsblatt [Official Gazette] of the Chief of the Civil Administration of Lorraine No. 71, p. 1010) (hereinafter referred to as "the Administrator") and the firm of Friedrich Flick Kommanditgesellschaft (hereinafter referred to as "Flick") :

(1) The Administrator conveys the installations of the plants of Rombach and Machern to Flick for economic use [wirtschaftliche Nutzung]. Annex 1, which constitutes an integral part of

the present contract, contains a description of things (and also of rights) that are "plant installations" [Werksanlagen] as the term is herein used.

(2) The parties are in agreement that the relationship arising from the present agreement must be regarded as having commenced on 1 March 1941, which is its effective date.*

Paragraph 2

(1) Flick is obliged to handle the plant installations with care, to maintain them in good working condition at his own expense and to keep them protected by adequate and the usually requisite insurance.

(2) Within the scope of orderly [ordnungsmaessig] management Flick is entitled to sell plant installations or to dispose of them in any other manner. Any closing-down, removal, and alienation of plant installations, the replacement of which would amount to 100,000 RM or more, is subject to approval by the Administrator. The proceeds derived from such disposal shall be transferred to the Administrator.

Paragraph 3

(1) In consideration of depreciations caused by the economic use of the plant installations conveyed, Flick is to pay to the Administrator a compensation of 0.90 Reichsmark for every ton of crude iron produced on the premises and in addition thereto, 0.90 Reichsmark for every ton of crude steel produced.

(2) Furthermore, Flick is to pay interest on the amount of 26,280,000 Reichsmarks (in words: Twenty-six million two hundred and eighty thousand Reichsmarks) at the interest rate on capital prevailing respectively in accordance with the principles for the determination of prices on the basis of prime costs for services rendered in fulfillment of public orders [LSOE].

Should, however, the yearly profit made by Flick from the economic administration, under the present agreement, of the installations conveyed, fail to reach the stipulated rate of interest, Flick's obligation to pay interest shall be reduced to conform to the actual profit. The value on the basis of which, according to the first sentence, the interest has to be computed, shall be reduced for each subsequent year of contract by the amount of compensations paid, in accordance with the provision of paragraph (1), during the period preceding the respective year of contract, as well as by the amount of proceeds from the disposals of plant installations provided for in paragraph 2, (2); this value shall be

* 1 March 1941 was the day on which formal trustee operation of Rombach was undertaken by Flick. See Document NI-2507, Prosecution Exhibit 538, reproduced earlier in this section.

increased to the amount of expenditures, if any, incurred by the Administrator for expansion and new construction.

(3) The profit shall be ascertained in accordance with the principles of orderly bookkeeping not later than 31 July of each year and is subject to inspection by an industrial auditor [Wirtschaftspruefer], to be appointed with the mutual agreement of the parties to the contract.

(4) The payments to be made by virtue of (1) above, shall be due for the three preceding calendar months on 15 February, 15 May, 15 August and 15 November, respectively. Payments made by virtue of (2) above, will, in accordance with the profit calculated by Flick, be due not later than on August 15 of each year. The final settlement shall take place as soon as the findings of the auditor become available.

Paragraph 4

(1) Flick is entitled to expand and to renovate the plant installations at his own expense. For investments which in any single case exceed the amount of 500,000 Reichsmarks Flick has to obtain the previous consent of the Administrator.

(2) Should Flick, upon the termination of the present contract, fail to acquire the plant installations by sale, he will be entitled to demand the reimbursement of expenditures approved by the Administrator, as provided for by (1) above, to the extent that the expansions and renovations of the plant installations thus undertaken are still credited with a book value reflecting a proper amortization. The renovations and expansions of plant installations which were not approved by the Administrator may be offered by Flick to the Administrator for sale.

Paragraph 5

(1) The Administrator shall hand over to Flick all stocks of raw materials, semifinished and finished products as such have been ascertained by an inventory made on the effective date of the contract according to the annex * attached thereto. Plant equipment, spare parts, and storehouse materials belong to the plant installations.

(2) The price for the stocks to be paid by Flick shall be determined by the inventory regulations attached to this agreement (annex 2),* and by the directives concerning the evaluation of inventories (annex 3).*

(3) Flick undertakes to pay the price in eight equal installments within a period of 4 years. However, he is also entitled to make payments at earlier dates. The parties agree that the first

* These annexes are not reproduced herein.

installment was due on 1 January 1942. Interest at the rate of 1 percent above the respective prevailing rate of discount of the Reich Bank shall be paid on installments due.

(4) In the event that the plant installations shall revert to the Administrator, Flick has to provide for the operational level of necessary stocks and to transfer such stocks to the Administrator.

Paragraph 6

(1) Flick agrees to take over into his service all employees of the enterprise on the effective date of the present agreement, excepting key personnel whom Flick cannot be expected to take over, and to grant them the same legal status which they would have, if the hitherto existing employer-employee relationship had been continued. As to pensions (2) below applies.

(2) To the extent required by the Administrator, Flick further agrees to pay pensions and survivor allotments which, by virtue of social security contracts [Versorgungsvertraege], the former owner of the plants Rombach and Machern, owes to his employees and their survivors. The Administrator shall transmit to Flick a list of those entitled and the amounts to be paid to them and as far as required shall supply information concerning the agreements.

(3) In the event that a Referent for questions of personnel and social service is employed, Flick agrees to make the appointment in accordance with the suggestion of the Gauleiter. If such a Referent has been already employed and should he be objectionable to the Gauleiter, Flick agrees to dismiss the same and to appoint another person in accordance with the suggestion of the Gauleiter.

(4) Flick further agrees to recruit 50 percent of the respective total number of male employees and workers from the Reich and in doing so to give preference, if possible, to families with many children. Accordingly, the total number of male employees and workers must comprise 20 percent of Reich Germans by the end of 1942 and the full quota of 50 percent by the end of 1944.

(5) Should the Gauleiter order that the quota of Reich German working personnel must exceed 50 percent of the total number of male employees and workers, Flick agrees to comply with such order.

Paragraph 7

(1) The Administrator will notify Flick as to all contracts which were in operation on the effective date of the present agreement, e.g., rents and leases, delivery and supply agreements, sales, carriage-of-goods agreements, insurance contracts, railroad con-

nection contracts, syndicate agreements. Flick agrees to negotiate with the parties to those contracts for the signing of respective new agreements. Flick may, however, advise the Administrator by 31 December 1942 of those instances in which he thinks it inexpedient to have new agreements signed.

(2) Should any goods delivered prior to the effective date of the present agreement be returned, the settlement therefor will be subject to a special agreement.

Paragraph 8

(1) All taxes and levies connected with the plant installations that were in arrears on the effective date of the contract are charged to the Administrator.

(2) As far as the objects conveyed to Flick embrace the use of protective trade rights Flick has to pay any fees involved.

Paragraph 9

Flick is entitled to transfer to any of his companies the rights and obligations arising from the present agreement and from the lease of other premises and buildings simultaneously made as well as from the arbitration agreements relative to the present agreement and to the lease. Flick will, however, continue to be liable to the Administrator for all contracts.

Paragraph 10

The present agreement shall be terminated on the day on which Flick will buy the plant installations from the Administrator, or upon the expiration of a period of 3 months after the date on which Flick will have been notified that the plant installations will not be sold to him. Beginning January 1943, Flick may terminate the agreement on giving 6 months' notice.

Paragraph 11

The parties to the present agreement will each bear half of the cost.

Paragraph 12

Any disputes arising from the present agreement shall be decided by arbitration. Further details shall form the subject of a special arbitration agreement.

Metz, 15 December 1942

The Administrator of the Iron
Foundries of Lorraine

[Signed] WENNER
Regierungspraesident

15 December 1942

[Stamp] Friedrich Flick
Kommanditgesellschaft

[Signed] FLICK

TRANSLATION OF DOCUMENT NI-2513
PROSECUTION EXHIBIT 546

EXTRACTS FROM NOTES FOR DEFENDANT FLICK ON A CONFERENCE OF
DEFENDANT KALETSCH AND DR. BASLER WITH GOVERNMENT REPRESENTATIVES, 20 JANUARY 1943, CONCERNING PROPOSALS OF
THE FLICK CONCERN FOR REVISION OF ROMBACH AMORTIZATION PROVISIONS, FLICK'S INVESTMENTS IN ROMBACH, DIFFICULTIES OF PURCHASE BY FLICK BECAUSE OF GOERING'S POSITION, AND
RELATED MATTERS

To Dr. Streese

Berlin, 20 January 1943

Notes for Dr. Flick

Discussion in the Reich Finance Ministry regarding the Rombach contract

Present—from the Reich Ministry of Finance—Ministerial Counselor Benfer, Ministerial Counselor Mueller, Government Counselor Juergens, and two additional experts.

From the Reich Ministry of Economics—Senior Government Counselor Dr. Ganster with one assistant.

From Mittelstahl were present—Mr. Kaletsch and Dr. Basler.

From the Hermann Goering Works—Dr. Delius.

At the beginning, Mr. Kaletsch stated our fundamental objections to the draft of the contract of 15 December 1942.*

The wording of the contract does not give the Rombach company any opportunity to write off amortizations and to carry out economically correct calculations. While originally, particularly on orders of the Reich Marshal, the trustees were to receive the plant and an immediate sale had been postponed only because of the undecided political relations with France, the present contract is hardly based on the supposition that we would at some future date become owners of the plant. According to the contract, we are simply lessees so that naturally all amortizations would have to be written off, not by ourselves, but by the Chief of the Civil Administration. That would not do. We had considered ourselves from the very start as entrepreneurs of Rombach, had transferred our best personnel there, and had also made considerable investments.†

† Compare P.S. on page 4 [of original document].

* Document NI-1988, Prosecution Exhibit 544, reproduced earlier in this section.

All that would be out of the question if in the future we operated the plant only as lessees and if the obvious change in the point of view of the Chief of Civil Administration or of the Supreme Reich Authority should be maintained.

Ministerial Counselor Benfer replied that there was no change of view. A sale, at the present time, was not to be considered according to his [Benfer's] opinion, simply because the Reich Marshal refuses it due to the totally undecided relationship with France. Rombach and the other trustees could not, therefore, at present become the owners of the plant and in his opinion, therefore, could not write off amortizations on properties which did not belong to them. As to the misgivings expressed by Mr. Kaletsch regarding the risks of new investments, nothing unfavorable is mentioned in the contract.

* * * * *

Then the principal question of amortizations was raised. We complained that all previous negotiations were based on the supposition that we would take over the plants as of 1 March 1941 and that retroactive contracts of sale would be concluded accordingly as soon as the political conditions should permit them. Mr. Kaletsch pointed out in particular, that the compensation of 90 pfennig for each ton of raw iron and each ton of raw steel represented merely a rent connected with the production, and does not include a compensation for wear and tear of machinery.

Our original formulation should therefore be reinstated in the contract, the wording "compensation for wear and tear" should be left out, so that later on the finance authorities could not argue that this compensation per ton also included the amortization itself. Ministerial Counselor Mueller agreed to that in principle.

Furthermore, we tried to make it clear to the authorities that it was quite possible to conclude a sales contract later and fix the purchase price according to the value of 1 March 1941. That, after all, has been the viewpoint of the Klein Commission. But if the value on 1 March 1941 is taken as basis for the contract, it is evident that the wear and tear of the old plant is a charge on the trustees, which means ourselves, and has to be considered correspondingly in our financial and tax reports. The expected period of usefulness of the old plant was still 5 to 7 years.

Ministerial Counselor Mueller as well as Senior Government Counsellor Dr. Ganster thought it best if the plant were sold to the trustees as soon as possible. Neither of them felt at ease with regard to the contemplated contracts regulating the ceding of the plants. It was suggested to inquire of the Reich Marshal whether there were still any objections to the transfer of ownership. Dr.

Delius said he was ready to make a corresponding inquiry at the Staff Office. Dr. Ganster was to report this matter to the Reich Minister of Economics through Solveen. Altogether, Dr. Ganster supported us very much during the entire proceedings, while Dr. Delius remained surprisingly passive and declared before the beginning of the conference that the whole discussion would not do much good since the Reich Finance Ministry had refused any assistance to him.

The following agreements were finally made:

We will send our draft of the contract together with detailed justifications for the handling of amortizations and improvements of the plant from the viewpoint of taxation as soon as possible (we have promised to present it by the end of the week). In order to judge the matter as to taxation, Ministerial Counselor Benfer will ask the opinion of the men in charge of taxation in the Reich Ministry of Finance (either Meuschel or Gebhardt). One copy of our letter and draft of the contract was to be sent to each of the following gentlemen: Ministerial Counselor Benfer, Ministerial Counselor Mueller, Senior Government Counselor Dr. Ganster, and Dr. Delius.

(Page 4 of original)

It was, moreover, interesting to learn the basic attitude of Ministerial Counselor Benfer concerning the question of liquidating French property. In 1918 and later during the Versailles negotiations, Benfer was charged with the liquidation of what had been German property. At that time he was also in charge of negotiations concerning compensation to be paid to Germany for Lorraine factories. The prices for which the French acquired the factories at the time were so low as to be scandalous. For the present case he had to state that the prices established according to Klein's expert estimate were even lower than the ones allowed by the French. He, as custodian of enemy property, could not see his way clear to do for another party that which he had condemned on the part of the French, especially since he had written books on that scandalous subject. Naturally we pointed out to him that the French in the period from 1918 to 1940 had done nothing beyond the barest maintenance and for that reason the Lorraine plants were in such poor condition at the present time.

† P.S. to page 1.—In that connection we particularly stressed that we must be allowed amortizations for the old plant [Altanlagen] also in order to carry out the necessary capital improvements. If that were not the case we would have to incur debts which could not be expected from a trustee or a lessee. If we were not allowed these amortizations the companies would have to make profit statements which would in no way correspond to actual conditions. That would lead to even greater arguments later in establishing the purchase price, which has to be based on the actual value of the plant at the time of the taking over, i.e., at the value estimated on 1 March 1941.

Besides, in case amortizations would not be allowed we would be far worse off as to taxation than any enterprise in the Reich. That never was meant and intended by the agreement. On the contrary, from the very start it was intended to appoint a responsible entrepreneur working at his own risk who was expected to use all powers available to him not only to manage the plant but also to bring it into a condition which according to German conceptions is necessary to maintain and improve such a plant.

Copies to Messrs.—

O. E. Flick
Kaletsch
Kurre
Dr. Streese
Dr. Burkart

TRANSLATION OF DOCUMENT NI-5577 b
PROSECUTION EXHIBIT 555

LETTER FROM THE OFFICE OF THE GERMAN MILITARY COMMANDER IN
FRANCE TO THE FRENCH FIRM DAVUM, 19 APRIL 1941, DIRECTING
THE RETURN OF 9 MOTORIZED ROMBACH BARGES TO
ROMBACHER HUETTENWERKE G.m.b.H.

Paris, 19 April 1941
Hotel Majestic, Avenue Kleber 19
Tel. Kle 6800/09

The Military Commander in France
Administration Staff Nbt. Wi II ESt
204 54
Schue/Sp.

Cie. de Dépôt and Agences de Ventes d'Usines Métallurgiques,
Davum
Rue Amelot 96
Paris

Subject: Sté. Lorraine des Aciéries de Rombas,
9 Motorized Canal Barges.

As I understand from the Rombacher Huettenwerke G.m.b.H. you are unlawfully holding back the motorized Rombach barges 1, 2, 3, and 5-10 (9 of them) and refuse to hand these over to the Rombacher Huettenwerke G.m.b.H.

I hereby give orders for an immediate return of these motorized canal barges, which you are holding unlawfully, to the Rombacher Huettenwerke G.m.b.H.

It has been found that these barges have not been well looked after in the meantime and I must reserve the right, through the Rombacher Huettenwerke, to hold you responsible for all damages.

The retention of these barges on your part is contradictory to the agreements made, and above all to the spirit which led to the agreements at the time, whereby when the iron was made available, the return of the ships necessary for transportation was specifically mentioned.

For the Military Commander
The Chief of the Administration Staff
BY ORDER: [Signed] SCHURER

For information—
Captain Dahl
Armament Inspectorate, Paris
Director General Roy

PARTIAL TRANSLATION OF DOCUMENT NI-3949 ¹
PROSECUTION EXHIBIT 550

LETTER FROM KAHNIS TO OTTO ERNST FLICK, WORKS MANAGER OF THE
ROMBACHER HUETTENWERKE, 4 FEBRUARY 1943, WITH COPIES TO
DEFENDANTS FLICK AND BURKART, CONCERNING ROMBACH'S
PRODUCTION OF STEEL FOR SHELLS

Plant Manager, Director
Otto Ernst Flick ²

Rombacher Huettenwerke
G.m.b.H.

[Stamp]
Received: 6 February 1943
J. No.

Rombach (Westmark)

Commercial director.--/L
4 February 1943

Erection of a SM (Siemens-Martin) furnace in Rombach.

Dear Mr. Flick,

As you know, armor-piercing shells have top priority at present. Rombach has already been detailed for Doehlen and other firms for steel armor plate, which, however, has to be smelted in an electric furnace.

As there is also a shortage of the necessary cap material for armor piercing shells, this would probably be the best justification for the erection of a Siemens-Martin furnace (the cap material is Siemens-Martin material), because this production also has top priority. According to information from my Berlin office, this is also the opinion of Inspector Erdmann.

As Rombach already manufactures electro-steel for armor-piercing shells, the cap material, in my opinion, is the best justification for the Siemens-Martin furnace.

I should be grateful if you would let me know by return mail the decision taken by the OKH [Supreme Command of the Army] representatives who visited you recently with respect to the pressing and scraping for 122's, 128's or 150's, respectively.

With kind regards,

To: Director General Dr. Flick
Director Dr. Burkart

Yours truly,
[Signed] KAHNIS

¹ This document contained a number of other items concerned with production by Rombach and other Lorraine plants for the military economy and armament of Germany.

² Son of defendant Flick.

D. Testimony of Defendant Flick

EXTRACTS FROM THE TESTIMONY OF DEFENDANT FLICK *

DIRECT EXAMINATION

* * * * *

DR. DIX (counsel for defendant Flick): Count three [count two]. Let us begin in the West with Rombach. First of all, let us go back to the events which took place in this country in the fateful years after the end of the First World War. What happened, Mr. Flick, to the plants which were in German hands in 1918, after, according to the Treaty of Versailles, Lorraine in itself became French territory?

DEFENDANT FLICK: In 1918 all plants passed into French ownership and then—

Q. State or private ownership?

A. As far as I know, first of all into State ownership, but I can only say so from my own memory, but I don't think I am mistaken, and then the State passed them on to private industry. This happened, as far as I know, because of long-term installment payments, and obviously under extremely favorable conditions for the private acquirers. On this point there were major disputes because of an interpellation in the French Chamber of Deputies. The public was able to continue to deal with this subject and did so, after a French professor described these events in a book which he published—the book was called, *Le Pillage Le Plus Fructueux*.

Q. I assume that the interpreter knows French, but to make sure that it gets into the record correctly, would you be kind enough to translate it into German?

A. Well, it means the most successful plundering.

Q. The most successful plundering. Nietzsche's law about the eternal return of the same thing seems to apply here.

A. Well, *Le Pillage Le Plus Fructueux*.

Q. Please continue.

A. Well, that's all I have to say about it at the moment.

Q. But I think it is necessary that you should say something else. You have described how the property passed via the French State into the hands of French industrialists, but what about the Germans who used to be in these plants?

A. All the Germans were completely expropriated. I assume they got some sort of compensation later, but to my knowledge

* Further extracts from the testimony of defendant Flick are reproduced above in sections IV H, V G, VI D, and VII E.

this was a matter of the German Government, and this compensation certainly amounted to only a modest fraction of what the plants were worth to the expropriated owners and had cost them, but the compensation was given by the German Government to the previous German owners.

All the plants in German ownership had been built by Germans with the exception of the plants of the firm of de Wendel. The family of de Wendel had been in Lorraine for 200 years. It was the oldest industrial family. They were the first to build plants in Lorraine even before 1870. But all the remaining plants, Rombach, Gleidingen, Hamerdingen, and so on, had been built by Germans in the times between 1871 and 1918. During this period the development of the Lorraine industrial district took place in general because of a technical discovery made during this time. This was the so-called Thomas process or basic Bessemer steel process, which was the prerequisite for the efficient smelting of the ores which are found in Lorraine. These were ores with a high percentage of phosphorus and these could only be exploited profitably after the invention of the two Englishmen, Gilchrist and Thomas, and this invention, I think, dates back to the end of the 1870s, and this is the explanation why all the works except de Wendel, who used to work on a different basis, were built during the German period.

Q. And de Wendel, as a Lorraine family then, kept their French nationality, or rather regained it, and kept their property?

A. Yes.

Q. The only ones?

A. Yes.

Q. You said the Germans, in the sense of the Germans from the old Reich [Altreich] as one used to say in Lorraine, were expropriated. Excuse me. Lawyers are sometimes a little pedantic. I would not like any misunderstanding to occur. Do you want to say that a formal act of expropriation was carried out by the competent German Government or do you only mean to say that by the annexation of Lorraine by France, in practice the Germans lost their property?

A. The latter was certainly the case. How this took place formally I can't say for certain but probably it was also a consequence of the peace treaty, I don't know.

Q. Certainly. It was not only pedantry on my part but I had to attach value to this clarification because later on we will come to the question whether the French were expropriated by the Nazi government; that is, whether at any time they ever lost their prop-

erty. Here at any rate it happened. Here the Germans lost their property. That's true, isn't it?

A. Yes.

Q. In fact, that is how things looked in 1918, 1919, 1920 and so on up to 1940. And now, would you please tell the Court what happened in Lorraine after France surrendered in 1940? I mean, what happened to the steel industry of course?

A. After the armistice in July 1940, the German Government started from the standpoint—and with it no doubt by far the largest part of the German people—they started from the standpoint that the frontier of 1918 in the West would be restored. A document has been submitted here according to which the government in June, in the summer of 1940, expected a peace treaty soon.* Through the Economic Group Iron Producing Industry the request was put to the steel industry asking them to make suggestions for the imminent peace treaty. One must start out from this attitude which was current at the time.

Q. You mean the peace treaty with France?

A. Yes, the peace treaty with France, and in this connection naturally the question of the Lorraine steel industry was discussed. The aim was to get the plants working again as soon as possible. The plants at that time were not working. The French officials had fled and there was nobody available in Lorraine to manage the works. In addition, there was a shortage of fuel, of gasoline. The first step of the German Government was that Roechling was appointed Commissioner General for Lorraine. Roechling was to be responsible for preparing the starting up of the works in Lorraine and in part also carried this out as in the case of Rombach, for instance. When we took over Rombach later for the trusteeship it was already working, but as I said it was the aim of the government that all plants should start operating again as soon as possible, and this task was far beyond the powers of the individual first appointed, that is, Roechling.

Because it would have been too much for him, the idea arose that all the German concerns of the steel industry should be used in Lorraine, each concern being given a plant to supervise and to get operating again as soon as possible—in fact a general use of German industry to this end in Lorraine. In this way six Lorraine trusteeships were given because in Lorraine there were six large steel works. Two trusteeships were issued in Luxembourg, one in the Saar, one for the coal mining industry so that on the whole about ten trusteeships in Lorraine passed to leading German concerns.

Ore mining, which was the basis of the industry of Lorraine,

* Document NI-3516, Prosecution Exhibit 517, letter of 11 June 1940, reproduced in C above.

was not handed over to the trustees concerned. It was entrusted to a Plenipotentiary General appointed by the German Government. We, as trustees of Rombach, had nothing to do with mining. At that time, that is in the summer of 1940, the German Government intended that the large steel works in France proper, that is, in Longwy and Briey, should also be given to German concerns for administration as trustees, and a concern had already been selected for each plant. In practice, therefore, each large German steel company was intended to fulfill some task in Lorraine. In fact, the ten trusteeships I have mentioned were distributed in Lorraine and Luxembourg while trusteeships over the old French works, a step which was originally also intended, was discontinued by the German Government later on.

A major steel concern like ours in these circumstances considered it a matter of course that we should be considered to participate in these tasks, but it was also in accordance with our own intentions.

Q. At this point I would like to ask you to tell the Court what the decisive or the essential motive of your interest in Rombach in particular was?

A. One must differentiate between the official reasons which we gave for wanting the trusteeship and an essential, and perhaps the most essential, reason which we did not announce officially. Our official reasons for wanting the trusteeship of Rombach were first, historical connections between Harpen and Rombach; second, the fact that a German legal successor of the Rombacher Huettenwerke no longer existed; third—

Q. Would you elucidate on that? I think that the legal successor—you mean the former owner of the Rombach company, but it's better if you explain that, why he no longer existed and whom you mean, and so on.

A. The Rombacher Huettenwerke of 1918 to 1919 were owned in the majority by a family, Spaether, in Coblenz and the Spaether family, as a result of the huge financial loss they suffered and because of later unfavorable economic developments, had lost their importance to such an extent that they could no longer be considered for a task of this magnitude.

Q. By financial losses you mean the loss of the Rombacher Huettenwerke shares in 1919?

A. Yes.

Q. And later in addition to that they had other losses that were not connected with Lorraine?

A. The former majority shareholder could not be considered for material reasons, nor was he suitable from the point of view of experts, the technicians at his disposal. He no longer had a

plant of his own at his disposal, and therefore could not produce the suitable managers required, so that for both these reasons the former group of majority shareholders could no longer be considered for the trusteeship. On our part there was the additional factor that in the steel works which we supervised in the east in 1939, we had been eliminated after the reoccupation of Upper Silesia, and then a special reason was that even after the well-known exchange¹ of soft coal [Steinkohle] against brown coal [Braunkohle], we had so much coal in the Ruhr available that we, in contrast to the other Ruhr concerns, were still in a position to supply the Rombacher Huettenwerke with fuel through the Harpener Bergbau Gesellschaft, and in Lorraine the raw material question was the reverse of that in the Ruhr. Ore and coke are the two bases, as I mentioned before. The Ruhr had coke and had to buy the ore. Lorraine had ore and had to buy coke, and we were the only group in the Ruhr which still had the quantities of coke freely available which were required to run a steel works of the importance of Rombach. That was one essential factor, because in this we had a special position, and the interoffice documents which have been submitted here in the Rombach case show, as do the other documents of the economic offices and the official agencies, and even in the case of Hanneken's evidence I believe, that these things were decisive from a purely objective point of view in granting us the trusteeship.

Q. Those were then the actual and officially given reasons, and now you have got to the point where you can tell the Court about your private reasons which you had no reason to state publicly.

A. One further essential factor, not to say the most essential factor, was due to the facts connected with the Reichswerke [Hermann Goering Works]. The Reichswerke had taken possession of the only free foundry in Bavaria, the Luitpoldhuetten, which was not a very large enterprise. In the east, that is in Linz, they had started to build large foundries near the Maxhuetten,² which belonged to us, and were now about to take the authoritative position and gain a firm foothold in the West too, and particularly in Lorraine. Maxhuetten, which was closely connected with us, would in view of these facts have run the danger of getting between the upper and the lower millstones of the Reichswerke, threatened from the east by Linz and from the west by the Lorraine works, of which one had to assume that for the larger part, at any rate, they would come under the control of the Reichswerke. It seemed best to us, therefore, from our point of view,

¹ This "well-known exchange" refers to the complicated transaction whereby Flick gave up to the Hermann Goering works certain soft coal properties in exchange for certain lignite properties which had been expropriated from the Ignaz Petschek group. See section VI.

² The Maxhuetten is located at Sulzbach-Rosenberg, east of Nuernberg.

that we should gain a foothold in Lorraine ourselves, and from there compete with the Reichswerke about questions of sales, production, and so on. You must not forget that the Lorraine plants concerned before 1918 sold a part of their production in southern Germany, and we had then once more to expect that this state of affairs would be restored. After 1918 the import of Lorraine steel products to Germany was restricted by a quota.

Q. If the Reichswerke had further increased their power in this way, would there not have been a danger that Harpen would once again have to give away some soft coal?

A. This possibility vaguely existed, and my ideas on this subject are shown by the letter, which in June 1940 I wrote from Marienbad to the then general manager of Harpen, Mr. Buskuehl, which letter has been read here.* I said here that if the Reichswerke, apart from the extension in Salzgitter, central Germany, and in Linz, in Austria, also have a large part of the Lorraine industry under their wing, then there will be an increased demand for coal and coke by the Reichswerke and then we must expect that the problem will once again be discussed that the Reichswerke have not enough coal available. Ways and means must again be found to remove this situation, and we had to fear that we would once more be faced by this issue. That was one of the reasons why we took the standpoint that it would be better for us to find a consumer of our own, a new large-scale coal consumer, and so we would be in a similar position as the other big Ruhr concerns which, by pointing out the large amounts of coal required by their own steel works, were in a position to refuse the demands of the Reichswerke for coal more easily, to refuse them with better reason than was the case with us.

Q. Did you in addition have an interest in the acquisition of the industrial works, steel works from French ownership? Were you, apart from the Rombach affair, offered any such enterprises?

A. Yes.

Q. They were offered to you?

A. Yes. Even before the war we negotiated with the firm of de Wendel, mentioned here for some time, with the idea of taking over a mine which the firm of de Wendel owned in Westphalia. The firm de Wendel had ore and smelting works in Lorraine. They had coal in Holland and in the Ruhr. They possessed two mines in the Ruhr. They wanted to sell one of these two mines in the Ruhr. Since 1938 we had continuous negotiations with them. I, myself, even as late as 1939 negotiated with the de Wendel family, in particular, with Humbert de Wendel in Paris. There

* Document NI-3513, Prosecution Exhibit 518, reproduced in C above.

were also negotiations in Amsterdam. In August of 1939, the negotiations were intended to be continued in Lorraine. They could no longer take place because of the danger of war. During the war, Mr. de Wendel had me informed through a director of the Dresdner Bank whom I knew, Dr. Pilder, that he was still willing to sell this mine to us. He wanted to know my opinion on this new offer. I had Mr. de Wendel informed that I did not intend to carry on with the project during the war although, as I said, in peacetime we had discussions repeatedly. Even as late as August of 1939, a week before war broke out, we intended to negotiate further.

* * * * *

Q. We now come to the conclusion of the trusteeship agreement itself. You know the affidavit of General von Hanneken,¹ who quite unequivocally states his opinion to the effect that you wanted this trusteeship of Rombach, and that you more or less managed to swindle Hermann Goering out of it while he was in a wine drinking mood in the course of his birthday celebration. Would you, therefore, with reference to the course of these discussions with government agencies tell us whether and on what condition you were to obtain the trusteeship of Rombach?

A. The negotiations concerning the trusteeship were, in the first place, conducted with the Reich Ministry of Economics, and essentially with General von Hanneken himself.

Burkart repeatedly, perhaps six, or seven, or eight times, negotiated with him, and I took part in a few of these discussions too. The Ministry of Economics on its part demanded expert opinions from the Economic Group and from the Reich Office for Iron and Steel. We have seen here that the Reich Office for Iron and Steel was responsible for granting the trusteeship to our group. It had expressed itself in favor of it. This, incidentally, is a document which we saw here for the first time.² I also assume that the Economic Group expressed itself similarly. One day Funk asked me when I happened to meet him, in what plant in Lorraine we were interested. The fact that we were to get the trusteeship of one was settled from the outset. General von Hanneken's statement which has just been mentioned by Dr. Dix is all the more interesting to me since the Ministry of Economics at the beginning of October 1940 made a suggestion about the Lorraine trusteeships to Goering in which we, our group, were suggested to take over

¹ Document NI-6019, Prosecution Exhibit 389, not reproduced herein. Von Hanneken was also examined and cross-examined at length before the Tribunal. His testimony appears in the mimeographed transcript, 21-23 July 1947, pages 4053-4226.

² Reference is made to Document NI-3518, Prosecution Exhibit 522, reproduced in part in C above.

Rombach. The expert of the Ministry of Economics who made the suggestion was General von Hanneken. And at that stage, in my opinion, we scarcely had a competitor. The firm of Spaether could not be considered and Roechling, as this stage, had quite different plans. He was aiming at de Wendel and Havendingen, and when both of these failed, he too began to feel the power of the Reichswerke because these two enterprises were given to the Reichswerke. He, at the last stage of these developments, when in principle the Rombach case had already been decided in favor of Mittelstahl, started to interest himself in Rombach on his own behalf. At the first stage, in my opinion, this was not the case at all, but be that as it may, it is not connected with any conversation on the occasion of Goering's birthday. In December, I talked to Goering about the Rombach case. At that time, the matter of Roechling's interest was already in the air. It was briefly discussed. On that day I also discussed other questions with him as Gritzbach, I believe, stated here,* because I wanted to talk to him about the expansion policy of the Reichswerke in general. But on this day, we, or that is I, did not get any decision from Goering, neither positive nor negative. In February 1941 or March, the general decision about the Lorraine trusteeship and the concerns in question was settled in a circular of the Economic Group which said that the Economic Group had received information to this effect from the Ministry of Economics. That is all, after this December conversation with Goering, I heard about this matter. I did not talk any more to Goering. I had no direct reply from Goering and no further information.

(Recess)

Q. We arrived at the negotiations which led to the conclusion of the trustee contract, and you said, Mr. Flick, that during the latter part of these negotiations Roechling came in as a competitor with a not-too-friendly letter which we read here. I don't want you to trouble the Tribunal with any unnecessary discussions between you and Mr. Roechling, and I would ask you to disregard these personal matters as far as possible. But I would like you to explain the factual importance and to stress why you and not Roechling received the trusteeship of Rombach.

A. The firm of Roechling had its own steel production of 600,000 tons per year. Our group had a steel production of approximately 2,000,000 tons annually. During the time of the pending decision about the question whether Rombach should go to Roechling or to Flick, the firm of Roechling had already received

* Erich Gritzbach testified as a prosecution witness. His testimony is recorded in the mimeographed transcript, 3 and 4 June 1947, pages 2470-2579. Extracts from his testimony are reproduced in section VI-C.

trusteeships of Laurahuette* in the east with 400,000 tons of steel per year; second, it had received the former Karlshuette in the west, a former Roechling enterprise which had come to France in 1918, with 300,000 tons of steel per year. The firm Roechling had therefore trusteeships of 700,000 tons. The plants of which they had trusteeships contained more than the firm of Roechling itself, and if the firm of Roechling had received Rombach, and if I estimate Rombach at 600,000 tons per year—M. Laurent estimated it at 1,000,000 tons—I say only 600,000, if Rombach had come to Roechling as a third trusteeship, the firm of Roechling would have received the trusteeship of 300 plus 400, plus 600 thousand tons, that is 1.3 million tons of steel a year, its own production being 600,000 tons. And we as the alleged second largest enterprise with 2 million tons per year would have had no trusteeship whatsoever, and the 600,000 tons of Rombach would have made a difference of 20 percent of our production to us, that is 600,000 to 2 million, whereas with Roechling it was more than 200 percent.

I believe I have dealt with the factual view of the decision. I repeat: All authorities who dealt with it before Goering, that is the Reich Office for Iron and Steel, the Economic Group, the Ministry of Economics, had all voted that Rombach should go to the Flick trusteeship and not to Roechling.

Q. Was the management of the plant in the interests of the French owners or was it contrary to their interests?

A. One has to imagine that a foundry consisting of steel only, which does not produce and is in an open position, exposed to climatic influence, goes through a process of deterioration and arrives at a much worse condition than when the plant actually produces and is maintained. It is as if a house is empty. There are no windows and no doors, no heating. If this is so, it is in a very much worse condition after 2 years than if it were lived in and were kept up by its inhabitants. That I have to say. A foundry which does not produce and which is exposed to all kinds of climatic conditions, which is exposed to wind and weather, as every expert will say, a plant after a few years of nonproduction is in a very much worse condition, and it is more difficult to start production with it than if it had been producing all the time. There can be no differences of opinion on this between experts.

JUDGE RICHMAN: Did you want this plant because you wanted to help the French owners or did you want it because you wanted to help yourself?

DEFENDANT FLICK: I have explained the point of view. We did not take over the trusteeship in order to help and support the

* In Upper Silesia, a part of German-occupied Poland.

French owners. I didn't want to say that, but the fact that we actually started producing was very much better for the French owners than if the plant had not been producing. They could not manage it at all because no French staff was there any longer and because the coal supply from the French side was impossible. We supplied half of the coke from our Westphalian mines.

DR. DIX: And what was your attitude toward the capital and the profits which came from the capital stock? Did you invest, did you use the profits, did you turn over the profits, or did you put them back into the plants? I think you understand what I mean.

DEFENDANT FLICK: We did everything in our power to start the plant. We managed it as our own enterprise. I think that during the time of our trusteeship, on investment account, in the shape of supplies and machines which we supplied, we spent amounts which I estimate to be about 5 millions. It could have been even 7 or 8 millions. Apart from that we repaired the plant. We did everything that was possible. We repaired the buildings. We maintained the flood control. In the steel industry an amount of about 5 marks per ton of finished product is estimated for general current upkeep and maintenance of the plant, repairs, and so on. That would have been for the whole time of our trusteeship 6 to 7 million marks. We transplanted a rolling mill from one of our own plants in Germany which was dispensable to Rombach and we established a new sheet iron rolling mill in Rombach. Everybody who saw the changes in Rombach will have to admit that we not only maintained the plant but enlarged it in an exemplary manner. I think we can prove by statistics that within the 3½ years of our trusteeship we invested more in the plant than their owners ever did within 10 years.

I don't think that I am saying too much if I say that this can be proved by looking into the books, and we did not draw a penny from the plant. We did not even pay dividends and no screw and no nail was taken out, but 12, perhaps 15 million marks were spent by us for the upkeep and for building up the plant. We took care of it and we maintained it as if it had been our own enterprise.

PRESIDING JUDGE SEARS: Witness, the trustee, however, would have a better chance, or at least it would seem so, to ultimately acquire the property than if the company was not the trustee?

DEFENDANT FLICK: Do you mean to say that—

Q. Yes, the fact that you were a trustee, you had a better chance to have the ultimate ownership given to you than if you were not a trustee?

A. Yes, we had no legal claims but we had a moral claim. There is no doubt about this, and as a trustee you could say here, "You can convince yourself. I have kept and maintained the plant

in a very good manner. I have proved that I am able to manage a plant." Such a man in general would have been the first to be considered, if there was not a special reason against it. That is, he would first be taken into consideration from a moral aspect.

Q. That you had in your mind probably in wishing to get the trusteeship?

A. You mean the idea of taking it over eventually? Yes, the intention of acquiring it basically did exist, given the position of the Hermann Goering Works, providing that Lorraine became German territory. The idea of acquisition only concerned us during the first stage. That was in the summer of 1940 when the government told us via the Economic Group that a peace treaty between France and Germany was imminent and industry should make suggestions for the coming peace treaty, and assuming and providing there was the peace treaty and the position with the Hermann Goering works which I have mentioned, we would have been interested in the acquisition after the peace was concluded. During the war we would not have purchased it.

DR. DIX: Now we have this affidavit¹ by the general manager, Laurent. If we read it without paying any particular attention to it, it creates quite a different impression from the impression that you are giving the Tribunal just now, referring to the maintenance and improving of the real capital which you were talking about. Laurent was requested by me for possible cross-examination, but I believe that it will be just as difficult for us to have him here as Viscount Strathallan,² Murnane,³ and Rudolf Hahn,⁴ and I think that I cannot possibly force him to explain his attitude as to his own affidavit, but perhaps we—

PRESIDING JUDGE SEARS: Where is he?

DR. DIX: He is in France, surely.

PRESIDING JUDGE SEARS: Well, you could at least ask him to come.

DR. DIX: Well—

PRESIDING JUDGE SEARS: Whether he will or not is another question.

DR. DIX: At his own expense? I beg your pardon, my esteemed

¹ Document NI-5396, Prosecution Exhibit 512, reproduced in B above.

² Viscount Strathallan, a British subject, represented the United Continental Corporation (an American company) in connection with the sale of the Julius Petschek properties. He gave an affidavit concerning this transaction, Document Flick 50-A, Flick Defense Exhibit A, which is not reproduced herein.

³ George Murnane, a New York banker, who also represented the United Continental Corporation.

⁴ Hahn executed an affidavit concerning the sale of the shares of the Hochofenwerk Luebeck A.G. (see par. 15, sec. I). This affidavit, Document NI-6018, Prosecution Exhibit 391, is not reproduced herein. Hahn later did appear before the Tribunal to testify concerning this affidavit and related matters. His testimony is recorded in the mimeographed transcript, 15 October 1947, pages 8749-8812.

colleague, Dr. Kranzbuehler, tells me just now that he wrote a letter to M. Laurent through the Secretary General and asked him to come here.* Perhaps he is coming. But for my next question we do not need his presence. It is not clear from the affidavit of M. Laurent what all is included in the damage as he estimates it, the damage he suffered through the German occupation. If you say, Mr. Flick, that you improved the plant then you have—or I will ask you directly—Could you mean also the mining part, that is the iron mining?

DEFENDANT FLICK: No. As I have already mentioned, we had nothing to do with mining. Mining in all of Lorraine during the time of the German occupation was separated from the plants and it came under a German general commissioner, and as far as that goes the damages which Laurent talks about are not only questions of mines but also loss of real capital which are matters which do not concern us—which are also consequences of times before our trusteeship and are also a matter of war damages through bombings, *et cetera*. All these are matters which we are not connected with, and in our capacity as trustees, in order to refer to what Laurent says, they must be detailed. One must, of course, know what he means.

Q. Now, Dr. Flick, you know that Dr. Kranzbuehler has undertaken to deal with the whole Rombach question with respect to the personal help which Laurent received, the advantages to French economy concerning coal and cement supplies, and so forth, and the possibility of taking French workers home to their native districts, even with respect to the personal support you gave M. Laurent when he was threatened with arrest, or even actually was arrested for some time?

Do you agree to Dr. Kranzbuehler asking the necessary questions of witnesses, and our dropping the matter now? Now at last I would like to ask you as a matter of principle—perhaps it is a little cumulative as it is not contained in your answer, but in a way follows from it. If somebody were to ask you: Was Rombach profitable to you, what would you then say quite naively?

A. I have already said that we did not take anything from the plant, that we did not exploit it either, and that we invested a lot. In order to clarify the question of Dr. Dix, one has to explain shortly the nature of the trusteeship. It was a relationship which was somewhat like a lease. We had to make payment in advance, a certain amount per ton of pig iron and a certain amount per ton of steel. Then we had to pay interest

* Laurent later appeared as a witness on 14 October 1947. Extracts from his testimony are reproduced in B above.

on the estimated value of the enterprise, and if apart from that we had a profit, then, of course, the profit was ours. If we imagine, for instance, that an estate owner leases his estate against, shall we say, first a payment per hundredweight of wheat and against an interest on the value, and if the owner of this estate, who after all bears the risk himself, keeps something for himself of the profit, then it is an analogous case to that which we have here in Rombach. We, of course, kept a certain profit, an account of a few million, but that was not from the French period but that was from the time of our own management. But that was only of a temporary character because it never came to a final accounting with the German Reich and because amortizations which had been granted to us during the time of our trusteeship, and only under certain circumstances which have not materialized, make it necessary now that we pay supplementary taxes for these amortizations.

What the result will be, I do not know for certain. At best plus minus zero for us. There still exist large commitments from our time, because we had ordered a number of big new installations from German firms, which, of course, the French now presumably will not assume. Be that as it may, a number of questions are not clarified yet, and there can be no question of a profitable business deal, and we bore the risk of the loss. At thirty thousand tons monthly production we would already have been running at a loss, but with forty, we did earn something.

Q. If you have nothing more to add, I shall not ask you about your intentions of acquisition because this question has been asked by the President and you have answered this question at full length, don't you agree?

A. Yes.

Q. So now my question is: In these documents a number of barges which had been taken away play a part.* I think you would prefer the actual managers of Rombach to be asked about this question, or do you know anything about it?

A. I don't know anything about it.

Q. Can you inform us about the 5 million mark account of your Rombacher Huetttenwerke which remained?

A. I have already said that a few million were left, and I have already said that this was a temporary condition and that they will probably be absorbed.

Q. Could you be dismissed by the Reich at any time as a trustee?

A. According to the contract, of course.

* See Document NI-5577b, Prosecution Exhibit 555, reproduced in B above.

Q. Do you know whether an order was given to destroy the plant when Lorraine was evacuated by the German troops?

A. Yes, that is known to me. The order was given by the German authorities to blast the whole plant. This was not carried out by the management.

Q. Now you have explained to the Tribunal that for yourself you had no profit and no advantages from taking over Rombach. You improved the installations in the plant, but now we come to the problem whether in Rombach products were manufactured which could be regarded as armament material or whether during your trusteeship the plant Rombach was exploited for the German war economy. First a factual question: Was this the case or was it not?

A. I can't say for certain because personally I visited Rombach in the spring of 1943, and at that time I saw nothing about manufacturing war material when I inspected the plant. But it is possible and certain documents prove that perhaps at a later time war material to a lesser degree probably was actually manufactured. I do not know more about it.

Q. My question went further. I did not only ask "was war material actually made," but I asked "how about exploitation of the plant for the German war economy during the war for the purpose of war?"

A. Generally the plant did not produce any immediate war material. It made peacetime products; for instance rails, girders, rod iron, rolled wire, and these products did not go to Germany exclusively, but, as far as I know, to a large extent they were supplied to France. I think at times as much as 30 and 40 percent and even more, especially in the field of cement. Supplies of a larger nature were made to France illegally to rebuild French hospitals, but the exact breakdown of the production I cannot give information about. They were orders which were given by the State through the General Commissioner to the management.

Q. Did you think this permissible or did you not? What is your opinion as a layman?

A. The whole production of Rombach I thought permissible without any consideration because we had a German civilian administration in Rombach and Rombach stood under entirely German jurisdiction; one had to rely upon everything being in order, and Lorraine was a German dominion based on a treaty with the French Government.

Q. All right, tell us about one Rombach committee which played a part at some time? Do you know anything about that?

A. The Rombach committee or consortium was a pure finan-

cial-technical matter and it was invented by Mr. Kaletsch for reasons of finances, but that has nothing to do with any intentions of acquisition. It is just a matter of finances.

* * * * *

DR. KRANZBUEHLER (counsel for defendant Burkart): Mr. Flick, I now want to leave this field and I want to ask you a few questions concerning Rombach. Yesterday I did not see quite clearly about one matter and I would like you to give me an answer which is 100 percent clear. When in the summer of 1940 you tried to get the trusteeship of Rombach, did you at that time have the intention of acquiring the property of the Rombach concern?

DEFENDANT FLICK: I think I have explained it already. We had the intention in case peace was concluded between Germany and France, and if in the course of the peace, Lorraine was restored to Germany—and that after all was a possibility which was assumed after the German-French campaign. That was the basis for our consideration and I think that any other position in this matter would have been nonsense because it would have been futile to deal with the possibility of purchasing Rombach as long as it was under French sovereignty. It was an obvious prerequisite for anyone who had the idea, which occupied us for quite a time, that Lorraine, on the strength of a German-French peace treaty, would be restored to the German sovereignty.

Q. Those were the considerations you had in the summer of 1940?

A. Yes.

Q. Now, at a later date, did you ever take any steps in order to acquire the property of the Rombach concern?

A. No. At no time did we make the request or application and we never made any suggestions in that direction, even in the summer of 1940. Those were only considerations and ideas that we had. We never made an actual suggestion, never made an application which went to the Ministry of Economics asking to get Rombach. As a suggestion or proposal that was never discussed, those were only ideas and considerations among ourselves. We had in this period joint file notes dealing with these considerations or what my ideas were concerning that problem, but there were no suggestions and no proposals.

Q. Mr. Flick, in 1941 there was a decree in Lorraine by the Chief of the Civil Administration. At a later time I intend to submit this decree to the Tribunal. Now, in this decree it is specifically expressed that it would be possible that the trustee of an enterprise at any time can apply to get the permission to acquire

the enterprise; did you apply on the strength of this decree in 1941? *

A. No, we never made any application.

Q. Mr. Flick, yesterday you were asked whether the management of the enterprise in Rombach intended to help the French owners or whether the intention was to get an advantage for yourself, and you were right when you answered that, of course, for you, your own interest was dominant. However, in this connection, I would like to ask you how from 1940 onward did you consider the prospects of the war?

A. I already testified yesterday that after the French campaign and after the Armistice Treaty of Compiègne, the German Government—and I may well say the larger part of the German people—counted on the fact that now we would have a quick peace treaty between France and Germany. We were also requested to submit proposals for the future peace treaty. And to that part of the German people, which certainly was the large majority, I belonged to. During that period, in spite of my hatred of war, in spite of the fact that I considered that the war was a misfortune from the very first day on and in spite of the fact that with everything I had and everything that I was, I tried my best to do everything in my power to avoid this war; in spite of all this, during this period of time after the French campaign, I was an optimist and I hoped that we would soon have the end of the war. Until autumn or perhaps the winter of 1940-1941, at least during that period, was the only period when I had an optimistic conception of things; I was pessimistic about the outcome of the war from the beginning of the campaign against the Soviet Union and the pessimism increased considerably when America joined the war. I think that was the same year, and then I practically considered that the war was lost when the superiority in the air passed to the other side and became quite apparent.

Q. When was that?

A. Well, I should say in 1943, the beginning of 1943 or perhaps the summer of 1943 when the big gasoline works in Germany were destroyed.

Q. Now, from that moment on when you considered that the war was lost, did you change your policy in the conduct of the enterprise Rombach; did you cause the works to be dismantled or see that no further extensions took place or that the works were impoverished in any way?

A. Our position in connection with the Rombacher Huettenwerke did not change. We conducted the works in 1942 like

* This decree was later introduced as Document Burkart 824, Burkart Defense Exhibit 189. It is reproduced in part in C above.

we did in 1941, in 1943 like in 1942, and in 1944 like in 1943, etc. Nothing changed, and more specifically no change took place in our policy of investments.

The reputation of the entrepreneurs was involved, and I didn't want anybody to say that I had used a trusteeship over a foreign plant in order to use it for our personal advantage and to the disadvantage of the real owners, and to impoverish it. If we did not make so many investments, then the money remained with us, but there are also conceptions concerning prestige and concerning the reputation of the entrepreneur. And these considerations took a considerable part in my thoughts in this connection. I repeat that our policy of investments in Rombach did not change at all, even in a period of time when no reasonable man in the world and even in Germany could think that Lorraine would be restored to German sovereignty and that consequently we could have counted on taking over the Rombach plant.

DR. KRANZBUEHLER: Thank you, Your Honor, I have no further questions.

* * * * *

CROSS-EXAMINATION

* * * * *

MR. ERVIN: Coming now to Rombach, Defendant, do you remember the meeting of the Kleine Kreis [Small Circle] that took place in June, 1940, the early part of June, the report of which we had in the document book here? *

A. I don't remember this meeting of this Small Circle, because as far as I know no record of that meeting was submitted here; but I may be mistaken.

Q. What was the Kleine Kreis?

A. I think it is hard to describe with a few words just what this Small Circle constituted. It was an occasional meeting of representatives of seven concerns, in order to discuss general questions of a basic nature and basic significance in the German steel industry. In particular there was the report of the chairman of the steel industry who was at that time Poensgen. He reported on what his experiences were, on what his basic position was in regard to questions of associations, questions of raw materials. But the entire so-called Small Circle was dissolved in the summer of 1942 when the RVE [Reich Association Iron] was founded.

Q. This particular meeting has to do with the future of the Lorraine plants—it is in document book 11-B, at page 45 it

* Document NI-048, Prosecution Exhibit 516, reproduced in part in C above.

begins. It is Prosecution Exhibit 516. If Your Honor please, I think I seem to remember that our page numbers were done differently at the time we put in this document. I have some very strange marks on mine.

PRESIDING JUDGE SEARS: What is the exhibit number? On page 45 of our book is Prosecution Exhibit 516, is that correct?

MR. ERVIN: That is correct. It is Prosecution Exhibit 516, Document NI-048.

PRESIDING JUDGE SEARS: That is the way it is in our document book.

MR. ERVIN: According to this record, there was a meeting held in Dusseldorf on June 7, at which Mr. Zangen gave an account of a conversation with Funk concerning the Lorraine plants. Do you remember the discussion of Lorraine plants in the Small Circle?

DEFENDANT FLICK: May I ask you to show me the document? I don't have it.

Q. Yes, I will. You don't remember it independently, the document?

A. I remember that I have seen the document here and that I read it, but I don't know what its exact content is. I would like to ask you to show me that document if I am to define my attitude toward it.

Q. My question was simply: you don't remember the meeting at all without refreshing your recollection from the document, is that right?

A. No, in that case I could not remember the meeting. Perhaps Burkart took part in it. I really can't say. I would have to see it first.

Q. Defendant, I am interested in one part of this meeting. You can see from the first several passages of the meeting, paragraph I-a, and particularly Roman paragraph II, there was a discussion of the Lorraine plants and just at the end of paragraph II there is a paragraph which indicates that you would have to make your agreement to a proposed letter to the Minister of Economics subject to certain reservations. Do you recall now the occasion of the discussion and the fact that a letter to Minister Funk was to be written to define the attitude of these firms with reference to the Lorraine plants?

A. The letter to Funk—I don't find anything here about the letter to Funk. I don't see it mentioned here. So far I only find that I say: "Mr. Flick points out that in the east the former owners have been eliminated. Although he does not in any way wish to contest the claims of the Ruhr works regarding former property in Luxembourg and Lorraine, he could, nevertheless, only

agree to the letter to Mr. Funk with the reservation that under certain circumstances he would assert claims in the east." What this letter to Funk was and what its significance is, I don't know and I haven't as yet found out from the context.

PRESIDING JUDGE SEARS: Mr. Ervin, the last sentence is a little hard to understand in English. Shouldn't that preposition "to" be "with" as the witness read it just now?

MR. ERVIN: That is "claims in the east"?

PRESIDING JUDGE SEARS: No; "to make his agreement to the letter to Mr. Funk with the reservation"—

MR. ERVIN: Yes.

PRESIDING JUDGE SEARS: —rather than "to the reservation." That is hard to understand.

MR. ERVIN: That is true. It should either be "subject to" or "with."

PRESIDING JUDGE SEARS: Yes, "subject to"—that's all right.*

MR. ERVIN: Well, maybe if you will look, Defendant, at paragraph Roman II (f), that will probably explain the purpose of the letter. Do you recall the incident at all now quite apart from the document?

DEFENDANT FLICK: Yes, I think I am now able to reconstruct this matter somewhat. I didn't remember it at first. I can only say now that it was my point of view that I agreed to that letter to Funk with the reservation that the claims of our group in the east should not be affected by that. This is how I understand the letter. This is the reservation I made.

* * * * *

Q. Well, you would say then that the letter does represent your point of view; that is, as expressed in paragraph I?

A. I cannot say that. I cannot say whether this letter represented my point of view at that time, but I would assume so. I think that this letter is in accordance with my opinion, that as long as the war lasts we want to make no acquisitions. We didn't make any acquisitions and we didn't even make any request for an acquisition. That this letter was the consequence of a conference which obviously had taken place before within the Small Circle, I believe to be true. This letter was probably sent out immediately subsequent to that conference. The content of that letter apparently is synonymous with what had been discussed in the Small Circle.

Q. Yes, I agree with you, Defendant. What puzzled me was that the discussion was held in the Small Circle at which you participated; then the letter is drafted expressing a point of

* The translation of the document has been conformed herein accordingly.

view which you now tell us was your point of view; and yet the letter omits to mention your firm. It is not possible that you disagreed with the letter, and for that reason your name was left out, is it?

A. For purposes of clarification let me repeat that I did not say that I was not in agreement with this letter. I think I can clarify it by stating that the plants mentioned here which were inside the Ruhr had established their own organization after 1918. They had to represent the interests which were liquidated in the Lorraine. Under Roman numeral I (*d*) this liquidation was touched upon. It says the plans of Mr. Ruehl (by trustee Harn) were mentioned by Mr. Zangen. I think that this is in that connection. I don't know all the names but I am sure that the Ruhr plants after the year 1918 had formed an organization for purposes of the common representation of the Lorraine; that is, former German interests which had gone over into the French territory. I therefore believe that this was the reason why we were not mentioned but that is all I can say about it. At any rate the letter is obviously a consequence of the meeting. What is contained in that letter is corresponding to my point of view.

(Recess)

Q. Defendant, do you know this letter we have been discussing? It wasn't quite clear in your testimony on direct [examination] as to your intention with respect to gaining title of Rombach. As I understand it you said that any notions which you may have had on that were entertained internally only at the time that a quick peace seemed to be in prospect, and that at least by the end of 1940 you had no such intentions. Is that correct?

A. I stated that we considered it at a period of time when generally everybody in Germany expected a quick peace with France, and so did we. In a period of time where we also had been requested by the Economic Group Iron Producing Industry to prepare ourselves and to submit suggestions for the coming peace treaty (*NI-3526, Pros. Ex. 519*). I also said that the file notes show that there was a conversation and that those file notes also confirmed this fact because they originated from this period of time and because they contained a remark according to which 50 percent were to be paid right away and the rest was to be paid in yearly installments. It is however, not known to me that in addition to those questions we should have made tangible proposals and suggestions. I testified our general attitude was based on the prerequisite that Lorraine would become German sovereign territory again and our considerations were meant for the case of the German-French peace treaty which contained this clause; that, as I said, was our general attitude.

JUDGE RICHMAN: You haven't answered the question yet.

DEFENDANT FLICK: Well, I am sorry but could you perhaps repeat the question? I perhaps didn't quite get it.

MR. ERVIN: Did you have any intention—I think that you testified you did—an intention to gain title at the time when you considered there was going to be a quick peace? That this intention was internal, that is, discussed internally, but that subsequently you did not keep that intention but rather had the viewpoint which you now expressed? That you were perfectly willing to wait until the end of the war?

A. What I said was that we had not made any suggestions at that stage; that is, any tangible suggestions. But we dealt with that matter in a tangible way only in case Lorraine was to become German sovereign territory, and with the further condition that in this case the Reichswerke would acquire the larger part of the Lorraine industries and bring them under their influence. Under those conditions we would always have an interest in obtaining a footing in Lorraine but we did not make a request to that effect.

Q. Did you discuss the possibility of converting the trustee contract into a sales contract after 1940?

A. I have no recollection of anything like that. I do not understand what counsel for the prosecution implies by that. I repeat, I did not make a request, but here in the document I see that at a certain time in Berlin, at our house, conferences took place with the representatives of other concerns. Mr. Burkart attended these talks. I personally did not attend them. The file note concerning them has not been initialed by me either. What I have seen here was discussed, namely, the question whether it would not be advisable to conclude a sort of preliminary contract mainly from the viewpoint of taxes and depreciation. I could not give you any direct details. I think on this Burkart would be the man to tell you because he was the man who attended the meeting.

Q. That file note you are talking about is Prosecution Exhibit 541 * which appears on page 101 of book 11-B.

PRESIDING JUDGE SEARS: Page 101?

MR. ERVIN: That is number NI-1887.

PRESIDING JUDGE SEARS: Page 101 in our book?

MR. ERVIN: Yes, Your Honor. It is paragraph A.

Q. Did Burkart have authority to conduct such discussions with reference to Rombach participating in suggestions?

DEFENDANT FLICK: Of course he had. Of course he had authority to conduct conversations or talks, but he had no authority

* Document NI-1887, reproduced in part in C above.

to buy Rombach. Of course he could talk with Roechling or representatives of the Kloeckner Works concerning tax questions. In quite a general way, of course, he had the authority. He had no reason to come to ask me. It is quite probable that I was not in Berlin at this time. I could not tell you.

Q. Do you think that he probably reported such discussions to you whenever they touched on concluding a sales contract before the termination or signing of such a contract?

A. I cannot find anything of the kind here. Of course, I have to read through it, but I do not see anything implying that Burkart said, "We want to buy the works." There is nothing about a preliminary purchase contract. I do not think that Burkart said that. I have to read it through, of course.

PRESIDING JUDGE SEARS: Well, he is not asking.

DEFENDANT FLICK: I only see that they had only had a meeting there.

Q. I understand that counsel is not asking for your actual recollection, but for your judgment now as to whether it is probable that he did repeat it to you.

A. That Burkart was authorized to have talks and conferences concerning general questions of the Lorraine trusteeships, and so on? That I have already answered in the positive. I said that he was authorized definitely, but he had no authority to submit suggestions for the purchase without consulting me.

JUDGE RICHMAN: Did he probably report these conferences to you? That is the question. Did he probably report these conferences to you? That is what the question is, and that is the answer the Court wants.

PRESIDING JUDGE SEARS: Your best judgment on that.

DEFENDANT FLICK: He probably would have told me what was discussed at that date. I assume he would; I could not give you any details though.

PRESIDING JUDGE SEARS: That is all he asked you at this time.

MR. ERVIN: Did further talks and discussions of this type on the form of the contract occur after 1941?

DEFENDANT FLICK: I could not tell you from memory. Further discussions concerning the trusteeship contract took place, but only in a general way until 1943 and even 1944, because as far as I can see from the documents it was only signed in 1943 or even only as late as 1944. That was not final, anyway.

Q. You remember that there were those discussions during that period?

A. Concerning the trusteeship contract?

Q. Yes.

A. Yes. Yes. Certainly, at least as long as it had not been signed in a final manner. To a large extent, these conferences

took place outside Berlin. I do not recall having carried on negotiations on my part, but most likely I will have been informed about them.

Q. Did Kaletsch participate in those negotiations?

A. Well, I think that is possible, even probable. I think you can even find a file note in this book. I do not know where it is, but I think that you read from it. Kaletsch had an interest in the matter, not in the conversations concerning the purchase itself; he was in charge of the tax side of the matter.

Q. Isn't it true that in these negotiations the suggestion was repeatedly made that an immediate contract of sale would be a much simpler way to operate Rombach, and one which your concern desired?

A. I can only repeat that we did not deal with those matters. We did not even consider them. After all, we would have needed money for that, and not on one single occasion did we meet and consider how much Rombach would cost, whether we were in a position to acquire it, and whether we should acquire it. This discussion did not even take place. There is no file note showing that we came together and decided to make a request or an application to acquire the Rombach Steel Works as legal property. It is merely a hypothetical case of our interest provided that Lorraine would come under German sovereignty in a definite way. If there had been negotiations with other representatives concerning trusteeship contracts, that was to clarify matters concerning the tax side or whether it would be advisable to conclude a preliminary contract which, however, would not be a definite purchase contract according to my opinion. I mean that at least so far as it is explained here.

These conferences are something quite different. The questions of depreciation have to be explained by Mr. Kaletsch. They are quite closely connected with the form of trusteeship; that is, it is a question which is complicated but interesting from the tax angle because the question is whether you can take depreciation into account in your profit and loss account without having actual property title of the installation. I think that the conversations with Kaletsch are intimately connected with these matters.

Q. There is one more of these conversations that puzzles me a little because in the course of it, a representative of the Reich Finance Ministry seemed to get the idea that from something that Kaletsch had said that what was desired at the present time was an outright contract of sale. That is Document NI-2513, Prosecution Exhibit 546.* It is at page 134 of 11-B. The conference took place on 20 January 1943.

* Reproduced in part in C above.

A. It was a conference which Kaletsch attended.

Q. This document is a report to you of the discussion, isn't it?

A. Yes. That is quite correct. It is true that I have signed it according to the specific testimony, but whether I have gained information of the details, I could not tell you. It is headed, "Note for Flick". However, there is no initial of Flick.

JUDGE RICHMAN: "Note for Mr. Flick", "Memorandum for Mr. Flick"? Could you not read those?

DEFENDANT FLICK: Well, one could read it, if one had the time and the opportunity, and if it was submitted. I have already testified, Your Honor, that in general I initialed everything that was submitted to me, but I did not read everything. If there is anything I have not initialed, even if it was meant for Flick, then you cannot conclude from it that I actually saw it because the mail which was directed personally to Flick was not dealt with and opened by myself. If my secretaries or my collaborators opened personal letters to Flick and did not deem them necessary for forwarding, then they were not submitted to me. It is possible—and I do not deny it at all—that I did have some knowledge concerning the contents. From the fact that I have not initialed this, you cannot by any means construe the probability that I would have seen it because it says, "for Flick". I cannot agree to that. After all, there is nothing much in it. There is only this question of principle. I think the contents can be very clearly explained by Kaletsch. He can do that much better than I because he was the expert for tax questions and I was not. He attended the negotiations and I did not. I think he can explain that in very much detail.

PRESIDING JUDGE SEARS: Witness, throughout this period, you had the hope ultimately to acquire the Rombach Works, did you not?

DEFENDANT FLICK: Under the primary conditions I already stated, namely, that there would be a German-French peace treaty. I did not want to acquire them during the war. During the war we never made any such suggestion. I repeat again and again, if Lorraine had become German, and if then the situation had been such that if we did not acquire Rombach, the larger part would have gone to the Reichswerke, then we would have used the opportunity of acquiring the works. Certainly, we would have done it.

Q. That was your thought during the war, after the hope of a quick peace treaty with France seemed to have faded.

A. That was our conception during the war. Yes. That is what I mean. Yes.

MR. ERVIN: Would you say that any suggestion in this Document NI-2513, Prosecution Exhibit 546 *, as to the trustees becoming owners of the works as of that date, had simply to do with certain financial details of the contract? Is that right?

PRESIDING JUDGE SEARS: The proposed contract?

MR. ERVIN: The proposed contract.

DEFENDANT FLICK: Well, at this very moment, I cannot look into that matter in detail. I have to read over the document once again, but there was no tangible intention of acquiring the works. That I can state without reading the document.

Q. Thank you, Defendant. That is all I wanted to know. This trustee contract wasn't signed until around 1943. Did you operate the Rombach firm from March 1941 in accordance with its terms, that is, retroactively?

A. Yes. I think that we did.

Q. During the entire period it was operated in accordance with the terms of the agreement which was not finally signed until 1943. At that time, it was amplified by a letter which we have introduced here?

A. Yes. I should think that is correct. Basically, the regulations were established already. After all, with government agencies it always takes quite a long time until those things are signed.

Q. And you paid a tonnage royalty on steel? You paid a fixed interest to the Administrator?

A. We paid a tonnage interest per ton of steel. We also paid in advance contributions per ton of pig iron and then furthermore, we paid interest on value.

Q. After that, what was left was the profit for the trustee, is that true?

A. Yes. That is correct. If there was a deficit, it was also the loss for the trustee.

Q. Well, the contract provided that your interest payments would be reduced if your operating profit was not sufficient to pay them, did it not?

A. I cannot quite remember the wording of the contract, but I think that the contract provides that in cases where we sustained losses, these interest payments should be somehow diminished; also the royalties, but there was a risk of loss and that remained with us, in the same manner as chances of profit.

Q. Were there any profits?

A. Well, we made profits in a general way, yes, but we might just as well have sustained losses if the steel production had

* Ibid.

decreased by 130,000 tons instead of 42,000 or 43,000 tons. Those are the characteristics of the activity of the entrepreneur—the chance of making profits and the risk of sustaining losses.

Q. Yes. That is perfectly true. I just wanted to know if there were losses. There were not any losses during this operating year.

PRESIDING JUDGE SEARS: The witness says there were profits.

MR. ERVIN: Profits. Now, do you know whether of the—

PRESIDING JUDGE SEARS: We do not care how much, just that there were profits, that is all. There were some profits.

DEFENDANT FLICK: Yes. There were some profits. I never denied that, did I?

MR. ERVIN: It was not quite clear from your testimony, Defendant. Now as to the products of Rombach, are you in a position to know where the steel eventually went, who the customers of Rombach were?

A. In detail, I could not tell you. I already testified that according to my estimate, I was in Rombach only four or at the most five times, just for 1 day. If I visited works like Mittelstahl, which was our own property, I did not see there how the steel was disposed of in detail because the whole thing was a matter for the plant manager; and I can only speak now from my general personal knowledge. We in Berlin did not receive the letters pertaining to that further purchase and sale. The steel and its use was decided upon by the association and syndicates of the steel industry of which Rombach was also a member. Since the Reich Association Iron had been founded, these syndicates had this Reich Association over them. They were supervised by it. The Reich Association Iron again was supervised by the Ministry of War Production which issued the general directives for the steel distribution. I assume that a large part of the steel went to Germany. However, I received information also that a considerable part went into former French territory and was sold there. I know from conversations with my son that he constantly had conferences at Paris and Nancy; he had these conferences with French trading companies, and among others, a trading company which had the name of Davum. These trading companies bought a large part of the Rombach production and sold it in the former French territory. The same can be said for another product, that is concrete. Concerning the deliveries of concrete, I may add that these deliveries according to information which I received were partly made through black market channels, that is, through illegal means. They went to France then for special purposes, among others, in order to repair the damaged French hospitals.

JUDGE RICHMAN: What do you mean by "former French territory"? To what are you referring?

A. In this connection, I mean France without Lorraine. I mean France before 1918, France without Lorraine, while Lorraine as from 1940 was considered sovereign German territory.

MR. ERVIN: Defendant, one more question as to the concrete and steel. Did your general knowledge include any knowledge that some of this concrete and steel went into the building of the Atlantic Wall?

A. No. I do not know that. I did not know the destination at all. The shipments and their destination, in a general way, I only know from hearsay.

PRESIDING JUDGE SEARS: Was the cement works connected with these various foundries throughout—

DEFENDANT FLICK: Yes. There was one cement works in Lorraine. This cement works used the converter slag, the Portland cement works. The opposite of the Portland cement works are these foundries. At Rombach, we had quite a large cement works which based its production on using the converter slag which is a by-product of the foundries.

Q. I simply asked whether there were factories or sections of the works where, for example, Portland cement might be manufactured?

A. Yes. They belonged to the Rombach firm.

* * * * *

REDIRECT EXAMINATION

* * * * *

JUDGE RICHMAN: Did you put any new money into that enterprise, any money from any other enterprises? Was it merely the money that you made in this particular enterprise that you placed back into it to invest and to make improvements, and so forth? Is that the fact?

DEFENDANT FLICK: At the beginning, we made big bank loans, quite a number of millions, apart from Rombach's own capital.

DR. DIX (counsel for defendant Flick): Excuse me, Mr. Flick, just a moment. Just a moment. I want to prevent this unhappy problem—what does "we" mean in this question? Who took up the credit?

A. The Rombacher Huettenwerke. They were founded with 500,000 marks capital of their own in the beginning. This working capital was not sufficient. Then they made big bank loans, the amount of which I cannot say exactly from memory, but which I estimate at a number of millions. That is quite

certain. It may have been 4 or 5 millions. The credits were given on our guarantee. We guaranteed this sum, that is Maxhuette and Mittelstahl I believe, but Mr. Kaletsch will know that for certain.

JUDGE RICHMAN: All I was trying to get at was whether any money had come from Maxhuette or Mittelstahl or any of these other concerns that you owned that went into this Rombach enterprise. Of course you guaranteed the credit, as I understand from your statements just now, but you did not put any other money in it out of enterprises that you already owned?

DEFENDANT FLICK: At first, the only money of our own was the company capital of 500,000 marks, its own capital. Then I wanted to say that the enterprise was financed by bank credits under our guarantee. These bank credits were repaid out of the profits of Rombach to a large extent in the course of the years.

PRESIDING JUDGE SEARS: But the capital you put in to purchase the shares still remained there? That is, was that repaid in any way?

DEFENDANT FLICK: No. That was not repaid. No.

PRESIDING JUDGE SEARS: I am not so sure that I understand about this trusteeship.

JUDGE RICHMAN: Neither am I.

PRESIDING JUDGE SEARS: There was a Rombach company organized?

DR. DIX: I am sorry, Mr. President. Your question is being translated incorrectly. You were asking about prestige, were you not?

PRESIDING JUDGE SEARS: Under your trusteeship you had organized, either yourself or in some other way, a Rombach company, G.m.b.H. This company issued shares. These shares were taken by the Mitteldeutsche [Stahlwerke] and Harpener Bergbau, were they not?

DEFENDANT FLICK: Yes.

PRESIDING JUDGE SEARS: And they paid money for those shares?

DEFENDANT FLICK: Yes. They paid cash.

PRESIDING JUDGE SEARS: Did the Mitteldeutsche and the Harpen companies ever get this money back that they put in for the shares?

DEFENDANT FLICK: No.

PRESIDING JUDGE SEARS: So that is the end of that so far as the organization is concerned.

DEFENDANT FLICK: We did not get any dividends nor did we get the capital back.

DR. DIX: This capital is therefore lost to you?

DEFENDANT FLICK: I presume so. The final account is not available, but I consider it as lost.

Q. Aside from the guarantee that Maxhuette and Mittelstahl took over for the bank credits opened to Rombach G.m.b.H., were there other guarantees?

A. To my knowledge, there were none, but I cannot say whether there is any claim against us on account of this guarantee. Kaletsch would have to answer that. I am not so well acquainted with these matters.

Q. So, on the assumption that there is no claim against you out of those guarantees, is it true, taking into account everything you have now told the Tribunal, that the final accounting for you would be that you lost 500,000 marks and have earned nothing?

A. That is what I assume, but I must explain that this, in essence, depends on the final accounting with whoever ordered the trusteeship. That is the Reich. No final account has so far been made with the Reich, especially not in the tax question. I have already mentioned that. It is a complicated question because the Rombach company was conceded amortization in its balance sheet, in a sense, although it did not possess installations of its own. These untaxed profits, as I should express it, must be subsequently taxed. To what extent and to what amount is an open question. It is a question which remains to be discussed. But we calculate that nothing can possibly remain.

Q. Now it is getting more complicated again.

A. That is the only way I can explain it. I am sorry, but I cannot declare that that capital is definitely lost. I assume that it is lost, but I do not know it.

JUDGE RICHMAN: Do you know whether the plant is in operation today, the Rombach plant?

DEFENDANT FLICK: As far as I have learned, the plant was not yet working in the spring or summer of last year. I do not know how it is today. This is mainly connected with the fuel shortage because the Ruhr isn't supplying any coke.

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E. Testimony of Defendant Burkart

EXTRACTS FROM TESTIMONY OF DEFENDANT BURKART¹

DIRECT EXAMINATION

* * * * *

DR. KRANZBUEHLER (counsel for defendant Burkart): Now please tell us how you came to join Mittelstahl?²

DEFENDANT BURKART: I mentioned just now a gentleman called Moeller. For many years he was a member of Vorstand of the Lauchhammer group in Lauchhammer and in Riesa. I had known Mr. Moeller for many years, as a result of my sales work and also our joint work with the associations in Duesseldorf and in Essen and he recommended me to Mr. Flick, when Mr. Flick at that time intended to find a successor to Mr. Terberger because Dr. Terberger wanted to take over the business management of Maxhuetten.

Q. Did Mr. Flick approach you or did you apply to him or how did it happen?

A. No, I didn't apply to him but one day Mr. Moeller asked me to introduce myself to Mr. Flick, because there was a chance he might have an interesting job for me.

Q. And you came to an agreement with Mr. Flick?

A. Yes.

Q. What was your work there and what were the conditions under which you were employed?

A. When I went to see Mr. Flick—

Q. That was in 1936, wasn't it?

A. In 1935, before I went there, he inquired in great detail about the work I had been doing, in what departments I had worked, and how things looked in Upper Silesian plants. After we had talked for about a half hour and I had been considerably surprised about the expert knowledge shown by Mr. Flick, which I never would have supposed to find in my former Aufsichtsrat chairman in Gleiwitz, Mr. Flick told me or rather asked me whether I would like to take over Mr. Terberger's job. I told Mr. Flick that I had never in my life taken on a job without knowing exactly what demands would be made upon me and whether I could meet these demands. So I asked Mr. Flick

¹ Further extracts from the testimony of defendant Burkart are reproduced in section V H.

² Concerning Burkart's personal history, see the stipulation of record, reproduced in section IV D.

to tell me of what the work of Mr. Terberger consisted. He told me the following: "You know that I am chairman of the Aufsichtsrat of several companies, for instance Mittelstahl and Maxhuetten. And to help me in this work as chairman of the Aufsichtsrat of these companies I have a small office in Berlin. Mr. Terberger works in this office and he helps me. The best thing would be if I showed you from today's mail what kind of jobs I have to deal with and which of these you would have to help me in." He had some folders with mail in front of him. He opened one of them and I can still see it in front of my eyes as if it were yesterday. The first was a monthly report from Maxhuetten. He opened this report and said, "Here, for instance, you see production costs for pig iron, production costs for Bessemer steel, and production costs for the rolling mill production. That interests me of course. I am also interested in production figures for the last month, in the amount of turnover, and in the long run what was the result, the total result of the enterprise." Then he turned a page and there was an application for a new building. Then he said: "Certainly you know from your experience with Oberhuetten that applications for new buildings must be approved by the Aufsichtsrat. So the Vorstand of the various companies, when it intends to carry out large new constructions, makes application to me and normally I discuss these applications in broad outline with the Vorstand and you have to see to it that the budget for new buildings is not exceeded. Furthermore, you have to see to it that we have a current financial control over the budget of a new building." Then there were some other documents which I don't remember. I think there was an account from the Steel Works Association. At any rate I thought I could cope with the task and I accepted the job. I only asked Mr. Flick to permit me for some months before taking over Mr. Terberger's work to allow me to visit the plants of Mittelstahl and Maxhuetten, not only to inspect and get acquainted with the plants but also above all to make personal contacts with the people with whom I would have to work later on. Mr. Flick agreed.

* * * * *

Q. Now I would like to ask you a few questions on the subject of the so-called spoliation of Rombach. For this point I shall use the document book 11-B of the prosecution. In this document book are a number of documents from which can be seen the development in the relations of the Flick group to Rombach. Would you please proceed in chronological sequence and describe in which way the Flick group and particularly also you yourself, took part in the management contract for the Rombacher Huetten-

werke. When did you first come in contact with this problem of the Lorraine Steel Works?

A. The first contact with the Lorraine problem I had was at the meeting of the Small Circle in June 1940.

Q. That is the meeting which is reported in Document NI-048, Prosecution Exhibit 516. * You will find that on page 75 of the German document book and page 45 of the English document book.

A. This meeting took place on 7 June 1940, that is, according to these minutes. In this meeting, Mr. Zangen reported about his last discussion with the Economic Minister Funk. May I just tell the Tribunal who Mr. Zangen was? Mr. Zangen was Director General of the Mannesmann Works in Duesseldorf. As far as I know, he had, since 1937 or 1938, been the head of the Reich Group Industry. That was the supervisory agency of the 32 Economic Groups. One of these Economic Groups was the Economic Group Iron Producing Industry. From these minutes it becomes obvious that Mr. Zangen, in his discussion with Mr. Funk, had been approached by the latter with regard to the so-called alleged desire for annexation but it is not quite clearly seen which firms had actually taken action with Funk. This was only a general remark on the part of Funk and the wish expressed by Zangen to fall in with this wish expressed by Funk. At another point in these minutes, mention is made of Lorraine and Luxembourg. That can be seen under VI. A letter by Hanneken is mentioned but this letter was not mentioned in detail. It is only said that the letter from Hanneken dated 31 May 1940 was discussed. The gentlemen present agreed to the draft for a reply, subject to minor changes. Since this letter from Hanneken, or rather the reply, is also mentioned in other points in this document book, I imagine that the thing which is meant is the order from Hanneken to Poensgen to make suggestions with regard to the distribution of the large blast furnaces in Lorraine and Luxembourg.

Q. Mr. Burkart, did you read these minutes at the time?

A. According to the distribution list, these minutes were also sent to Mr. Flick and therefore I assume that I saw these minutes at that time. In any case, I am sure Mr. Flick told me about that, because Mr. Flick was present at the meeting.

Q. In that case I would like to ask you what was your idea about the essential point, that is, about the question who, after all, had taken the initiative with regard to the Lorraine Steel Works? Was it the government or industry?

A. The initiative was taken by two gentlemen; first of all

* Reproduced in part in C above.

it can be seen from the report of Zangen that he had been approached by Funk.

Q. So the initiative was taken by Funk for one.

A. Yes, that is correct, Funk, the Minister of Economics, but with the proviso that he said one had to go slowly on the point. The other man who took the initiative was definitely Hanneken. He had ordered Poensgen, as I have already mentioned, to make certain suggestions as to how the Lorraine-Luxembourg steel works could be divided. That the initiative had been taken by the Ministry of Economics can also be seen from the reply which was attached to the minutes as an enclosure.* This reply was discussed in the meeting. This letter addressed to Funk starts with the words: "On the occasion of a conference with Director General Zangen * * * "

DR. KRANZBUEHLER: Your Honor, it is on page 51 of the English book.

DEFENDANT BURKART (continuing): "* * * you touched upon the question * * *" so that means, quite clearly, it was not Zangen who had broached the subject, but Funk.

Q. Now in this reply we also find the attitude of those people who found themselves concerned in this industrial circle; that is, in this letter, you can find it under paragraph 1.

"As long as the war lasts, i.e., until peace is signed, the above-mentioned firms will refrain from making any claim regarding the transfer of ownership or of usufructuary supply rights in respect to minette mines in the minette district or to steel works in Luxembourg or Lorraine, in which connection they make the provision that no claims possibly made by other sources will in the future be held against them and given preference." On the following page, under paragraph 3, it says: "The above-mentioned firms reserve for themselves the right to state their claims after the end of the war which will have the object of giving them the possibility of having returned to them those mines and steel works which had been partly or fully their property before the World War and had been operated by them."

Well, I think that is a very decent sort of attitude, don't you? Now why did Mr. Flick not adopt the same attitude?

A. If you look at the first page of the letter addressed to Funk you will find the works named in whose name Mr. Poensgen had formulated this letter. Now these firms, which are mentioned there, had all been owners in Lorraine and Luxembourg; that is, they had been such all the time prior to 1918. For instance, the firm Kloeckner used to have the works in Kneuttingen;

* The enclosure mentioned is a part of Document NI-048, Prosecution Exhibit 516, reproduced in part in C above.

the Vereinigte Stahlwerke or rather their legal predecessors, that is the family Thyssen, used to own the large works in Hagendingen and they also had valuable investments in Luxembourg.

Q. I think it is sufficient if you say that all these were firms who previously had possessions in Lorraine.

A. Yes they had these valuable possessions, either foundries or mines.

Q. Now Flick was not one of these firms?

A. No, he was not, and that is why he was not included in this list of names.

Q. You just said that you had been informed by Mr. Flick of this meeting of 7 June 1940. Now, in connection with this information, what did you do then?

A. Perhaps I may just point out that according to these minutes, Mr. Flick also expressed an attitude which has been recorded here. His attitude was that he said: "I am quite prepared to have you state your claims for later on but I want to make the provision for myself that if need be I shall later stake claims in Upper Silesia as a previous owner." In other words, Mr. Flick meant to express "Of course, I quite agree with what you do but you must then also understand that I, as an owner and previous owner in Upper Silesia would, when the occasion arises, want to refer to these arrangements in my own way." For this very reason, of course, I was very interested to hear from Hanneken how he was going to continue with this problem. My main point of view was to get the thin edge of a wedge in with Hanneken with regard to the extension of the Reichswerke in Salzgitter.

Q. Now what had that to do with the possession of the Lorraine steel works?

A. That had a lot to do with it because Mr. Pleiger, when he founded the Hermann Goering Works, stated as the reason that Germany is not producing enough steel and is not producing sufficient rolling products, that is, from German ores. After all, that was his point of propaganda and it was the basis on which Salzgitter was founded.

* * * * *

Q. You were afraid of the rivalry of the Reichswerke and that is why you fought them, is that correct?

A. Yes.

Q. Now, my next question is, for these reasons of rivalry you went to General Hanneken and pointed out to him that because of the Lorraine steel works the Reichswerke Hermann Goering were really superfluous, is that correct?

A. Yes, that is quite correct. I pointed out to Hanneken that, because of the reannexation of Lorraine and Luxembourg and

because of the return of Upper Silesia to the Reich, sufficient capacity had been gained by Germany or would be gained by Germany so that the erection of Salzgitter would be a waste of money and of iron.

Q. Now, this meeting and discussion would be the one of 10 June, 1940 is that right? We have your note dated 11 June and it is in the book under Document NI-3516, Prosecution Exhibit.¹ It is on page 64 of the German book, on page 35 of the English.

A. Yes, that is the note.

Q. Did you on this occasion make a suggestion to Hanneken or give him a hint that the Flick group itself was interested in the Lorraine steel works?

A. No, we didn't do that in any way. At that time the idea of Rombach hadn't even been born. I only got some sketchy information about his plans in Lorraine and Luxembourg, and then I fired my shot against the Reichswerke, as you find here under paragraph 2 in these notes.

Q. Now, when did the idea of Rombach enter into the discussion for the first time?

A. The idea of Rombach was first known to me through the letter from Mr. Flick to Mr. Buskuehl which is dated 23 June 1940. I received a carbon copy of this letter.

Q. That is Document NI-3513, Prosecution Exhibit 518,² on page 67 of the German, and page 37 of the English text. What did you arrange because of this letter, or what did you think were the essential points in it?

A. The new idea for me in this letter was the new orientation of Mr. Flick toward the west. Originally I had thought that Mr. Flick would orient himself toward Upper Silesia, particularly since the Upper Silesian district had come back into the Reich in the autumn of 1939. I knew that Mr. Flick previously had large interests in Upper Silesia and that is why I thought as a previous owner he would direct his interests toward Upper Silesia. That is why this letter seemed new to me in its context.

Q. Now, because of this letter did you make any arrangements?

A. I did not do anything after I had seen this letter. What I did was that I waited until Mr. Flick returned and then a few days later, perhaps 10 or 14 days later, when Mr. Poensgen called me on the telephone, I asked Poensgen, before passing on his suggestions with regard to Lorraine and Luxembourg, to have another discussion with Mr. Flick. Mr. Poensgen brought up

¹ Reproduced in C above.

² Ibid.

the subject. He had told me that he had heard that Hanneken had enlarged upon his original order.

Q. Mr. Burkart, I think you are going out of the chronological order here. This telephone conversation with Mr. Poensgen is mentioned in a note. You made it yourself and it is dated 4 July. But before this conversation, I think you received the letter dated 26 June—it is Document NI-3526, Prosecution Exhibit 519.* and it is on page 72 of the German, and page 43 of the English text, isn't that correct?

A. Yes, that's correct.

* * * * *

Q. Now, this circular, is that not the basis for all further considerations? I mean by that, is it not the supposition that only wishes for an imminent peace treaty should be stated.

A. Yes, that's correct. At that time we were all under the impression that the peace with France would be signed at the latest within 2 or 3 months. At the very latest, by Christmas.

Q. Now, what did you think would be the fate of Alsace-Lorraine in the case of a peace treaty?

A. If at that time anybody in Germany had thought or had said that only Alsace-Lorraine would come to Germany then he would have been considered a pessimist, a defeatist and a grumbler. That was roughly the attitude in the higher circles. So if one were cautious and counted only on the return of Alsace-Lorraine to the Reich, one could, according to the attitude at that time, have been considered very cautious indeed.

Q. Now, what was the next step after this letter of 26 June? I think that would have been the telephone call by Poensgen which you just mentioned.

A. Yes, that's right. As to this point I only have to say that Poensgen told me then that Hanneken had enlarged his order to him, not only with regard to territorial requests so far that he also wanted to include Longwy and Briey; Hanneken was not only to suggest previous owners, but also other groups of plants, for instance, the Reichswerke.

Q. Now, the note about this telephone conversation is found in Document NI-3522, Prosecution Exhibit 521,* on page 55 of the English book, and page 86 of the German.

PRESIDING JUDGE SEARS: What was the number?

DR. KRANZBUEHLER: It's on page 55.

Q. Mr. Poensgen informed you that his order had been enlarged?

DEFENDANT BURKART: Yes.

Q. Also that he was to suggest a distribution in which he was

* Ibid.

to consider such works as had not had previous holdings in Lorraine. Now, wasn't it obvious, then, that you should state to him the wishes of the Flick group with regard to Rombach because after all you knew those wishes? Now, why didn't you do that, at least according to this memorandum?

A. I did not want to state anything prior to the discussion between Poensgen and Flick. At that very moment I was only concerned to nail Poensgen down on the statement and that he should wait with his proposals until this conversation with Mr. Flick had taken place. Poensgen promised me that without any difficulties.

Q. After this telephone conversation with Poensgen did you make any official applications that in case of a peace treaty Rombach should be sold or handed over in any other way?

A. For the time being we did not make any written applications, but Mr. Flick, as far as I remember, in July talked to Mr. Poensgen. I myself kept up contact with the Minister of Economics and also with the supervisory office for iron and steel. I did that because I had heard from Hanneken or his right hand assistant that Hanneken had not only asked Poensgen for an expert opinion but had also asked the supervisory office for iron and steel for an expert opinion. Since I had almost daily contact with the supervisory office in quota questions, it was natural that its chief and myself should discuss Lorraine. After all I was not the only person with whom this was discussed, but the supervisory office discussed this problem also with other Berlin representatives of the large concerns, such as—I remember that I saw in the antechambers representatives of Kloeckner, of the Stahlverein, and others. I heard it also from the members of the supervisory office that they were looking for factual documents with regard to previous ownership about capacity and other relevant points, so that they could make their proposals on the basis of such documents.

Q. In Document NI-3518, Prosecution Exhibit 522 * you will find the distribution proposition made by the Reich Office for Iron and Steel—that is on page 57 of the English book, and page 88 of the German book. It is the proposals dated 26 July 1940. And in this distribution proposition is contained the proposition Rombach for the Flick group. That is on page 92 of the German book and page 60 of the English text. Now, was this proposal made on the basis of those discussions which you just mentioned?

A. Up to a point these propositions were based on my negotiations and to a point they also were based on the own considerations of the Reich Group Industry. May I ask the Tribunal

* Reproduced in part in C above.

to turn to page 4 of this expert opinion, page 60? It is under Roman number II and is headed, "Actual Proposals for Distribution According to Plants," page 59. You will find there the basic principle according to which the Supervisory Office proceeded when they worked out these proposals. It is said here, "The ultimate purpose of this distribution was to insure that each of the German concerns should have a share in the acquisition of the Luxembourg-Lorraine pig iron production capacity in the same proportion as their share in the pig iron production capacity of the total German iron industry. The pig iron production capacity of the individual German plants was established according to the present ownership or participation ratio in the Greater German Reich * * *" From this proposition which was the fundamental suggestion you will see that the Reich Office for Iron and Steel was of the opinion that every German concern was to be included in this task. That is, not only the previous owners, not only us, but all of them were to be included so that was a general task which had to be fulfilled. In a conversation with a chief of this office, a senior government counselor, Kiegel, and his deputy, Dr. Kraft, I had pointed to Rombach, of course.

Q. During these discussions with the Reich Office had the basic considerations shifted? That means were they only relevant in case of a peace treaty with France?

A. No, this was of course the natural foundation for any of these arrangements, because after all you cannot count your chickens before they are hatched.

* * * * *

Q. Now, what was the attitude of the Ministry of Economics to the distribution list of 20 July, that is, the official suggestion made by the Reich Office for Iron and Steel?

A. From the documents which are available here, it can be seen that toward the end of August I went to see Hanneken again. We have a document to this effect.

Q. You mean Document NI-3529, Prosecution Exhibit 526 * is that correct? It is on page 101 of the German book, and page 67 of the English. It is a memorandum about your consultation with Mr. Hanneken on 27 August. Is that what you mean?

A. Yes, Your Honor, that is the note.

Q. What was the reason for this discussion and what was the attitude of the Reich Ministry to the distribution proposition of the Reich office?

A. The attitude of Hanneken was generally not opposed. He only asked me, for what reasons do you want to go to the west?

* Reproduced in C above.

And then I told him our reasons. I pointed out to him that we were afraid that the same situation would come about as in the previous year, when Mr. Pleiger needed urgently a soft coal basis, and now we would have the same situation all over again. Lorraine and Luxembourg, after all, brought with them a large number of coal consumers in the German district. But in practice they did not bring coal. Consequently there was the danger that again coal would be looked for and they would see which of the plants had some coal available, particularly coking coal, and then this whole problem would again stick with Mr. Flick. As another reason—

Q. Mr. Burkart, I don't quite understand that. Where did you see the danger?

A. I pointed out that in Lorraine and Luxembourg there were a number of steel works which would now come into the German industrial and economic district, which were very large coal and coke consumers, but had no coal. Since the coal production was rather low in the Ruhr the danger existed that these new owners of the Lorraine and Luxembourg plants, that is, particularly the Reichswerke, would again come running to the Ministry of Economics or to the Four Year Plan Office and say, "We need coal." In that case a similar situation would come about as happened in 1939 when the whole Harpen transaction came about because of Pleiger's demand for his own soft coal basis for his steel works in Salzgitter.

Q. Your anticipation was therefore, that Flick would lose more coal if they did not increase the production?

A. Yes, that's correct. We had the proverb as our leading motto—"Once bitten, twice shy."

Q. There is another reason pointed out in this note in front of us.

A. Well, the other consideration was that we had been told repeatedly by official agencies that the Flick group was based one-sidedly on a scrap iron basis. You have to expand in the direction of ores, but in Germany, in the German Reich, the ore possessions were distributed and therefore the occasion to participate in steel works with an ore foundation was a good opportunity.

Q. Were there not also questions of rivalry of importance, particularly as far as Maxhuetten was concerned?

A. Another reason which was of great importance to us, perhaps it was one of the decisive factors, was the idea of the Reichswerke. Your Honors, you know by now the position of the Maxhuetten, I mean on the map. The Maxhuetten plants are not very far from Nuernberg. There is another one near Saalfeld, about 160 kilometers north of Nuernberg. Previously Maxhuetten

had a very good consumer district in south Germany, particularly in Bavaria and in Wuerttemberg. Into this consumer district Mr. Pleiger had advanced and mainly he had come from the east, from Linz. There he had built the Linz foundry. Now, we knew that Pleiger was trying very hard to annex in Lorraine and Luxembourg some large possessions. In other words, there was the danger that the consumer district of Maxhuette would not only be threatened from the east but perhaps to a large extent from the west. In order to keep our fingers in the pie, that is, in the price policies in Lorraine and Luxembourg, we took that as a reason for taking an interest in Rombach.

* * * * *

IX. CLOSING STATEMENTS

A. Introduction

The closing statements for the prosecution and defense are set down in more than 600 pages of transcript (*Tr. pp. 10344-10969*) and their delivery required 5 trial days. The closing statement for the prosecution, delivered on 24 November 1947, was followed by nearly 4 days of defense closings (25, 26, 28, and 29 Nov. 1947). The rebuttal statement for the prosecution, also delivered on 29 November 1947, occupied approximately 1 hour of trial time. The defense closings were rendered in the following order: Burkart, Terberger, Kaletsch, Steinbrinck, Weiss, and Flick. From this voluminous argumentation the following are reproduced herein: extracts from the closing statement for the prosecution (sec. B); extracts from the closing statement for defendant Burkart (sec. C); extracts from the closing statement for defendant Steinbrinck (sec. D); extracts from the closing statement for defendant Weiss (sec. E); the closing statement for defendant Flick (sec. F); and the rebuttal closing statement for the prosecution (sec. G).

Closing statements for the defendants, Terberger and Kaletsch, no parts of which are reproduced herein, may be found in the mimeographed transcript, pages 10572-10713. The opening statements for the prosecution and for each of the defendants are reproduced in full in section III.

B. Extracts from the Closing Statement for the Prosecution *

PRESIDING JUDGE SEARS: We will hear the argument for the prosecution on each count of the indictment.

INTRODUCTION

GENERAL TAYLOR: On 18 April 1947, over 7 months ago, the prosecution in its opening statement outlined the evidence in support of the indictment which has been brought against these defendants. Since that time the evidence presented in support of the charges has been subjected to months of sustained scrutiny, analysis, attack, and explanation by the defendants and their very able and energetic counsel. Whatever anyone may ever say about this proceeding, no one can ever say truthfully that the defendants had anything but the fullest opportunity to justify their actions in a proceeding conducted with endless patience and judicial detachment.

In summing up this case after 7 months of trial, the prosecution sees no necessity or benefit from a tedious rehearsal of details of the record. We are filing factual briefs, on each count of the indictment, as requested by the Tribunal, on the evidence under each count of the indictment. In this oral statement, we propose to confine ourselves to the most salient items of proof, and to deal principally with the defenses, excuses, and explanations upon which the defendants have chiefly relied.

For in this last analysis, and now that the proof is in, it seems to us that there are relatively few important issues of fact to be resolved. On most of the essential points the record leaves little room for doubt. Millions of civilians from the countries occupied by Germany were brought to the Reich against their will and put to work. Thousands of them did work as forced laborers in plants of the Flick Concern. This constituted enslavement. Upon occasions often the conditions of employment were such that disease and death were bound to and did occur. Flick and the other defendants of the Flick Concern during the war knew that there were many enslaved workers among the employees of their plants. We will outline the proof. The defendants did seek to acquire and did acquire possession and control of factories and other capital goods in the occupied territories against the will of the true owners. The defendants did seek to acquire and did acquire extensive properties, and in effecting these acquisitions the defendants utilized the anti-Semitic laws and politics of the

* 24 November 1947, Transcript pages 10344-10463.

Nazi government as a lever. The defendants Flick and Steinbrinck did establish relations with Himmler at an early date; they continued to meet regularly with Himmler and other notorious SS leaders right up to the end of the war, and they did contribute substantial sums of money which became part of the financial resources of the SS. All these basic facts charged in the indictment have been conclusively proved and cannot, I believe, now be seriously disputed.

Essentially, therefore, the defense in this case is by way of confession and avoidance, or by way of demurrer. Private persons, as these defendants claim to be, are said to be beyond the reach of international penal law. This court is said to be unlawfully constituted and without jurisdiction. The defendants profess to have been ignorant, at first, that thousands of their employees were brought from distant lands against their will, and to have learned about this shocking circumstance only late in the war. Substandard and dangerous conditions of employment, and mistreatment, they say they know nothing of; anyhow, it wasn't so bad; anyhow, it was bad elsewhere, too; and anyhow they did all they could to ameliorate the situation. The plants and factories which they acquired in the occupied territories were seized by the government originally, and some other German concern would have had them had the defendants not undertaken the responsibility of managing them. As for the seizure of Jewish properties in Germany, that too was really the act of the government, and others might have driven an even harder bargain with the Jewish owners. As for the SS, Himmler was a dangerous man and when he asked for money the defendants thought it best to give it. However, they discussed only cultural matters with him and the other gentlemen of the SS, all of whom were disarmingly polite; and the defendants never suspected that the SS was committing the horrible crimes which have since been proved. Anyhow, say the defendants, we were just businessmen. Life under Hitler was a difficult and dangerous thing, especially for a prominent businessman. Whatever we did that now seems reprehensible was done out of fear.

Thus do the defendants seek to cloak their motives and justify or apologize for their actions. Many of these purported defenses submitted are untrue, others are irrelevant and ephemeral. The whole pattern disintegrates under analysis of the law and the facts, like a cobweb on a housewife's broom.

Much more insidious, I believe, is the deadening effect on the mind of endless weeks spent with these defendants and their witnesses and documents. The trial has unfolded in this courtroom a cross section of life in Germany under the Third Reich. During these long months we have lived in a world where all the normal moral standards and human values are inverted. War is a whole-

some state of affairs, and peace is a fitful, restless, tense period of preparation for war. Love for one's country is a crime, unless the country be Germany; Frenchmen, Poles, Czechs, and Russians must work for the glory of the German fatherland and render unquestioning obedience. Human slavery is commonplace and a necessary part of the scheme of things. The police, so far from being the guardians of law and order, are dangerous and malevolent malefactors. This was a bad and brutal world. But, just as the ear gradually accommodates itself to a badly tuned piano, or as the eye adjusts to the Lilliputian scale of a puppet show, so do our minds tend to accept a morally topsy-turvy world if we focus on it too long and without an occasional side glance at a normal world. This, indeed, is the prime function of criminal law and law enforcement. By judgment and sentence, the universal standards of conduct embodied in civilized law are confirmed again and again. And it was the collapse of law enforcement in Germany, and the abdication of moral and legal responsibility by just such men as these defendants, which brought about and, indeed, constituted, the disastrous disintegration of German society, and led to the cataclysm from which we have hardly yet started to recover. Most fundamentally, the defendants have sought refuge in this case by dividing the perverted world of the Third Reich into "we" and "they". "They" are the bad men, a cast of characters which constantly shifts according to the charge at issue. Sometimes "they" are less fearsome figures like Pleiger or Kranefuss; upon occasion "they" speak through the ghostly but hardly ghastly voice of a Finnish masseur. Whoever "they" are, "they" are the root and branch of all the evil of the Third Reich. "We," on the other hand, were quite innocent of evil intent, but "we" did fear "them." To placate "them," "we" had to be on the best terms with "them." "We" gave Goering large sums of money and acted as his agent; "we" housed Himmler, gave him pocket money, and masqueraded as members of his "Circle of Friends"; "we" regretfully acquired properties which Goering and Pleiger seized from unfortunate Jews and Frenchmen; "we" were shocked to discover that "we" had been obliged to use thousands of foreigners whom "they" had enslaved to keep our businesses going. It was most regrettable, but what could "we" have done about it?

The prosecution submits not only that these matters are legally insufficient to constitute a defense, but also that the record shows this entire line of defense to be utterly spurious and meretricious. The leading defendants, Flick and Steinbrinck, were not reluctant dragons. All the defendants are uncommonly able to take care of themselves, and have been phenomenally successful at accomplishing what they set out to do. To suggest that these men, whose

enterprises flourished like the green bay tree under Hitler and who occupied the most powerful and privileged positions in the German industrial fabric, spent 12 years skulking about in fear and doing what they did not want to do, is ridiculous.

This whole line of argument would never have been made, I am sure, except for one circumstance. These crimes were connected with the war; and the war is something that everyone would like to forget. The eyes of the world are focused now on other things. For this reason defense counsel have told us—and no doubt will tell us again—that the trial of these defendants is a mere anachronism. But the reconstruction which the world needs is not merely material but also moral reconstruction. And one means toward this end is the reaffirmation of fundamental standards of law. We cannot permit wholesale violations of these standards to go unpunished and, even worse, unremembered. To say that they were part of the war and part of an effort to win a war is no excuse for inaction. The framers of the Hague Conventions recognized the danger that just such crimes would be committed, and especially in wartime. It has never been a principle of law and enforcement that transgressions will go unpunished in areas where they occur most often, and no such principle must govern our actions here.

Now, if it please the Tribunal, the prosecution proposes to sum up the evidence under each count and then to deal with some of the general defenses which have been raised, such as fear and coercion.

Mr. Ragland will handle the presentation under count one, I will handle the presentation under count two, Mr. Lyon will deal with counts three and four, and I will conclude with the discussion of general defenses.

Mr. Ragland will handle count one.

COUNT ONE

MR. RAGLAND: May it please the Tribunal. The basic facts as to the slave-labor program of the Third Reich and the criminal nature of that program have been determined by the International Military Tribunal, and are so well known as to require no restatement here. These determinations have been ratified and confirmed by the United States Military Tribunals in the *Milch* case and the *Pohl* case. Efforts to attack some minor parts of the determinations of the International Military Tribunal have been made by the defense. It is asserted by the defense that the determination that less than 200,000 of the 5,000,000 workers who arrived in Germany came voluntarily involves somewhat too low a figure and also that the Tribunal has painted somewhat too black a picture

concerning the methods of conscription, the conditions of transportation, and the treatment of the workers in Germany. Suffice to say, the evidence in this case as a whole, in the words of the Tribunal in the *Milch* case, "was in no way contradictory of the findings of the International Military Tribunal, but on the contrary, ratified and affirmed them."

The deportation to Germany from the occupied countries of millions of slave laborers was not without purpose. As found by the International Military Tribunal, the slave-labor program was conceived of "as an integral part of the war economy" and at least 5,000,000 persons were deported to Germany "to serve German industry and agriculture". The industries under the control and management of the defendants were not, as we shall see, least among those whose demands were served.

The Flick Concern was one of Germany's greatest industrial combinations in the field of heavy industry. It consisted of a vast group of iron and steel companies, brown and hard coal enterprises, and fabricating plants, all of which, directly or through participations, were owned by the FFKG. In terms of total production for the German war effort, there were only two or three privately owned firms which ranked with the Flick Concern in importance. The steel companies of the Concern were the largest producers of steel in the Reich, next to the state-owned "Hermann Goering Works" and the Vereinigte Stahlwerke. In brown coal output, the Concern was the largest producer in Germany. Harpen and its subsidiary together constituted the second largest enterprise engaged in hard coal mining in the Rhine-Westphalian district. The rolling mills, blast furnaces, foundries, machine shops and fabricating plants of the Concern forged and cast an endless variety of steel and iron products. The companies and plants of the Concern were among the leaders in armament production, including armor plate, guns and gun parts, tanks and tank parts, airplanes, armored vehicles, artillery, and infantry ammunition. The fabricating enterprises of the Concern were the leading producers of tanks in Germany and ranked second among the manufacturers of shells.

The "achievements" of the Flick Concern involved the use of large number of laborers, and by 1944 the Concern employed in excess of 120,000 persons in its enterprises. The record clearly establishes that many thousands of laborers were foreign workers and prisoners of war, and many hundreds were concentration camp inmates. This is clear from the evidence of the defense as well as that of the prosecution. The evidence presented includes statistics taken from the files of the Flick Concern which, while incomplete, show the composition of the labor force in many of the

enterprises of the Concern. These statistics indicate that, at least by the end of 1940, not less than 40 percent of all the employees of the Flick Concern were foreign workers, prisoners of war, and concentration camp labor. This percentage figure is but slightly higher than the figure derived from an affidavit of the defendant Weiss which is in evidence. It may, therefore, be conservatively estimated that in excess of 40,000 foreign workers, prisoners of war, and concentration camp laborers were used in the Flick Concern. This figure does not, of course, reflect the constant turnover in these classes of labor due to deaths, escapes, and disability.

We are told by the defendants that many of the foreign laborers employed by the Flick Concern were voluntary workers. Even if true, this would be of minor significance. The extent of the use of forced labor by the Flick Concern is much less significant than the fact that forced labor was used. Furthermore, in point of fact, the evidence makes it plain that the overwhelming majority of the foreign workers of the Flick Concern were forced to work in Germany against their will. In view of the conclusiveness of the evidence on this point, no useful purpose would be served by a detailed presentation here of the evidence. It suffices to recall at this point that a number of persons who had worked in various Flick companies during the war years testified before this Tribunal that they had been required against their will to perform work for these companies. The absence of testimony to the contrary by a single foreign worker is significant, particularly in view of the defendants' protestations that all of the foreign workers to whom they had spoken stated that they had come to Germany as volunteers. Moreover, the defendants themselves often asserted during the course of the trial that the enterprises of the Flick Concern obtained their foreign labor, in considerable part, through the government agencies under the jurisdiction of Sauckel as Plenipotentiary General for the Allocation of Labor. In view of the judgment of the International Military Tribunal, it cannot seriously be contended that any significant number of workers obtained through these agencies were voluntary workers.

But we are also told by some of the defendants that they did not have actual knowledge of the slave-labor program of the Third Reich and, more particularly, that they did not know that forced labor and labor of concentration camp inmates was being used in the enterprises of the Flick Concern. In the opening statement on behalf of defendant Flick, his counsel stated:

"I shall not submit counterevidence to the assertion of prosecution that the defendant Flick had known of the coercive methods used in the recruitment of foreign labor. I believe I remember that the prosecution once expressed the idea that

these defendants, as some of them had done in the big trial, would also claim impunity for reasons of their complete ignorance of the practice of such coercion. I have reason to assume that the prosecution, if my memory is correct, will err in respect of Flick, for whom alone I am pleading here. From the witness stand Flick will explain to you how much he knew, what his convictions were, and what he assumed." (*Tr. p. 3144.*)

The testimony of the defendants themselves, in reply to specific questions, discloses that, despite general disclaimers of knowledge, they were not, in the words of Flick's counsel, in "complete ignorance", but on the contrary had a wide range of knowledge both of the German program and of the use of slave labor by the Flick Concern.

The defendant Flick conceded that "when the number [of eastern workers] grew bigger and bigger, I gained the feeling and moral conviction that not all of them—that it was unthinkable that all of them had come voluntarily to Germany." (*Tr. pp. 3422-3423.*) In the course of visits to Lwow and Toelz, Flick "gained the impression" that some foreign workers were not volunteers. (*Tr. p. 3724.*) When Kaletsch was questioned about a letter which referred to the exemption of certain workers from the "Sauckel Action" in France, he thought he may not have read that part of the letter, since it was in the form of a "P.S." (*NI-5467, Pros. Ex. 552; Tr. p. 7887.*) Burkart freely admitted that he knew of the conscription of workers in France as early as the spring of 1943 (*Tr. pp. 6533, 6776*), and that as the result of a visit to Groeditz made together with Flick, he knew of the use of concentration camp inmates in Flick plants in 1944 (*Tr. pp. 6587-6590*), regarding which he had a "peculiar uncanny feeling." As he stated he also admitted that he was aware that numbers of Russian women and children were employed in Flick plants and mines, which caused certain "doubts and qualms" to arise in him, until it was "explained" that this kind of labor was regarded differently in Russia. (*Tr. pp. 6560-6563.*) He had no doubt that some Italian workers were being driven to labor in Germany by arrests. (*Tr. p. 6533.*) Although Weiss' "bad memory" made parts of his oral testimony hazy, certain facts of his awareness emerge clearly when taken together. Thus, he knew that concentration camp inmates were employed in the plants of the Flick Concern which he designated. (*Tr. pp. 8985, 8987-88.*) He knew of Sauckel's plans in October 1942 for conscription of workers in France. (*Doc. NI-3617, Pros. Ex. 175,* Tr. p. 9001.*) He was conscious of many indicia of compulsion in the employment of foreign workers (*Tr. p. 9008*); he "may have heard" that foreign labor was forced (*Tr. p. 9003*); and he "may have known of" the Goering decrees

* Reproduced in section VII B.

ordering labor conscription in Poland. (1666-PS, *Prosecution Exhibit 70*; NI-4310, *Pros. Ex. 76*; *Tr. p. 9007*.) Terberger admitted that 41 eastern workers assigned to Maxhuette from a Gestapo prison, to his knowledge, did not come to the plant voluntarily. (*Tr. p. 9512*.) He was aware that foreign workers had sometimes "escaped" (*Tr. pp. 9488-9489*; *9507-9508*) and he also knew that foreign workers could not resign from their work. (*Tr. p. 9533*.) Furthermore, in addition to their individual admissions, the knowledge of each of these defendants, Flick, Kaletsch, Burkart, and Weiss, is reasonably the knowledge of all of them. They worked together as a group, conversed with each other, and exchanged reports and information regularly. It would be strange, indeed, if they did not share their doubts or convictions on labor topics also.

If the defendants did not know of the presence in Germany of forced labor, their awareness was considerably less than that of the average German. From the testimony of Speer (*Tr. p. 9151*) and Stothfang (*Tr. p. 6004*) it is clear that it was generally known in Germany that at least part of the foreign labor did not come to Germany on a voluntary basis. The defendants here were no mere average Germans. They were "sophisticated" men who held high positions in German industrial life and whose activities covered a wide range. Any claim on their part of lack of knowledge of the slave-labor program, to say nothing of lack of knowledge of the use and treatment of forced labor in the enterprises of the Flick Concern, can only be described as incredible. But no need exists to belabor this point. The record is replete with examples of letters, reports, circulars, and other documents, sent to, initialed by, or in the files of the defendants, relating to foreign labor. These documents could not have done otherwise than put the defendants on notice that the foreign labor brought to Germany was forced labor; neither in substance nor in language could the documents be construed as relating to voluntary labor. A few examples will suffice. A file notice of April 1942 taken from the central files of the FFKG and signed by Kuettner, assistant to Burkart (*Tr. p. 6817*), which contained a report on a conference where Sauckel was present, stated (NI-3165, *Pros. Ex. 129*):

"In the interest of the performance of the Russians, the hitherto strict regulations for their employment will be considerably eased.

"The barbed wire around the camps will be removed; the guard personnel must guarantee the security of the camp. The marking of Russian civilians, especially the Ukrainians, will be alleviated.

* * * * *

“According to information from the RAM (Reich Labor Ministry) another 500,000 Russian civilians will be brought to the Reich by the end of June, partly on the basis of compulsory recruitment * * *.

“The Labor Ministry will direct closed trains with recruits to the Regional Labor Office.”

If there was any doubt that the substance of this notice reached the defendants in the Berlin Office, it is fully dispelled by a memorandum written by Burkart, recording subsequent conversations of Flick and Burkart with Schieber of the Speer Ministry in May 1942. Schieber was quoted by Burkart as declaring (*NI-1697, Pros. Ex. 828*):

“We have a large program for procuring foreign workers, which additionally provides the German labor market from the Ukraine with 350,000 to 400,000 people for May, and with 400,000 to 500,000 people for each month of June and July. These people will have to be properly placed.”

Copies of this report were sent to Kaletsch, Weiss, and Terberger.

In July 1942, Burkart sent Flick a memorandum, with Terberger's name on the distribution list, transmitting information on a conference where Speer and Sauckel had been present. The memorandum pointed out that (*NI-5234, Pros. Ex. 238*):¹

“Gauleiter Sauckel has now finally promised to procure 120,000 Russian workers for the mining industry within the next 4-6 weeks, so that Mr. Pleiger can make available the necessary additional coal for steel production.”

In a letter to Flick, from Harpen, dated July 1943, and which was initialed by Flick, Kaletsch, and Weiss, it was observed that (*NI-4736, Pros. Ex. 260*):²

“The schedule of categories for labor allocation for 1943-44 provides for only 30 percent losses of the available foreign labor as an average per year.***

“Among the losses of the foreigners, particularly the number of escapes among the eastern workers is strikingly high.”

As early as December 1941, an RVK circular (*NI-4102, Pros. Ex. 250*)², initialed by Kaletsch and Weiss, discussed the apprehension of Russian workers in the previous month. Although counsel for defense disputed the translation of the German word as “apprehension”, there was no dispute about parts of the circular which stated that Russian workers would be shipped to Germany in closed transports, guarded by SS men. Another report of the RVK, in June 1942, initialed by Burkart and Weiss, declared (*NI-4731, Pros. Ex. 253*): “Recent experiences, however, show

¹ *Ibid.*

² Reproduced in part in section VII B.

that labor transports from Russia are becoming more and more unsuitable for the mines. In many cases half of them consist of women and a high percentage are children." A letter to Flick, seen by him and initialed by Kaletsch and Weiss, complained of the high percentage of old men, women, and children in the foreign contingents assigned to the Rombach plants. (*NI-5592, Pros. Ex. 181.*) Reports initialed by Terberger, in 1942 and 1943, referring to the "escape" of Russian workers, noted that some such workers should be transferred to prisons to be "educated by the Gestapo" for good discipline. (*NI-329, Pros. Ex. 197; NI-3150, Pros. Ex. 202.*) Burkart and Kaletsch initialed an RVE circular of July 1943 which emphasized that in the effort to obtain concentration camp inmates, it was improper for members of the RVE to approach the SS camp administration directly. (*NI-5598, Pros. Ex. 313.*) Another RVE document which Terberger initialed, asserted that Italian military internees who refused to work must be punished. (*NI-4554, Pros. Ex. 311.*) A circular from Roechling of RVE, dated October 1943, which was initialed by Terberger, concerned the "Treatment of Foreign Workers." After referring to "breaches of contract" by such workers, it declared (*NI-3178, Pros. Ex. 310*):

"Improper conduct on the part of the workers is immediately to be called to attention and severely punished, if necessary, by putting into concentration camps. Repeated and serious misconduct by foreigners, especially disappearing from work, must be reported by the plants without delay to the Gestapo."

The defendants' information and knowledge were not restricted to that which they derived from reports and documents which came to them. Among other things, they made inspection trips to the plants, the mines, and other establishments of the Flick Concern, and they talked with the plant managers and other persons who dealt daily with the foreign workers. They could not have been so naive as to be unaware of the course of events both in Germany and in the enterprises which they controlled or managed.

We are finally told by the defendants that the responsibility for the use of slave labor and concentration camp labor in the enterprises of the Flick Concern was not actually their responsibility. They suggest, in this connection, that the term "Flick Concern" is meaningless, that legal control was vested in separate managements of the various enterprises, and, in any event, that the defendants did not deal with labor matters. The record, however, conclusively rebuts any such suggestion. The term "Concern" is not an invention of the prosecution, nor is it a term of mere description. Neither is the term "Flick Concern",

which was often used by the defendants in their business, a meaningless term or term of mere description. A "concern" is defined in German law and is known in business practice as "legally independent enterprises integrated for economic purposes under a unified management." Such was the Flick Concern, consisting of four major groups—iron and steel, hard coal firms, and fabrication plants under the unified management of a partnership, the FFKG, which, legally and in fact, was but a synonym for Flick himself. Flick appointed the Vorstand members and other leading officials of the subordinate companies of the Concern; he convened and took part in key Vorstand meetings; he determined and executed reorganizations of the Concern, dictating the transfer of shares and participations from one company to another and merely giving notice of his plans to the boards of such companies. Flick effected his supervision and control of the Flick Concern through a head office in Berlin, in which his chief assistants were Burkart, Kaletsch, and Weiss. These three defendants, as General Plenipotentiaries, had the authority to review and supervise the activities of the companies subordinate to the partnership. The defendants would have us believe that the Berlin office was a passive and unimportant feature of the Flick Concern and essentially only an office for the administration of Flick's financial interests. This picture, however, is not consistent with the objective evidence as to how the Flick Concern actually ran, nor indeed with the descriptions of themselves and the Concern which the defendants used in earlier days. While Flick and the other defendants in the Berlin office did not direct the day-to-day operations of each plant in the Concern, the evidence demonstrates that they exercised pervasive control and supervision, including control and supervision over labor questions and policy. This control and supervision, moreover, was exercised on the basis of detailed information. Each month, and sometimes more frequently, the defendants received comprehensive reports from each of the component firms, which reports included surveys of labor needs and conditions. The defendants visited the plants frequently on inspection and other trips, and the local managers often came or were called to the Berlin office.

Terberger was the deputy chairman of the three-man Vorstand of Maxhütte and when the chairman was away—which he was most of the time during the years 1941-43—Terberger exercised the functions conferred on, and performed the tasks required of, the chairman. Moreover, when the third Vorstand member resigned in 1943 the tasks formerly performed by him were taken over by Terberger, who testified that the procurement of foodstuffs

for Maxhuette workers thereafter came directly under his control. Terberger also testified that he had a "moral duty" to see to it, so far as he had the opportunity, that "the workers employed in our plants were not only treated decently but were also taken care of in other matters, that is, that they were well fed and protected."

The defendants used impressed foreign labor and concentration camp labor in enterprises under their control or management, and they did so with knowledge of the character of such labor. There can be no doubt, therefore, of their guilt of the crime of enslavement under Control Council Law No. 10. The criminal nature of the mere utilization of slave labor clearly appears, moreover, from the judgment of the International Military Tribunal. In finding Speer guilty of war crimes and crimes against humanity, the Tribunal pointed out that he "was also directly involved in the utilization of forced labor as Chief of the Organization Todt", that he "relied on compulsory service to keep it adequately staffed", and that he "used concentration camp labor in the industries under control." The record here contains a story of confinement, suffering, malnutrition, and death. But enslavement need involve none of these things. As stated by Tribunal II: ¹

"Slavery may exist even without torture. Slaves may be well fed, well clothed, and comfortably housed, but they are still slaves if without lawful process they are deprived of their freedom by forceful restraint. We might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery—compulsory uncompensated labor—would still remain. There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery."

With respect to utilization of forced French labor, the defendants urge as a defense that these workers were supplied by the French Government under an agreement with the Reich. Tribunal II, in rejecting this defense, stated, in part: ²

"The position of the defendant seems to be that, if any force or coercion was used on French citizens, it was exerted by their own government, but this position entirely overlooks the fact that the transports which brought Frenchmen to Germany were manned by German armed guards and that upon their arrival they were kept under military guard provided by the Wehrmacht or the SS."

¹ Judgment in the case of the United States *vs.* Oswald Pohl, et al., Volume V, this series, page 970.

² Judgment in the case of United States *vs.* Erhard Milch. See Volume II, this series page 788.

The defendants are also guilty of the crime of deportation and of the murders, brutalities, and cruelties committed in connection therewith. The slave-labor program, as found by the International Military Tribunal, involved criminal deportation of many millions of persons, recruited often by violent methods, to serve German industry and agriculture. The utilization of the forced labor by defendants make them participants in the crimes committed under such program. As already demonstrated, the defendants obviously knew of the slave-labor program and had ample information to put them on notice as to the methods adopted in its execution.

The evidence further establishes guilt on the part of the defendants of the crime of ill-treatment of impressed labor and prisoners of war utilized in the enterprises of the Flick Concern. This Tribunal has seen and heard the story of a number of witnesses who endured the life of a forced laborer in the enterprises of the Flick Concern and told this Tribunal what that life meant. The Tribunal has also heard the story unfolded by documents taken, in considerable part, from the files of the Flick Concern and the RVK. The witnesses and documents tell of disreputable, vermin-infected barracks and other housing for foreign workers, often surrounded with barbed wire fencing; of extreme hours of work under miserable conditions; of lack of food, hunger and starvation; of widespread sickness, disease, and death; and of beatings and other ill-treatment. The defense has introduced numerous affidavits designed to establish that conditions were not really as bad as described by the witnesses and as set forth by the contemporary documents and that poor conditions and ill-treatment existed at most only in exceptional cases. It is to be observed that a large number of these affidavits came from parties in interest who were themselves involved directly or indirectly in these crimes. The detailed discussion of the evidence is contained in our brief. Suffice it to say, the evidence in the record leaves no doubt of the horror of the conditions under which the slave labor and prisoners of war were exploited in the Ruhr coal mines of the Flick Concern and of the resulting sickness and death on a vast scale. It is equally clear that throughout the Flick enterprises evil conditions existed, involving miserable housing in many instances, malnutrition and often extreme hunger, extreme hours of work, fear and confinement, physical suffering and sickness, and ill-treatment of various sorts, including beatings. The defendants themselves shrink from any admissions that conditions were not good. At the same time, they relate at length what they did or wanted to do to improve matters. It may well be true that the defendants did not have

personal information about all details of the treatment of the foreign workers and prisoners of war. But the various reports which came to the Berlin office gave defendants ample notice, even apart from the knowledge derived from their inspection tours and otherwise, generally with respect to the conditions which existed, particularly in the Ruhr coal mines. Moreover, the defendants' control of the Flick Concern placed a responsibility upon them which cannot be avoided. They had a responsibility for the care and treatment of the workers in their enterprises. Nor is it an answer that many of the conditions were the inevitable consequence of the vast program involving the sudden influx of millions of foreign workers into an economy strained by war, particularly with respect to clothing and food. The defendants through their utilization of the slave labor which was involved in such program were participants therein and must share responsibility for the conditions which such program helped bring about.

While the defendants freely admit use of prisoners of war in the enterprises of the Flick Concern, they deny illegal use or ill-treatment of such prisoners. This defense is based, in part, upon issues of fact and, in part, upon issues of law. It is admitted by defendants that prisoners of war of practically all nationalities were used in the Flick mines and that Russian prisoners of war were used in armament production, but the illegality of such use is denied. Various defense witnesses testified to the utilization of prisoners of war of various nationalities in the production of munitions and armament material up to the stage of "final" production, but the illegality of this is also denied by the defense. A defense witness also testified that prisoners of war, including British and French prisoners, may have participated on occasion in loading guns on freight cars. The testimony of witnesses for the prosecution, who were present in the plants and had first-hand knowledge, is that French and Belgian prisoners of war were engaged in the production of shells and naval guns at Groeditz and that prisoners of war of all nationalities were engaged in transporting, assembling, and producing guns at another plant of the Flick Concern. The extensive utilization of prisoners of war in the Flick plants, and the fact that these plants were largely engaged in armament production, fully buttresses this direct testimony. The asserted defense that prisoners of war are not protected by international law and therefore may be required to work in any kind of activity, is based upon contentions long since rejected by the International Military Tribunal. The asserted defense that use of prisoners of war in armament production is unlawful only when the "final" stage of production is involved not only is unrealistic when viewed

in the light of the purposes of the international conventions but also becomes an absurdity when considered in the light of testimony given by a defense witness as to the definition of "final" stage of production. (*Tr. pp. 7010-11.*)

Whether the mere utilization of prisoners of war in coal mines is unlawful *per se* as a violation of the prohibition against use of prisoners of war in unsafe and unhealthy occupations need not necessarily be considered here. This is not to say that such utilization is not prohibited under international law. Indeed, even the defendant Flick himself admitted the dangerous character of such employment. However, more than mere utilization is here involved. Under the Geneva Convention the employment of prisoners of war on work for which the prisoner does not have an aptitude is expressly prohibited. The evidence plainly establishes that many of the prisoners of war were unskilled, ill, poorly clothed, and half starved. We need not detail the many facts which demonstrate the validity of this statement. It is sufficient to point out that the asserted desire of the defendants to retain their German miners stemmed from their knowledge that unskilled prisoners of war and eastern workers were incapable of sustaining a high productivity, that Russian prisoners at Harpen frequently bent their dishes in order to get more food into them, that X-ray examinations of Russian prisoners employed at Harpen disclosed a high incidence of open tuberculosis, and that Russian prisoners working in Harpen tore up their pants in order to wrap the pieces around their feet. The utilization of prisoners of war under such conditions in mining operations is clearly unlawful. Moreover, the ill-treatment of prisoners of war was not confined to those working in Flick mines. For example, at the Fella Works, located in the center of agricultural Bavaria, prisoners of war were described by company officials themselves as "specially undernourished." Prisoners of war kitchen workers at the Rosenberg plant of Maxhuette admittedly worked 98 hours a week performing heavy manual labor. And only after Stalag officials had complained did prisoners of war at another locality receive a day of rest each week.

* * * * *

COUNT TWO

GENERAL TAYLOR: Under count two of the indictment, all of the defendants except Terberger are charged with "plunder of public and private property, spoliation, and other offenses against property" in violation of international law, and, in particular, in violation of Control Council Law No. 10. On the face of things, we appear to be passing from atrocities and offenses against per-

sons, such as were involved in count one, to offenses against property. And, indeed, the acts which are charged as crimes in this count were committed in the first instance against property. But it must not be thought that the impact of the crimes charged in this count was felt only in terms of francs or marks or acres or tons. The seizure of factories and other capital goods in the occupied countries had a shattering effect on all aspects of the internal economy of those nations. As the International Military Tribunal found, their resources¹ "were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation, and an active black market."

The basic facts with respect to the German program of plunder in the occupied countries have been established by the decision of the International Military Tribunal. That Tribunal found that war crimes had been committed in that the Germans exploited the occupied territories "in consequence of a deliberate design and policy. There was, in truth, a systematic 'plunder of private property' which was criminal under Article 6 (b) of the Charter."² Amplifying this conclusion, the Tribunal stated:

"The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry."

It remains to determine what part the defendants charged under this count played in this criminal program. The evidence on this point is analyzed in detail in the prosecution's brief, and, here again, we will confine ourselves at this time to the salient features of the evidence.

a. Rombach

Four of the defendants—Flick, Burkart, Kaletsch, and Weiss—are charged under this portion of count two. The term "Rombach" refers to the large iron and steel works in Lorraine which the defendants took control of through the Flick-owned Rombacher Huettenwerke.

The Rombach works, as the record shows, became the lawful property of French owners at the time of the Treaty of Versailles.

¹ Trial of the Major War Criminals, *op. cit.*, Volume I, page 240.

² *Ibid.*, pages 238-39.

The Rombach blast furnaces and other works were a very substantial property with a production capacity of 600,000 to 1,000,000 tons of steel per year.

The record could not possibly show more clearly that the defendants voluntarily, eagerly, and energetically sought to acquire possession, control, and ultimately ownership of the Rombach plants. By order of the French military authorities, the iron and steel plants of Lorraine were evacuated on 14 June 1940 before the advance of the German armies (*NI-5396, Pros. Ex. 512*).¹ Three days earlier, the defendant Burkart had already undertaken to impress General von Hanneken that "the foundries of Lorraine, Luxembourg, and Belgium are part of the German economy" (*NI 3516, Pros. Ex. 517*). Ten days later, Burkart, Kaletsch, and Flick were already pushing for the appointment of a particular commissioner for the iron industry of Lorraine, and looking forward to the day when "Lorraine has been reunited with her motherland" (*NI-3525, Pros. Ex. 513; NI-3540, Pros. Ex. 514*). And at the same time, Flick himself wrote from Marienbad a long letter to one of the officials of his companies setting forth at length the reasons in support of his claim to a share in the iron works in Lorraine and, in particular, to Rombach (*NI-3513, Pros. Ex. 518*).¹ There is no need to labor further the energy and avidity with which Flick and the other three defendants here charged sought to have the Rombach works allocated to the Flick interests. On the witness stand, Flick acknowledged the voluntary character of his actions (*Tr. p. 3730*).

In these efforts the defendants were, of course, successful. The Rombach, as well as other Lorraine plants were, at first, seized by a government administrator pending their allocation among the several German steel interests. The agreement between the government and Flick whereby possession and control of the Rombach plants was transferred to Flick was finally signed in December 1942, and made retroactive to 1 March 1941.

The defendants occupied Rombach from 1 March 1941 to August 1944 (*NI 5396, Pros. Ex. 512*).² During that period the owners were dispossessed.†

† "Throughout the duration of the administration of public commissioners the powers of the property-holder or owner and of persons otherwise entitled to represent or administer are suspended." (*NI-2567, Pros. Ex. 504*). This condition did not change when Flick and other trustees were appointed.

Mr. Laurent, the owner, testified, "I was just chased away from the Rombach Steel Works" (*Tr. p. 8698*), although M. Laurent was allowed to visit the plants a few times until 1942 (*NI-5396, Pros. Ex. 512*). The total dispossession to which the owners were subjected is emphasized by the fact that the defendants operated

¹ Reproduced in section VIII C.

² Reproduced in part in section VIII B.

Rombach for their own profit and produced for the German war economy. Flick, during the course of negotiations with the Reich officials when the question of French participations, was raised, refused: "In my opinion not practicable" (*NI-1991, Pros. Ex. 523*), and: "No discussion of the question of French circles remaining minor participants should be entertained" (*NI-3533, Pros. Ex. 524*). No serious claim has been made that the owners were not dispossessed or that they were in any way compensated.

That the defendants planned, attempted, and expected to obtain title to Rombach in aggravation of the crime of dispossession, is not contested. The defendant Burkart testified that the agreement of December 1942 with the government was considered by the Flick interests as "the first step toward what we wanted." (*Tr. p. 6630.*) Numerous other documents to the same effect are cited in the prosecution's brief. For all practical purposes, Rombach became the property of the defendants, and only the loss of the war prevented the acquisition of actual title. During the period of possession, the defendants treated the Rombach installations as their own property, and, as Flick acknowledged, realized profits from Rombach operations. (*Tr. pp. 3500-01, 3783-84.*)

In line with the general pattern of German occupation policy as determined in this connection by the International Military Tribunal, the defendants operated the Rombach plants, not so as to support the French economy, but to support the German economy and the German war effort. This mode of operation was likewise in keeping with Germany's unlawful annexation of Lorraine, in which the plants were located. Rombach produced munitions, and the Rombach cement works produced thousands of tons of concrete for the fortifications of the English Channel coast. The larger part of the steel production went to Germany. (*Tr. p. 3784.*)

All four of the defendants charged under this portion of the indictment participated actively in the acquisition of the Rombach works and in their management after possession had been obtained. The lead was taken by Flick and Burkart; the extensive activities of each of them is set forth in detail in the prosecution's brief. Kaletsch and Weiss knew of and, to a lesser degree, participated in the successful efforts to obtain Rombach, and both of them became members of the Verwaltungsrat of Rombacher Huettenwerke, which controlled the works after their acquisition.

We think that there could hardly be a clearer case of plunder of private property within the meaning of Control Council Law No. 10. All of the essential elements of the crime are clearly proved and, indeed, acknowledged upon the record. The attempts which

the defendants have made to justify their actions and mitigate their guilt are insubstantial.

The defendants have suggested, for instance, that, under their management, capital investments and improvements were made at Rombach, and that they did not destroy the plants when the Germans were forced to evacuate Lorraine. The evidence as to improvements is flimsy at best; and most of the new installations were for war production and did not enhance the value of the property to the true owners when they recovered it at the end of the war. But whether they improved it or not is quite irrelevant; there can be no serious suggestion that damage or injury to the plant is an essential element of the crime of plunder at international law. Since Flick considered the plant his own, to be operated as a part of his enterprise, and intended to acquire title to it as soon as possible, it was only natural that he would seek to maintain its operating value. The French owners were dispossessed, and it would have been scant comfort to them that the plant was still in good condition had the Germans won the war.

Nor is it any defense that Flick never acquired full title. The record is quite clear that all parties expected that Flick would obtain title as soon as hostilities were successfully concluded. Furthermore, it is uncontested that the defendants were in full possession and control of the property for over three years, in the course of which they operated it for the benefit of the German economy and the German war effort, and with no regard for the French economy. This in itself would be criminal under the Hague Conventions and Law No. 10 even if Flick had never intended or expected to acquire title. The seizure and operation of Rombach was a part—and an important part—of the general pattern of German occupation under which, as the International Military Tribunal found, the resources of the occupied countries “were requisitioned in a manner out of all proportion to the economic resources of those countries and resulted in famine, inflation, and an active black market.” It was, in short, part of a pattern. And the record conclusively shows that the defendants, through their membership and activities in the Economic Group Iron Producing Industry and by their personal contacts with Reich officials, were fully informed concerning German policy in this respect and helped to formulate the plans for its execution. The defendants’ nominal status as supposed “trustees” of the Rombach properties is a grim misnomer. As Tribunal II stated recently in its judgment in the Pohl case: *

“All of the interests of the trustee were violently opposed to those of the *cestius qui trustent*. The recognized concept of a

* Judgment in the case of United States *vs.* Oswald Pohl, et al., Volume V, this series, page 991.

trustee is that he stands in the shoes of his beneficiaries and acts for their benefit and in opposition to any encroachment on their rights. Here, however, the trustee was in the service of adverse interests and acted at all times under an impelling motive to serve those interests at the expense of his beneficiaries. Actually, the trusteeship was pure fiction.”

The defendants also seek immunity on the ground that, as private individuals, they are not answerable under international penal law. This argument is not peculiar to count two and applies generally to the case as a whole; accordingly, we will dispose of it subsequently, when the general defenses which have been put forward are dealt with. The only other defense which relates primarily to count two is that the Rombach plants were seized initially by the government through its official agents and that, if anyone is criminally liable for the seizure, it can only be the government agents.

This point will not stand analysis. This is not the case of a dollar bill or chattel which has been innocently acquired from a thief or the original converter. It is quite plain on the record that the defendants were parties to the original plan for the confiscation of the Rombach properties. It was contemplated from the beginning that the government administration of the Lorraine industries should be only temporary, pending their allocation among the several German interests. And it is equally plain that the defendants themselves so regarded the process. The defendants commenced their efforts to obtain a share in the exploitation of Lorraine even before the French had evacuated the province, and set their cap for the Rombach properties only a few days later.

Furthermore, it is quite clear that the defendants knew the circumstances under which the government had seized the Rombach properties, and are chargeable with the knowledge that the seizure was unlawful. Their participation in this process, and their subsequent acquisition of the properties from the German Government, certainly makes them participants in the criminal conversion. Tribunal II recently had occasion to determine a similar matter in the Pohl case. In holding the defendant August Frank guilty under the indictment in that case, Tribunal II stated: *

“Any participation of Frank’s was *post facto* participation and was confined entirely to the distribution of the property previously seized by others. Unquestionably this makes him a participant in the criminal conversion of the chattels * * *.”

Finally, as has already been pointed out, the defendants’ guilt does not lie only in their taking possession of the Rombach plants

* Ibid, page 997.

and seeking to acquire title to them. Regardless of how they obtained the plants, they operated them for 3½ years in such a manner as to injure the French economy and promote the German war economy, and this in itself was unlawful under the Hague Conventions and Control Council Law No. 10.

b. Steinbrinck as Plenipotentiary for Coal, Iron, and Steel

I turn now to the defendant Steinbrinck as Plenipotentiary for Coal, Iron, and Steel.

The defendant Steinbrinck had left the Flick Concern prior to the seizure of Rombach, and is not charged under that portion of the indictment. He is, however, charged under count two for his activities as Plenipotentiary General for the steel industry in northern France, Luxembourg, and Belgium; and as Plenipotentiary for Coal in France, Holland, Belgium, and Luxembourg. He held office in the former capacity from May 1940 until July 1942, and in the latter capacity from March 1942 until the German armies were forced to evacuate the western occupied area.

Goering's decree of 10 January 1942, pursuant to which Steinbrinck became Plenipotentiary for Coal in the West, stated that the task was "to give directives and policies and to take all steps to bring the production of coal to a maximum and to orient the production of coal according to the demands which the Reich has to fulfill in regard to coal." (*Tr. pp. 4285-86.*)

Steinbrinck well understood the unlawful purposes which Goering's decree and his own appointment as "Bekowest" were designed to achieve. In August 1942, he attended a meeting in Berlin at which Goering stated (*Tr. p. 5238*):

"The only point that interested me is what we can squeeze out of the territory now under our control with utmost application and by straining every effort and how much of that can be channeled into Germany. I don't give a damn about import and export statistics of former years."

Steinbrinck himself has acknowledged his full awareness that the main objective of his appointment was to despoil the occupied western territory of coal in favor of German needs. I quote from his testimony:

"The directives for the production program in those various countries, that is in Holland, Belgium, and northern France, and at the beginning also in Lorraine, were issued by the Bekowest * * *. The distribution of available coal to the various countries and in favor of the Reich or in favor of Lorraine and Alsace, that was the responsibility of the Bekowest * * *." (*Tr. p. 4760.*)

"I was aware that from the German side, probably from Goering's direction, it was desired that the occupied territories

within all possibilities should be used for German interests. In this way also ran my own directives which I received as Bekowest * * *." (*Tr. p. 5238.*)

The statistics of coal consumption and coal exports in the areas under Steinbrinck's control, as established in the record and official report which we have summarized in our brief, show quite conclusively that Steinbrinck was a faithful and able executor of Goering's unlawful purposes. Coal production in his territory was maintained approximately at the peacetime level, but coal exports from these regions to Germany were greatly increased, large amounts of coal were diverted to factories engaged in German war production, and the civilian economies of the Low Countries and northern France suffered very substantial decline of coal consumption and consequent deprivation.

Steinbrinck's own letter to Heinrich Himmler, written in 1944, in support of Steinbrinck's application for transfer from the Allgemeine to the Waffen SS, summarizes his mission as Bekowest most succinctly. In this letter, Steinbrinck stated, referring to his capacity as Plenipotentiary for Coal (*NI-8542, Pros. Ex. 744*):¹

"I control the entire soft coal and brown coal mining industries in Holland, Belgium, and France. I control the mines and regulate the coal mining industries of those countries for the purpose of greatest possible exploitation in the interests of the war economy."

Steinbrinck's appointment as Plenipotentiary General for Steel originated in Goering's office of the Four Year Plan; he was empowered to "give all orders which appear necessary to him for my instructions and directives with respect to the utilization of the iron producing and smelting industries in the above-mentioned plants." (*NI-3751, Pros. Ex. 503*).² The record shows that in steel, just as in coal, Steinbrinck's task was to exploit the iron and steel industries of the occupied countries for the benefit of the German war economy (*Steinbrinck 307, Steinbrinck Exhibit 7*). I quote from the record:

"The task which was taken over by the General Commissioner consisted of raising the production of the iron and steel industry of Belgium to the highest possible level, with the use of the raw materials at hand, and of disposing of it for the purpose of meeting the domestic requirements of the German economy and the economy of other countries—that last for barter purposes."

¹ Reproduced in section VC.

² The decree of appointment of Steinbrinck has not been located, the language quoted being from the decree by which Roehling was appointed to an identical office in other occupied countries of the west. That Steinbrinck exercised the same functions as Roehling, deriving from von Hanneken, has not been disputed.

Steinbrinck's own testimony fully confirms that he had broad powers and complete responsibility for the execution of this unlawful program. And, as the evidence in the record summarized in our brief shows, Steinbrinck was as capable an executor in the field of steel as in the field of coal. Steel production in the areas under his control was raised nearly to full capacity, civilian consumption in the occupied territories was restricted, and exports from these areas were carefully controlled in accordance with German war needs. The report of the military commander in France for 1941 pays eloquent tribute to the success of Steinbrinck's endeavors; as is shown by the quotation of the report in our brief.

The unlawful nature of Steinbrinck's activities as Plenipotentiary General for both coal and steel is, we submit, wholly clear under Articles 46 and 52 of the Hague Regulations and the decision of the International Military Tribunal. Steinbrinck's control of production and allocation of output constituted "requisitions in kind and services" which were enforced not merely "for the needs of the army of occupation" but for the benefit of German domestic economy and the over-all German war effort. And his activities fall squarely within the language of the judgment of the International Military Tribunal: *

"In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether."

c. The Occupied East

I turn to the occupied eastern territories.

All of the defendants, except Steinbrinck and Terberger, are charged under count two with plunder and spoliation committed in the occupied Soviet territories. Flick is charged with responsibility for the unlawful operations of the Berg-und Huettenwerke Ost, commonly known as BHO; and Flick, Burkart, Kaletsch, and Weiss are charged in connection with the Vairogs and Dnepr Stahl acquisitions.

The over-all German program for exploitation of the occupied Soviet territories as described by the International Military Tribunal and as demonstrated by the record in this case, is set forth in detail in the prosecution's brief. It is uncontested that a care-

* Trial of the Major War Criminals, *op. cit.*, Volume I, page 239.

ful and deliberate plan was worked out by the interested government agencies prior to the attack on the Soviet Union, and that Goering issued directives for economic operations in the east which set forth clearly the objectives of the program and clearly demonstrated its unlawful nature. Goering's decree provided for the creation of monopoly companies, including the BHO. They also contemplated that private German industrial interests would participate in the exploitation process. There can be, I believe, no argument upon the point that the program and its execution were in violation of the Hague Conventions. The official plan itself stated (*NI-6375, Pros. Ex. 567*):

"The regulations of the Hague Convention on Land Warfare, which concern the administration of a country occupied by a foreign belligerent power, are not applicable, since the U.S.S.R. is to be considered dissolved * * *. Therefore, any measures are permitted which the German administration deems necessary and suitable for the execution of this comprehensive task."

d. Berg-und Huettenwerke Ost

* * * * *

COUNT THREE

MR. LYON: If it please the Tribunal; the defendants Flick, Steinbrinck, and Kaletsch are charged under count three with participation in crimes against humanity and specifically in the economic persecution of Jews. The proof has shown that the defendants did in fact participate in the specific projects of Aryanization—as the process of wresting property from Jews was called—charged in the indictment; that they did, as charged in the indictment and opening statement, advise and act for the government in connection with these Aryanization projects; and that they did go even so far as to help the government draft Aryanization laws. Defense counsel have frequently referred in Court to what they call the “apparently incriminating character” of some of the documents, and they have also described them as “documents which at first glance would bring delight to the heart of a prosecutor.” The defenses to this count necessarily thus consist, perhaps even more than in the case of the other counts, of arguments as to the law and pleas in confession and avoidance. As to the law, defense counsel argue that Law No. 10 does not cover crimes against humanity except when they occur entirely after 1 September 1939. This argument we shall take up after discussing the evidence.

Defense arguments by way of confession and avoidance can be summarized as follows:

First.—The defendants acted pursuant to government wishes

or orders. So far as this involves pleas of coercion or semicoercion influencing the conduct of the defendants, it will be treated separately in a later section of this statement on pleas of coercion generally.

Second.—All the really bad things were done or influenced by others, particularly certain villains such as Goering, Pleiger, and Keppler.

Third.—Things would have been worse for the Petscheks if the defendants had not participated. In effect, the defendants were protecting the Petscheks and getting for them better treatment than they would otherwise have gotten.

Fourth.—Documents written by the defendants frequently do not mean what they say. Here we encounter a curious doctrine advanced by the defendants which they call "howling with the wolves." Wherever the documents show the defendants advising or advocating harsh measures against Jews in letters to government officials, the defendants tell us they didn't really mean what they said and didn't intend to see their ideas put into effect.

The basic weapon of the defense, however, is none of the above arguments but arises from the nature of the transactions, involving as they do questions of corporation finance, foreign exchange, and corporation tax questions. The case has offered some elements of complexity and the opportunity to create the appearance of a great many more. As a result, a number of subordinate detailed issues have been raised which can better be treated in the brief on count three, which will be submitted to the Court. Here again we wish primarily to discuss the principal defense arguments and the evidence in the record to the contrary. We confine ourselves here, in the interests of brevity, to the Petschek transactions; the evidence with reference to Hochofenwerk Luebeck is discussed in our brief.

I'd like to turn to the major defense arguments as we understand them.

a. The Major Defense Arguments

First, as to how the defendants ever got involved in these transactions; in the first place, they would have us believe that they were "drafted" by Goering. The commission from Goering to Flick given in January 1938 is described by the defendants in varying terms as an "order" or "mandate." This is, of course, entirely misleading because the documents clearly show that whether this relationship with Goering be termed an "order", a "commission", a "mandate", or by any other name, it was still something that Flick wanted and asked for. This is admitted by the defendants, and the full measure of their eagerness appears

from their own documents. Flick himself wrote a lengthy memorandum on 19 January for his conference with Goering 2 days later in which he advised that only one person in Germany should be empowered to negotiate with the Petscheks (*NI-784, Pros. Ex. 397.*)*

A number of documents in the record written by the defendants in November and December of 1937 and January of 1938 show the almost daily preoccupation of the defendants with securing a preferential position in getting a share of the Petschek properties. On 7 December 1938 Steinbrinck wrote a memorandum to Flick about a conference he had had with one of Flick's bankers, and Steinbrinck wrote, "He also realizes that we have to be very much after it if we want to intervene in time" (*NI-5304, Pros. Ex. 399.*). On 12 January 1938 Steinbrinck wrote of an agreement between Flick and Herbert Goering for the payment of a commission payable to the latter in the event Flick should acquire some or all of the Petschek brown coal properties. The memorandum of Steinbrinck stated as to the agreement: "It is a prerequisite for Herr Flick that the General Oberst (Hermann Goering) is willing to solve the P. problem energetically ***." (*NI-12318, Pros. Ex. 864.*). Commissions were also paid or promised to two other men, including a man named Wetzel who was an official of the Julius Petschek companies and was supposedly working in their interest. It would be curious indeed if Flick, shrewd and capable businessman as he was, was offering commissions to people to get him something that he did not want.

The defendants tell us that once they became involved in the matter, their relation to the Petscheks was essentially a protective one. Dr. Dix has even gone so far in his opening statement as to describe Flick as the Petscheks' "attorney". A host of documents in the record renders this suggestion too preposterous to dignify with further comment.

Actually the proof shows that the defendants advocated the use of forceful measures against the Petscheks. Flick's basic memorandum of 19 January 1938, which he says set forth the substance of his remarks to Goering, advocated conclusion of a so-called voluntary agreement with the Julius Petschek group on the theory that this would "strengthen the tactical position against the important Ignaz company." He said, "Tactically, the German position would be stronger still if one of them had sold voluntarily." (*NI-784, Pros. Ex. 397.*)* A long memorandum by Flick, also prepared in January 1938, set forth strategy for dealing with the whole Petschek problem. In this memorandum he said, "The P. group must not be allowed too much time, they will make only

* Reproduced in section VI B.

more difficulties the more time they have". (NI-3675, *Pros. Ex. 405*). He went on to say:

"Since we have to expect with considerable certainty such refusal from at least the Petschek group, it will be necessary to work out a draft for a law with all possible speed which, considering the above, at first, is to be used as a means of pressure."

On 10 January 1938 Steinbrinck wrote a memorandum, which was initialed by Flick, in which he said, "As according to our latest information, it seems unlikely that the shares of the P. group property will be surrendered voluntarily, one must contemplate forcible measures or State intervention." (NI-3251, *Pros. Ex. 407*).*

Those three documents were all explained by the defendants as not really meaning what they said or at least as not reflecting the true attitude of the defendants. The memorandum for Goering, says Flick, must be read in the light of the audience to which it was addressed. He says the same is true of the second memorandum which he thinks was intended for a meeting of the committee to which Flick had been appointed initially to solve the Petschek problem.

Flick in effect says he was trying to fool such people as Goering, Keppler, and Pleiger whom he has referred to as "fanatical Nazi anti-Semites." He wanted to convince them that he was of the same mind as they were. And this he did, so he tells us, so that he could gain a position such that he could influence the course of the transactions along proper lines. He thus claims that this was a necessary part of his general aim to protect the Petscheks.

As to his remarks to Goering—this is what Flick testified, and I quote:

"One had to adapt oneself to the language of national socialism and also the person concerned. It was unthinkable for me to go to Goering and tell him, 'You have asked for an expropriation law; this is complete nonsense.' I had to try tactical and diplomatic means to get him on to the way I considered right and on to those lines which I was trying to get at in the matter, and which in the end I managed to achieve." (*Tr. p. 3259*.)

This procedure Flick describes as "talking the language of the Nazi Party" and "howling with the wolves."

I quote again from his testimony:

"It was as I said; one had to talk the language of the Nazi Party to some small extent, and had to howl with the wolves, as they say, if one wanted to play a part at all and if one

* Reproduced in part in section VI B.

wanted to try to deal with matters as one thought right.”
(*Tr. p. 3275.*)

Steinbrinck tried to explain away his memorandum of 10 January 1938, referred to above, on somewhat the same basis even though it was clearly an inter-office memorandum. He says that he thinks it was probably just a draft for a memorandum or letter which would eventually be sent to the government, and he adds that, after all, the language referred to by the prosecution is only a small part of the memorandum.

However, a great many other documents in the record are to the same effect as those just referred to, and the defendants have not even attempted to explain them away even on such a basis. For example, on 20 November 1937 Steinbrinck had a conference with Keppler in which they discussed a proposed draft of an Aryanization law. Steinbrinck reported in his memorandum of this conference (*NI-10124, Pros. Ex. 792*): “I pointed out to Keppler that in my opinion the wording is not broad enough because the P. group could claim that they have the exploitation and administration of the brown coal property exercised by Aryans.”

On 30 December 1937 Steinbrinck wrote in another inter-office memorandum that, “If one wants to make any rapid progress, the pressure upon the P. group must, by all means, be intensified,” (*NI-10125, Pros. Ex. 793*).* It is clear that this remark was inter-office advice offered to Flick and not merely a statement of what was said to outsiders. The same memorandum goes on to say and I quote again: “Herbert Goering was asked to speak to Reinhart and to make an appointment for an interview with Carl Petschek.” Steinbrinck continues. “Herbert Goering consented immediately. As a matter of fact he considers it in accordance with the wishes of the General [Hermann Goering] to make known ‘the latter’s wishes and decision with fullest brutality.’”

At many other points in the evidence the defendants’ own testimony mars this beautiful picture they offer us of the defendants diplomatically but firmly standing between the Petscheks and these “fanatical Nazis” who would have liked to take their property arbitrarily without giving them a penny. In the first place numerous documents show that these so-called fanatical Nazis were concerned with the possible repercussions in foreign countries of drastic action in early 1938. It will be recalled that the Petscheks were citizens of Czechoslovakia, and the time for threatening and then absorbing that country had not yet arrived. In fact the Nazi government still had to take the first step of seizing Austria. Keppler and Goering, both of whom were key

* *Ibid.*

figures in the seizure of both Austria and Czechoslovakia and privy to the highest plans of the Nazi state, appear in the defendants' own documents as being apprehensive about the use of drastic action at that time independent of any advice received by them from Flick. (See Doc. NI-10123, Pros. Ex. 791, memorandum by Steinbrinck of 16 Nov. 1937; Doc. NI-10126, Pros. Ex. 794, memorandum by Steinbrinck of 31 Jan. 1938, re conference with Keppler; Steinbrinck 364, Steinbrinck Ex. 60, memorandum by Steinbrinck, re conference with Neumann of 1 Feb. 1938.) A letter from Steinbrinck to Hermann Goering dated 18 February 1938 stated that Hermann Goering "told Herr Flick that any act of violence against the Petscheks must be carefully thought over, since in no case must it result in failure or damage German interests," (NI-10127, Pros. Ex. 796). Thus in this letter written by Steinbrinck in 1938 the roles of Flick and of Hermann Goering are described in just the reverse fashion from the way they are described to us today.

Perhaps the most striking and complete refutation of the entire defense argument appears in two memoranda written by Steinbrinck about a conference he had had on 30 April 1938 with Koerner, Goering's deputy in the Office of the Four Year Plan (NI-10134, Pros. Ex. 803 and NI-10135, Pros. Ex. 804). In Steinbrinck's memorandum of points to discuss with Koerner he included the proposal that, and I quote his words, "In order to avoid complications one should therefore consider stamping the enterprises Aryan by appointing a state commissioner." (NI-10134, Pros. Ex. 803). In his second memorandum written 2 days after the conference, Steinbrinck reported that, and I quote again, "Koerner rejected my question, whether it was intended to appoint a state commissioner and thus to stamp the Petschek group Aryan until the owners were prepared to sell. One did not intend to apply such forceful measures, but intended to use other means to induce the owners to sell." (NI-10135, Pros. Ex. 804).

Thus what we see in these documents written by the defendants themselves is a proposal which was rejected by one of these government officials whom the defendants would have us believe were always pushing toward harsher and harsher measures but were held back by the defendants.

The myth of the protective and benevolent role of the defendants is also dispelled when we look closely at the arguments they make about the foreign exchange provided for the Julius Petscheks. Flick says that his great and positive contribution was that he obtained a substantial amount of foreign exchange for the Julius Petschek interest. He says that it was a very complicated matter which required his unusual skill in matters of corporate

finance and the like. In this connection the defendants point to the complicated foreign exchange regulations which were in effect at that time in Germany. The difficulty of obtaining foreign exchange is further pointed to by the defendants as rendering immaterial the fact that Flick's exclusive commission to negotiate cut out all other possible bidders for the property.

This general line of argument is also specifically refuted by a great many documents. In the first place the documents show us that a number of government officials had agreed in principle to the political necessity of paying foreign exchange to the Julius Petschek group independently of any persuasion on the part of Flick (*NI-10124, Pros. Ex. 792; NI-10128, Pros. Ex. 797; and Steinbrinck 369, Steinbrinck Ex. 68*).

Flick's asserted superior skill in finding foreign exchange and getting approval for its payment finds no support in the record. I. G. Farben and the Potash Syndicate were the two companies in Germany with the greatest resources of foreign exchange, and it was those two groups which eventually supplied virtually all the foreign exchange involved in the transaction. In February 1938 Steinbrinck wrote a memorandum about a conference he had had with Neumann, an official of the Four Year Plan, and Steinbrinck's report of Neumann's recommendation is most interesting indeed (*NI-10131, Pros. Ex. 800*). Steinbrinck wrote that Neumann "recommends not only to negotiate with the Reich Bank, but in the first place also with the Reich Ministry of Economics, lest another group, which might have better connections or be more intelligent in tracing foreign currency positions might outdo us."

Finally the documents make it clear that the payment by the defendants of foreign exchange to the Julius Petschek group is in no sense whatever a favorable reflection on their motives or character. In April 1938 Steinbrinck wrote a memorandum for Flick which reflects his apprehension that I. G. Farben or Wintershall might be getting ahead of them. Steinbrinck said that Wohlthat might be "in touch with I. G. or even Wintershall, since he knows their position and ignores us, since we cannot give him foreign currency." Steinbrinck's recommendation was that if Flick were to be left out in the cold in this fashion they should try to influence the government away from the solution by payment in foreign exchange. He said in this memorandum, and I quote (*NI-10133, Pros. Ex. 802*):

"If it proves correct that Wohlthat is now in charge and is obtaining foreign currency independently, we are left with only one counterproposition.

"We must point out that in view of the great liabilities and

the great construction investments, the acquisition of the concern with foreign currency is not necessary at all. We should propose to appoint a government commissioner to give an investment credit of 20 to 25 million Reichsmarks through the Reichskredit or some other organization, and to secure it through mortgage. This proposal will be so full of appeal that we will again get the reins into our hands."

As we have seen, Steinbrinck did in fact make a proposal for appointment of a "state commissioner" in his conference with Koerner a week later, a proposal which was rejected by Koerner (*NI-10134, Pros. Ex. 803; NI-10135, Pros. Ex. 804*).

The whole defense story of being opposed to the use of force against the Jews is refuted further by the role played by the defendants in the Ignaz Petschek matter.

Immediately after the occupation of the Sudetenland, Steinbrinck's memorandum tells us of conferences he had with Wohlthat. His memorandum of 13 October 1938 stated that:

"The day German troops marched into Aussig, the administration office of the Ignaz Petschek group was immediately occupied." (*NI-894, Pros. Ex. 444*.) *

The memorandum goes on to say that all credits of the Petschek group were blocked, and tax experts had been sent to investigate the books of the company. Steinbrinck's memorandum makes it clear that these steps were taken as part of the campaign to bring about Aryanization of the Ignaz Petschek properties. He said:

"Today I informed Mr. Wohlthat, who has taken these measures following a special order of G. F. (That is, the Field Marshal, Goering) that already some result had been achieved."

And he continued:

"As soon as the Petscheks are prepared to negotiate we shall intervene to take up negotiations according to the order of the GF." (Goering)

The memorandum then stated that "For the rest, close cooperation and mutual information was promised." Thus the division of labor between the defendants and Wohlthat was set forth. Wohlthat would supervise the efforts to use various agencies of the government to bring pressure on the Petscheks, and the defendants would stand ready to "negotiate" with the Petscheks after they had been brought around to what would have been considered a reasonable mood. The documents prove that in the early part of 1939 there were numerous German groups interested in negotiating with the Ignaz Petschek interest, but that the defendants

* Reproduced in section VI B.

jealously guarded their exclusive position (*NI-10086, Pros. Ex. 786; NI-10138, Pros. Ex. 809*).

While the defendants effectively blocked efforts by anyone else to negotiate with the Petscheks, they took no steps themselves. Their attitude was aptly summarized by Steinbrinck in a conference on 10 February 1939, which he had with Wohlthat; Gebhardt, who was in charge of the tax investigation; Hahn, another government official; and Karl Rasche of the Dresdner Bank. Steinbrinck wrote a lengthy report on this conference, which Flick initialed, obviously read closely, and wrote penciled comments on (*NI-3277, Pros. Ex. 455*).^{*} Steinbrinck says in this memorandum that what he called "headlong competition" must be prevented between various German interests who wanted to negotiate with the Petscheks. He said: "Therefore I argued that in my opinion, one should make the Petscheks fidget, particularly if the tax situation were favorable." He went on to say that Wohlthat's point of view "is still that our group is entitled to conduct the negotiations and that in any case, no other authorizations may be granted without special consent of the Field Marshal and the approval of Flick". (*NI 3277, Pros. Ex. 455*). The references there obviously being to Goering and Flick.

This same conference is further illuminated by a memorandum written by Hahn, (*NI-10086, Pros. Ex. 786*) which states that:

"Herr Steinbrinck was of the opinion that it was still too early to negotiate with the Petscheks. The Petscheks were not sufficiently softened up yet. For tactical reasons, too, one should delay taking up negotiations. He added also that the authorities should not make any declaration to the effect that the trusteeship would be extended, as an official (Referent) in the Reich Economics Ministry had done. The pressure on the Petscheks should, if possible, be increased."

When Steinbrinck was questioned about this on the witness stand, he became quite indignant that anyone should be critical of his attitude. He referred to Carl Petschek as being what he called "actually a very clearly established tax sinner" (*Tr. p. 5360*) who should have been reasonable enough to come around to him and Flick and offer to negotiate. Yet when Steinbrinck was asked by the Tribunal if he was familiar with the facts upon which the tax liability was based, he said he was not.

Of course, it is not material to the crimes charged in the indictment in our view whether or not the taxes were justified. It would be enough, we submit, if the ordinary procedures for the collection of taxes were abused for the ulterior purpose of putting pressure on the Petscheks to sell their property. It is perfectly clear from Steinbrinck's own memorandum, which was read by Flick, that he knew the tax procedures were being used for just

^{*} *Ibid.*

these purposes. Steinbrinck has also written another memorandum which further illuminates the whole subject. This is a memorandum which he wrote on the 26 June 1939 about a conference he had had with Gebhardt 2 days earlier (*NI-10139, Pros. Ex. 860*).^{*} Steinbrinck reported that in the opinion of Gebhardt the position of the Finance Ministry was "stronger than ever" and "he would even call it unshakeable". Now, does this mean that the tax claims were genuine, or only that they were so devised that the Petscheks could not effectively oppose them? It clearly means the latter as we can see, and as Steinbrinck certainly could see from Gebhardt's reaction to a suggestion which he made. This came about through a discussion of the price that should be paid to the government trustee for the stockholders of the Petschek companies. Steinbrinck advocated a relatively favorable price so as—as he put it—to "satisfy all the German outside shareholders and avoid any attacks from abroad". Steinbrinck went on to say, in this memorandum:

"Herr Gebhardt seemed to like my idea, after I had pointed out that the Reich, in acquiring the property, might neutralize an excessively favorable treatment of the outside shareholders by means of an appropriate regulation of tax claims."

Here we can see with clarity the conception of the tax claims which lay in the minds of Steinbrinck and Gebhardt. The tax claims were wonderfully elastic. They could be increased to whatever amount would be necessary to wipe out the payment allocated to the Petscheks for their portion of the stock in the companies!

One of the many inconsistencies of the defense arguments concerns the relative desirability of brown coal and soft coal. Flick has emphasized the business reasons which led him to want to acquire brown coal property from the Petscheks in the first instance. He has pointed out that his Mittelstahl plants used brown coal for the production of steel; and that he felt the need for enlarging his brown coal basis. (He says he had only a 30 year supply and needed more to be secure.) At this point in the story, Flick emphasized that brown coal was difficult to obtain. However, for other purposes of the case, he tends to depreciate the value of brown coal. He does this when it comes to a matter of comparing what he gave the Julius Petschek group with what he got from them. He does it again when he compares the soft coal given by him in the Ignaz Petschek exchange with the brown coal of the Eintracht and NKW companies which he received.

Flick further tells us that after the Julius Petschek transaction was concluded he was saturated, as he puts it, with brown coal and needed no more. This is said presumably to create the im-

^{*} *Ibid.*

pression that he was not really interested in the Ignaz Petschek brown coal. This in turn is probably supposed to reinforce his claim that he was forced into that exchange transaction. On the other hand, when the whole claim of compulsion in the exchange transaction is analyzed, it amounts only, on the defendants' own admissions, to a preference on their part for brown coal as opposed to money, which Flick would have received if some of his Harpen soft coal had been taken by the government by power of eminent domain.

The defendants' suggestions that brown coal was either undesirable or merely a necessary nuisance required for steel production becomes even more ridiculous when compared with their descriptions of the position of the Petscheks in Germany. The Petscheks they describe as extremely successful and wealthy people who had very valuable holdings in Germany. These holdings, however, were holdings of brown coal; and the Petscheks were not in the business of steel production but simply in the business of selling brown coal. Yet the defendants shrink with horror from any admission that they wanted brown coal because it was valuable and profitable. Again their testimony is refuted by their own documents. In November 1937, Steinbrinck wrote in a memorandum that he had explained to Keppler that—and I quote his language—“we have learned from the experience of the past twelve years that brown coal property could not be acquired for money.”

Another important phase of the record revolves around the proposals for Aryanization laws which were drafted by a lawyer working for the defendants. We refer to the draft prepared by the lawyer Hugo Dietrich and addressed to Steinbrinck by a letter dated 20 June 1938 (*NI-898, Pros. Ex. 437*).* The letter from Dietrich to Steinbrinck, in care of Mitteldeutsche Stahlwerke at the Bellvuestrasse headquarters—that is the letter of transmittal which enclosed the memorandum and draft—of the Flick Concern, read in full as follows:

“Referring to our discussion of Saturday concerning the Ignaz Petschek problem, I enclose the exposé we discussed, along with two carbon copies, which you might transmit to Ministerial Director Wohlthat.”

This covering letter was initialed by both Kaletsch and Flick. Both Kaletsch and Flick claim to be extremely doubtful that they actually read the enclosed draft of legislation or understood its nature. Thus, they have tried to leave Steinbrinck to explain it by himself as best he can. Steinbrinck's various explanations are entirely inconsistent with documents in the record, including the very letter under discussion. For example, when examined by

* *Ibid.*

the Court, Steinbrinck said, "Your Honor, I believe the Dietrich proposal was not a Petschek proposal; it was a general suggestion ***" etc. This statement is entirely misleading. Of course, it was general legislation, but it was legislation drafted with the Ignaz Petschek matter very much in mind. This is perfectly clear from Dietrich's letter of transmittal and also from the contents of the enclosed memorandum of Dietrich's (*NI-898, Pros. Ex. 437*). When Steinbrinck forwarded copies of the Dietrich draft to Neumann and Wohlthat of the Office of the Four Year Plan, the draft was clearly tied in to the Ignaz Petschek problem. Steinbrinck stated:

"Moreover, we come to the conclusion that still other measures must be adopted (put in a trustee), if in the case of Petschek good results are to be accomplished in the interest of the Four Year Plan and the efforts of Aryanize." (*NI-897, Pros. Ex. 438*; * and *NI-896, Pros. Ex. 439*.)

Steinbrinck also claimed on the witness stand that the draft of the law prepared by Dietrich was "a protective measure against the effects of the law of 26 April and 14 June." One would suppose from this that the Dietrich draft was intended to better the situation of Jewish property owners over their position under existing law. However, the Dietrich memorandum on its face is quite to the contrary. This memorandum said: "According to German law, there is as yet no legal provision which permits the sale of an enterprise or holdings is in Jewish hands, against the will of the Jewish owner, not even in the case of the most essential enterprises." (*NI-898, Pros. Ex. 437*). * The memorandum went on to state that the Plenipotentiary General of the Four Year Plan (Goering) might, under the law of 28 April 1938, "appoint a trustee in order to carry through the necessary tasks for the Four Year Plan in plants owned or controlled by Jews"; but, Dietrich continued, "the economic profit of this measure would, however, be to the advantage of the Jewish owners of the works or stockholders." In view of all this, Dietrich's memorandum stated that—and I quote his language again—"An additional decree would therefore be required," and then he proceeded to offer his draft of a law which was essentially the same as the law eventually enacted on 3 December 1938.

Flick's efforts on the witness stand to deny knowledge on his part of the whole Dietrich matter were to say the least, incongruous. When asked on direct examination if he knew about the Dietrich letter and its contents, he answered, "After what I said about this affair today, I think I have to answer this question in the negative." (*Tr. p. 3341*.) Flick said that he had been of a dif-

* *Ibid.*

ferent opinion when interrogated on the matter before trial but was now inclined to doubt that he had really known about the matter since Dietrich himself said that he had never talked to Flick about it. Flick said, "I also assume that his memory is probably very much better than my own, because it must be assumed that for him discussions with me were more important than the other way around." (*Tr. p. 3341.*) Flick went on to admit "Be that as it may, I cannot say more about this affair, whether these discussions with Dietrich actually took place or whether they did not, cannot be said now." (*Tr. p. 3341.*) On cross-examination Flick wavered still further in his half-hearted assertion that he never knew about the Dietrich matter, and finally upon examination by the Court, Flick stated that he believed he had talked to Dietrich about anti-Jewish legislation, and the transcript at this point reads as follows:

"JUDGE RICHMAN: You did have a conversation with Dietrich sometime about anti-Jewish legislation, did you not?"

"DEFENDANT FLICK: Well, yes, I am of the opinion and I think that I remember that I had that conversation, namely, a conversation concerning the changes in legislation. Mr. Dietrich denies it, and he is of another opinion. That means we don't differ concerning the legislation itself, but we differ about the fact that he is alleged to have told me that he had a mandate." (*Tr. pp. 3857-58.*)

Flick initialed the letter from Dietrich to Steinbrinck enclosing the memorandum and proposed draft of law. To avoid this admitted fact, he launched forth with the longest of many discourses we have heard from the defendants, to the effect that they did not necessarily read documents which they initialed. Flick explained that the initial only meant that he had had an opportunity to read a document. It would be hard to find a document to which this explanation could be less applicable. The letter itself consists of only one sentence which contains reference to Ignaz Petschek, a matter obviously very much in Flick's mind, and to Wohlthat, the official who, to Flick's knowledge, was mainly in charge of the Petschek matter in Goering's office. Thus, in one simple sentence, the general nature and expected use of the attached memorandum and draft of law was made perfectly obvious. When Flick was asked, "Is it possible or conceivable that you could have initialed this letter without looking at it for even an instant?" Flick answered as follows: "I couldn't tell you. I don't know. After 10 years—I mean, that's quite a period of time." (*Tr. p. 3848.*) But then he grudgingly admitted, "I most probably would have shot a glance at that letter at least."

This participation by Flick, Steinbrinck, and Kaletsch in the

drafting of a general Aryanization law constitutes the clearest possible evidence of participation in the general process of making life intolerable for the Jews in Germany. It was conduct of unparalleled cynicism to connive at and assist in the enactment of general anti-Jewish legislation for the purpose of securing specific property from specific Jews. It is, we submit, conduct which is clearly punishable under Law No. 10.

In the last analysis all these attempts to avoid their own documents are of no avail. The defendants simply wrote too many of them to explain them away on any consistent theory—consistent, that is, with innocence on their part. They dotted all the “i’s” and crossed all the “t’s.” Their documents tell us not only what they did but why they did it. They set down on paper the workings of their own mind to an extent that is surely remarkable, to say the least; and when they got all through they even wrote out the conclusion for us. This, like much of the evidence, was written for us by Steinbrinck. In November of 1939, a few weeks before the conclusion of the Ignaz Petschek exchange transaction, he wrote a memorandum of a conference he had had with Goering’s deputy, Koerner, which stated as follows:

“Referring to the brown coal, I said that these property transactions might later on become the subject of inquiry by international courts.” (NI-932, *Pros. Ex. 471.*) *

b. The Acts Charged Are “Crimes Against Humanity”

Defense counsel have raised questions as to whether the crimes charged under count three are covered by Control Council Law No. 10. We submit that they clearly are.

First, are the acts charged of a criminal nature? It seems too clear to require discussion that the acts charged against these defendants are of a type which ordinarily is considered criminal under civilized legal systems, including the American and German law. In American law these acts would be known by such names as extortion or fraud, if not worse. In this connection the opinion and judgment of the Berlin Kammergericht with respect to the nature of the Aryanization law of 3 December 1938 is of considerable interest. It will be recalled that this law was essentially the same as the proposal drafted at the order of the defendants. In this opinion and judgment the Kammergericht said of that law that it “is invalid because it contradicts the generally recognized principles of all law and must therefore be considered immoral to such an extent that it can have no validity.”

The acts of the defendants were not only criminal in nature but they were crimes against humanity, within the meaning of Law No. 10. They were instances of persecution carried out as part of

* *Ibid.*

a broad program and policy of the general government itself for the persecution of Jews. The acts charged herein were carried out in close cooperation with government officials and government policy on the highest level, and the defendants themselves have stated that their activity charged under count three was really activity as agents of the government. In the opening statement of the prosecution in this case we discussed this entire question at some length; and we respectfully invite the Court's attention to the discussion of the law offered by us at that time.

While we think that our view of the scope of Law No. 10 is the correct one, the proof in this case has shown that the question need not necessarily be decided in order to find the defendants guilty as charged. The proof has shown and the defendants themselves have repeatedly emphasized that their activities charged under count three were very substantially and closely connected with the Office of the Four Year Plan. The very purpose of the Office of the Four Year Plan was economic preparation for war. This was admitted on the witness stand by Gritzbach, Goering's aide and a man who was intimately familiar with the purpose and activities of the Office of the Four Year Plan. This conclusion has been made too clear for doubt by a mass of evidence submitted before the IMT. For example, in its judgment the IMT stated as follows with respect to Walther Funk: *

“On 14 October 1939, after the war had begun, (Funk) made a speech in which he stated that the economic and financial departments of Germany working under the Four Year Plan had been engaged in the secret economic preparation for war for over a year.”

Accordingly, the acts charged in count three were clearly connected with the commission of crimes against peace, and would be punishable even under the restricted scope of the doctrine of “crimes against humanity” adopted by the International Military Tribunal under the London Charter.

COUNT FOUR

I should like to pass now to count four.

Count four involves the defendants Flick and Steinbrinck. The gist of the charges is that they aided and abetted the criminal programs and activities of the SS through extensive financial support. The proof also shows financial support by these defendants of other Nazi leaders and organizations. But the guilt of the defendants can be adequately dealt with by focusing our attention on their financial support of the SS, which was the most pervasively criminal organization of the Third Reich and the one with

* Trial of the Major War Criminals, *op. cit.*, Volume I, page 305.

which the connections of the defendants were closest and most substantial. Steinbrinck was himself a high ranking officer of the SS from 1933 onward, and he is separately charged under count five with membership in that organization, found criminal by the International Military Tribunal.

The widespread crimes of the SS were shown in great detail before the International Military Tribunal and were summarized in its judgment and opinion. From these findings, it is clear that the SS took an important part in every major crime of the Third Reich; and in the worst of the crimes the SS was pre-eminent. These crimes included murder and extermination of millions of Jews, Poles, and others considered "subhuman" under SS racial doctrines, the massacres at Lidice and other places, brutality and mistreatment in concentration camps, persecution of the Jews, inhumane labor requirements, and medical experiments. The SD and the Gestapo, which were also found to be criminal, were part of the SS. The IMT stated that "through its control over the organization of the police, particularly the Security Police and the SD, the SS was involved in all the crimes which have been outlined in the section of this judgment dealing with the Gestapo and the SD." The IMT stated that "the criminal activities of the SS followed quite logically from the principles on which it was organized."

The defense has not tried to dispute the correctness of the findings of the IMT with respect to the SS and its criminal activities. It may be noted that the SS was found criminal only for the period after 1 September 1939. This follows from the view taken by the IMT of the scope of the crimes covered by the Charter and therefore subject to the jurisdiction of the Court. It is the position of the prosecution that crimes against humanity before 1 September 1939 are cognizable by this Tribunal under Law No. 10; and the findings of the IMT make it clear that many of the activities of the SS found criminal after 1939 were also engaged in by the SS on a wide scale before that date. However, the legal question as to the scope of crimes against humanity under Law No. 10 need not necessarily be answered in connection with count four. The defendants aided and abetted the SS through financial support continuously from 1939 through 1944 as well as before, and indeed on an even larger scale.

The proof clearly shows that the defendants did in fact, as charged, furnish extensive financial support to the SS. The proof also shows, as charged, that this was done principally through the Circle of Friends of Himmler, of which the defendants were members.

The defenses which have been offered under this count, once

again in the nature of confession and avoidance, may be summarized as follows:

(I) The defendants deny that they knew of the crimes of the SS or at least of most of the more serious crimes.

(II) The defendants also tell us that they understood that the money they contributed through the Circle of Friends of Himmler was to be used for cultural purposes or hobbies in which they understood Himmler was interested.

(III) The defendants have also offered some slight evidence that the money was actually used for "social" and "cultural" purposes, but the main defense is based on what the defendants understood the money was to be used for.

(IV) The defendant Flick, though apparently not Steinbrinck, says his financial contributions were not entirely of his own choosing and that they were motivated by something in the nature of coercion or semicoercion. This plea is considered separately in a later part of this statement, and in our separate briefs.

The efforts of the defendants to plead ignorance, and even lack of suspicion, that the SS was engaged in criminal activity, have consisted mostly of denials that they gained any such knowledge or suspicion from other members of the Circle of Friends of Himmler. These members of the Circle of Friends included the men many of whom are known to have been the leading figures in the worst crimes of the Third Reich; men such as Himmler himself, of course, Oswald Pohl, Otto Ohlendorf, and Wolfram Sievers.

These assertions, even if true, would be no help to the defendants because it is clear that knowledge of criminal activity by the SS could and did come to the defendants Flick and Steinbrinck from many other sources. Many of the criminal purposes of the SS were matters of common knowledge in Germany and some crimes, such as the massacre at Lidice, were publicly proclaimed throughout Germany and the world. Criminal persecution policies of the SS were also widely known. The SS was certainly known to be taking a leading part in the persecution of Jews, much of which occurred on city streets and in broad daylight. We have heard in the testimony and from the documents, for example, of the pogrom of November 1938, which is sometimes referred to as "Crystal Sunday", by reason of the very extensive damage to Jewish shop windows in such cities as Berlin.

The IMT, on the basis of voluminous evidence presented before it, concluded that the criminal programs of the SS "were so widespread and involved slaughter on such a gigantic scale, that its criminal activities must have been widely known."

In the light of this finding, the presumption is, in the absence of

evidence to the contrary, that any rational person in Germany had reason to believe that criminal activities were being carried on by the SS. The presumption is far stronger in the case of two highly intelligent and highly connected persons such as Steinbrinck and Flick, who were in close touch with government parties and SS circles.

PRESIDING JUDGE SEARS: You will have to read a little slower.

MR. LYON: Yes, Your Honor. I skipped a quotation which had been included in our written statement.* It was a quotation from the judgment of the IMT.

PRESIDING JUDGE SEARS: I thought the interpreter was getting behind, that is all.

MR. LYON: (Continuing) In view of the overwhelming evidence as to many of the crimes of the SS which Steinbrinck and Flick knew or had good reason to suspect, no presumption need be relied upon. At the outset we run into several of the many inconsistencies among the defense arguments. On the other hand, the defendants would have us believe that they suspected nothing of the brutalities and horrors that went on in concentration camps run by the SS. Flick has told us that on his tour of Dachau in 1936 everything appeared to be sweet and lovely. Food was tasty, barracks were airy, and he was even told that the inmates were paid for their work. On the other hand, Flick tells us that he thought Himmler's purpose in taking the Circle of Friends on the tour was to reassure them that rumors of brutality in concentration camps were untrue. Moreover, if we are to credit Flick's other testimony, his tour of Dachau could hardly have given him any substantial reassurance. He has told us at great length of his fears of being confined to a concentration camp, and he has described this frightful possibility as a likely consequence of failure to use slave labor to produce armament orders. The obvious fact is that though Flick had no reason to fear that he himself would be sent to a concentration camp, his claim (for purposes of count one) that it was an unpleasant place to go was a matter of the commonest report. For example, in a letter circulated by the RVE and received by the Flick Concern in October 1943 we are given this picture of a concentration camp; and I quote (*NI-3178, Pros. Ex. 310*):

"Improper conduct on the part of the workers is immediately to be called to attention and severely punished, if necessary by putting in concentration camps. * * * With this treatment the foreigners would soon realize that they will fare better

* Counsel refers to the fact that a mimeographed copy of the closing statement the prosecution intended to give was prepared and circulated in advance of the actual delivery of the closing statement. This practice was often followed to assist the interpreters, to aid in the observance of footnotes, etc.

if they behave properly and work willingly, rather than be difficult, work poorly, and leave their place of work."

The circular also stated that the RVE had asked the Gestapo and the Minister of Labor to prosecute cases of misconduct by foreigners and "to punish them with severity." We would invite the Court's attention not only to the role of the Gestapo but also to the conception of a concentration camp appearing in this circular. Misconduct is to be "severely punished, if necessary by putting in concentration camps."

Moreover, apart from the kind of treatment given inmates of the concentration camps, the defendants knew perfectly well that many people were confined to concentration camps on the basis of racial, religious, or political persecution. Steinbrinck has admitted that he knew that Social Democrats and Communist leaders were confined as one of the first steps of the Nazi regime to suppress all opposition, another fact which was a matter of common knowledge in Germany. These steps in the first establishment of the dictatorship and reign of terror were but the fulfillment of intentions which Flick had heard from the mouth of Hitler himself on 20 February 1933 at the meeting in Berlin where campaign contributions were solicited for the elections of 5 March 1933. The same plans had also been disclosed by Hitler to a meeting of the original members of the Keppler Circle, which later became the Circle of Friends of Himmler, in the late spring of 1932. According to the testimony of Keppler, Hitler made clear at this time his intention to abolish trade unions and other political parties.

As to the SS policy of persecuting Jews there is no real denial by the defendants that they had the fullest knowledge. The defendants could not avoid knowing that the general SS doctrine held Jews to be "subhumans" and "criminals". An example of this attitude proclaimed in a meeting of the Circle of Friends of Himmler is found in a speech of Kranefuss in commemoration of Heydrich. Kranefuss stated: "The Reichsfuehrer said yesterday that he, the deceased, was feared by subhumans, hated and denounced by Jews and other criminals, and at one time was misunderstood by many a German."

Another of the defenses to the charges under count one also consists of an effort to shift the blame for crimes charged under that count to the SS. The defendants tell us that if there was anything wrong in the treatment of concentration camp workers at the Flick plants (including the shootings at Groeditz) it was the fault of the SS. In general the defendants, whatever they may claim, must be charged with knowledge of the role of the SS and many points of the SS program, including participation in the

compulsory recruitment of slave labor, prevention of escapes, arrest of workers who did escape, and punishment of slave laborers through confinement to concentration camps.

The defendants also certainly had reason to believe that the SS was associated with the use of forceful and violent methods. Himmler openly boasted in a statement written by him in 1936, in a book, that there were some people in Germany who "turn sick at the sight of the black coats of the SS." The role of the SS in the Roehm purge of 30 June 1934 was also a matter of common knowledge. In addition Flick and Steinbrinck even heard from the mouth of Himmler himself on the occasion of their visit to his headquarters in December 1943 that he had the reputation of a "bloodhound" or "butcher".

While the defendants thus admit they knew or suspected many of the crimes and criminal policies of the SS they still shrink with horror from admitting that they had even the slightest reason to suspect that wholesale murders or exterminations were being carried out. They tell us this notwithstanding the fact that Hitler in a speech on 30 January 1939 had predicted the "obliteration of the Jewish race in Europe" in the event of war; and in spite of the fact that reports of the exterminations were circulated not only in Germany but throughout the world, and heads of state of other countries publicly called upon Germany to put an end to these murderous practices. The newspaper, "Der Stuermer", published by Julius Streicher, openly demanded the extermination of Jews "root and branch" as he called it, for a long time; incitement to murder which was the basis of his death sentence by the IMT. After the exterminations had been in progress for some time, Streicher reported the exterminations and added, "this is no Jewish lie." The defendants insist that they did not read "Der Stuermer", but Steinbrinck grudgingly admitted that reports published in such a newspaper, with a circulation of over half a million, could hardly be termed secret reports.

Of course, the defendants do not deny that they knew of some massacres, for example, the massacre at Lidice in June 1942 which was proclaimed throughout Germany and the entire world. The official communique issued by the government stated that in the village of Lidice "the men have been shot, the women deported to concentration camps, and the children taken where they may have suitable upbringing. The buildings of the village have been razed to the ground, and its name erased."

Moreover, the evidence makes it clear that the defendants could not even have regarded this massacre as an exceptional case of wholesale murders. Both Flick and Steinbrinck received personal

and special notice that Jews were being exterminated. Steinbrinck attended a meeting on 6 August 1942 under the chairmanship of Goering, at which the leading German occupation authorities were present. In the course of the discussion of food problems one of the officials stated "only a small percentage of Jews is still alive." Flick received a written report in 1941 from a representative of the Economic Group Iron Producing Industry, a man named Faulhaber, who had been traveling in Russia. The report was forwarded to Flick in a letter from Reichert of the Economic Group of the Iron Industry, and the letter indicates that copies also went to a half dozen other leaders of the steel industry including Roechling and Poensgen of Vereinigte Stahlwerke. Faulhaber's report stated that "the city of Dnjepropetrowsk [Dnepropetrovsk] is free of Jews, so are Kiew [Kiev], Krivoi Rog and a few other towns that we passed. Those who did not escape were 'liquidated'."

The defendants Steinbrinck and Flick have endeavored industriously to insulate themselves from these reports of exterminations. Steinbrinck admits he was at the meeting where it was stated that "only a small percentage of Jews is still alive," but he says he was very much preoccupied with problems in the west and would probably not have paid attention to anything else that was said. As to the Faulhaber report Flick, Kaletsch, and Weiss either deny or think it very unlikely that they read the information about liquidation of Jews, although all three initialed the letter of transmittal. They have insisted, as they do with all the most incriminating documents, that their initial only means that they had an opportunity to read it. The report runs to eight pages and so they tell us that such busy men as they were would probably not have read it to the end. On the other hand, other evidence makes clear their eager interest in Russian plants, the subject matter of Faulhaber's report. Kaletsch's testimony on this point was supported by a most curious piece of self-corroboration:

"This letter no doubt came in with my mail. I initialed the letter, but I cannot remember having read the report or the reports which were enclosed. I don't think that I can have done it because they describe incidents on pages 8 and 9 of this copy which are so devastating, so shattering, that if I had read them I certainly would have remembered them; but as I say, I can't remember this incident. But no doubt the letter was presented to me. Anyway, I initialed it with my mail."
(Tr. p. 7603.)

These explanations by Steinbrinck, Flick, and Flick's collaborators fall in the standard pattern used by all the defendants in

attempts to avoid the impact of incriminating evidence. But the really significant thing about the Faulhaber report and the speech heard by Steinbrinck is the utterly casual way in which the reports were given. The extermination of the Jews is stated as a matter of course. It is nothing startling and nothing newsworthy. It is just mentioned in passing. In the circles in which these men traveled and from which they got their information it seems quite clear—even more than the general rumors and reports would indicate—that these men had not only the suspicion but the moral certainty that the Jews were being slaughtered.

The other main defense urged upon the Court as to count four lies also in the field of ignorance. The defendants tell us that they had no knowledge that the money contributed through the Circle of Friends of Himmler would be used for the general purposes of the SS, but understood that the money would be used for cultural purposes and certain hobbies in which Himmler had demonstrated an interest. Such hobbies, they say, included Schaefer's Tibet expedition, various excavations, and restoration of monuments and castles, including the Wewelsburg.

The evidence establishes beyond any reasonable doubt, we submit, that none of the contributors of the money—and certainly neither Flick nor Steinbrinck—really cared how the money was spent. First of all, the whole story that Himmler stated that the money would be used for cultural purposes rests only on the testimony of the defendants and some others who were in *pari delicto*. None of the numerous documents in the record which pertain to the contributions of money ever refers to cultural purposes, and even the defendants do not claim that Himmler would have spent his time or money on cultural activities in the later years of the war. Even members of the Circle who tell us of cultural purposes also mention other purposes as well. Von Schroeder referred to "emergencies". Karl Wolff also referred to "special relief for deserving old fighters."

Moreover, the witness Lindemann says that although Himmler displayed some interest in hobbies of the kind referred to by the defendants, he never heard these activities mentioned as the purpose of the funds contributed. Lindemann also testified, in answer to a question by Judge Richman, that he had never seen any signs of cultural activity that would have required the expenditure of 1,000,000 marks per year. Lindemann testified that he could not remember any discussions whatever by members of the Circle with respect to the use made of the money. We have heard a great deal from the defendants and their counsel as to the difficulty or impossibility of getting an accounting under the Third Reich. This question becomes quite irrelevant

when the evidence indicates that they did not even care about an accounting of how the money was spent.

Certainly this was true in the case of Flick and Steinbrinck. All they knew or cared to know was that the money was turned over to Himmler as the head of the SS to be used as he thought best. Their contributions to the SS were by no means limited to those which they made through the Circle of Friends of Himmler and they do not even claim as to these other contributions that there was any mention of cultural purposes. They admit that they contributed money from Flick companies to the SS even as early as 1932. In a letter written by Steinbrinck to Raabe, a leading official of the Maxhuetten company, in 1938, Steinbrinck stated that there was a "special agreement between our group and the Reichsfuehrer SS" under which all contributions were to be made direct to the Reich leadership of the SS. Steinbrinck added that this agreement had been in existence since 1931, and had been approved by Hitler himself. Steinbrinck on the witness stand did not even try to deny or avoid the statement made by him in this letter but merely said he thought the agreement was made in 1932 instead of 1931.

While the main claim of the defendants is that they understood the money was supposed to be used for cultural purposes they have also made a slight effort to prove that the money was really in fact so used. This effort consists of the submission of an affidavit by SS General Karl Wolff, head of Himmler's Personal Staff and one of the men in charge of the bank account into which the funds eventually found their way. Wolff's affidavit states as follows:

"As the contributions made by the Circle of Friends were allocated under my personal supervision, I am able to confirm that while I held office the amounts were used, as indicated, only for the fulfillment of social, cultural, and public functions of the SS, for example for social relief to deserving old fighters, for excavations in Germany and in Olympia, for the Tibet expedition, for weaving and pottery training institutes, allowances for the SS porcelain manufacturing plant at Allach, etc." (*Flick 69, Flick Ex. 68.*)

However, the records found in the files of the SS indicate that this statement is misleading, also false (unless one makes due allowance for an SS officer's distorted conception of what is "public", "social", and "cultural"). It is impossible to trace every pfennig that was spent since the canceled checks in the bank records are reported to have been burned, and the copies which went to the SS have never been located. However, there is evidence in the record which shows clearly that a very sub-

stantial part of the money was used for regular monthly payments to field grade officers of the SS including such high ranking officers as Kaltenbrunner, Pohl, and Wolff himself (*NI-12187, Pros. Ex. 868; NI-10609, Pros. Ex. 869; NI-10148, Pros. Ex. 865*). Monthly payments out of special account R to the highest ranking SS officers ranged from 200 marks a month to 600 marks except in the case of Wolff who received 800 marks a month. Of this amount paid to Wolff 300 marks was termed "for a second household in Berlin and Gmuend" and the remaining 500 was referred to as "secret payment," (*NI-10148; Pros. Ex. 865*). It is clear that the regular monthly payments to SS officers consumed a very substantial part of the million marks a year contributed by the Circle of Friends of Himmler.

The fundamental fact and the one which is conclusive for our purposes is that the money was put at the disposal of Himmler as leader of the SS to dispose of as he wished. The proof shows that at least a very substantial part of the money went for direct payments to SS officers, a use which could hardly be more directly related to fostering the SS and its activities. In our view, however, this proof is superfluous: it is not necessary in our view to apply trust fund principles of precise tracing of the flow of the money. It is not necessary to show that the moneys were specifically earmarked. Money is a highly useful and fungible thing which was needed by the SS as well as by any other organization. The uncontradicted evidence shows that the SS was to a considerable extent dependent on contributions from business circles, and we have also seen that in 1933 Himmler was so anxious to get money that he called for it personally at the offices of Flick and Steinbrinck. The moneys which Flick and Steinbrinck contributed went into the general funds of the SS and thus became part of the financial life blood of the organization. This could hardly have been a surprise or a disappointment to Steinbrinck or Flick; and it was surely the natural and foreseeable consequence of their contributions.

It need not be shown that the defendants stipulated that their funds should be directly used for specified criminal activities. SS men were not paid for crimes on a piece-rate basis. Moreover, we must remember that the crimes of the Third Reich were not simple, common-law types of murder, assault, and robbery, in which planning, preparation, and execution of crimes are carried out by a small number of people who are active from the beginning to the end of the crime. The crimes of the Third Reich were the product of specialization and minute division of labor. Some people planned, some incited, some contributed money, and some were the "trigger men."

When all is said and done and all the explanations and excuses

have been considered, the simple and uncontradicted fact remains that the defendants contributed very substantial moneys to the SS, through the Circle of Friends of Himmler and otherwise, which were placed at the unrestricted disposal of Himmler as Reich Leader of the SS. If Himmler thought the money was useful to him as Reich Leader SS his judgment should be conclusive for present purposes.

Now General Taylor will continue.

PRESIDING JUDGE SEARS: General Taylor.

COUNT FIVE

GENERAL TAYLOR: Count five of the indictment concerns only the defendant Steinbrinck, who is charged with membership in the SS, an organization declared to be criminal by the International Military Tribunal. Article II of Control Council Law No. 10 recognizes as a crime "membership in categories of a criminal group or organization declared criminal by the International Military Tribunal." In its judgment the IMT considered at length the evidence concerning the policies and activities of the SS, and made the requisite declaration of criminality.* The declaration applies to all persons "who had been officially accepted as members of the SS," and who became or remained such after 1 September 1939. The declaration expressly applies to all "members of the Allgemeine SS." The declaration does not apply to any persons "who were drafted into membership by the State in such a way as to give them no choice in the matter," but there is no contention that Steinbrinck falls within this provision. The declaration applies to all SS members who had "knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter or who were personally implicated as members in the commission of such crimes."

The declaration by the International Military Tribunal that the SS was a criminal organization is conclusive and binding on this Tribunal and has not been questioned by the defense. The provisions of Law No. 10 on which count five is based are, at bottom, merely a statement of the necessary degree of connection with the crimes committed by the SS which, if proved to exist, will support a finding of individual criminal responsibility for those crimes. Guilt does not automatically attach by virtue of the mere fact of membership alone. However, these provisions of Law No. 10 (and the London Charter and the judgment upon which they are based) recognize that the SS was a large and complicated organization which was engaged in a criminal program of great magnitude, and that a great many

* Trial of the Major War Criminals, Volume I, op. cit., pages 268-273.

persons in a wide variety of particular occupations contributed to the execution of this program. The guilty members of the SS included many whose occupations or activities, viewed without reference to the program of the SS as a whole, might seem innocent enough, as for example architects and dentists.* But all these persons, no matter how seemingly innocent their individual occupations, were contributing to the advancement of the over-all program of the SS. If they continued to make this contribution, knowing that the objectives and activities of the SS were criminal, they must be found guilty under Control Council Law No. 10. This was clearly established by the decision of Military Tribunal I in Case 1, (Medical case), in connection with the defendant Poppendick. Military Tribunal I stated that the evidence against Poppendick raised "a strong suspicion" that he was involved in criminal medical experiments, but acquitted him on these charges because the prosecution did not prove his guilt "beyond a reasonable doubt". Nevertheless, the prosecution did prove beyond a reasonable doubt that Poppendick knew of the experiments and of their consequences, and that they were being carried on by the SS, of which he was and remained a member. Accordingly, he was found guilty under count four of the indictment in Case 1, which, as to Poppendick, is identical with count five in this case. The acquittals of four defendants in the Pohl case under similar charges may perhaps be questioned in the light of the evidence which was introduced, but are in no respect inconsistent in legal theory with the judgment of the International Military Tribunal or of Tribunal I in the Medical case.

The defendant Steinbrinck has not contested the fact of his membership in the SS. His service record (*NI-3421, Pros. Ex. 858*) shows that he was originally commissioned as a Standartenfuehrer (equivalent to a colonel) in the SS on 31 May 1933, that he was promoted to Oberfuehrer (senior colonel) in 1935, and to Brigadefuehrer (brigadier general) on 30 January 1939. His assignment is described as being on the staff of the Reich Leader SS.

Counsel for Steinbrinck has suggested that the defendant does not fall within the declaration of criminality because his rank in the SS was as it is put "purely formal" or "honorary." (*Tr. p. 3936.*) We find no basis for this contention in the law or the facts. The International Military Tribunal specifically and carefully exempted from its declaration of criminality certain categories of membership in the organizations with which it dealt;

* Max Kiefer (architect) and Hermann Pook (dentist) were convicted under the "membership count" in Case 4, *United States vs. Oswald Pohl, et al.*, Volume V, this series.

thus, it exempted from the declaration with respect to the SS "the so-called SS riding units." The declaration contains no such exception with respect to "formal" or "honorary" membership in the SS and, indeed, it is difficult to see what these adjectives mean other than to denote individuals who had other occupations and did not devote their full time to SS matters. This circumstance has existed in the case of defendants in other cases who have nonetheless been found guilty of membership within the meaning of Control Council Law No. 10, such as the defendant Karl Brandt in the Medical case, whose full time and highly responsible occupation was as Reich Commissioner for Health and Sanitation. Furthermore, the line which Steinbrinck's counsel seeks to draw is intrinsically illogical. Himmler did not confer high rank on prominent individuals with no purpose in mind. By accepting membership such individuals lent their names, prestige, and respectability to the SS as an organization. The Bavarian State Minister for Special Tasks, in a bulletin issued on 3 September 1947, very wisely pointed out that SS members such as Steinbrinck (*Steinbrinck 383, Steinbrinck Ex. 92*) "were for the most part sponsors and supporters of the SS, who by means of their support rendered special service to the SS so as to make their guilt rather more conspicuous than that of an ordinary active member of the SS."

Furthermore, we must not be misled by more adjectives. Steinbrinck was an important, highly useful member of the SS. He was very far from being inactive. Steinbrinck's counsel has explained that Himmler offered him high rank in the SS because "Himmler wished to increase the respect of the public for the SS by taking a person like Steinbrinck in. The latter enjoyed great public esteem as one of the best-known submarine commanders in the First World War and as Knight of the Order Pour le Mérite." (*Tr. p. 3936.*) Hitler and Himmler lost no time in capitalizing on Steinbrinck's military reputation. The defendant himself has testified that when Hitler went to his first meeting with the leading German generals in September 1933, Steinbrinck was called upon to appear in SS uniform in Hitler's own entourage. I quote his testimony (*Tr. p. 5072*):

"The immediate reason, as he (Himmler) told me later on, was that he wanted me, who was a well-known U-boat commander and was a man who was not unknown among the German generals in my capacity as a naval officer—he wanted to have me, when Hitler and the heads of the Party, of the SA, and SS, would meet the German generals in Godesberg."

Steinbrinck had also had an interesting meeting with Field Marshal von Hindenburg during the First World War and was

again called upon to appear as an SS officer on the occasion of von Hindenburg's funeral. But valuable as Steinbrinck's military fame was to Himmler and the SS, his excellent business connections were even more useful. As has been clearly proved under count four of the indictment, Steinbrinck, together with Baron von Schroeder, another SS General, were the prime movers in initiating the whole plan for financial contributions by the Himmler Circle to the SS. Thus Steinbrinck, one of the original members of the Keppler Circle, played a leading part in developing constant and cordial relations between the SS and German's leading industrialists, and was influential in procuring a steady source of income from these wealthy circles, which were made available to Himmler with no strings attached. This is not the picture of an "inactive" SS man.

Furthermore, Steinbrinck valued and made use of his rank in the SS and his connections with Himmler. In May 1944, he wrote a personal letter to Himmler describing his duties as Plenipotentiary for Coal in the Occupied Western Territories and requesting, because of the nature of these duties, that he be given rank in the Waffen SS. (*NI-8542, Pros. Ex. 744*).* So far from being ashamed of the connection, he was anxious to make it closer and to appear in the uniform of the Waffen SS.

The prosecution believes that the record in this case proves beyond any reasonable doubt that the defendant was fully aware of the criminal purposes and activities of the SS. Naturally enough, he has not admitted this. As we said in the opening statement, we believe that, once the fact of membership after 1939 has been proved, it is incumbent upon the defendant to come forward with some evidence that he was ignorant of the criminal character of the organization. We believe that, under the circumstances of this case, his bare unsupported denial of such knowledge is utterly insufficient. The evidence to the contrary is overwhelming.

By his own admission, Steinbrinck's acquaintance with Himmler antedated Hitler's seizure of power. He was influential in securing financial support for Himmler as least as early as 1932. He was given high rank in the SS immediately after the seizure of power and was twice promoted. He immediately lent his naval prestige in furtherance of good relations between the SS and the armed forces. He was a prime mover in establishing such relations between the leading industrialists and the SS. He was a principal organizer of private financial support for Himmler. By the middle of 1933, his relations with Himmler, both socially and professionally, were very close, as the record

* Reproduced in section V C.

plainly shows. On 13 July 1933, he wrote to Himmler (*NI-10095, Pros. Ex. 782*): *

"Only today I could speak to Alvensleben since his time was very much taken up. In a discussion with Herr Flick, I found out that it is true that the proposition mentioned in Alvensleben's letter to you was discussed between him and Alvensleben; thus I have wronged our mutual friend.

"At the moment, however, it does not seem advisable for you to initiate anything. Since a new Aufsichtsrat of Linke-Hofmann-Busch has to be elected anyhow, and since the city of Breslau doubtless will express special wishes, it will be best in this connection to eliminate the persons in question.

"Furthermore, I should like to report that on Monday I resumed my activity in old vigor, and I hope now also to be reinstated by and by into our common work.

"With best regards and Heil Hitler!"

The meaning of this letter is not altogether clear, but it is plain that important business was afoot and that the relations between the two men were confidential. On the stand, Steinbrinck was totally at a loss to explain the nature of "our common work." Ten days later, in another very informal and friendly note to Himmler, Steinbrinck expressed the "hope that my health will soon allow me to cooperate more actively." (*NI-8279, Pros. Ex. 740.*) In October, in another exchange of letters, Himmler and Steinbrinck laid plans for long talks at Munich and exchanged courtesies on behalf of their wives (*NI-8280, Pros. Ex. 741; * NI-8282, Pros. Ex. 742.*)

During the remaining years before the outbreak of war, the Circle of Friends, of which Steinbrinck was an original member, developed into the regular mechanism for the maintenance of the contact between Steinbrinck's business friends and the SS, and the financial contributions to the SS were put on a regular footing. After the outbreak of war, Steinbrinck spent most of his time in the western occupied territories, but continued to attend meetings of the Circle when his duties permitted. In approaching this question of Steinbrinck's knowledge of SS activities, it must be borne in mind that the defendant is a highly intelligent man who had extensive military and business contacts. His testimony is replete with mention of meetings and visits with many of the highest functionaries of the Nazi Party and the Third Reich. Sprinkled through his testimony are the names of von Kleist, Model, and other prominent Field Marshals and Generals; Goering, Funk, and Terboven, von Woyrsch (an SS entire SS), and Himmler himself; Baron Kurt von Schroeder,

**Ibid.*

Obergruppenfuehrer and the eighth ranking member of the Voegler of the Vereinigte Stahlwerke, Pleiger, Koerner, and Keppler. If men such as these did not understand, at least in general, the purposes and activities of the SS, no one in Germany did.

Despite Steinbrinck's increasing preoccupation with the western occupied territories during the war, he did not lose personal touch with Himmler. On 9 October 1944, as conditions grew increasingly critical in western Germany, Steinbrinck concerned himself with the problem of what to do with the hundreds of thousands of foreign workers and prisoners of war in that area in the face of the Allied advance. For the answer, he turned to Himmler, and sent the following message to Himmler's adjutant (*NI-8541, Pros. Ex. 743*):

"The questions discussed with you a week ago concerning the threatened western territories are becoming more and more pressing and demand clarification. * * * In case of an emergency, the orderly shipping off of the 800,000 prisoners of war and foreign workers seems endangered * * * Clear decisions as to what is to become of the local workers and the entire population in case of an emergency are lacking * * * Here everyone hopes for a decision of the Reich Leader SS and Minister of the Interior. Please see to it that a clear directive is issued as soon as possible. I shall be glad to discuss this matter at any time."

For the sake of brevity, I forbear to summarize again what we have said under count four of the indictment with respect to Flick's and Steinbrinck's knowledge of the SS activities. Steinbrinck was deep in the affairs of the SS before it became powerful, and stayed with it to the bitter end. Educated, intelligent men who finance and consort with such as Himmler, Pohl, Ohlendorf, Sievers, and Wolff can legitimately be called upon for clear and compelling proof that they did not know what they were up to. We respectfully submit that the defendant has completely failed in this respect, and if he is not guilty under count five, it can only be because the highest circles of the SS and the government were composed of men who heard no evil, saw no evil, and spoke no evil.

That concludes count five, Your Honor.

THE CONSTITUTION AND JURISDICTION OF THIS TRIBUNAL

Since the close of the international trial, nine Tribunals have been constituted in Nuernberg for the trial of offenses under Control Council Law No. 10, and three judgments have already been rendered by such Tribunals. One might have assumed that the legal basis for and the constitution of these Tribunals was by now a settled matter. Defense counsel in this case, however, have at the close of the proceeding filed an elaborate motion to dismiss (designated No. 4) in which they challenge the authority and jurisdiction of this Tribunal on a variety of grounds. The prosecution is filing today a full answer to this motion, the contents of which we need only summarize at this point.

The grounds urged in support of the defense motion we submit are based upon a complete misconception of the background, legal status, and jurisdiction of this Tribunal. It is not a court martial; it is not a military commission of the type which has been established under military law in all the theaters of war—for example, at Dachau—to try enemy belligerents for war crimes. It is not part of the judicial system of the United States. It is an international court, established under international authority by quadripartite legislation as part of the quadripartite condominium in occupied Germany. Like the International Military Tribunal, this Tribunal was established by:*

“ * * * the exercise of sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world.”

In order to give effect to international agreements previously entered into, including the Moscow Declaration of 1943, the London agreement of 1945, the Control Council for Germany, in the exercise of its supreme authority in Germany, enacted Control Council Law No. 10. Among other provisions, this law (Art. II, par. 2) authorized the zone commander in each zone of occupation to establish tribunals for the trial of suspected war criminals, and to determine the rules and procedure under which such trials should be conducted. Pursuant to this international authority, Ordinance No. 7 was promulgated by the zone commander in April 1947.

The authority of the President of the United States, through his authorized agents, to commit the United States to this inter-

* Trial of the Major War Criminals, *op. cit.*, Volume I, page 218.

national procedure for the trial of suspected war criminals is derived from the provisions of the Constitution which vest in the President the executive power of the United States, and which appoint him Commander in Chief of the armed forces. The Supreme Court of the United States has emphasized in the United States against Curtiss Wright Corp.¹ "the very delicate, plenary, and exclusive power of the President as the sole organ of the Federal Government in the field of international relations." Exercising this plenary power, the President has broad discretion and wide authority in joining with other nations for governing the territory of a defeated belligerent. These powers clearly extend to the abolition of existing courts and the creation of new courts. In *Leitensdorfer v. Webb*,² decided by the Supreme Court in the last century, the Supreme Court held that a judicial system established by the military commander as a part of the provisional government of New Mexico was perfectly legal.

The fact that the members of this Tribunal are citizens of the United States appointed by the military governor in no way divests this Tribunal of its international character or of its status as part of the quadripartite occupational administration. The military governor might, for reasons of security or otherwise, appoint United States citizens to serve on strictly German courts, trying Germans for offenses against German law, but such appointments would not convert German courts into United States courts. Moreover, the international character of these Tribunals is conclusively evidenced by the fact that the membership of the Tribunals and the prosecution staff may be multipartite.

The defendants have also suggested, in effect, that there is no form in which German war criminal suspects may be tried unless it be the courts of Germany itself. But the Supreme Court of the United States, in *Duncan v. Kahanamoku* (327 U. S. 304, at 313), referred to "the well-established power of the military to exercise jurisdiction over * * * enemy belligerents, prisoners of war, or others charged with violating the laws of war," and "the recognized power of the military to try civilians in tribunals established as a part of a temporary military government over occupied enemy territory."

Likewise, the defendants have attacked the proceedings on the ground that Ordinance No. 7 permits the Tribunal to accept and consider depositions, affidavits, and hearsay and opinion evidence. There objections are raised on the basis of the American Articles of War and the Constitution.

The points raised by the defendants in this connection here, we believe, already have been disposed of by the decision of the

¹ United States vs. Curtiss Wright Export Corp., 299 U. S. 304 (1936).

² 61 U. S. 176 (1857).

Supreme Court in the Yamashita case.* A full discussion of this matter and of the application of the Yamashita decision is contained in our answer to the defendants' motions. The rules of evidence upon which American courts customarily rely can, indeed, serve as one of the sources from which these and other international tribunals derive their own rules of procedure, but neither the American rules of evidence nor those of England, France, Russia, or Germany can independently restrict or invalidate the rules before this Tribunal any more than before the first International Military Tribunal.

Certain other points made in the defense motions do not, we believe, require oral discussion, unless the Court desires further argument on these points after examining our written answer. It is certainly not without importance in connection with these matters that the defendants have made far more extensive use of the liberal evidentiary rules than has the prosecution on the matter of affidavits and would, we believe, be infinitely more hampered should their motions to strike be granted.

As a general legal defense to the entire indictment, the defendants have put forward the theory that "private persons," as these defendants are said to be, cannot be held criminally responsible under international penal law. This novel theory is elaborated in a brief which has been filed on behalf of the defendant Weiss by Dr. Herbert Kraus, and was also relied on by Weiss' counsel, Dr. Siemers, in his opening statement. (*Tr. pp. 3962-64.*)

It is noteworthy that both Dr. Kraus and Dr. Siemers have derived their proposition as to "private persons" by deduction from the old—and now universally rejected—point of view that international penal law applies only to governmental entities and has no application to individuals whatsoever (*Weiss 1003, Weiss Ex. 1*). Thus, Dr. Siemers, speaking for Weiss, told the Tribunal that: "All previous international treaties, for instance, the Hague Convention Concerning Land Warfare, and the Geneva Convention, were directed at the state and not at private individuals. It was a general principle that the responsibility for observing rules of international law was the State's." Of course, if the impact of international penal law on individuals is not recognized at all the question is foreclosed as to these defendants, whether or not they indeed are "private persons." But this doctrine has been universally rejected for many years; the trial and punishment of individuals for transgressions of the international laws and the usages of war is now nothing novel and, indeed, authoritative precedents can be cited from decades past.

We find no support in law or in logic for such a distinction.

* In re Yamashita, 66 U. S. 340 (1946).

Counsel for the defense have told us that this is "the first time in the history of the law" that private persons have been "charged with being guilty of a breach of international law." (*Tr. p. 3962*). This is a flagrant misstatement of facts, as is well known to the defense counsel who made it. In the indictment in the first international trial, Gustav Krupp von Bohlen und Halbach, who clearly falls within the category of "private persons" as defense counsel use it, was named as one of the defendants. He was not brought to trial solely because his physical and mental condition rendered his presence at and participation in the trial impossible.¹

PRESIDING JUDGE SEARS: Was he arraigned?

GENERAL TAYLOR: No, Your Honor, he couldn't even be brought in.

PRESIDING JUDGE SEARS: Then there wasn't any opportunity for him to raise the question.

GENERAL TAYLOR: There were cross motions and full argument on the question of whether he should be excused from attendance or not.

PRESIDING JUDGE SEARS: Yes, but that was different from attacking the jurisdiction of the court.

GENERAL TAYLOR: His counsel didn't see fit to do it.

PRESIDING JUDGE SEARS: He couldn't make that a motion before he came before arraignment.

GENERAL TAYLOR: I suppose so.

PRESIDING JUDGE SEARS: I think not. There is no use discussing it. We will accept the brief.

GENERAL TAYLOR: In Case 1, the Medical case,² before Tribunal I, Dr. Adolf Pokorny was named as a defendant and was actually tried. Military Tribunal I points out in its opinion "the defendant Pokorny never held any position of responsibility * * *." ³

PRESIDING JUDGE SEARS: Don't take my statement as in any way an expression of view.

GENERAL TAYLOR: No, Your Honor.

PRESIDING JUDGE SEARS: I was just thinking if it was the opportunity to present the question.

GENERAL TAYLOR: Your Honor, I am merely directing my remarks to whether this is an unprecedented proceeding.

PRESIDING JUDGE SEARS: Oh, yes.

GENERAL TAYLOR: Pokorny was acquitted by Tribunal I, but not because of this circumstance; Tribunal I was "not impressed with the defense which has been tendered by the defendant"

¹ For various motions, answers, medical reports, memoranda, and rulings concerning the postponement of the proceedings in the IMT case as to defendant Gustav Krupp von Bohlen und Halbach, see *Trial of the Major War Criminals*, op. cit., volume I, pages 124-147.

² *United States vs. Karl Brandt, et al.*, Volumes I-II, this series.

³ *Ibid.*, Volume II, page 292.

but, because of the presumption of innocence, acquitted Pokorny "not because of the defense tendered, but in spite of it."¹ Before the military commissions sitting at Dachau, a large number of private individuals have been tried and, where proved guilty, have been sentenced for violating the laws of war by torturing or murdering allied aviators who had been shot down over Germany and had become prisoners of war.

It is also interesting to note that the defense here put forward must be highly embarrassing to a defense counsel in Case 7, now being heard before Tribunal V.² In that case, eleven German generals are on trial, and the charges are based in part upon the fact that they ordered and carried out the execution of thousands of members of the civilian population in German-occupied territories in southeastern Europe. One of the principal defenses which has been put forward in that case is that the civilians thus executed had violated their duties toward the occupying power under the laws and usages of war, and that therefore their execution was warranted.

Nor is this the first time that private persons who might be described as "industrialists" have been charged and tried for violations of international penal law. Twenty-eight years ago, just after the First World War, a very similar proceeding was conducted before a French military tribunal.³ The defendants included Hermann Roechling—who has been a witness in this very trial and whose name figures largely in the documents on Rombach—Robert Roechling and half a dozen others who were accused of the plunder of private property in France during the First World War in violation of the laws of war. That case involved certain removals of property as well as dispossession of the owners, but in other respects it was very parallel to the charges in count two of our indictment with respect to Rombach. The French military court found the defendants guilty, and imposed sentences of up to 10 years imprisonment. Upon appeal, the judgment was annulled on purely technical grounds; the record did not show the presence of an interpreter at all sessions; one of the court clerks was below the statutory age of 25 years. Hermann Roechling was not apprehended by the French authorities, and the proceedings were never renewed. But certain observations made in the opening statement by the French prosecutor indicate the striking similarity:

"Confronted with such serious facts, the importance of which is to be found not only in the intrinsic value of the

¹ *Ibid.*, page 294.

² The Hostage case, *United States vs. Wilhelm List, et al.*, Volume XI, this series.

³ For further information and partial reproduction of the Roechling case, see appendix B, Volume XIV, this series.

objects removed but also in the fatal damage voluntarily inflicted on the industrial life and the prosperity of an entire country; * * * it is proper in this case not to forget that it is an individual prosecution brought against named industrialists and that our only mission is limited to finding out precisely what personal role they played in these acts, and what is their own responsibility, if it is established that they have provoked and carried out these measures which are opposed to the law of nations, or that they have brought about their execution by stimulating, if necessary, the action of the public authorities in order to make their execution more rapid, complete, and ruthless.”

I continue the quotation.

“The purpose * * * will be to find out * * * whether one must consider that there is a responsibility peculiar to the accused and, for that purpose, to examine the circumstances particular to the removals executed by them, the opportunity that they had to take advantage of such a profitable situation, and the direct, obstinate, constant action through which, by exerting pressure on the official services, they succeeded in obtaining from them the realization of their desires.

“But, due to the prolongation of the war and the sharpening of its industrial character, having the urgent obligation to ensure the supplying of its factories, deprived of any imports by the strict blockade of the Entente, the German Government considered itself in a sort of state of emergency authorizing the taking of all steps in its power, and arrogated to itself the right to take, wherever it could, and especially in invaded territory, the goods and raw materials that it lacked * * *.

“This very peculiar conception of the right of the occupier, neither provided for nor justified by any international convention and which is directly in opposition to the law of nations, which always maintained a careful distinction between what belongs to the public domain and what is private property, led the German War Ministry to the creation of a whole series of organizations destined to secure the practical realization of the goal. It was with these organizations that the industrialists came into contact.

“* * * the German industrialist who used these means, reaped a personal benefit from them and took advantage, with the purpose of realizing a benefit, of the force put at his disposal.”

Both Dr. Kraus and Dr. Siemers have laid great stress on a remark by the French chief prosecutor, the distinguished M.

Francois de Menthon, in his opening statement before the first International Military Tribunal.¹ The statement relied on by them is as follows:

“It is obvious that, in an organized modern state, responsibility is limited to those who act directly for the state, they alone being in a position to estimate the lawfulness of the orders given. They alone can be prosecuted and they must be prosecuted.”

This remark was made by M. de Menthon in the course of his argument that criminal responsibility under international law attaches to individuals, and not merely to the state; we doubt that he thereby intended to exclude individuals such as these defendants from the scope of international penal law. We are forced to observe that the quoted remark certainly did not represent the view of the French Government or, apparently, of M. de Menthon himself. At most, we are faced with a Gallic inconsistency, for M. de Menthon himself signed the indictment naming Gustav Krupp as a defendant, and when it appeared doubtful that Gustav Krupp's trial would be possible, M. de Menthon signed, on behalf of the French Government, a motion seeking to add Alfried Krupp von Bohlen as a defendant in the first international trial.²

Finally, it is quite clear that Control Council Law No. 10 recognizes no such distinction between “private persons” and “officials” as the defendants seek to draw. And in clause “f” after making reference to persons who held “high political, civil, or military” positions in Germany, continues by making reference to persons who held high positions “in the financial, industrial, or economic life” of Germany. Persons so described unquestionably include individuals such as these defendants. It is quite true that this reference is contained in the clause which relates only to crimes against peace, but it is unthinkable that Law No. 10 intends, or that under international law one might reach the conclusion that private individuals may be tried for the commission of crimes against peace but not for the commission of war crimes or crimes against humanity.

In conclusion on this point, we invite the Tribunal's attention to the fact that the defendants have not hesitated to reject the idea that they were “private persons” when it suits their purpose under certain portions of the indictment. Dr. Flaechsner, in his opening statement on behalf of the defendant Steinbrinck, elaborated the circumstances which led the defendants to participate frequently as experts, advisers, or administrators in

¹ Trial of the Major War Criminals, *op. cit.*, Volume V, page 388.

² *Ibid.*, Volume I, pages 141-142.

governmental work. (*Tr. pp. 3924-25.*) In explaining the Petschek transactions, the defendant Flick repeatedly protested that he was in effect acting as an agent of Goering to assist in the accomplishment of a very important project in the interests of the Third Reich. The activities of such agencies as the RVK, the RVE, and the BHO, in all three of which Flick participated, were surely quasi-governmental in character. Steinbrinck's activities after he left Flick were almost entirely official, first as the government administrator of Fritz Thyssen's property and subsequently as Plenipotentiary General for coal and for iron and steel in the western occupied territories. Steinbrinck's own testimony on the Petschek transactions, if contrasted with the legal arguments Drs. Kraus and Siemers have made, strikingly emphasizes the depths of inconsistency to which the defense has been forced in this case. I quote Steinbrinck's testimony:

"I believe that at this time and at this stage, when Hugo Dietrich got this commission, we were not private persons in that sense. Either we had Koerner's permission to make concrete proposals—in that case we had not only the right but, I presume, the duty to put ourselves in the place of the State and its ideas and to consider what could be done; and if I discussed this 'What can we do' with the experts who were proper officials, then surely it is an internal discussion between, if you like, experts commissioned by the State and not a private person." (*Tr. p. 4922.*)

Indeed, this entire line of defense, which has been put forward is, we believe, so flimsy that we doubt that defense counsel ever intended it to be taken seriously on its own merits. A large part of Dr. Kraus' brief on this point is in fact devoted to argumentative assertions that private industrialists lived in a constant state of fear under the Third Reich, and that they had no alternative except to swim with the tide, however dirty the waters might be. This, of course, is merely another facet of the defendants' over-all argument on fear and coercion, which we will deal with presently.

*OTHER GENERAL DEFENSES, INCLUDING FEAR
AND COERCION*

We come now to consider the more important general defenses and justifications which have been put forward. At times it is difficult to tell whether the defendants and their counsel really think that these explanations are defenses at all; some of them are so patently insufficient to constitute legal defenses that the defendants seem to be talking to themselves rather than to the Tribunal. It is not edifying to hear men accused of enslavement and plunder justify their actions on the grounds that they were "businessmen", that they were seeking security against competitors, or that they were after "compensations" for "sacrifices" in other situations where they had been "cheated." It is distressing to hear men accused of extorting property from members of a persecuted minority explain their anti-Semitic actions or utterances as "howling with the wolves." Defenses such as these seem to have been put forward as part of an effort to suggest that all businessmen, or at least all German businessmen, would have behaved the way the defendants behaved under similar circumstances.

Most persistently and emphatically, the defendants have urged that the acts charged to them in the indictment were done under the pressure of constant fear. We will devote most of our attention to this point. Before doing so, however, there are two or three other points on which we will comment briefly.

Criminal responsibility under Control Council Law No. 10 Article II, paragraph 2 of Control Council Law No. 10, insofar as it is relevant to this case, provides that:

"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 * * * ."

Several things are apparent from this provision. First of all, the language recognizes that though the crimes enumerated in Law No. 10 are largely of traditional types—murder, enslavement, kidnaping, etc.—their commission in the Third Reich was accomplished in a far more complicated and large-scale fashion than is ordinarily true of such crimes. By the same token the law recognizes that where crimes are committed on a systematic and

wholesale basis, guilt is not limited to those persons who pull the trigger or wield the club.

Where crime is performed on a widespread and systematic basis, there is necessarily much division of labor and specialization. We find, for example, a Streicher in the business of incitement to murder; not to any particular murder at a particular time, but to broad programs, plans, and enterprises accomplished by groups or organizations through the cooperative effort of their various parts or members. In recognition of such facts Control Council Law No. 10 contains language to include individuals who were "connected with plans or enterprises involving" the commission of crimes or were members of an "organization or group connected with the commission of any such crime."

The prosecution does not, of course, contend that this language should be pushed to unreasonable limits. It does not contend that the word "connected", for example, should be pushed to the absurd length of including as criminal a seamstress who sewed a button on the uniform of an SS man who thereafter committed murder. Obviously this language, like that of any other statute, must be interpreted in the light of a rule of reason. There must be a substantial connection between the defendant and the crime. There must of course, be a causal relation between the defendant and the crime, and the defendant must have knowledge of or reason to be aware of the crime committed.

The prosecution need not, however, prove that the defendants' acts were indispensable to the commission of the crime charged or of a similar crime. While the defendants must have been connected with its commission, the prosecution need not prove that the crime charged would not have taken place whether or not the defendants had participated. Further, such proof on the part of the defendants is patently not a defense. In a number of instances, defense counsel have sought to prove that the crimes or similar crimes would have taken place in any event if the defendants had not entered the picture. For example, in connection with the charges under count two with respect to the Rombach plant in France, it has been pointed out that someone else would probably have dispossessed the French owners if the plant had not come to Flick. The same argument is implicit in the suggestions of defense counsel that if Flick had refused to use slave labor in his plants someone else would have taken over the plants and done so. This argument has no merit. Surely it is no defense to a charge of murder to show that if A had not been killed by B, he would have been killed by C within a short time anyway.

Furthermore, the prosecution need not show that the defendants intended to commit the specific crime that occurred. While

civilized penal systems require that the person charged intended the commission of an act that constitutes a crime, the intention need not be in all respects identical with the crime that in fact occurs. For example, if A shoots at B and kills him, it is no defense that A was aiming at C.

Likewise, it is familiar law that the requisite element of guilty knowledge, or intention to commit an act which is criminal, may be supplied by a course of conduct which is grossly negligent. A man may not proceed in a dangerous manner, reckless of the consequences, and then be heard to say that he did not intend that any injury should result. These familiar principles lie at the heart of such concepts as that of manslaughter, and are well known and universally accepted. They have particular application in connection with count four, where the issue has been raised whether Flick and Steinbrinck had knowledge of particular crimes and atrocities committed by the SS. It is sufficient if the facts and circumstances known to the defendants were such as to indicate that the SS was a highly dangerous instrumentality—that there was a high degree of probability that crimes would be committed. The question whether Flick and Steinbrinck had knowledge of any particular crimes is material, only as to aggravation or mitigation of guilt.

In its opening statement, the prosecution made it quite clear that these defendants do not stand accused of being “industrialists” but of having committed crimes. Neither this case nor any of the other cases being tried before the Nuernberg Tribunals is concerned with questions of economic reform. But the economy of the United States is based on private enterprise. There are businessmen everywhere in our homeland, and the defendants have not hesitated to attempt to assimilate themselves to a prototype with which we are all very familiar, and on which we depend in our daily life at every turn. The defendants have proclaimed again and again that they are private entrepreneurs and are devoted to the principles of private enterprise.

The prosecution is quite prepared to concede that the defendants give every indication of devotion to the profit system. But we think the record shows clearly that they are less ardently attached to certain other fundamental principles upon which the business community of any civilized nation must depend. And, in any event, so far as this proceeding is concerned, we think that these protestations of devotion to the capitalist system are nothing but an effort to becloud the true issues.

We think that such a defense does no good service to businessmen in any country. Free enterprise does not depend upon slave labor, and honest business does not expand by plunder. Any

businessman is surely entitled to defend himself against charges of criminal conduct.

But no businessman should defend himself against such charges by putting on the symbolic silk hat and claiming any privileged status.

Most illuminating in this connection was Dr. Dix's examination of the witness Lindemann, another member of the Himmler Circle. In an effort to explain the Flick contributions to SS funds, Dr. Dix, in a long hypothetical question, asked Lindemann whether he would "have understood" if Flick had told Lindemann that Flick took part in the Circle and contributed money "because politically he must have some support, a safe place on which he can lean and where he can find a sort of political visiting card." In reply, Lindemann made it clear that Flick had never said anything of the kind to him, but stated further that, if Flick had said it, he would have understood the remark as meaning that under the Third Reich, it would have been "difficult" for "anyone who had large economic interests in Germany and who, of course, tried to maintain and further them * * * without any sort of connection with the high Party authorities, to maintain his position." (*Tr. p. 2990.*)

What lies behind this type of testimony? If Flick really did not know what kind of a man Himmler was, and knew nothing about the criminal activities of the SS and of Himmler's Secret Police, his gifts of money to Himmler are not indictable, whether or not he was a businessman. On the other hand, if he knew or had reason to know the nature of SS activities, his financial contributions are, we would have supposed, both reprehensible and indictable. If the contrary is suggested, it can only be upon the theory that businessmen have such a sacred mission to "maintain and further" their enterprises, that they are entitled to exoneration or at least deep sympathy if they commit crimes in furtherance of their business enterprises. We earnestly suggest to the Tribunal that this is a grossly distorted conception of the prerogatives of industrialists, and its acceptance could do nothing but harm businessmen everywhere. Surely, on the contrary, businessmen must be held to the same standard of steadfastness, and of unwillingness to commit crimes, whether in the face of temptation or threat, that the law requires of all individuals.

The Sins of Others

At numerous points throughout these proceedings, the defendants or their counsel have put forward arguments that the defendants should not be held liable because other persons, not in the dock, are themselves guilty of similar conduct. Thus, it

has been suggested that the conscription of slave workers from France was legitimate because Laval or other members of the Vichy government cooperated in their program. More often, it is the Soviet Union which is made the scapegoat, and in the interests of brevity, I will comment only on those arguments which pertain to Russia. These arguments have been made principally in two different forms.

The first argument is that the laws and usages of war cannot be held applicable as between Germany and the Soviet Union. It is, of course, true that the Soviet Union, like Czechoslovakia and certain other countries, was not a signatory of the Hague Conventions. This point has already been answered in the judgment of the International Military Tribunal, which we submit rightly stated that the Hague Conventions were merely declaratory of existing international law, and were therefore applicable whether or not the Soviet Union was a signatory power.

But it has been further suggested that there was a sort of bilateral custom observed by both Germany and the Soviet Union in their relations with each other, under which the laws of war would not be observed by either side. This point seems to be especially made with respect to those portions of count two which charge the plunder of property in the Soviet Union. We can find no substantial support for this argument in the record, and in any event the judgment of the International Military Tribunal again seems conclusive. It is hard to see how such a bilateral custom could have been developed except during the war. And the record is quite clear that the German program for exploitation of the occupied Soviet territories was carefully drafted and developed well in advance of the outbreak of war between Germany and the Soviet Union. This argument of the defense seems to me to resolve itself into the following syllogism: "I want to kill that man. I think he is a barbarian. Therefore, when I attack him I will use the weapons of barbarism."

The second branch of the argument is that, subsequent to the military defeat of Germany and the quadripartite occupation of German territory, the Soviet Union has deported Germans to slave labor and plundered German property.* The prosecution is uninformed concerning the basis of such assertions; certainly we find nothing in the record in this case to support them. But, in

* As the prosecution has pointed out in its brief, the laws and usages of war, as embodied in the Hague and Geneva Conventions, are not applicable to the quadripartite occupation of Germany, because hostilities are completely at an end, there are no hostile German armies in the field anywhere, nor does any German Government exist. But, of course, the general principles of civilized law must nevertheless be observed by the occupying powers, and the defense argument seems to charge a transgression of such principles.

meeting the arguments, we will assume that these assertions are true.

We earnestly suggest to the Tribunal that this is a most dangerous line of thought. We will say quite bluntly that we think defense counsel are ill-advised to put it forward. We cannot see how it can benefit their clients and can do nothing but harm to Germany. This argument, if it should prevail, would not lead to a judgment that the defendants are innocent of enslavement and plunder; it would lead to a judgment that enslavement and plunder are no longer crimes. Such a judgment would be a serious, and possibly mortal, blow at the foundation of peace and justice. It would greatly increase the hazards under which weak or defenseless nations exist in a restless world. It would render them subject to the same type of occupation that Germany herself has visited upon most of Europe, and would leave them no eventual recourse against their oppressors.

Apart from the terrible implications of such a judgment, this argument is quite unknown to the law. The law does not exist only by virtue of its own enforcement, though a substantial measure of enforcement is necessary to perpetuate the law. But it is unfortunately true that in this world crime often goes undetected and unpunished. Never has it been suggested that this circumstance should be a defense where the defendant is before the court. Recognition of such a defense would mean nothing less than the disappearance of law.

It is precisely this line of thought, we submit, which has brought about the disintegration of Germany. Because crime was encouraged and committed in certain high places, it ceased to be regarded as crime in the courts. The argument put forward by defense counsel, we suggest, reflects this attitude. Germany has nothing to gain and everything to lose from such an unhappy relaxing of the standards of international conduct. Enforcement of the law in this case, if the evidence establishes guilt, must sooner or later operate as a deterrent in other circumstances, and Germany, like all nations, has everything to gain and nothing to lose by the reaffirmation of moral and civilized standards of conduct.

Superior Orders and Coercion—The Law

We come finally to what seems to us the ultimate defense in this case. Speaking for the two leading defendants, Dr. Dix and Dr. Flaechsner each commenced his opening statement with a Latin quotation. The gist of Dr. Dix's quotation is that the Third Reich forced the defendants to commit impious and iniquitous acts. Dr. Flaechsner on the other hand told us that the defendants are suffering here for the madness of their rulers. This plea, based on alleged fear and coercion, has been most emphatically

reiterated throughout the trial; we will examine it now in the light of the law and on the basis of the record.

So far as the so-called doctrine of "superior orders" applies in this case, it is governed by paragraph 4 (b) of Article II of Control Council Law No. 10, which is substantially identical with Article 8 of the London Charter, and provides:

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

This principle has been most frequently applied and interpreted in military cases. The military profession puts a high premium on discipline and obedience and usually does not permit subordinates to question the orders of their superiors. But it is well established under military law—German as well as English and American—that a subordinate is not bound and in fact is bound not to obey an order which he knows directs the commission of a criminal act. Under certain circumstances, even though the subordinate is aware of the criminal character of the order, the order may be given some weight by way of mitigation. In the international trial, these matters were considered in the cases of Keitel and Jodl, and it was held there that the fact that they were acting under orders from Hitler could not even be considered by way of mitigation, because of the far-reaching and obviously criminal character of their acts.

The defendants in this case, as they have repeatedly and plaintively told us, were not military men or government officials. None of the acts with which they are charged under any count of the indictment were committed under "orders" of the type we have been discussing. By their own admissions, it seems to us they are in no position to claim the benefits of the doctrine of "superior orders" even by way of mitigation.

From a legal standpoint, the prosecution might drop the matter at this point, but it will be illuminating to carry it further. The defense of "coercion" or "duress" has a certain application in ordinary civilian jurisprudence. But, despite the most desperate efforts, the defendants have not, we believe, succeeded in bringing themselves within the purview of these concepts.

The defense of coercion or duress in criminal actions rarely has been made, and there is not a great abundance of refined precedent under German or Anglo-Saxon law. But, under both systems of law, it is clear beyond question that this defense has no application unless the defendant acts under what we may roughly describe as

“clear and present danger.” Section 52 of the German criminal code states:

“A crime has not been committed if the defendant was coerced to do the act by irresistible force or by a threat which is connected with a present danger for life and limb of the defendant or his relatives, which danger could not be otherwise eliminated.

An authoritative statement of Anglo-American law on the subject † taken from Wharton’s Law is:

“The fact that a crime is committed under coercion and compulsion, in fear of instant death, may be set up as a defense to the prosecution for the commission of such crime; but, to be available as a defense, the fear must be well-founded, and immediate and actual danger of death or great bodily harm must be present, and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat. It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person.”

† Wharton’s Criminal Law (1932), Volume I, section 384.

The classical statement of this rule, by Lord Deoman, is, in summary, that no man, from fear of circumstances to himself, has the right to make himself a party to committing mischief on mankind. † More recent decisions in American courts tell us that a threat of *future* injury is not sufficient to raise a defense, that threats from a person who is a mile away at the time of the commission of the crime is no defense, that the risk of combat with a relentless companion does not, in any degree whatsoever, justify the slaying of an innocent man, and that there is no principle of law which would justify or excuse anyone in taking the life of an innocent man to protect himself, ‡ citations given.

† Regina v. Tyler (1939) 8 Car. and P. 616.

‡ People v. Rapke, 103 Mich 459 (1895); Leach v. State, 99 Tenn 584 (1897) Rizzolo v. Commonwealth, 126 Pa. 54 (1889).

The defendants have not introduced one iota of proof which suggests that they were ever under such a present and imminent danger as the law requires. All that they have shown is that they lived under a dictatorship. But, as the International Military Tribunal stated with respect to the London Charter, and as is equally applicable under Law No. 10: *

* Trial of the Major War Criminals, Volume I, op. cit., page 323.

“* * * the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law.”

Fear and Coercion—The Facts

If the evidence which has been offered on the ground of fear and coercion is insufficient legally, it is also singularly unconvincing factually. Certainly the defense of fear or coercion advanced by a defendant in a criminal case is an affirmative defense upon which the burden of going forward must be sustained. But the prosecution does not wish to take a pedantic attitude on technical doctrines. Not only is there absolutely no plausible evidence that the defendants committed the acts with which they are charged under the influence of fear; rather, we think, the record makes it clear beyond doubt that no such influence played any part.

If we cast a backward glance at the history of the Flick enterprises, it will be seen that they began to take form as a substantial industrial concentration shortly before 1920, and that their growth can be traced through the next 25 years to the collapse of the Third Reich in 1945. The first half of this period was the democratic era of the Weimar Republic. Jews were not persecuted, and their property was not Aryanized. There was no Gestapo, and Himmler was unknown. Their plants were worked by German labor. All of a sudden, halfway through this period, there was a violent change in the social and political atmosphere. The defendants had to do business with a wholly new set of political leaders. Extraordinary and shocking new doctrines became common currency. After the war broke out, thousands of their workmen were drafted and the problem of labor supply became acute. Within 2 or 3 years, well over a third of their employees were foreigners. Many of these were conscripted slave workers.

By using the defense of fear and coercion, the defendants have at least implied that some of these extraordinary developments were unwelcome to them. The defendants were respectable, wealthy men with extremely wide contacts, both within and without Germany. Their operations involved an enormous volume of correspondence and record keeping.

The inference is compelling, we believe, that if the defendants were really opposed to the shattering changes in German social and political life which came in with the Third Reich, some tangible evidence of this opposition, other than their own statements in this trial, could and would be produced. But the available docu-

ments and the witnesses who have testified tell us of no such opposition except a lurking worry that the Nazi regime itself enter the field of business or unduly encumber private enterprise by regulations. Not a single document has been introduced which reflects any opposition of or alarm at the rise of dictatorship, the abolition of liberty, the degrading persecution of Jewry, the overrunning of neighboring countries, or the enslavement of millions of workers. Of all the witnesses that the defendants have called, not one has testified that the defendants clearly opposed these things, or, indeed, that they were much concerned about them.

On the contrary, the proof as to the defendants' conduct during the years 1932-45 is overwhelming that their relations with the masters of the Third Reich were excellent. This conclusion stares one in the face from every corner of the record and every effort that the defendants have made to obscure this fact has failed in the face of the documentary evidence. There is no need again to thumb the dossier—Keppler Circle, Himmler Circle, SS membership, favored status with Goering, as testified to by Gritzbach, Petschek, Rombach, BHO—from start to finish this is a record of successful and profitable collaboration with the men these defendants say they feared.

Speaking of the period just after Hitler came to power, Hermann Rauschning has written: * “The old upper classes wanted to remain on top. Bared of any shame or dignity, they clung to their positions, following all the Party doings they were told to follow—anything not to lose their positions.” Reading this, one is forcefully reminded of Lindemann's testimony that if Flick left a “political visiting card” with Himmler, it was probably because he wanted to “maintain his position.” To speak of “fear and coercion” on the record in this case is, we believe, an insult to the intelligence; these men “howled with the wolves” because they ran with the pack.

* The Voice of Destruction (1940), page 99.

CONCLUSION

Dr. Kraus in his brief, and the other defense counsel, upon a number of occasions, have suggested that the defendants were helplessly trapped in a criminal maze. This point has been especially stressed with respect to the slave-labor charges in count one of the indictment. Armament orders, we are told, were allocated by the State to the Flick plants; they could not have been filled without using the foreign slave labor which the State also made available. What could the defendants have done? If they had refused to employ the labor or failed to fill the orders, their plants would have been taken over by someone else, the laborers would

still have been enslaved, and the orders would have been filled. Why, we are asked, should Flick or the other defendants have sacrificed themselves to a futile martyrdom?

We have expressed our view that, in the light of the record in this case, these questions are highly academic. There has not emerged the picture of a Flick who, even assuming the State would not have harmed him, would have preferred to see his plants stand idle in order to avoid the stigma of slave labor. We doubt that the defendants ever devoted much thought to the perplexing questions posed by Dr. Kraus, and we are certain that they have never been preoccupied with the possibilities of martyrdom. Nevertheless, this question merits reflection.

The answer is, we submit, not so difficult as would appear at first blush. The question assumes the existence of a highly difficult and dangerous situation without paying any regard to how that situation came about. Germany would not have launched the war if it had not been known that armament orders would be filled; slave laborers would [not] have been brought to Germany if it had not been known that industrialists would use them to fill the armament orders. Flick and others like him did not suddenly wake up one morning to find themselves in this desperate predicament; on the contrary, they worked themselves into it over the course of many years. We may well answer the question with another: If the defendants and others like them had not given money in furtherance of Hitler's election in 1933, if they had not curried favor with Himmler and Goering, if they had not carefully woven themselves ever closer into the economic hierarchy of the Third Reich, if they had not subordinated everything else to the maintenance of their leading positions, would they have ever found themselves faced with the problem which Dr. Kraus' rhetorical question poses?

This is a situation, in fact, which is encountered in criminal law time and time again. A succession of slips, mistakes, and minor offenses often leads a man into a desperate situation in which he is confronted with grave risks if he does not continue to walk the path of crime. Obviously, the acute dilemma which we are asked to suppose confronted these defendants would have been an even greater dilemma for Himmler or Goering or Goebbels, or anyone in the Third Reich except Hitler. Surely it is true that if Himmler had suddenly been overcome by remorse, say, in 1941, undoubtedly someone else would have stepped into his shoes and acted much as Himmler did for the remaining years of the Third Reich. And it may be doubted whether Himmler would have been allowed to settle down peaceably to repent his sins.

In short, if we are to give the defendants the benefit of the doubt and assume that they have ever felt any qualms concerning

the course upon which they had embarked, they have only themselves to blame. Dr. Kraus' question has often been asked before, and has often been answered; one answer has been given in the judgment of the International Military Tribunal: ¹

"Hitler * * * had to have the cooperation of statesmen, military leaders, diplomats, and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime."

But there is perhaps a more fundamental answer to Dr. Kraus' ethical problem. Unfortunately, this is a most imperfect world and frequently a violent world. Everywhere and every day, men and women are subjected to stress and strain and temptation and threats. It is a very lucky man who goes through life without ever being confronted with a situation where he must show some degree of courage in order to avoid behaving in a shameful fashion. During the past 8 years, countless men and women of many nations have been required to face danger and death at the risk of being held criminally answerable if they failed to meet the test. I know of no reason why these defendants should not be held answerable by the same standards that countless thousands of far more deserving men and women have measured up to.

It is, to be sure, an unhappy shortcoming of mankind that civilized standards of behavior are not self-sustaining, and that they must be continually reinforced by a system of reward and punishment. It gives no pleasure to me or, I am sure, to any member of my staff, to ask that these defendants be punished for what they have done. But the record in this case leaves us no alternative. The distinguished French jurist, M. de Menthon, has reminded us that: ²

"* * * like all ethical rules, those which should govern international relations will never be definitely established unless all peoples succeed in convincing themselves that there is definitely a greater profit to be gained by observing them than by transgressing them. That is why your judgment can contribute to the enlightenment of the German people and of all peoples."

GENERAL TAYLOR: That concludes the statement, Your Honor.

¹ *Ibid.*, Volume I, page 226.

² *Ibid.*, Volume V, page 426.

C. Extracts From the Closing Statement for Defendant Burkart *

DR. KRANZBUEHLER (counsel for defendant Burkart): Your Honors.

“The essence of war is violence; moderation during war is nonsense.” These words of English Admiral Lord Fisher in his memorandum to the First Lord of the Admiralty, Winston Churchill, dated May 1914 † might seem cynical at a time when, in reaction to the horrors of war, the use of violence is abhorred and when some forms of violence are only too easily called “criminal.” I nevertheless quote these words of the English Admiral, as they contain in the briefest form the basic principle which governs the actual practices of war.

† Quoted from *Der Handelskrieg mit U-Booten* [The Commercial War with Submarines], published by the Marine Record Office, Mittler and Son, Berlin, volume I, page 157.

Even in international law this theory hardly undergoes a perceptible weakening. To prove this I should like to refer to one authoritative source, that is, to Oppenheim. He expressed the above-mentioned principle of the English admiral in the following words:

“Victory is necessary in order to overpower the enemy: and it is this necessity which justifies all the indescribable horrors of war, the enormous sacrifice of human life and health, and the unavoidable destruction of property and devastation of territory. Apart from restrictions imposed by the Law of Nations upon belligerents, all kinds and degrees of force may be, and eventually must be, used in war, in order that its purpose may be achieved, in spite of their cruelty and the utter misery they entail. As war is a struggle for existence between states, no amount of individual suffering and misery can be taken into consideration, however great it may be. The national existence and independence of the struggling state is a higher consideration than any individual well-being.” †

† Oppenheim-McNair, *International Law*, (4th Ed., London, 1926), volume II, page 123 [not an exact quotation].

The perception of the essence of war should make one thing quite clear: If it is a matter of establishing whether a certain form or concomitant of the waging of war violates international law, the question whether an individual suffered to a small or great

* Transcript pages 10470-10571, 25 November 1947.

extent through these war measures is insignificant. The appeal to sentimentality might have its effects for political propaganda. It has, however, nothing to do with establishing facts of criminal acts.

There is one more lesson to be taken from this basic law of warfare. Any restriction of the use of violence means an exception to the rule. † According to the general principles of all legal systems, it must be clearly recognized as being such an exception, it must be interpreted restrictively, and must be proved by those who refer to it.

† See the First Rule of War by Hugo Grotius, *De iure pacis ac belli*, Carnegie Edition. Volume III, chapter I, Article 2: "In war things which are necessary to attain the end in view are permissible."

It might seem strange that such basic considerations about the law of warfare are put at the beginning of the amplifications of the defense in proceedings against industrialists, that is, against private persons. Probably not one of these defendants ever thought during the war that his activity as a businessman had anything to do with international law. It was reserved for this indictment to declare individual citizens participants in the policies of their government and to make them responsible. Due to this fact the defense is bound to concern itself with this government policy and its legality. It is not merely the facts themselves which will be of importance, but the question of how these facts appeared to a German who was not a leading politician.

After these premises I shall turn to the problem which I undertook to deal with within the framework of the defense in general, the so-called "deportation for slave labor." I do not think it is necessary to ask the Tribunal—which with patience and, I imagine with a certain surprise, followed the evidence for so many months—to dispel the mist which war propaganda spread over the allocation of foreign labor with the slogan "deportation for slave labor." I shall not occupy myself here with this propaganda slogan, but I shall examine the legal aspect of the so-called "deportation for slave labor." So-called, because here we have a conception which is a *novum* in international law and its importance calls for careful scrutiny.

The broadest interpretation of this conception would embrace any activity by which foreign workers were brought or kept in Germany against their will for work during the war. There is no doubt that the prosecution regards such a form of compulsory service as a violation of international law.

The foundation of the indictment with regard to the international law in this case is the Hague Land Warfare Convention dated 1907. From the interesting discussions in this courtroom

the Tribunal is familiar with the opinion of the defense that many regulations of this convention have become obsolete because of the developments of the last 20 years. I will, however, for the sake of the prosecution, presume that we are living in the year 1907 and on this basis view the Hague Land Warfare Convention. There you will look in vain for a regulation which forbids the compulsory service of workers outside of the occupied territory.

The indictment is based on two provisions, one of which has no connection at all and the other one only a very limited connection with this question, that is, with Articles 46 and 52. Article 46 of the Hague Land Warfare Convention states:¹

“Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. * * *”

I can see no connection whatsoever between this regulation and the conscription of labor. Article 52 says:²

“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.”

* * * * *

Two restrictions result from this regulation for the compulsory demand of services: first, only for the needs of the occupation army; and second, no participation in military operations.

What is not shown by this article is a veto against employing these workers outside the occupied territory. On the contrary, if it is practical for the belligerent nation to have work for the requirements of the occupation army performed in its home country, there is nothing in Article 52 which opposes the compulsory use of workers from the occupied territory for this purpose. This interpretation I base on the aforementioned principle, that exceptions to the unrestricted use of violence in war must be clearly formulated and proved by those who refer to them.

On the basis of the accusation, that is, of the Hague Land Warfare Convention as drawn up in 1907, there are however a number of other possibilities which justify the deportation of workers to a place outside of the occupied territory. This applies first of all to the evacuation for military reasons of that part of the population capable of bearing arms. This point of view was already of importance during the First World War, when—as is well known—Belgian workers were sent to Germany. De Watteville, an English

¹ “Treaties Governing Land Warfare,” War Department TM 27-251 (United States GPO, Washington 1944), page 31.

² Ibid., page 33.

expert of international law concedes, from this point of view, that "considerable justification" existed for these measures taken by Germany. * Similar considerations existed also in this war. In the East, especially, questions of military security played an important part in the evacuation of areas endangered by partisans,** and the persons deported to Germany for these reasons cannot, therefore, be regarded as being unlawfully deported on the legal basis of 1907.

* H. de Watteville in Grotius Society VII (1922) page 147.

** See Sauckel in Central Planning, 1 March 1944, [Document R-124], Prosecution Exhibit 81 (1769), Prosecution Document Book 3-A, Order of Chief of OKW concerning treatment of partisans as prisoners, dated 8 July 1943 [Document NI-2840], Prosecution Exhibit 246, Prosecution Document Book 4-A.

The same applies to the evacuation of men fit for military service immediately before the arrival of the Allied troops as reported by the witness Roessler, referring to Brussels. (*Tr. p. 2798.*) No military commander can be expected to leave behind him military reserves for the advancing enemy. A further vindication lies in the duty of the occupying power to maintain public order. With reference to the recruiting of Belgian workmen during World War I, the investigation committee appointed by the Reichstag in 1919 arrived at the conclusion that these measures did not violate Articles 46 and 52 of the Hague Land Warfare Convention because, in view of the history of their origin there existed no doubts "that these rights are preceded by military necessities and that the maintenance of public order and public life is a military necessity." *

* *Das Werk des Untersuchungsausschusses der verfassunggebenden Nationalversammlung und des Deutschen Reichstages 1919-1928* (Report of the Investigation Committee of the Constitutional National Assembly and the German Reichstag, 1919-28), resolution dated 2 July 1926, volume 1, page 193 ff.

For these reasons, the committee, with the collaboration of such an international authority as Professor Schucking, confirmed the right of the occupying power to deport labor under compulsion in order to avoid unemployment. Therefore, the consideration that the desire to produce labor had really been the decisive factor is irrelevant, provided the afore-mentioned viewpoint of the "public order" existed *de facto*. During this war considerable unemployment existed in some of the occupied territories, not artificially fostered as asserted by the prosecution, but as a natural result of the war. (*German tr. p. 7029; German tr. p. 6603; Doc. Burkart 758, Burkart Def. Ex. 124; Doc. Burkart 839, Burkart Def. Ex. 204.*) The decisive reasons for this fact were not under the control of the German authorities but were the sequel of Allied warfare. In the east it was due to the complete destruction of industries

by the Russians, and in the West to the inclusion of the occupied territories in the economic war, particularly by the British blockade. So far as the German measures put an end to unemployment caused by these acts of war they were also, on the basis of 1907, legal.

Yet another viewpoint must be mentioned which even according to classical international law could justify compulsory service of foreign workers. I mean here the point of view of self-defense. Particularly the Anglo-Saxon authorities on international law value the right of self-defense very highly, and consider it a fundamental right¹ which justifies unlawful acts.² Secretary of State Lansing, known as the author of the American Notes on German Submarine War during the First World War, says in his memorandum of 3 March 1915 the following:

“Of what importance is the observation of a law compared to the life of a nation? Have we the right to reproach the governments of war-ravaged Europe for their indifference to our legal rights? The conditions are extraordinary.”³

¹ Wheaton, *International Law*, 5th edition (Coleman Philipson, London 1916), pages 87 and 89.

² Oppenheim, *International Law*, 3d edition, volume II, (Ronald F. Roxborough, London), page 601.

³ Tansil, Charles Calan, *America Goes to War*, German Edition, (Stuttgart 1940) page 215.

The political and military practice, especially of England, offers us numerous examples for a very far-reaching application of the rights of self-defense, beginning with the well-known attack on the Danish fleet in the harbor of Copenhagen in 1807, up to the attack on the German supply ship *Altmark* in Norwegian territorial waters on 16 February and the destruction of parts of the French Fleet in Oran harbor on 3 July 1940. The judgment of the IMT expressly recognizes this right and, for instance, examines the occupation of Norway from the viewpoint of whether this act was justified as a measure of self-defense.* If, therefore, even a war as such can be justifiable as an act of self-defense, this applies to an even higher degree to individual measures in time of war if they are indispensable for relieving an emergency.

The conscription of foreign workers started on a large scale in late 1942 and early 1943. At that time Germany was actually at war with three major powers, namely the United States, Great Britain, and U.S.S.R. Is there, then, really any need to explain the fact that Germany, severed from all overseas connections, and devastated in an ever-increasing manner by inexorable air raids,

* Trial of the Major War Criminals, *op. cit.*, “The Invasion of Denmark and Norway,” volume I, pages 204-209.

was in a desperate situation and had to make the greatest exertions in order to avert the collapse of the front line in the east, a collapse the beginning of which is connected with the ominous name of Stalingrad? This fate of an inundation of Germany by the Bolshevik armies was a dreadful menace to the existence, not only of the State, but also of every individual. If there are states of emergency at all which justify measures of self-defense, then such a state of emergency was existent to an ever-increasing extent from that time onward.

Neither is it a fabrication *ex eventu* if we consider this threat to Germany from the east as the starting point of the recruitment of foreign labor.

The prefaces to the basic decrees and ordinances on the employment of foreign workers time and again point to the inevitable necessity of protecting German territory and the whole of Europe against the Red flood.* In view of the events which have occurred in the east since the capitulation of Germany, who would dare to say that the fears of that time were unjustified or exaggerated?

* See memorandum concerning the general principles for the treatment of foreign workers, Document Burkart 680, Burkart Defense Exhibit 48.

It may be argued that the attacker could never claim the right of self-defense. Be this correct or not, even the IMT judgment states that of the wars with the United States, Britain, and the Soviet Union, only the last could be classified as a German aggressive war.¹ The conflict with the United States, however, is simply described as war;² that with Great Britain is passed over in silence. Thus in the case of those two countries, the right of self-defense was given. To be sure, the IMT did not give credence to the official German version that it was a case of a necessary preventive war with the Soviet Union but the German people had no access to the documents which were available to the IMT, top secret records and memoranda. They only saw what was obvious at the time: the invasion of Poland by the Soviet Union in September 1939, the attack on Finland in November 1939, the invasion of the Baltic states and the military occupation of Bessarabia and the Bucovina in June 1940. Why, in the face of these facts, should the people doubt that Germany would be the next victim? Why should they suppose that Hitler would unnecessarily start a war on two fronts, which he himself had always described as madness? The individual citizen—and here citizens, not statesmen, are accused—must be credited with looking upon the Russian campaign as an act of self-defense, and he cannot be blamed when

¹ Trial of the Major War Criminals, op. cit., "The Aggressive War Against the U.S.S.R.," volume I, pages 213-215.

² Ibid., "War Against the United States," pages 215-216.

things were different in actual fact from what he knew and assumed.

All my previous deliberations have been based on the Hague Land Warfare Convention as the prosecution sees it, i.e., according to the historical situation of 1907, and I assert that even on this basis the conscription of foreign labor in the Reich from 1942 on had to be considered justified in the eyes of a German private citizen. I should now like to abandon the basis of the prosecution and to appraise the Hague Land Warfare Convention as it must be appraised today, 40 years after its birth.

It should not be necessary to waste a single word in this courthouse in stating that international law is constantly developing. Justice Robert H. Jackson, the Chief Prosecutor for the United States before the IMT, in his report to President Harry Truman concerning the prosecution of the war criminals, states as follows on this subject, and I quote:

“Unless we are prepared to abandon every principle of growth for international law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a newer and strengthened international law. International law is not capable of development by legislation, for there is no continuously sitting international legislature. Innovations and revisions in international law are brought about by the action of governments designed to meet a change in circumstances. It grows, as did the common law, through decisions reached from time to time in adapting settled principles to new situations.”¹

The IMT associated itself fully with this concept and stated on the subject as follows, and I quote:

“The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts. This law is not static but by continual adaptation follows the needs of a changing world.”²

Adaptation to the needs of a changing world—that is also the function of international law and the laws of warfare especially. Thus whoever wants to form a judgment as to which actions correspond to the laws of warfare cannot do so merely by consulting old treaties, but he needs to study thoroughly the exigencies of war and the actual practice of war up to its latest development.

There is hardly a more striking example of the dynamics with

¹ Report dated 6 June 1945.

² Trial of the Major War Criminals, *op. cit.*, volume I, page 221.

which the law of war develops, above and beyond treaties, through actual practice than the Law of Naval Warfare. As late as November 1936 the great naval powers under English leadership concluded a treaty concerning the rules of submarine warfare, and only 4 years later these rules were already ineffective because both parties disregarded them in practice. This is the result of the findings of the IMT when it examined the charges against Admirals of the Fleet Raeder and Doenitz of violating the rules of warfare.* If, in view of the practice of war, the IMT saw fit to declare inapplicable a treaty only 4 years old at the outbreak of war, how much more cause is there for this Tribunal to examine the question as to whether the Hague Convention, which dates back more than a generation, really corresponds to the requirements which are a consequence of the development since that period.

The Hague Convention of 1907 is based on the necessities of war in the light of the experiences of the second half of the 19th century, and on the moral and political ideologies of a world essentially liberal and bourgeois. These two fundamentals of the Hague Convention have quite obviously changed completely.

Let me start with the first fundamental, the exigencies of war. The Hague Convention allots them a dominant part, † but it does not by any means designate them as “exigencies of war” as we would call them today, but “military necessities.”

¹ Hague Land Warfare Convention Preamble, No. 6.

This distinction is not accidental but significant, for the Hague Convention, which originated under the dominant influence of the continental major powers, Russia, Germany, and France, is based on the continental conception of war as a conflict solely between military forces of the opponents. A much-quoted decision of the Reich Supreme Court formulates this principle at the beginning of the First World War as follows. I quote:

“The German concept of international law is far removed from that of certain foreign legal codes, namely that war is to be conducted in a way to cause the severest economic damage possible to the enemy countries involved * * *. Rather the principle is held valid that war is conducted only against the enemy state as such and against its armed forces.” †

† Entscheidung des Reichsgerichts in Zivilsachen, [Ruling of the Reich Supreme Court in Civil Matters] 26 October 1914, volume 85, page 374 ff.

The Anglo-Saxon world has never recognized this continental concept of war. In its view, war is directed not only against the

* *Ibid.*, pages 810-817.

enemy state and its army, but against every enemy national. † There can be no doubt that the Anglo-Saxon concept of war as a fight between the people, down to the last individual, has prevailed. I doubt whether this is progress, but it is a fact. Because of this fact, a direct influence of warfare on the civilian population has arisen, such as would have been quite unimaginable in the year 1907. The example which was most discussed in Germany, and probably in Japan also, is air warfare. To be sure, it has been attempted again and again to represent the attacks on civilian populations as the bombing of military objectives. No one who has experienced such attacks will believe that. An attempt has also been made to enlist the aid of a "new interpretation" of the Hague Convention. In the light of this "interpretation," industrial towns are regarded as "defended" in the meaning of Article 25 of the Hague Convention, and civilian workers classed as combatants. ‡

† Oppenheim-McNair; International Law, 4th edition (London 1926); page 119.

‡ Report on the International Juridical Status of Individuals as "War Criminals." Prepared by the Inter-American Juridical Committee, Washington, 1945, page 7.

All these are attempts at excuses which miss the crux of the matter. The crux of the matter lies in the "totalitarian character of modern warfare," which regards enemy economy and the civilian population as targets of attack and thereby considers the effects of war upon them as a legal means of combat. †

† Baldwin's statement in the House of Commons, 10 November 1932. Compare also statement of the U. S. General Eaker and the British Air Marshal Trenchard; 8th German White Paper; Dokumente ueber Englands Alleinschuld am Bombenkrieg gegen die Zivilvoelkerung, 1945, No. 4, 101 and 1083. [Documents Concerning England's Sole Responsibility for the Air Bombardment of the Civilian Population.]

One will try in vain to find anything concerning these matters in the Hague Convention. Nor is anything to be found there about propaganda warfare which, especially since the invention of radio, has become a dangerous weapon of war and is likewise directed above all against the enemy civilian population with the aim of undermining its morale. No one will believe that this type of warfare can be judged according to the rules of the Hague Convention, and, for instance, put the transmission of news, using the name of an enemy sender as the source, on the same level as fighting under false colors or in enemy uniform. New types of warfare simply develop their own laws in adaptation to the "needs of a constantly changing world."

In no sector of warfare, not even in air warfare, has this change been so fundamental and fateful as in that of economic

warfare. This was an unknown concept in 1907. In 1939 the British Empire, on the very first day of the war, already had a special Ministry for Economic Warfare. The importance of this branch of warfare can hardly be overestimated, and this not only in its immediate effects during the war, but also in its effect on the domestic and foreign policy of states even in peace. The British economic war against Germany during the First World War opened the eyes of many states to the danger threatening their independence from that side, and thereby became the immediate cause of the striving for economic autarchy, which so extensively and unfavorably affected world trade, † and was perhaps the greatest cause of the Second World War.

† Scheuner: Die voelkerrechtlichen Auswirkungen des modernen Wirtschaftskrieges, Zeitschrift fuer die gesamte Strafrechtswissenschaft. [The Effects of Modern Economic Warfare on International Law, Journal for the Entire Criminal Jurisprudence], volume 104, 1944, page 237.

The aims of economic warfare have been formulated by an English writer as follows. I quote:

“To promote the greatest unhappiness of the greater number among the enemy people without actually slaughtering them—so far as they are non-combatants. To starve them, to reduce them to poverty, to force them to wear sackcloth and to drink gall, are its aims.” † ‡

† J. M. Spaight, *Aircraft and Commerce in War*, London 1926, page 8.

‡ George F. S. Bowles writes in similar vein in “England’s Strength”, Vieweg Publishing House, page 192.

The same author states that economic war is regulated insufficiently in the existing provisions and that of necessity the existence of economic warfare must be recognized as an essential part of war, and on an equal footing with armed warfare. †

† Spaight, *op cit.*, pages 11-19.

This recognition, which might have been discussed in the period between the First and the Second World War in judicial literature,¹ prevailed immediately and as a matter of course in the Second World War. Economic war is accepted as a factor even though some of its effects are accompanied by protests of the power detrimentally affected thereby.² Thus if it is established that it is one of the aims of economic warfare to destroy the commerce and industry of the enemy, then those measures, such as the forced conscription of workers, which are necessary to counteract these aims, fall under the laws of economic warfare.

¹ J. L. Kunz, *Kriegsrecht und Neutralitaetsrecht*, [The Law of War and the Law of Neutrality], Vienna 1935.

² Zeitschrift fuer auslaendisches oeffentl. Recht und Voelkerrecht [Journal for Foreign Public Law and International Law], volume X, 1940, page 422, re. protest by Soviet Union to British Government, Moscow, 10 December 1939, against the embargo on exports from German seaports.

Economic warfare and forced labor are essential partners. It is no mere coincidence that the same man who, in 1914, demanded from the German General Staff preparations for war in the economic field, should also be the first to conceive the idea of conscripting foreign workers for Germany, thereby instigating the conscription of Belgian workers during the First World War. It is because the prosecution sees in such things an expression of Nazi ideology that I point out that the man who originated these ideas in the First World War was the German patriot and Jew, Walther Rathenau.³

³ "Tragische Erinnerung" in "Die Gegenwart" ["Tragic Memory" in "Our Times"], No. 36/37, of 30 June 1947, pages 14-15.

The whole question of compulsory conscription of workers for allocation in the industry or agriculture of a belligerent state, is, then, a problem of economic warfare, and as such is not provided for in the Hague Convention any more than any other problem of economic warfare. It would also be hopeless to try to solve this problem with the aid of article 52 of the Hague Convention. For this article deals with the services of "coachmen, blacksmiths, and carpenters." †

† Albert Mechelynck, *La Convention de la Haye concernant les lois et coutumes de la guerre sur terre d'après les actes et documents des Conférences de Bruxelles de 1874 et de la Haye, de 1899 et 1907*, Gent, 1915, page 369. [Albert Mechelynck, "The Hague Convention On Land Warfare according to the Acts and Documents of the Conferences of Brussels, 1874, and the Hague, 1899 and 1907," Ghent, 1915, p. 369.]

Would it not be the interpretation of a Shylock to see in that the rules according to which the struggle to be decided by war between the productive potentials of major powers is to be fought? One may argue with me that in its own provisions of the so-called Martens clause in the preamble the Hague Convention has indeed provided against the event of not containing a comprehensive ruling on all possibilities of warfare. For the judgment of events which are borderline cases in contractual international law or which move in unexplored spheres of international law, this clause refers to the principles of international law, and I quote:

"as they emerge from the established customs prevalent among civilized peoples, from the laws of humanity, and from the demands of public conscience."

The reference to the laws of humanity and the demands of public conscience has certainly lost importance at a time when the foundations of Western civilization, uncontested in 1907, are by no means any longer generally recognized. †

† Report on the International Juridical Status of Individuals as "War Criminals." Prepared by the Inter-American Juridical Committee, Washington, 1945.

In spite of this change, the Martens clause still retains its significance as a guarantee for certain human rights which are—or at least ought to be—generally recognized. In this respect this clause contains a basic principle of the Hague Convention, for, this order is nothing other than the attempt to safeguard, as far as military necessities permit, the human rights of the individual between the fighting forces. † An examination of the portent of the Martens clause in regard to certain acts of war involves, of necessity, an examination as to whether that act constitutes a violation of the laws of humanity. Here again it is not the public conscience of 1907 which is a deciding factor, but that of our present time, and it looks entirely different today as compared with 40 years ago, especially in regard to conscription of labor.

† Laun, *Die Haager Landkriegsordnung* [The Hague Convention], Hamburg, 1946, page 25.

In 1907 compulsion by the state for the performance of certain types of labor would have evoked a storm of indignation as a severe infringement of the principle of personal liberty. Since then, people's attitude towards this problem has greatly changed under the pressure of economic and political exigencies. I have submitted to the Tribunal the documents dealing with that development. In Germany, it starts with the "Vaterlaendische Hilfsdienstgesetz" (Patriotic Auxiliary Service Law) of 1916 † and, by way of several ordinances of the period of the Weimar Republic, leads to the comprehensive registration of all persons fit for labor in the Third Reich. (*Burkart 601, Burkart Ex. 1; Burkart 605, Burkart Ex. 2; Burkart 606, Burkart Ex. 3; Burkart 872, Burkart Ex. 208; Burkart 870, Burkart Ex. 209.*)

† For similar laws of other countries waging war see Oppenheim-McNair, *International Law*, London 1922, pages 121-122.

In the Soviet Union, the duty to work is anchored in the constitution, extended in a number of laws, to cover all its nationals, including women and juveniles, for absolute compulsory service (*Burkart 609, Burkart Ex. 6*).

In France, for national defense purposes, compulsory labor was instituted even before the war, and was applied even to foreigners (*Burkart 608, Burkart Ex. 5*). Type and place of work are solely dependent upon public requirements. Even those states which in peacetime displayed no tendencies in that direction, assumed the right to exercise compulsory labor in wartime. The position did not change much after the war, not even in the States, which, by virtue of their wealth, could best afford to pursue a liberal economy. The limitations imposed on the right to strike in the United States through the Smith-

Connally Act, and compulsory labor in important industries in England through the Control of Engagement Order show how the conception of personal liberty has undergone a change even in those countries. †

† E.g., England, by Defense Regulation No. 58. Compare also Allan G. B. Fischer, *Economic Progress and Social Security*, London 1946, quoted by "Neue Zuercher Zeitung" No. 353, of 23 February 1947.

The problem of compulsory labor has presented itself with ever-growing urgency since the First World War. It is not a German invention but a world problem. Shall an occupied territory be the happy island from which the occupation power must keep all the problems not known in 1907? We Germans wish it were so today, but we cannot believe it.

This development of the conception of the right of personal freedom taking place within the states cannot fail to influence the relations between the nations. For the Hague Convention Concerning Land Warfare does not intend, during a war, to put the enemy national in a better condition than the enemy's own state, but it only wants to prevent him being put in a worse position. The conceptions developing within states regarding the meaning of human rights do, therefore, have a direct and practical effect on the relations with the outside, since they make the public conscience insensitive to certain restrictions of personal liberty.

Here too, I am not speaking of theory but of practice. Immediately after the invasion of German territory, the Soviet Union deported the population to Russia for compulsory labor (*Burkart 618, Burkart Ex. 8*). In Germany nobody was astonished at that since it was generally known and discussed in the German newspapers already in 1943, that the Allied statesmen had the intention of forcibly using German workers for purposes of reparation outside the frontiers of the Reich (*Burkart 615, Burkart Ex. 9*). This intention assumed concrete form in the Morgenthau Plan which, in 1944, President Roosevelt took with him as a basis for the negotiations at the conference of Quebec. The provision which is of interest here, reads:

"Restitution and reparation shall be effected * * * by forced German labor outside Germany;" †

† *Germany Is Our Problem* by Henry Morgenthau, Jr., Harper Brothers, Publishers, New York and London.

This clause was included in the secret protocol of the Yalta Conference of February 1945 in the following form, and I quote (*Burkart 617, Burkart Ex. 7*):

“Germany has to pay reparations in threefold form:

(a) * * *.

(b) * * *.

(c) Use of German workers.”

The Proclamation No. 2, of the Control Council dated 20 September 1945, corresponds to this agreement. This proclamation orders in section VI, subsection 19a:

“The German authorities will carry out for the benefit of the United Nations such measures of restitution, reinstatement, restoration, reparation, reconstruction, relief, and rehabilitation as the Allied representatives may prescribe. For these purposes the German authorities * * * will provide * * * labor, personnel, and specialists and other services for use in Germany and elsewhere * * *.” (*Burkart 621, Burkart Ex. 10*).

The legal basis for such compulsory conscription of the German population is created in Control Council Law No. 3, dated 17 February 1946. (*Burkart 607, Burkart Ex. 4*.) This order establishes compulsory service for all men able to work, in the age group of 14 to 65, and for all women able to work, in the age group of 15 to 50. The labor offices are empowered to direct these persons by force to certain places of work. Disobedience against this order is punished by imprisonment and withdrawal of the food ration card, a measure which the prosecution before the IMT stigmatized as being especially inhuman.

Today, on the basis of these laws, forced labor is being carried out for the Occupying Powers in all four zones of occupation in Germany. Moreover, the Soviet Union claimed, on the basis of this provision of the Allied Powers, the right to deport German workers by force to the Soviet Union and has made use of this right in innumerable cases with the knowledge and connivance of the three other Occupying Powers.

I still have to refer to one other fact which casts a light on the relation between compulsory labor and human rights in modern state practice. I mean the retention of the German prisoners of war for economic reasons. As the Tribunal has rejected all evidence I offered in regard to this point, I only can point out the things which are generally known. With the exception of the United States, the same Allied Powers which issued Control Council Law No. 10, 2½ years after the cessation of all hostilities, still retain more than 2 million German prisoners of war, and this for compulsory labor for economic reasons, be it the mining industry in France and the Soviet Union, or the gathering of the harvest in Britain.¹ Of course there are politicians, as for instance a few British members of Parliament,

who term these things as "utterly wrong and utterly immoral." ¹ But the governments do not share this conception of right and moral, and, unfortunately, it is according to the actions of governments that the actual contents of international law are determined.

¹ Lord Pakenham in *The Times* of 13 February 1947, on the question of the repatriation of war prisoners.

² James Hudson in House of Commons Parliamentary Debates, Weekly Hansard, No. 47, 21-27 March 1947, pages 1035-1036. Monday, 24 March 1947.

The prosecution does not like hearing such arguments from modern times, and they want to persuade us that none of the Allied measures in Germany after the capitulation of May [1945] allowed of any conclusions as to the duties imposed by international law before this period. This argument fails in the first place because the Morgenthau Plan and the Yalta Agreement were made before the German capitulation; but apart from this fact such an argument seems strange in the mouths of representatives of a nation which has written on its flag and declared as its war aim the carrying out of true international law. Should not precisely the time since the capitulation, when no enemy any longer resists the implementation of international law, be the most suitable to recognize this law?

Three statements are being produced in support of this thesis that any conclusion drawn from Allied measures after the capitulation as to the true position of international law is unjustified. It is said that Germany as a state no longer exists; it has no government and by her unconditional surrender has waived all rights. Let me comment on this in brief.

The legal aspect of states is dominated by the principle of continuity. The change of an existing legal state must clearly manifest itself in some exterior form. A state, least of all a world power, with a centuries old history does not, as it were, secretly disappear from the concert of nations. It is true that the victorious Allied Powers had the possibility, one by one, or altogether, of annexing Germany. However, they did not do that, maybe in remembrance of the Atlantic Charter. In the declaration of the four Allied Supreme Commands of 5 June 1945, in which their taking over of this supreme power in Germany is announced, it says, and I quote:

"The taking over of this supreme power and sovereignty for the above-mentioned purposes does not effect the annexation of Germany."

In the meantime numerous government declarations have been made on the part of the Allies and neutrals confirming

Germany's continued existence as a state.¹ Likewise there are already a series of national and foreign legal decisions² to the same effect.³

¹ For example: declaration by British Foreign Office, "The Times", 4 April 1946.

² For example—Zuerich Supreme Court, 1 December 1945, *Deutsche Rechtszeitschrift* [German Legal Journal] 2d year, volume 1, January 1947, page 31.

³ Compare quotations from: F. A. Mann, London, in the *Sueddeutsche Juristenzeitung* [South German Legal Journal], 20th year, No. 9, September 1947, page 468; Ernst J. Cohn, London, in *Monatsschrift fuer Deutsches Recht*, [Monthly Journal for German Law], 1st year, volume 6, September 1947, page 178.

But if Germany as a state continues to exist, then the present regime is an occupational regime, and, as long as the state of peace is not restored, is no less subject to the regulations of the Hague Convention than was the German occupation before the capitulation. It is alleged now that the rights of the military government exceed those of an occupation power because there is no German Government capable of action. That seems quite incorrect to me. The government of a belligerent country which is occupied only in part never has any sovereignty in the part occupied.

In such a regular case of occupation the occupying power always bears full responsibility for seeing that the needs of the population are considered in all branches of administration. Neither has a military government in Germany any need to do more than that. Moreover, the last German Government, the Doenitz Cabinet, did not dissolve on its own initiative, but was arrested by the Occupying Power on 21 May 1945 and was therefore actually prevented from carrying out its functions. † If it were to be conceded that an occupying power can lawfully widen its functions by such a measure, the door would be opened to any circumvention of the Hague Convention Concerning Land Warfare.

† See aforementioned decision of the Zuerich Supreme Court of 1 December 1945.

I still have briefly to refute the error that "unconditional" surrender as such empowers a victorious nation to arbitrary action in the occupied territory. If that were to be recognized it would have to be valid also for Germany's relation with Holland and Belgium, whose armies had likewise unconditionally surrendered. In both cases "unconditional" only means that in the capitulation no particular conditions in favor of the vanquished were established. There can be no question of a complete or partial abolition of existing international law through unconditional surrender.

The assumption is therefore not justified that the present occupational regime in Germany does not allow any conclusions as to the law of occupation according to the Hague Convention. On the contrary this law is still valid, naturally with those alterations which the change in international law since 1907 has necessitated in general. Even those who want to contest this fact † will at least have to confirm the regulations which serve to protect the inalienable human rights, especially therefore article 46—quoted so often by the prosecution—on respecting the honor and the rights of the family, the life of the citizens and private property.

† As for example, Mann and his thesis concerning the rights of an occupying power.

This is what results from a survey of that development. In the past decades the conception of personal liberty has undergone a change resulting in compulsory labor being regarded as a legitimate measure in all states. From its national origin, this development has spread to international relations. The use of compulsory labor by Germany corresponds to the plan, conceived by the Allies not later than 1943, of using German workers in Allied territory under compulsion. This intention, formulated in the Morgenthau Plan and accepted by the Yalta Agreement, became law and was acted upon in occupied Germany under Proclamation No. 2 and Control Council Law No. 3. Unless one wanted to impute a deliberate neglect of international law to the four Allied major powers, their attitude must necessarily lead to the conclusion that they do not regard the drafting and deporting of labor from an occupied territory as a violation of the Hague Land Warfare Convention and of the rights of man, during hostilities any more than today.

It is even necessary to go one step further. If compulsory labor is to be permissible today, that is at a time when hostilities have actually ceased, it was all the more so in an epoch when war was still raging on both sides and, as Oppenheim puts it: *

“No consideration can be given to the suffering and misery of the individual, however great that may be.”

The legal position of the civilian population during actual hostilities marks the utmost of restrictions the individual is called upon to endure because of the violent clash between two nations. This legal state during actual hostilities must be regarded as the minimum under international law. After the cessation of hostilities it cannot deteriorate, but only improve. Therefore, a

* Oppenheim-McNair, *op. cit.*, volume II, page 123, (not an exact quotation).

measure which was warrantable during hostilities may be unjustifiable today, but certainly not the other way round.

The following is the result of this inquiry: The Hague Land Warfare Convention lays down the rules, applicable for the encounter of two armies. It contains no provisions for the economic warfare as part of which the armament race and the mobilization of labor are to be regarded. This novel type of warfare has its limits only in the principles of humanity and the rights of man as generally accepted. The drafting to work by governmental compulsion in most places where labor is needed does not, by the standards which generally are accepted today, signify a violation of the rights of man. A belligerent power, therefore, is at liberty to use manpower from an occupied territory to the extent, and in the place, as and where the necessities of economic warfare dictate it.

How, then, can this conception be reconciled with Control Council Law No. 10 which the prosecution also uses as a legal basis of its charges? I need not discuss here the grave objections which have been raised against this law, as a whole and in its separate parts, by reason of its violations of international law and the accepted principles of the penal law of all civilized nations. On the contrary, I wish to submit that the law is in force, and, moreover that it is binding for this American Tribunal, or can at least be applied by it, for it would appear that Control Council Law No. 10, in dealing with war crimes proper—in contrast to crimes against peace and humanity—shows a tendency to keep within the framework of international law as generally accepted. Article II paragraph 1 (b), dealing with this subject reads in the authentic English text, and I quote:

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

* * * * *

(b) *War Crimes*, Atrocities or offences against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment, or deportation to slave labour or for any other purpose of civilian population from occupied territory, murder or ill treatment of prisoners of war * * * .”

According to this provision, war crimes must constitute a violation of the laws and customs of war for one thing. Now, if it is an established fact, and I think I have proved it to be so, that the conscription of manpower for work outside an occupied territory is permissible according to the legislation and practice of all the belligerent major powers, then no violation of laws and customs of war, and consequently no crime under Article II of Law No. 10 has been committed. Nor does this statement mili-

tate against the fact that deportation to slave labor has been incorporated into the law as an example of a war crime. Such contradiction, be it noted, would arise only if we were to regard labor conscription and deportation to slave labor as identical conceptions. Such an intention cannot be imputed to the Control Council, and it would certainly object to having the above quoted provisions of Control Council Proclamation II [sic] interpreted as directives for deportation to slave labor. Unless we attribute to the wording of Control Council Law No. 10 a deliberately propagandist and therefore juridically wrong intention, it must be interpreted as it is understood by common usage.

In the German text, the English word "deportation" is rendered as "Zwangverschleppung." Many will associate this term "deportation" with the idea of penal settlements, such as Cayenne, and whoever has watched, in the early dawn, the long column of convicts, as they were being marched, manacled together under heavy police escort, to the embarkation point in the port of Marseilles, will have rather a vivid idea of what the word "deportation" means. I imagine the prosecution, too, shares this view, for in its opening address it emphasized that the bulk of the 5 million foreign workers, of whom only 200,000 had come to Germany voluntarily, the remainder, that is, 4.8 millions, "had been rounded up in manhunts during which houses were burnt down, churches and theaters combed, children shot, and families broken up by the SS and other 'recruiters'." (*Tr.* p. 65-66.)

If, and to the extent that that is true, I should also regard it as a deportation within the meaning of Control Council Law No. 10. On the other hand, according to the wording of Control Council Law No. 10, and the interpretation which the prosecution gave to it in its opening address, the mere use of compulsion by laws and decrees does not come under the heading of war crimes, for by this interpretation deportation means a hauling off by use of physical force or by arbitrary and brutal methods.

We shall examine the results of the evidence presented in court as to whether and to what extent a deportation within the meaning of Control Council Law No. 10 is proved at all.

The second element of a war crime, under section 10, is slave labor. Here, too, I cannot impute to the legislator an intention to disseminate a juridically wrong slogan for reasons of propaganda. We must, therefore, take this term "slave labor" seriously and examine its meaning in legal usage. In the official German translation "slave labor" is rendered by "Zwangsarbeit" in this passage. The same term, "Zwangsarbeit" occurs

in another passage of the law. According to Article II paragraph 3 (b), a term of imprisonment with or without hard labor [mit oder ohne Zwangsarbeit] can be imposed as punishment. The official German translation then is based on the assumption that forced labor of a deportee is the same as the hard labor of a convict. By the term "slave labor" the authentic English text obviously wants to convey that the work of a deportee is supposed to be even harder, and his legal position even more miserable than that of the convict sentenced to hard labor.

Slave labor under Article II of Law No. 10 is, then, not by any means the performance of work under normal conditions shared by all workers, but a very drastic degradation reducing the worker to the level of a convict, if not lower. The result then is that, even under Control Council Law No. 10, the drafting of foreign workers in an occupied territory and the allocation for work in the territory of the occupying power does not in itself alone constitute a war crime. It is only by going beyond the necessities based on the development of economic warfare by brutal acts in drafting the workers, or by making them work under inhuman conditions, that the characteristics of a punishable fact are given, as it is defined in Control Council Law No. 10 by the terms "deportation" [Zwangsverschleppung], and "slave labor" [Sklavenarbeit].

Up to this point I have followed the prosecution in its view inasmuch as it makes no distinction between any of the annexed or occupied territories and regards the legal position of the populations involved as identical. To me, such a view appears to be most superficial. The legal relations of all these territories with the Reich varied considerably. Because of lack of time I cannot furnish proof of this for all countries from which manpower was drafted to the Reich, so I will restrict myself to quote as examples those from which witnesses were presented to this Tribunal by the prosecution.

First, let us consider Czechoslovakia. She was occupied by German troops on 15 March 1939 without opposition on the part of the Czechs. In a "solemn agreement" signed on 15 March 1939 by the German Reich Chancellor and the German Minister of Foreign Affairs on the one hand and the Czech President of State and the Czech Minister of Foreign Affairs on the other, the Czech Government "trustfully laid the fate of the Czech nation into the hands of the Fuehrer of the German Reich," (*Burkart 638, Burkart Ex. 12*).

While on the very same day German troops marched in without meeting opposition, the newly created Protectorate of

Bohemia and Moravia was incorporated as an autonomous part of Greater Germany by decree of 16 March 1939. † That being so, it is hard to see any basis at all for the application of the Hague Land Warfare Convention.

† Reich Law Gazette I, 1939, page 485.

In the light of our present knowledge, there can be no doubt that the agreement of 15 March 1939 came into being under considerable pressure. However, precedents are lacking for the assumption that agreements brought about under pressure should be null and void. Before the International Military Tribunal, at any rate, any reference to a similar point of view in connection with the Treaty of Versailles of 1919 was strictly prohibited. And the cession to Germany of the Sudetenland by Czechoslovakia, for that matter, was not a voluntary one either, but brought about under pressure, the only difference being that the pressure was exercised not only by Germany, but by Great Britain, France, and Italy as well in this case. Most recent history also knows of cession of territories under pressure, as for instance the cession of Bessarabia and Bucovina by Rumania on the basis of the Russian ultimatum, and the occupation of the Baltic republics by Russia on the basis of the demands of June 1940 presented in the form of ultimatums.

In the case of such changes of territories, one government or the other may indeed, for the time being, deny recognition of the new state of affairs. The normal course of things, however, would be that after a certain conventional period a *de facto* recognition would take place, to be followed sooner or later, according to the political conditions in the countries involved, by a *de jure* recognition. The Protectorate of Bohemia and Moravia, too, had been recognized *de facto* by Great Britain on 19 June 1939 through the appointment of a Consul General in Prague. † Similarly, through the instrumentality of commercial treaties, in any case, a partial recognition was accorded by the United States. ‡ As regards relations with the Soviet Union, one cannot but regard the boundary and friendship agreement of 23 August 1939 as a *de jure* recognition of the then existing German demarcation of frontiers.

† Parliamentary Debates (Hansard) House of Commons, Official Report of 19 June 1939, page 1782.

“The step taken implies *de facto* recognition of the present position in Bohemia and Moravia.”

‡ Press Releases, Washington, 18 March 1939, page 200.

Under these circumstances, therefore, it is legally untenable to judge the relations between Germany and the Protectorate by occupation law. † How much less could a private German citi-

zen ever conceive the idea that some day a court would rule that all laws issued for Bohemia and Moravia were null and void, and that only the Hague Land Warfare Convention was valid. How could that ever occur to him, considering that he was ignorant of the pressure which had been brought to bear? According to the news releases available to him, in particular the announced agreement between the respective governments and the Fuehrer proclamation of 16 March 1939 (*Burkart 639, Burkart Ex. 13*), he could have only one view, namely, that the concluded settlement took place in agreement with the lawful Czech Government and served the peaceful solution of a difficult political and economic problem created by the Versailles Treaty.

† Professor Julius Merkl, Germany and the Constitution of the UN under the Aspect of International Law. *Deutsche Rechtszeitschrift* [German Legal Journal], 1947, volume III (March).

I now turn to France. The drafting of French workers for work in the Reich was based not indeed on German regulations but on the laws and decrees of the French Government of 16 February 1943 and 1 February 1944 (*Burkart 646, Burkart Ex. 19; Burkart 648, Burkart Ex. 21*). The prosecution calls this government a puppet government whose acts were, of course, meaningless from the aspect of international law. In its judgment against Field Marshal Milch, Military Tribunal II took a similar view in a form which does not suggest that the Tribunal probed deeply into this question. In actual fact, the state of things was this: Even before the military defeat of France, the French National Assembly convened in Bordeaux to deliberate on a revision of the constitution. With the majority required for a revision of the constitution, the appointment of Marshal Pétain to the office of Chief of State with special powers was carried. This resolution of the National Assembly was announced by the then President of the Republic, Lebrun, on 10 July 1940, and had thus all the characteristics of a lawful act of the legislative power. Based on the powers thus accorded to him, the Marshal formed three cabinets as the years passed by, first with Laval, then with Darlan, and again with Laval. The seat of the French Government was in Vichy, that is, in unoccupied territory up to 1942. The origin of the Petain government, the personality of the Marshal and the territorial independence of the unoccupied part clearly refute the thesis of a German puppet government.

If, however, this thesis is used to deprive the acts of the Vichy government of any national and international force, the effect cannot but be a grotesque one, when we think how many govern-

ments maintained diplomatic relations with Vichy (*Burkart 866, Burkart Ex. 210*).

In 1942, no less than 43 countries maintained relations with the Vichy government, among others, Your Honors, the representatives of your own country, the United States of America. Do you demand of these defendants that they disregard the actions of a government to whom President Roosevelt accredited an ambassador? Diplomatic relations between the United States on the one hand and the Vichy government on the other, existed right until the time that American troops landed in French North Africa. If, at the time, the United States had recognized a French government other than the one in Vichy, it should have been fitting for them to have referred to that government's permission when entering French territory. This, however, did not happen. The proclamation issued at that time, is, as has been pointed out correctly by Wendell Willkie, † extremely similar to German proclamations of the same nature issued at the time of the invasion of Holland and Belgium. This could not have been otherwise as, after all, there was but one French government and that was the one of Vichy. In a sense, this has also been recognized by the prosecution itself, however only in cases where the Vichy government registers its protest against German measures, and not where it agrees to them.

† "The President * * * gave as a reason the same age-old, worn-out diplomatic formula that has never fooled anyone, certainly not Belgium and Holland when Hitler entered their territories and gave a similar reason: 'In order to forestall an invasion of Africa by Germany and Italy, which, if successful, would constitute a direct threat to America across the comparatively narrow sea from western Africa, a powerful American force * * * is today landing on the Mediterranean and Atlantic coasts of the French colonies in Africa.'" Wendell L. Willkie, *One World*, New York 1943, page 175.

If, during the course of the trial, the prosecution has asked of this or that defendant whether or not he was aware of the existence of the forces of General de Gaulle, such a question is of no importance whatsoever to the legal position of the Vichy government.

During the whole of 1943, it was as everyone knows, quite a debatable question whether General de Gaulle or General Giraud was to be entrusted with the formation of a future new French Government in exile. During the fall of 1942, General Eisenhower offered this post to Admiral Darlan, the former deputy of Marshal Petain, who was however assassinated and so dropped out of the race. †

† Capt. Harry C. Butcher, *My Three Years With Eisenhower*, 1942-45. Overseas Edition for the Armed Forces, pages 79, 93-94.

As late as 1944, General de Gaulle was still forbidden by the Allied Command to step upon French soil. Only at the end of October 1944 was the Provisional Government headed by de Gaulle recognized by the Allies. †

† Europe Archives, Frankfurt, dated June 1947, page 637.

As is shown by this survey, according to internationally recognized principles of law it is indefensible not to recognize the laws promulgated by the Vichy government as those of the legitimate French Government. It does not affect the legal point of view and is actually incorrect to assert that the Vichy government acted under the pressure of Germany. † The Tribunal has been in a position to ascertain from the documents submitted and from the testimony of Ambassador Schleier what a dreary and difficult procedure it was to negotiate afresh each time; how the French Government always insisted on concessions being granted to them as well (*RF-1509, Pros. Ex. 789*), and how they eventually did not accept many things despite pressing German demands, as, for example, the employment of French women in the Reich territory.

† See the "Message of the Swiss Members of the Federal Council to the Meeting of the Federal Council Concerning the Ratification of the Financial Agreement Concluded in Washington, of 14 June 1946."

One, therefore, cannot just ignore the existence of an internationally recognized, legitimate French government. The laws promulgated by it are in no way subject to the ruling of the Hague Land Warfare Convention. This is already evident by the fact that the laws are valid in the whole of France and therefore also in the unoccupied territory. If a Frenchman, by virtue of the French decrees, left the occupied French territory in order to work in Germany, he then became, in the opinion of the prosecution, a deported slave worker in contravention of the Hague Land Warfare Convention. If another Frenchman, by virtue of the same decree, at the same time left the unoccupied territory of France to take up work in Germany, then, however, the Hague Land Warfare Convention was not violated, and thus, in the opinion of the prosecution, everything was all right as far as international principles went.

A third example, the Soviet Union. The Soviet Union, as is known, soon after its seizure of power, informed all foreign powers, that it did not recognize any of the agreements concluded by the Czarist government (*Burkart 652, Burkart Ex. 25*). In that way, it also evaded the obligations incurred by the Hague Land Warfare Convention. Even later on, it did not participate in agreements of a humanitarian character, in particular

it did not become a party to the Geneva Convention of 1929. At the beginning of the German-Russian war in 1941, neither party took any steps to ensure a mutual enforcement of this Convention. A German attempt to safeguard at least the application of the hospital ships agreement was refused by the Soviet Government (*Burkart 653, Burkart Ex. 26*). From these facts, there naturally emerges the question whether the Soviet Union can at all demand from Germany adherence to the humanitarian provisions of the various international conventions with respect to her nationals. The IMT which dealt with the problem, simply says: "The argument * * * that the U.S.S.R. was not a party to the Geneva Convention, is quite without foundation." †

† IMT judgment: Murder and Ill-treatment of Prisoners of War, pages 228-232.

What is meant presumably by this terse remark is that humanitarian provisions generally are applied international principles, which are valid no matter whether the individual state had become a party to a certain convention or not. However correct this axiom may be, just as incorrect is its application to the relations between Germany and the Soviet Union during the Second World War. The whole of international law, as a means for adjustment of the relations between sovereign states, is based upon a fundamental hypothesis, namely that of reciprocity. It is but an expression of this fundamental hypothesis if the legislation of many states makes the treatment of foreigners within their territories dependent on the guarantee of reciprocity. A further sign is that, for an infringement of certain international provisions in individual cases, the right of retaliation and reprisal has been granted. All these institutions thereby assume that the international relations between the states concerned, are basically normal ones, and that the infringements merely constitute exceptions. The relationship between the two totalitarian powers, † Germany and the Soviet Union, was however a different one during the war and is without precedent in modern history.

† See F. A. Mann, London, *The Status of Germany Today*, *Sueddeutsche Juristenzeitung* [South German Legal Journal], volume 2, No. 9, of September 1947, page 472.

In brief, it was a mutual renunciation of all legal principles as applicable in wartime. Surely the prosecution will not deny that such a renunciation actually took place as far as Germany was concerned. I have already enumerated that on behalf of the Soviet Union, already before the war, preparations had progressed to a stage at which humanitarian conventions had been withdrawn not signed, or their application expressly de-

nied.† The full consequences of this attitude, already proved before the war, were borne by the Soviet Union during the war. Their way of waging war, the treatment of the wounded who fell into Soviet hands, the treatment of German prisoners of war during the battles as well as since the capitulation, and the treatment of the German civilian population after the invasion of Germany, are historic facts of which, I may assume, the Tribunal has taken official cognizance.

† Professor Giese, in Giese-Menzel "Vom deutschen voelkerrechtlichen Denken der Gegenwart," ["Contemporary German Thinking on International Law"] *Frankfurter Rechtswissenschaftliche Abhandlungen* [Frankfurt Juridical Treatises], No. 9, 1938.

The testimony submitted to the Tribunal of one of the prisoners of war returned from the Soviet Union is therefore, only a minute section of this huge tragedy (*Burkart 655, Burkart Ex. 27*). It illuminates for the fraction of a second this ominous obscurity in which the happenings of the East are shrouded. Immediately after having been taken prisoner, shoes are stripped off, and the march barefooted or stockinged in icy weather, starts; interrogations accompanied by executions; tortures and maltreatments in the prison camps; sadistic execution of an escaped prisoner in the presence of all his comrades and, above all, the system of continuous undernourishment in conjunction with excessive demands on the work potential of the prisoners, which brings about the inevitable result, namely death of prisoners on an inconceivable scale. Viewed side by side with this martyrdom, the employment of prisoners in the Russian armament industry is a mere bagatelle, which I need hardly mention here.

I have not reminded the Tribunal of these facts in order to balance guilt against counterguilt, nor in order to raise the idle question as to who started all this. What, however, is of importance to me, and I wish to state this quite clearly, is that the Soviet Union did not, during the Second World War, recognize for her part the application of any international principles of a humanitarian character with respect to members of the German nation. Therefore, applying the principle of reciprocity, the German Government was in no way bound to honor any obligations of this kind with respect to citizens of the Soviet Union. If, during a war based on differences of ideology, both the powers engaged therein actually agree not to recognize and not to observe the general principles of international law with respect to each other then no tribunal can retrospectively reproach one party with nonobservance, and accept it as an invariable fact for the other.† The IMT, in view of the fact that Russian judges were present, was not in a position to discuss this aspect at all. This Tribunal,

as an American court of justice, however, is not tied in that way, and will, I hope, recognize its duty to repudiate an opinion which is not only incorrect but also unjust.

† As superficial as it is false, is the saying of William E. Jackson: "The sins of Soviet Russia do not make the Nazis any less guilty." Was Nuernberg Justified? Collier's Magazine, 19 April 1947.

I shall come later to the legal aspects arising from this matter, in connection with the treatment of eastern workers. At this juncture I merely wanted to show, by citing the three examples of Czechoslovakia, France and the Soviet Union, how completely different are the fundamentals for an evaluation of the question whether international principles of law apply to the conscription of workers from different countries, apart from whether they can be violated at all. Even though you, Your Honors, may judge some of the problems discussed by me in a different light, one thing you cannot deny: These problems exist and cannot be solved by slogans, but can be solved only by an intensive knowledge of the political facts and a thorough study of their legal consequences. The six business executives who are sitting here before us in the dock were supposed to have been in a position to judge these facts. What should have rendered them capable of doing so? Who should have told them? Merely in order to arrive at the essence of the problem did I submit to the Tribunal the affidavit of Dr. Friedrich Gaus (*Burkart 851, Burkart Ex. 211*), chief for many years of the Legal Department of the Foreign Office and Special Envoy on Ribbentrop's staff. Not only is Dr. Gaus an uncommonly experienced and clever man, but he is also a collaborator and presumably a witness of the prosecution in the impending trial against members of the Foreign Office. He had a declaration published in the papers to the effect that it was the duty of every German official to uncover all the activities of the Third Reich and to tell the absolute truth to the Allied authorities. It is to be presumed, therefore, that he has complied with this principle in the affidavit submitted by me. To the precise question as to whether he considered the conscription of foreign workers an infringement of international law, Dr. Gaus replied that he naturally knew that it was the conscription of French workers particularly which constituted a violation of international law. He did not comment on the conscription of workers from other countries. When further questioned as to which article of the Convention in particular this conscription did in fact violate, his reply is rather a vague one for a lawyer of his standing. He says he did not examine the question very thoroughly at all, but that he merely assumed it from the point of view of generally accepted principles. In that connection he

entirely disregards the fact that there was a French Government in existence. And then there came the reply to my question as to whether he had communicated his legal doubts to his Foreign Minister, or to the German Ambassador in Paris, who had repeatedly visited him. The Tribunal has the reply to this question on its record. As far as I am concerned there is but one thing that I can definitely establish from the rather complicated phraseology of his answer: Dr. Gaus, chief of the Legal Department of the Foreign Office, told neither the Foreign Minister nor the Ambassador in Paris the reasons why, according to his comprehensive knowledge of international law, laws of the French Government introducing compulsory labor for Germany represented a violation of the Hague Land Warfare Convention. He voiced no legal misgivings at all about the conscription of Frenchmen, but at the most, political ones. He said nothing at all about the other nations because he was not asked. If even the Foreign Minister and the Ambassadors heard nothing of these legal problems from the qualified legal adviser, then, how was one of these defendants to know of these matters? If they had asked a competent personality whether the Hague Convention was to be applied in the occupied territories, they would at best have been given the same answer which General Clay recently gave in a press interview, namely, "The question is irrelevant." †

† Eine unpassende Frage [An Irrelevant Question] *Wirtschaftszeitung*, 11 July 1947, Stuttgart, page 2.

In accordance with the preceding expositions, compulsory conscriptions in the Protectorate of Bohemia and Moravia can in no way be judged according to international law; those in France have to be judged according to internal French law; and those in the Soviet Union, in any event, apart from the generally valid laws of warfare. As far as the law of warfare is at all applicable, the question really is whether the German Government foresaw "deportation" and "slave labor", and realized them in the sense in which these words are to be understood as legal concepts. In this field, where we reach the realm of evaluation of evidence, can be seen the difficulty, even almost the impossibility of a proceeding which is to be bound by the summary definition of the IMT, so far as no new significant evidence is submitted. The IMT judgment only states, regarding the question of "deportation" in the sense of a forcible removal, that the conscription of labor "in many cases" was attained by drastic and violent methods.* The lack of precision of this statement for an event of such huge scope shows how justified the adjective "summary" is. This holds all

* Trial of the Major War Criminals, volume I, pages 243-247.

the more, since the statement contained in the judgment does not rest on detailed investigations by the IMT regarding these events, but on the reports of the governments concerned relative to the drafting of labor forces from their territories. The IMT, by the London statute, was brought into the unique situation of having to accept as evidence governmental reports, in other words, contentions on the part of the prosecution. Ordinance No. 7 has at least deviated from this practice, which is contrary to all principles of criminal procedure, and to cite an example, Military Tribunal V, Case 7, has already actually rejected as evidence in the proceedings against the southeast generals a report of the Yugoslav Government which had been accepted in the IMT proceedings. If one were to imagine that the IMT, as well as the American [sic] Military Tribunals, now had not accepted the absolutely one-sided government reports in evidence, the afore-mentioned findings concerning "deportation" would actually have remained without any foundation whatever in evidence.

Following these remarks on the procedure concerning evidence in the IMT, we should now examine the results of the evidence produced before the Tribunal here. The prosecution has, as a matter of fact, called a number of witnesses to prove the defendants' participation in the criminal government program. All these witnesses were so-called deported slave workers. What are the facts about their coming to Germany? The Czechs, at the summons of their labor office, in express and local trains, under ordinary traffic conditions, (*Tr. pp. 606, 840, 940, 1267, 1285*) the two Ukrainian women on the summons of the local district commander, in a collective transport with sufficient food supplies. (*Tr. pp. 740-741.*) They certainly went—as they maintain—against their own wish, in the same way as most of the persons under compulsory service in Germany, and probably in other belligerent countries, took up their assignment for work against their wishes. None of these witnesses, however, was subjected to force, not to mention that none of them witnessed or reported scenes like burning down of churches, killing of women and children, or the like. I will deal with the two witnesses from a concentration camp, Rittenberg and Travers when I come to that subject; they do not belong to the large group of foreign workmen regarded as free laborers. There remains the witness Roessler. It is true that he was arrested and shipped to Germany from the prison. But, and this seems to be the decisive point, he was not arrested in order to be sent to work in Germany, but because he was a particularly active member of the Belgian resistance movement. He was, therefore, not arrested for reasons of labor assignment, but, on the contrary, he was released for reasons of

labor assignment. (*Tr. pp. 2764, 2796.*) According to this witness' report, raids were carried out just a few days before the arrival of the Allies in Brussels, whereby young men who were fit for military service were arrested and transported to Germany. (*Tr. pp. 2765, 2798.*) Earlier in my argument I pointed out that this kind of evacuation is justified for military and security reasons and by classic international law, justifying also—as in all military measures—the use of force to the extent essential for the attainment of success. The witnesses have not said anything in regard to brutalities connected with these measures. Ministerialrat Stothfang, Sauckel's personal Referent, was in a position which afforded him a particularly good insight into the methods actually adopted for procuring manpower from foreign countries. According to his statement, excesses occurred in isolated instances; they were exceptions, however, and Sauckel tried every time to make investigations and to prevent repetitions. (*Tr. p. 6011.*)

This then is the result of the statements made by the witnesses for the prosecution with regard to this count. Of the witnesses for the defense I only mention Minister Schleier whose warm, human, sympathetic feelings for the French workmen recruited for Germany will also not have escaped the Tribunal. In his official capacity as well as privately he made his own observations in this respect. (*Tr. pp. 5903, 5938.*) He saw collective transports go by rail from France to Germany decorated with the French tricolor and with the inscription "Voluntary Workers for Germany," without police attendance and without the use of force. In keeping with their temperament the Frenchmen sang on the journey, and not always songs exactly friendly to the German Government, so for example, at Aix-la-Chapelle they sang the "Internationale." The result of this demonstration was not, however, arrests and brutalities, but only a strict mail censorship for all workmen participating, which after about 6 or 8 weeks made a complete change discernible in these men's attitude toward their employment in Germany. However, Mr. Schleier, in express trains between Berlin and Paris, which he had to use frequently, often enough saw and spoke to French workmen who were going home on leave, carrying heavy luggage with them, and who returned to Germany again after termination of their leave.

I will admit as a matter of course that neither Ministerialrat Stothfang nor Minister Schleier had information of everything that happened in the branch offices. But if the adoption of brutal force had been part of the program, as asserted by the prosecution, this could not have been concealed from these two witnesses.

Considering that for the recruiting of foreign workers no system of brutal force, that is no system of deportation, existed,

it stands to reason that the defendants could have had no knowledge of such a system. The prosecution has tried in vain to prove such knowledge. From the mass of documents only one need be taken into consideration as regards this count, namely the arrest of men working for the Siac company in Genoa in June 1944. (*NI-3216, Pros. Ex. 135; Tr. pp. 6843, 6512.*) The evidence has cleared up this point completely; it was a matter of an arbitrary act by the SD with the object of procuring laborers for the SS enterprises. The German local authorities were surprised as well as indignant about this action, and they tried, through the Ministry of Armaments, to bring about the return of these Italian workers. The attempt failed owing to Himmler's omnipotence. This action had nothing to do with the recruiting of workmen for private economy. Defendant Dr. Burkart who received information about this, could only conclude from the general indignation and the endeavors to put an end to this action, that this had been an isolated and sensational incident. And this conclusion was correct in view of the facts.

Whether the defendants had knowledge or not of the mere legal fact of compulsion, that is, without the use of force, is without significance, in my view of the law, for legal compulsion was admissible as such, and the knowledge of an admissible fact cannot incriminate anybody. Since, however, the prosecution puts such great stress on the knowledge of this mere compulsion, I must go into this matter briefly. Each one of the defendants has testified before this Tribunal to what extent and from what period he had knowledge of the labor recruitment in the different foreign territories. The prosecution does not believe part of these statements and tries to refute them.

A direct proof, however, has not been offered in any one of the individual cases. The only document of importance in this direction could be Mr. Weiss' note of 8 October 1942 (*NI-3617, Pros. Ex. 175*) saying that the introduction of compulsory service was intended for France. Simultaneously Mr. Weiss expresses his hope that this intention would not be carried out, because non-voluntary workers do not make for efficiency. If this is the only document from the voluminous files of the Flick Concern, which used to keep minutes of even the most unimportant conferences, it can well be assumed that the prosecution has completely failed to substantiate direct proof.

* * * * *

In carrying out this government program, there appeared abuses, less in the case of the western workers, more in the case of the eastern workers. But even there, there were exceptions.

The IMT designated one man as being responsible for this entire program, including the abuses, and executed him: Sauckel. In the IMT verdict the violations and abuses occasioned by the police, or due to political reasons, were expressly mentioned as a reason for declaring the organizations, dealing with these tasks, and responsible for them, to be criminal: the Gestapo, the SD, the SS, and the Corps of Political Leaders. I cannot imagine a more unequivocal establishment of the responsibility of government agencies for the entire program and for the abuses that happened in connection with it.

In view of this clear situation, the prosecution needed a special construction to make the thesis of the responsibility of the industrialists plausible. The construction is as follows: The industrialists—in the east zone they are called “hyenas of monopoly capital”—wished to make especially big business out of war. For this purpose they needed as many and as cheap workers as possible. They therefore urged the government to kidnap those cheap foreign slaves in the occupied territories and to drag them into their factories.

Let us look at the two components of this thesis more closely: Cheap labor and the initiative of industry. In the course of the trial the evidence on the high costs of foreign labor has caused the prosecution to restrict its original assertions in this field. As seen from the evidence submitted by me, the actual costs for a foreigner per working day were 10 to 25 percent higher than those for a comparable German worker.†

† Report of Krupp Revisionsbuero dated 20 November 1942, Kramer affidavit, Burkart 751, Burkart Exhibit 117, document book 3, page 385.

If, in addition, we consider the established lower output of the foreign worker as compared with that of the German worker, these relative costs increase in the case of the foreign worker from 160 percent to 190 percent of the costs for a comparable German worker. Consequently, the output of raw steel per worker in Germany dropped from one monthly average of 7.3 tons in 1938 to 3.9 tons in 1944,† representing a decrease of nearly 50 percent. Hence, there was no financial motive whatsoever for the employment of foreign labor.

† Graphic representation and Salewski's affidavit, Burkart 750, Burkart Exhibit 116, document book 3, pages 382 and 383. That the same cost ratios apply to the Flick plants may be seen for example in the Lauchhammer report dated 16 November 1942, Burkart 752, Burkart Exhibit 118, document book 3, page 387.

Now, what about the initiative of the entrepreneur in the procurement of foreign labor? In order to answer this question, it is necessary to examine closely the position of the so-called labor

allocation within the economy as a whole. This examination alone will make it possible to form a judgment as to where the initiative was and where the execution, what was the cause, and what the consequence.

Depositions of the witnesses Roechling, Rohland, Reichert, and others (*German Tr. pp. 6155, 7095; Burkart 780, Burkart Ex. 146; Burkart 796, Burkart Ex. 164*) as well as the official documents, show convincingly to what a great extent the industrialists of the Third Reich only took orders, simply acting in the capacity of executive agents of the State.

Even in the infancy of the Third Reich, the change took place from a liberal economic body to a State-controlled production machine. This development was advanced and accelerated by the Four Year Plan. By this plan the omnipotent National Socialist State to a far-reaching degree placed private economy under trusteeship. By regulations with legal effect, and by general administrative provisions, all actions of the entrepreneur and his business management were regulated, (*Burkart 873, Burkart Ex. 212; Burkart 874a, Burkart Ex. 214*), and counter actions threatened with punishment (*Burkart 874, Burkart Ex. 213*).

Finally, this development reached its logical conclusion in total war economy, which destroyed the initiative of the entrepreneur, completely subjected industrial production to the coercion and dictates of the State, and fixed penal sanctions in case of violations of this authoritarian production system. Then the period began of the production and acceleration programs, of "quotas" given to the factories by government authority, so frequently discussed in the course of this trial.

The commodity exchange regulations of 18 August 1939 (*Burkart 664, Burkart Ex. 32*) formed the legal basis for the compulsory execution of government orders enforceable by imprisonment, mentioned here for the first time. The war economy regulation of 4 September 1939 (*Burkart 665, Burkart Ex. 33*) originated the idea of compulsory war economy and made the act of jeopardizing the supplies for the population—fixed by the State—subject to the death penalty. Then, with this as a legal basis, as the war grew more intense, industry was submerged with a veritable flood of decrees, ordinances, and directives dealing with the uniform and rigorous control and organization of production. The factory—not the corporation—finds itself at the very bottom of this mighty lever, being the final executive agency. The political programs in the dictatorship of the Third Reich, actually was determined by one man, Adolph Hitler. (*German Tr. pp. 6179, 8174, 8176; Burkart 672, Burkart Ex. 40.*)

In the Central Planning Board, consisting of State authorities—Speer, Milch, Koerner, Funk, and I dare say, Sauckel—who at

times consulted experts on economy—the programs were examined with regard to their practicability, were amended, distributed, and forwarded. From this point they passed on directly to the factories via the Ministry for Armaments and a complicated system set up by Speer, the rings [Ringe] and committees; not, however, through the administrative channels of the companies or the concerns (*Burkart 862, Burkart Ex. 220*). This system guaranteed the mobilization of even the smallest plant. The leader of the committee or of the ring received clearly fixed orders for total production from the offices of the Ministry for Armaments; he forwarded these orders to the individual plants, which thus were deprived of every possibility of making independent decisions. One man alone was responsible for the control of production, Speer. This is stated in one of the few clear sentences of the so-called “Tapeworm Decree” of 29 October 1943 (*Burkart 666, Burkart Ex. 34*), which contains an impressive record of innumerable offices, which governed the plants in a parallel manner and in confusion. The decree defines this as the “issuance of orders” by the Minister for Armaments and his offices, which call themselves “command posts.” Plans for peacetime production were strictly prohibited; relentless measures were to be adopted against plant leaders offending against this regulation (*Burkart 670, Burkart Ex. 38*).¹

The conversion to complete war production was enforced with the most rigorous means, even calling in of the SD. (*Burkart 792, Burkart Ex. 158*.) After Stalingrad, total war was proclaimed, production targets were set anew by a Fuehrer proclamation (*Burkart 673, Burkart Ex. 41*),² the ring and committee leaders were exhorted by Speer “to put more rigorous pressure on the firms and to take such energetic measures as would result in meeting the required output in spite of the draft. “The refusal to carry out the programs would have resulted in the immediate loss of the enterprise.” The entrepreneur had but to obey; he was graciously permitted—in his own plant—to submit “wishes and suggestions” to the Ministry most respectfully! The effect which resulted from the constant pressure exerted by the offices of the Ministry for Armaments is shown by an event in the Spandau plant, when, during, an inspection, Hauptdienstleiter Saur, chief of the Technical Office in the Ministry for Armaments—whose name has been frequently mentioned in this trial—lent further emphasis to his normally coarse demeanor by slapping the employees (*Burkart 876, Burkart Ex. 237, German Tr. p. 6652*). He unceasingly brought pressure to bear upon the plants by the use of threats and impelled them to an increase in production.

¹ Reproduced in section VII B.

² Reproduced in part in section VII B.

None of the defendants here has ever been committee or ring leader. True, some of the leading plant managers employed in the plants of the Flick enterprise had been appointed to rings or committees by the Ministry for Armaments. However, in this capacity they only received orders from the Ministry for Armaments, and were obliged to act in accordance with its directives to organize the production programs in their particular branch of industry (*Burkart 862, Burkart Ex. 220; German Tr. pp. 6582, 6583*).

That then was the pressure which the employers in the Third Reich allegedly brought to bear on the authorities in order to have labor allocated to them. Under the weight of the documents and evidence presented we find the contrary to be the case. The pressure of government orders and demands was so strong that no plant was able to evade it. "Due to the rigorous program orders and the insufficient supply of manpower assigned, an immense bottleneck developed within the individual plants," (*Burkart 678, Burkart Ex. 46*). Since they were held responsible for meeting the program orders, the requests for manpower necessarily had to emanate from their offices. Only the *pressure of the program orders made it necessary for the plants to request manpower*. Now, in what manner did the individual plant, which had to meet its production orders, requisition manpower?

Already during the last few years before the war, the labor shortage had become acute in Germany. Even at that time labor allocation authorities, whose lowest executive branches were, and still are, the local employment offices, systematically registered all workers, and restricted their right to change their place of employment, e.g., the iron industry. The allocation of labor was under the exclusive supervision of the employment offices. This applied especially to the numerous foreigners who at that time were pouring into Germany. (*Burkart 658, Burkart Ex. 28*). During the war independent employment of workers was prohibited. A plant requiring workers *had to* requisition them from its labor office. In the application, for which an official form (*Burkart 659, Burkart Def. Ex. 29*) was prescribed, generally an allocation for industrial manpower was requested. According to paragraph 1 of the form, foreign workers were to be assigned upon request in the event that domestic manpower was not available. Above all, the plants wanted German workers. This was confirmed as a matter of course by all the witnesses from the plants, whom we have heard here, and who, by virtue of their position, had an over-all picture of production. (*German tr. pp. 6784, 6808, 9252-53, 9441-42; Burkart 796, Burkart Def. Ex. 164; Burkart 865, Burkart Def. Ex. 229.*) The plants considered

the allocation of foreign labor only as the last resort. Time and again they requested German manpower from the labor offices, and in almost every individual case they stubbornly fought the drafting of German skilled workers into the Wehrmacht (*Burkart 676, Burkart Def. Ex. 44; Burkart 677, Burkart Def. Ex. 45*). With respect to the application of a plant, the labor office exercised the right of complete discretion to decide whether any workers were to be assigned at all, and if so, what workers were to be assigned. It was the task of the labor office "to supply the plant with those workers who, among those available, appeared most suitable for the work" (*Burkart 844, Burkart Ex. 219; Burkart 778, Burkart Ex. 144; Burkart 796, Burkart Ex. 164*)—German men, German women,—no matter whether they had voluntarily applied for work, had been conscripted, transferred from other plants, or came from plants that were "stripped of manpower"—juveniles, foreigners, and prisoners of war.

Was the German plant leader responsible for the fact that in total war manpower reserves finally were exhausted as a result of the heavy demands of the Wehrmacht (*German tr. p. 6652; Burkart 783, Burkart Ex. 149*) and the fact that subsequently foreigners were predominantly conscripted?

In the course of the war, the procedure followed by the labor offices in the allocation of labor was subject to certain changes owing to the more active intervention of the armament offices, armament departments, and armament commands. (*Burkart 667, Burkart Ex. 35; Burkart 666, Burkart Ex. 34; Burkart 844, Burkart Ex. 219; Burkart 671, Burkart Ex. 39; Burkart 674, Burkart Ex. 42; Burkart 675, Burkart Ex. 43*.) But basically the procedure was always the same. The requisition was made by the plant to the labor office, or, if the requirements could not be met, via the regional labor offices, which later became the Gau labor offices, to the Plenipotentiary General for Labor Allocation (GBA). The actual allocation was contingent upon the priority of the production quotas to be met, and was decided upon by the Armament Command [Ruestungskommando]. The total demand for labor which could not be locally supplied was determined by the GBA through joint action with the Ministry for Armaments, whose ever-increasing participation in this sphere was becoming evident. "The supplying of manpower was effected by the GBA within the framework of his responsibility for labor allocation in accordance with the requirements of the armament economy as set forth by the Minister for Armaments," (*Burkart 671, Burkart Ex. 39*). The transportation and allocation of the required manpower was, therefore, the sole responsibility of the authorities. During the war, no plant had anything to do with these actual

procurement measures. The recruiting of foreign labor in foreign countries was prohibited as a matter of principle. However, the Ministry of Labor granted permission in some cases for recruiting labor by private firms for special areas and periods of time, thus, for example, in France until the end of 1942, and in Italy in 1944. The recruiting agents were not authorized to employ coercion, the work contracts drawn up by them were made on an entirely voluntary basis. In the few cases in which plants—also such plants which belonged to the Flick Concern—were granted permission for such recruiting (*NI-3206, Pros. Ex. 133; NI-3139, Pros. Ex. 134; NI-3203, Pros. Ex. 209*), it had nothing to do with conscription, and certainly nothing at all to do with deportation.

Thus, on the basis of the governmental program quota the plant had to submit applications for the allocation of the necessary labor. The decision on the disposition of the application rested with the State; it procured and allocated labor to the extent, in the manner, and at the time which the authoritative offices deemed appropriate.

As it was expressed by the president of one of the most important German regional labor offices, who had been in office for many years, "the plant was forced to accept the workers referred to it by the labor office, and then had to adapt these workers to its general scheme of production in the most feasible manner," (*Burkart 844, Burkart Ex. 219*).

Under such conditions, one can hardly speak of the responsibility of the applicant for measures taken by the State. If upon the submission of an application a verdict is rendered by a judge, he alone bears the responsibility for this verdict and not the applicant. This applies as well to other state authorities, and even more so in cases where a legal obligation to submit an application was present.

And this obligation existed in a most impressive form. Whoever did not meet delivery quotas for the Reich during the war, for example, because he had not requested the necessary workers, risked either a penitentiary term or death sentence (*Burkart 847, Burkart Ex. 215; Burkart 848, Burkart Ex. 216*).

For terminating an employment contract without the consent of the labor office, even a plant leader would have been sentenced to a term of imprisonment (*Burkart 869, Burkart Ex. 218*). Anybody who made false statements about his needs for labor, or asked for too little and thereby endangered the armament industry was threatened with penal servitude, or even death, by the Fuehrer decree of 3 March 1942 (*Burkart 668, Burkart Ex. 36*);* he did not conform to the general ideas regarding the proper behavior of a plant leader, and therefore excluded himself from the

* Reproduced in section VII B.

community." Is it astonishing that, in view of the tenor of these regulations, the owner of an enterprise, in order to save his own skin, repeatedly brought to the notice of his different plants the serious consequences which an offense against these regulations might have? (*Burkart 669, Burkart Ex. 37.*)

Whenever labor allocation is conducted by the State in such a dictatorial manner, a request from an individual plant could never be the cause for the drafting of foreign labor. The plant gets its laborers from the quotas at the disposal of the authorities. These are recruited or drafted according to plans made by the highest Reich authorities based on a calculation of the probable demands. The demand stands in direct relation to the production, and decision about this and its extent is again dependent only on one factor, the State.

The plant is therefore only an impartial executive organ. Caught in the huge pincers of production—pressure exerted by the highest authorities on the Ministry of Armaments and its under structure, on the one hand, and Draconian threats of punishment on the other hand—it informs the proper authority of its needs of labor (as well as of raw materials, power, and many other things) and gets, against its own wish, foreigners allocated to it by the labor office. With their help the manager carries on production as well as possible in fulfillment of his duty as a patriot, which is also a duty imposed by law. *This* and none other is to him the state of affairs. After several years he then hears, through the indictment in the Flick trial, that he and every German works manager has committed a war crime.

* * * * *

As regards the real duties of the administration office in Berlin, I do not want to anticipate the statement of my colleague, Dr. Nath, who is going to deal with this question in more detail. I shall confine myself here to the activities of Dr. Burkart. He has described his education and his work at some length to the Tribunal. The most important part of his work was the supervision of the production costs and prices in the iron producing plants and in the soft coal mines of the Concern. One of his additional functions was to pave the way for the directors of the plants when they went to Berlin for a conference with the authorities, or to collect for their use information from such authorities.

The prosecution is trying to represent as a cardinal point of his work these courtesy services which are of completely secondary importance compared with his main activity. The prosecution has introduced half a dozen documents to show that through this subordinate function Dr. Burkart established connection with the labor allocation authorities, no matter how insignificant the con-

nection was. These documents, however, provide in themselves the best evidence for the defense, for, in the first place, their contents are open to no objection at all. These documents say nothing of deportation, or even of conscription, nor do they describe any acts of ill-treatment or abuse. (*NI-3690, Pros. Ex. 177; NI-5604, Pros. Ex. 128; NI-3166, Pros. Ex. 127; NI-3617, Pros. Ex. 175; NI-4541, Pros. Ex. 299; NI-5234, Pros. Ex. 238.*)*

They prove what is denied by no one, that in the Flick Concern foreign workers and prisoners of war were employed in exactly the same manner as in the rest of German industry; and, just as in all other cases, that they were requested for the Flick Concern by the plants from the local labor offices. The documents, furthermore, show complete lack of authority on Dr. Burkart's part to make any personal demands whatsoever in the name of the Concern. As we have seen, such action would actually not have been possible at all in view of the existing organization of the labor authorities, which originated in the local labor offices. Consequently, the authority lay with the individual plants, and no document exists which has not in some way been initiated by some plant. I quote from two affidavits:

"There were no special files concerning the employment of foreign workers because these questions were not handled by the administration office." (*Burkart 776, Burkart Ex. 143.*)

"Therefore, if Dr. Burkart, through the central office, had wanted to make decisions, in all probability he would only have made himself a laughing stock." (*Burkart 770, Burkart Ex. 137.*)

If Dr. Burkart had any authority to requisition foreign workers, he had none whatsoever with respect to their employment and treatment. I speak here only of the actual duties within this field, and leave it to my colleague, Dr. Nath, to examine the legal connections that result from the position of member of the Aufsichtsrat, of the Vorstand, or as plenipotentiary. Therefore, I shall make only the two following remarks on this subject.

According to the law for the regulation of national labor, which apparently is considered by the prosecution as the legal basis for judgment concerning welfare duties, the one man responsible for the employment and treatment of workers in a plant is the leader of the plant. In other words, if there really were abuses in a plant in the treatment of foreign workers, that were not restricted to isolated cases, then, at any rate, according to views prevailing in criminal law up to this time, the leader of the plant would have been responsible for such acts. This is not something which has been evolved by jurists, but the direct sentiment of all those

* *Ibid.*

connected with such matters in a factory. The witness Oehme perhaps expressed this fact in the clearest way:

“These gentlemen had nothing to do with the matter. They had no authority at all in this respect. The treatment of foreigners was a matter for the plant, and the plant alone. This is the very reason why I offered to testify of my own volition. I wanted to make it clear that these defendants had no authority, but only we—that is to say, the plant leader and his plant chiefs.” (*German Tr. p. 6976.*)

This opinion has been confirmed by all the other witnesses who expressed their views on this question. If you want to know the opinion of a plant leader himself, then consider the testimony of Dr. Flick’s son, the witness Otto Ernst Flick:

“Q. Do you realize fully, Mr. Flick, that the responsibility for the welfare of the workers, of all workers, rested with you as leader of the plant? Is that correct?”

“A. Yes, there could be no doubt about that.” (*German Tr. p. 7198.*)

The second view too, which I have still in mind in this connection, is a legal one. As none of the defendants showed any initiative in bringing about the state laws and ordinances concerning the drafting and employment of foreign workers, then the charge of participation in the enslavement program is practically reduced to this: that the defendants in the pursuance of their activity have obeyed the laws of their country or tolerated that the laws were obeyed by others. The judgment of the IMT did proclaim the principle that, originating in international law, certain obligations exist immediately incumbent upon every individual in the world, irrespective of existing laws of his state otherwise applicable to him. Strangely enough, however, the IMT declared this principle, proclaimed by itself, as inapplicable. For it does not found its decision on generally recognized international law but declares briefly and emphatically that: *

“The law of the Charter is decisive, and binding upon the Tribunal. The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; * * *.”

Only after the establishment of this fundamental principle that the Tribunal will give priority to the legal power of the Charter

* Trial of the Major Criminals, *op cit*, vol I, page 218.

in preference to all other sources of law, the declaration reading as an excuse follows:

“The Charter * * * is the expression of international law existing at the time of its creation * * *.” *

This sentence has to be read carefully. It is an expression of international law at the time of the establishment of the Charter, and not, as might be expected, at the time when the crimes of which the defendants are being accused, are supposed to have been committed. A general principle of criminal law prescribes that in judging a criminal offense the law effective at the time of the offense must be applied; that means also international law as existing at the time of the offense. When so high a tribunal as the IMT, despite this recognized principle, refers to international law not as existing at the time of the offense but as existing at the time of the Charter, the doubts which did befall the Tribunal as to whether international law at these two moments could be considered identical, becomes immediately apparent. A tribunal recognizing actually its subordination solely to international law, could, in its decisions, as expounded by the French judge, have voiced no uneasiness faced with treaty stipulations which were quite obviously at variance with the requirements of modern warfare. This lack of freedom in the decision was the necessary consequence of the Tribunal's unconditional recognition of the binding force of the Charter. The Tribunal, founding its decision completely on the supremacy of international law, applies to itself the conservative principles of Anglo-Saxon jurisprudence which say,—I quote, this is by Oppenheim:

“International law is a law for the international conduct of states and not of the conduct of their citizens.”

Another quotation:

“If it happens that a rule of national law is in indubitable conflict with a rule of international law, national courts must apply the former.”

Does not this contradiction reveal the horrifyingly erroneous course followed by the Nuernberg administration of justice? If in the future, every citizen is supposed to be his own legislator, then this is an exaggeration of individualism, bound to end in nihilism. The IMT realized this problem without being able to find its final solution. Here it is again the French judge who points out that many principles laid down in the London Charter are contrary to a basic principle so far generally recognized in the life of the states as well as in international life, namely that of the division of labor. For this reason he raises an objection

* Ibid., page 218.

against the Charter, giving at the same time some advice, both of which I may be allowed to quote because of their significance. I quote from a lecture of Professor Donnedieu de Vabres:

“Through these stipulations the Charter, the rules of which were binding upon the Tribunal, has exceeded the stipulations of national law applying to the principle of individualism. It exposes itself to one objection, that of endangering the discipline requisite for the conservation of the states. In future, a rule of this nature ought to be applied only with caution and discernment.”

If I understand the advice of the excellent French jurist correctly, he intends to warn against the uncritical taking over of rules, established to be applied to notorious offenses of principal war criminals, in other proceedings in which certain far less important violations of international law are dealt with. I ask that for once you try to realize which set of facts actually is the foundation of the charges against these defendants and which roundabout ways the prosecution had to go in order to be able to claim even the suspicion of a doubt. Would these actions on the part of the accused, even if the legal argumentation of the prosecution is being followed, really justify the application of a special law which was intended for other persons and other definitions of crimes?

In the draft for a Convention on the Jurisdiction in Criminal Cases, published in 1935 by the American Society for International Law, we read in Article 14, as follows, and I quote:

“No state shall prosecute or punish an alien for an act or omission which was required of that alien by the law of the place where the alien was at the time of the act or omission.”

In the commentary text thereto we read, and I quote:

“The individual should not suffer, through no fault of his own, because one state punishes what another requires.” This principle is termed “obviously just” and “probably in harmony with relevant national and international practice.” Such statements of leading American authorities from the year 1935 show the way which we have to follow in order to return to the firmly entrenched principles of our law. As in so many other cases, it is again Hugo Grotius who expressed this principle in its simplest and most convincing form. I quote from his work, *De Jure Belli ac Pacis*:

“We can ask of nobody to do something that for us is right but for him is wrong.”

Your Honor, these statements conclude my arguments on the subject of slave labor. Due to the restricted time available, I would not like to make an oral presentation of what I have to say

on the subject of spoliation, that is, referring to Rombach, BHO, and Dnjeprstahl. The Tribunal will have these arguments submitted in writing and I beg Your Honors to take note of my arguments. My colleague, Dr. Siemers, will deal on principle with the subject of spoliation; he, in his plea, will partially refer and have to refer to what I have said on this subject and what I was planning to present orally, but am now forced to submit in writing only. I will, therefore, omit the reading of what I had to say on spoliation, and will now read my concluding argument.

Your Honors. After a trial which has lasted 7 months, I have attempted, in the short period of time which was allotted to me for that purpose, to recapitulate on a large scale the results of the presentation of evidence in regard to the fundamental questions on the allocation of foreign labor and to investigate the relations of the defendants to that subject. Further, I have touched upon excerpts from the charge of spoliation which is connected with the names of Rombach, BHO, and Dnjeprstahl. In all this, my client, Dr. Burkart, has been referred to very rarely. Do not believe that it was thereby intended to minimize his importance. He was a leading executive of the Flick Concern and certainly one of the leading businessmen in the German iron industry; but he was just a businessman and not a statesman or a general. If, therefore, questions of government policy or of the conduct of the war are concerned, he had no influence on them, because of the nature of his profession and of his position. If any proof were required, then this trial has brought it to light.

It is, therefore, no coincidence if I have found hardly any opportunity during my statement to mention the name of my client; but rather it is a necessary sequel of the prosecution, which, as General Taylor has recently stated, does not place on trial the individual defendants but rather a system, the willing tools of which they had been. The defendants, therefore, are not here as persons, but as symbols—as symbols for German industry.

Since the first Nuernberg trial we have observed with growing amazement the magic tricks of the prosecution in bringing ever new circles of the German people to trial by means of "symbols." First it was the politicians; that still made sense. Then it was the generals; that startled many people. And since then, in quick succession, ever new "symbols" have been searched out, all of whom, as we now find out, were much worse than the major war criminals who were hanged as a result of the first trial. Those major war criminals were merely uneducated minor persons, who would never have acquired power, or who would not have misused it, if they had not been induced to do so by the persons who pulled the strings, that is, the "symbols." The jurists, industrialists,

bankers, diplomats, and the government employees—they were the ones who were the cause of everything.

For the last 2½ years we have lived through a succession of criminal proceedings brought against the guards of concentration camps and their superior SS leaders because of the crimes committed there. Here we finally hear from the prosecution, who was the cause of it all—industry.

You may believe me, Your Honors, that the initial astonishment at the ever new discoveries of the prosecution has given way to a deep indignation. Who is going to be placed in the dock next, as the next “symbol”? No one knows; no one understands it; least of all the defendant himself. Take the case of Dr. Burkart. Has any one action or even one single statement by him been proved to be immoral, not to speak of it as being criminal? Nothing of the sort. His political background certainly does not make him one of the champions of the Third Reich. He had no relations whatsoever with the Party, and, as a Catholic and member of the Center [Zentrum] party, he was in ideological opposition to the Party. That applied to his entire family, and was even stronger after the wife of his brother had been killed because she belonged to the Jewish race. His character in general made him an opponent of all violent measures. He desires to live and to let live. At the time of the collapse, Dr. Burkart was at Riga with the foreign workers who, according to the indictment, he had ill-treated for years. Neither he nor any of the other higher executives of the works was harmed in any way. The GPU kept him in prison for months and thoroughly investigated his activities. As a result, he was freed. All that shows that a frank appraisal of that man and his activities must lead to the same impression which Dr. Burkart’s long-time janitor stated in his letter, which he wrote spontaneously, on his own initiative, to this Tribunal. I quote:

“I cannot imagine how a man like Dr. Burkart could be condemned as a war criminal.”

With all these occupational, political, and personal conditions present, it is more than justified to ask: What prompted the prosecution to put just Dr. Burkart on trial as a “symbol”? He was drawn into the events of these stormy times like millions of others, without having been asked and without having brought it about in any way.

Not even the prosecution has claimed in this trial, as it has done in the trials of other industrialists, that these defendants were guilty of precipitating the war. Thus, the last grounds are eliminated on which they could be held responsible for the collective methods with which that war was conducted by the govern-

ment. If the individual citizen were to be held responsible as a participant in the policy of the government, because he had pursued his trade within the limits of that policy and because he had observed the laws of the government, then the prosecution would find itself in a boundless maze. When the IMT judgment stated that Goering had borne complete responsibility for the exploitation of the occupied territories, and Sauckel that for the foreign workers, that could be understood, for they were persons whose names and duties in these fields were known to everyone. People said to themselves that if anyone at all could be held responsible, then these were the right people. Now, however, the prosecution suddenly decides that Dr. Burkart is responsible with them, a man whose name was known to no one, not to you, Your Honors, and not to me either. Tomorrow this, or some other indictment, will state that John Doe is responsible for the annexation of Alsace because he opened a milk shop at Strasbourg, or that Frau X participated in the slave-labor program by employing a Dutch cook. The collective guilt of the German people, which in contrast to this prosecution, was rejected by the IMT by insisting on proof of individual guilt, this collective guilt is now introduced once more. If what Dr. Burkart did is a crime, then everyone who lived and did his duty during the war in Germany would be a criminal.

Until the present time it has been common in the administration of justice to hold a person responsible for something only if he himself had caused it, and the acid test for the determination of such a causality was made by disregarding the individual and then determining whether the course of events would have been different in that case. I beg you to apply that test.

If you imagine that Goering or Sauckel had not been there, then many things probably would have been different. If you disregard Dr. Burkart, it would have had no influence whatsoever on the course of the events which have been dealt with here. Not one foreigner less would have been brought to Germany, and the German economic policy in the East and West would not have been different by one iota. The possibility of participation in the government's policy is thus brought to nothing by the absence of any causality. And what about guilt? Remember my introductory remarks. "The essence of war is violence; moderation during war is nonsense." Dr. Burkart did not coin this phrase, but rather an English admiral. And not he, but the statesmen and commanders in chief on both sides acted in accordance with that principle. Winston Churchill said that he was tired of thinking about the rights of neutral countries. And it was President Roosevelt who gave the order to the fleet to fire on German ships, despite

the fact that war had not been declared, with the demand, "let us not split hairs." And Marshal Stalin recommended to his Allies to carry out continuous air attacks on German cities, and they acted in conformance with his words.

While major powers in a battle of giants fight for victory or destruction with the most modern means for the conduct of war, while rockets are racing through the ether, and while the valuable secret of mass annihilation through atomic energy is slowly ripening towards perfection, are these six businessmen supposed to live their own war in accordance with the Hague Rules of Land Warfare of 1907? While one German city, and one German factory after another were destroyed to rubble and ashes, should they have considered it as forbidden to utilize the enemy's factories? Should they have considered it a crime to force foreign workers to work while the enemy considered it his right to kill German workers with their wives and children by air attacks? If that really was to be expected of them, then one cannot be surprised at the resigned statement of one of the best known German experts on international law—"from now on there are two kinds of international law, one for German nationals and one for the rest of the world." *

* Prof. Dr. Rudolf von Laun, *Die Haager Landkriegsordnung*, Wolfenbuettel, 1946, page 64.

I, however, cannot agree with that statement. There are not two kinds of law. Rather there are two sets of standards. There can be only one kind of international law which applies to everyone, or none at all.

That is the decision to be made and the responsibility which rests on you as the judges. This word "judge" represents a high duty. The courts of all countries have recognized it as their highest duty to protect the rights of the individual from abuses by the government. Their dignity has always depended on how capable of that very duty they proved themselves to be. When the Prussian Supreme Court had the courage in a legal altercation to decide against the absolute monarch, Frederick the Great, the contemporaries said in admiration, "There still are judges in Berlin." When in 1933 the German Reich Supreme Court in the trial against the Reichstag arsonists acquitted the accused Communist leaders, among them the present Prime Minister of Bulgaria, Dimitrov, despite strongest political pressure, all those who did not want to see justice reduced to becoming the harlot of politics breathed a sigh of relief.

The judges of your country, the United States of America, may point to a proud tradition in regard to the protection of the individual against the State. Remember that tradition, and the

expectations with which the whole world watches this first trial of industrialists. And last but not least, remember this people, which amid its rubble has little more left than the hope for justice. Remember also that destroyed towns and dismantled plants may be rebuilt more easily than destroyed faith. Act in such a manner that the world will some day say, "There were judges at Nuernberg."

I move, Your Honors, that the defendant Burkart be acquitted.

D. Extracts from the Closing Statement for the Defendant Steinbrinck¹

DR. FLAECBSNER: Your Honors. In order to abbreviate my plea, I wish to solicit your permission to confine my arguments to counts one and two in writing and to submit this in writing to you, and I solicit your permission to present orally counts three, four, and five. Thus I hope not to avail myself of too much time of this Tribunal. I assume that the translation will be submitted to the Tribunal within a short period of time. The reproduction, however, I believe, is not yet ready. Otherwise Your Honors would already have the translation before you.²

PRESIDING JUDGE SEARS: You have the Court's approval of proceeding as you suggest.

DR. FLAECBSNER: May I therefore begin with count three? In its argumentation and opening statement, no less than in presenting its evidence, the prosecution devotes an especially large space to count three of the indictment, and they would obviously like to see it played out under the heading of "crimes against humanity, committed in connection with measures of Aryanization" as third act and climax of the drama that they are staging against Flick and associates.

By presenting the play in three scenes, namely—

1. Aryanization of Rawack and Gruenfeld A.G. and Hochofenwerk Luebeck,

2. United Continental Corporation and distribution of the property of Julius Petschek,

3. Ignaz Petschek and barter soft coal for brown coal, the prosecution tries to show the audience the crimes of the defend-

¹ Complete closing statement is recorded in mimeographed transcript, 28 November 1947, pages 10715-10785.

² Counsel refers to the fact that a mimeographed translation of the closing statement he intended to give was not yet available for distribution. Ordinarily such a translation was made available before the actual delivery of the argument so as to assist the Tribunal in following the argument, observing the footnotes, etc.

ants, thinking to establish their guilt by such catch phrases as "cooperation with Aryanization" or "putting the sellers under pressure for the purpose of self-enrichment," "extension of the Jewish laws" or "perversion of governmental authority for private ends." In face of this it will be useful to examine the legal foundation upon which the prosecution sought to erect this structure. The defense has already pointed out that in this respect the prosecution statements lack all legal basis. The IMT definition of a criminal offense against humanity does not cover actions committed before 1 September 1939.

In contrast to this, the prosecution claimed that the trial court is not bound to base the application of the legal term "crime against humanity" upon the principles pronounced by the IMT, because it has to start from a legal basis different from the one upon which the IMT judgment is constructed. The prosecution also asserts that Control Council Law No. 10, cited here, represents a different legal foundation from the London Agreement of 8 August 1945 on which the IMT judgment is based. The attempt of the prosecution to widen in application the meaning of Control Council Law No. 10 in as far as it refers to crimes against humanity, beyond the interpretation established by the IMT judgment, is a mistake. It has been shown before that Control Council Law No. 10 and the IMT Charter have the same legal foundation, namely, the London Charter. The Charter of the IMT, defining for the first time the term "crimes against humanity," forms part of the London Agreement, and therefore the formulation of the term "crimes against humanity" chosen in the Charter has become part of this agreement too. But Control Council Law No. 10, too, is based on this agreement. The introduction to the Law refers expressly to the Charter of the IMT. The prosecution believes that they can justify their divergence with the different wording of the definition of "crime against humanity;" Control Council Law No. 10 omits the words "committed * * * in execution of or in connection with any crimes within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated," which the IMT Charter contains. In this fact the prosecution believed it had found a basic difference with regard to the interpretation of the term "crime against humanity" according to both these legal foundations, and it draws the conclusion that punishable crimes against humanity could have been committed even before the key date fixed by the IMT. This conception of the prosecution, however, strikes a blow against the authority of this Tribunal, and above all, abuses the text of that law. The leading factor, when weighing up the legal position, is the point that to disregard the key date chosen by the IMT after much

deliberation, and, moreover, to drop the connection which according to the IMT and the Charter must exist between the crime against humanity and war of aggression or with a violation of the peace—is to remove all limits to the application of the term “crime against humanity,” to open the doors to a subjective treatment, and to leave safe ground altogether. It is this consideration, which as one of the IMT judges, Professor Donnedieu de Vabres said, compels us to exercise wise moderation when applying the term “crime against humanity.” If the prosecution nevertheless recommends a wide interpretation, it is abusing the text of the law. Deprived of the restrictions as to time and facts, the term “crime against humanity” becomes entirely vague and allows of such different interpretations that a high degree of lack of legal guarantees would be the consequence. An example is the charge raised by the prosecution under count three. The prosecution wants to apply the provision of Article II 1(c), of Control Council Law No. 10 of 20 November 1945, to the Aryanization of industrial enterprises. In this connection the fact is disregarded that neither the Charter of the IMT nor the aforesaid law lists the encroachment on or injuring of property rights as an element of the “crime against humanity.” As crimes against humanity the Charter of the IMT as well as the Control Council Law list extermination, enslavement, forced deportation, deprivation of liberty, rape, and other inhuman acts committed against the civilian population. From the wording “other inhuman acts committed against the civilian population” in connection with the foregoing examples, it is to be concluded that the acts declared by law as punishable must be acts aimed against the individual in his physical existence itself. Violations of the basic rights must be involved which, as for instance, liberty, honor, and physical integrity, are connected with the individual as such. The encroachment on and injury of material rights, however, such as property rights, cannot be concerned. Property and property rights cannot be regarded as highly personal basic rights such as these.

And a similar opinion seems to have been held by the American Military Tribunal No. II in the case of United States of America against Oswald Pohl and others * in saying that, “Had Germany rested content with the exclusion of Jews from her own territory, with denying them German citizenship, with excluding them from public office, or any like domestic regulation, no other nation could have been heard to complain.”

Even on legal grounds the defendants must be acquitted on this count of the indictment. The prosecution, however, starts

* See section VIII, Volume V, this series.

from a different legal conception of the term "crime against humanity" and sees the crime as committed by the defendants in the fact that the Jewish stockholders and/or participants in the firms of Rawack and Gruenfeld as well as Hochofenwerk Luebeck A.G., where considerable shares of the capital stock were Jewish, were forced under pressure of the general conditions prevailing in Germany to sell their shares to the Mitteldeutsche Stahlwerke directed by the defendant Flick. One cannot fail to recognize the fact that after national socialism had completely seized governmental powers in Germany, it set its aim to extensively eliminate Jewish interests from economic life. At the beginning of the National Socialist rule it appeared, and was also expressed in the statements of leading Party circles, that only the elimination of the Jewish element from the government, the civil service, and culturally leading professions was planned. In the economic field it was in fact not until 1938 that a number of decrees were issued which dealt with the Jewish problem in economic life, and which attempted to control the latter according to National Socialist principles, until final steps were taken with the Goering decree of 3 December 1938. But even in the face of this development, in the case to be decided here, the question remains open as to whether these cases of Aryanization referred to by the prosecution constituted an Aryanization at all in the sense of the German legislation, i.e., measures which could give occasion for the application of the term "crime against humanity" from the point of view of "persecution on racial grounds." The definition of the "Jewish enterprise" was only made by the decree of 26 April 1938, and 14 June 1938.†

† Document book 9, Documents 1406-PS, Prosecution Exhibit 334 and 1404-PS, Prosecution Exhibit 335.

At the time when the shares of the firms of Rawack and Gruenfeld and Hochofenwerk Luebeck A.G. were acquired, this definition was not yet in existence at all. It is indisputable that the majority of the capital stock of the firm of Rawack and Gruenfeld was acquired by the Mittelstahl group—firm of Possehl,—from Messrs. Benjamin, Netter, and other non-Jewish owners on a voluntary basis. It is contested, however, whether the nominal RM 189,000 originally belonging to the banking house of M. Warburg, Hamburg, were voluntarily sold. This amount represents exactly 5 percent of the capital stock, and was of no importance to the purchasing party Mittelstahl, firm of Possehl, but not to the authorities at whose wish the sale was effected. There can therefore be no question of a compulsory sale to Mittelstahl of the stock owned by the firm of Rawack and Gruenfeld, much less of an Aryanization.

The firm of Hochofenwerk Luebeck, in 1937, was believed to

be under Jewish influence; the Hahn works were also considered a Jewish enterprise holding a considerable minority amount of the Hochofenwerk Luebeck A.G. stock. On 10 December 1937, Messrs. Hahn sold to Mittelstahl part of their Hochofenwerk Luebeck A.G. shares, nominally 3.4 million shares, this being 21 percent of the Hochofenwerk Luebeck A.G. stock. This transaction cannot possibly be called Aryanization. Much less can this transaction—a purely commercial one—be construed to contain the facts of a case establishing a “crime against humanity.” The Hahn works were in no way compelled to sell their Hochofenwerk Luebeck A.G. shares, retaining in their possession a considerable part of their stock, and selling it later to the Mannesmann-Roehrenwerke with their entire works at Grossenbaum. Not till then did Rudolf Hahn, authorized by the Mannesmann-Roehrenwerke,† sell the shares to Mittelstahl, the Hahn works at Grossenbaum having at that time, unknown to the defendants, passed into the possession of Mannesmann. Mannesmann was Aryan property and these shares were originally Aryan property. No blame, in the penal sense, can therefore be attached to the defendants of this trial for the sale of stock by Mr. Hahn on 10 December 1937, nor for the acquisition of the remaining shares originally in the possession of the Hahn works at Grossenbaum.

† Transcript of 15 October 1947, German pages 8792, 8795.

As for the Petschek case, according to public opinion at that time, Petschek’s brown coal property was supposed to be Jewish property. Whether this was a legal fact is very doubtful. Documents submitted by the prosecution show that high officials of the Four Year Plan (Ministerialdirigent Neumann) were of the opinion that the shares of the Anhaltische Kohlenwerke of the Werschen Weissenfelder Braunkohlenwerke were under American influence. The Prague banking house, Julius Petschek and Co., in January 1938, held less than 40 percent of the total block of shares. On resuming negotiations with the United Continental Corporation, it appeared that the Petscheks, for a number of years, had relinquished, in favor of the Americans, their voting rights in connection with the United Continental Corporation as well as with the shares of the Anhaltische Kohlenwerke of the Werschen Weissenfelder Braunkohlenwerke. This rendered doubtful every legal chance of seizing their property as a Jewish possession for the purpose of Aryanization.

Still more vague is the Jewish character of the so-called Ignaz Petschek property. I refer in this connection to the Document Steinbrinck 359, Steinbrinck Defense Exhibit 54, where Karl Petschek analyzes the organization of this group, stating that

the complex described in Germany as the Ignaz Petschek problem is neither a Jewish nor a Czech affair. Whether and to what extent the State and government authorities nevertheless took steps in connection with the Aryanization laws applying to this property is immaterial for the legal judgment of the indictment against Flick and Steinbrinck as private persons. It is, on the other hand, of importance that these men in their negotiations were endeavoring to solve these problems on a fair and non-political basis of private enterprise.

In book 9 of the indictment material the prosecution has submitted the documents proving the anti-Semitic legislation of the Third Reich. But these documents make known only a fraction of "external conditions," as described by Hahn and Spiegelberg, which already in 1934 induced some of the Jews to sell their property in Germany and to emigrate. Rudolf Hahn, in his examination, has deposed that in view of these "external conditions," his uncle, Dr. George Hahn, resigned as early as 1934 from the chairmanship of the Aufsichtsrat of the Hochofenwerk Luebeck A.G.† and Spiegelberg declared in his affidavit that he had advised numerous Jewish industrialists and businessmen, even in 1934 and 1935, to disengage themselves from their enterprises and to go abroad.‡ In timely recognition of future developments Julius Petschek, at an early date, sought contact with Flick through the banker Daenhoff, and, later discussed a possible sale with Rosterg by way of a Dr. Bauer. But as far back as 1934 and 1935, military authorities were in favor of a change of ownership with regard to Luebeck.

† Transcript of 15 October 1947, German page 8759.

‡ Document book 16, Document NI-10144.

Long before Flick began negotiations with the Petscheks, Goering declared that with the conclusion of the Four Year Plan the economic power of the Jews in Germany would be crushed. (Document Steinbrinck 356, Steinbrinck Defense Exhibit 51.) It was not the initiative of the defendants that supplied the motive power for the Aryanization of the Hochofenwerk Luebeck A.G., or the Petscheks' brown coal property, as the prosecution pretends, but the strongest elements of public life; State, Party, and Armed Forces urging the elimination of all Jewish and foreign influence on industrial spheres in Germany prominently connected with war economy and State policy. This even the prosecution does not fail to recognize, stating accordingly that what substantiates a crime is the pressure brought to bear on the owners in order to compel them to sell. The prosecution has not been successful in producing conclusive evidence to show that this pressure on the selling parties was brought to bear by

the defendants, that it can be traced to their initiative, or that the defendants might have taken an active part in it.

With reference to Rawack and Gruenfeld A.G., Spiegelberg, in his affidavit,† emphasized that the negotiations with Mittelstahl were conducted in courteous terms customary in business transactions. It could be maintained that Spiegelberg possibly saw pressure in the allusion made by Flick and Rohde to impending regulations by the authorities controlling foreign currencies. From this the prosecution intends to build up a charge that Rohde, as Flick's collaborator, privately informed an adviser of the Foreign Currency Office of the plans made by Messrs. Neu and Spiegelberg to sell the majority block, deposited abroad, of the Rotterdam subsidiary company, as well as other intrigues. For many years, Flick and Rohde had carried out economic tasks in Upper Silesia by order of the German Government, receiving full credit and thanks for their trusteeship in Upper Silesia from the Reich government, the Foreign Office, the Ministry of Economics as well as the Reich Ministry of Finance.

† Document book 16, Document NI-10144.

It was the design of Messrs. Neu and Spiegelberg to defeat the aims of the Reich Ministry of Economics and the Four Year Plan. If Rohde withheld from the German authorities knowledge of this plot, he would have appeared as an accomplice of these intrigues. Apart from this, as Rohde testified as a witness, these plans meant a detriment to all German stockholders of the firm of Rawack and Gruenfeld. Rohde had to inform the foreign exchange control authorities, and as a fair business friend he had to point out the drawbacks of this planned transaction to Neu and Spiegelberg. Is that a crime against humanity? In his second affidavit Spiegelberg no longer takes it upon himself to talk of "pressure," especially as he can no longer remember the plans of his business friend Neu.

Rudolf Hahn declared in his affidavit,† that he had been induced by the pressure of general conditions in Germany, intensified by Flick's and Oldewage's activities, to sell the Luebeck shares. However, in cross-examination he admitted that he had not noticed any pressure exerted by the defendants. All he had left to go by was the presumption that Flick had taken part in it and that only because the representative of the Four Year Plan had declared that he would have to sell to Mittelstahl.

† Document book 9-A, Prosecution Exhibit 391 [NI-6018].

From the Document Steinbrinck 329, Steinbrinck Defense Exhibit 47, and Document Steinbrinck 330, Steinbrinck Defense Exhibit 48, as well as from statements by the witnesses Hahn and Spiegelberg, the high Tribunal has learned

that Mittelstahl, previously and on several occasions, had refused to acquire Luebeck, and that Flick, as a witness, gave evidence that he was interested in a negative sense, merely inasmuch as it would have been undesirable for him to see Luebeck pass under the influence of hostile competition. Organically, and from an angle of economic geography, the Flick Concern was just the one to annex Luebeck. This was well known by the authorities of the government, Party, and army, which were responsible for the iron and steel economy. They were not interested in procuring a profitable deal for Mittelstahl. They, on the contrary, had designs on the merger of Luebeck with Mittelstahl for technical reasons and reasons of planned economy. How loath Flick was to fall in with definite Aryanization tendencies of the authorities is shown by the fact that Mittelstahl, in opposition to the endeavors made by the Party and the authorities, retained Mr. Muench, as well as two members of the Hahn family, in Luebeck's Aufsichtsrat.† This can, most obviously, be deduced from the advice given to Mr. Oldewage by Steinbrinck:‡ “He should occupy himself less with Jewry, i.e., follow up Aryanization tendencies.”

† Prosecution Exhibits 379-381, Documents NI-2626, NI-4401, and NI-2627, respectively.

‡ Document book 9-A, Prosecution Exhibit 385, Document NI-2629.

If the contracting parties of the United Continental Corporation group, Mr. Murnane and Lord Strathallan, forwarded letters of thanks to Flick for conducting the business, that should really be sufficient proof that in any case the representatives of the Julius Petschek group never felt that pressure was brought to bear on them during their negotiations with Flick and Steinbrinck. Goering set Flick a time limit until 31 January 1938, for the negotiations with Murnane, after Flick had succeeded in inducing Goering to find a solution on the basis of private enterprise, instead of the political solution for which a commission had already been appointed. If this time limit, set first for a solution on the basis of private enterprise, would expire without result, there was a great danger that the solution of the Petschek problem, intended by Goering, would be effected by purely political means. Flick did not inform Murnane of Goering's decision, in order to avoid any appearance of pressure. He would, however, not have acted in a straight-forward manner if he had failed to point out to Murnane that his authorization was not for an indefinite period, and when negotiations were resumed in May 1938, the defendants showed the same attitude. After the first regulation pertaining to Jews had been published on 26 April 1938, Steinbrinck says to Weissmann: “We have come to know Murnane as a fair partner, therefore, we consider it right not to

initiate negotiations just at a time when more severe laws are appearing, otherwise Murnane might gain the impression that we were trying to bring pressure to bear on him."¹ That is a clear statement proving the contrary of the prosecution's assertion. In order to uphold its thesis, the prosecution is trying to present the order issued by Goering for sole authority in negotiating as a means of pressure. To make this possible the prosecution is forced to claim that during that period Julius Petschek was conducting promising negotiations with the Kali-group Wintershall, when, according to its assertion, Flick interfered with the business, allegedly preventing it by his negotiations.

The prosecution has told the high Tribunal on several occasions that, unfortunately, it had lacked the opportunity of investigating all documents at their disposal before the opening of defense. The defense is convinced that with thorough knowledge of the documents, the prosecution would never have filed its charges against Flick, namely, that by the so-called sole authority to conduct negotiations, he eliminated the inconvenient competition, preventing Murnane from making a favorable contract with the Kali-group. The examination of the prosecution's witness Jantzen, as well as numerous documents² have shown that Wintershall neither anticipated the conclusion of a contract, nor that their suggestions for negotiations introduced by third parties were taken seriously by the United Continental Corporation.³

¹ St. Doc. Bk. 4, Doc. 369, Ex. 68.*

² St. Doc. Bk. 4, Doc. 357, Ex. 52, Doc. 358, Ex. 53.

³ Tr. 14 Aug. 1947, German pp. 5420, 5431, 5463; Doc. Bk. 4-A, Doc. NI-3451, Pros. Ex. 415.

By the testimony of the witness Schacht, as also by the Steinbrinck documents,† it has been proved that Goering alone was in the position to approve of the necessary foreign currencies for the acquisition of the brown coal shares and that, in order to insure an economic handling of the foreign currency resources of which only small amounts were available, it happened quite often that currency transactions with foreign countries were transferred to one single office to be dealt with. Already in December 1937, that is, before Goering gave his order to Flick, Keppler had induced the two groups, I.G. Farbenindustrie and Wintershall, to conduct negotiations ‡ with Julius Petschek through one single representative in order to avoid reciprocal out-bidding by interested parties.

† Doc. Bk. 4, St. Doc. 367, Ex. 66, Doc. Bk. 4, St. Doc. 363, Ex. 59.

‡ Doc. Bk. IV, St. Doc. 355, Ex. 50.

In judging Flick, as having sole charge of negotiations, the

* St. is the abbreviation for Steinbrinck.

prosecution is overlooking the fact that Flick no longer acted as a private businessman, but that he was under orders of the delegate for the Four Year Plan; that he no longer acted on behalf of his own interests and on his own initiative, but by command of the government; and that, in the case of each decision to be made, he was dependent upon the instructions of his mandator.

This also applies to the contents and the essence of the two orders by Goering, of which the first had to be carried out by 31 January 1938, then to be extended and amplified in conjunction with the second, dated 1 February, which was prolonged and extended. For each step taken by Flick and Steinbrinck they had to obtain their instructions from the Four Year Plan, that is, Neumann, Wohlthat, or Koerner, and that not only with reference to the dates of negotiation deadlines, but also with reference to the amount and the category of foreign currency to be provided.†

† St. Doc. Bk. IV; Doc. 364, Ex. 60; Docs. 365 and 365a, Exs. 62 & 63; Docs. 366 & 366a, Exs. 64 & 65; Doc. 367, Ex. 66; Doc. 369, Ex. 68; Doc. Bk. 2; Doc. 331, Ex. 69; Doc. Bk. 4, St. Doc. 370, Ex. 70; Doc. 370a, Ex. 71; Doc. 370b, Ex. 72.

All these file notes, notes on conferences, reports, etc., prove their extreme, almost pedantic care and correctness in dealing with this government order. Although free businessmen, they, as responsible advisors of the government, adapted themselves to the bureaucratic organization of the State in order to safeguard, in complying with the order, the interests of the State. The bitter charges, raised by the prosecution against the defendants, of spoliation and deprivations of racial persecutees have not been proved on any count. If the prosecution is of the opinion that the carrying out of the transaction, in its final result, was a favorable deal for Flick, then this interpretation applies to nearly all participants, including the United Continental Corporation.

This Tribunal will have to decide whether the participation of the defendants was based on their aim to find a fair and just solution or to achieve the same result by applying force. In this connection it must not be overlooked that already at the end of 1937 plans were being made to take action against the Petscheks. Goering desired a political solution, that is, a solution of applying pressure, and for this purpose he appointed a commission. There could hardly be any doubt of the results to be achieved, judging by previous political Aryanizations, such as, for instance, Simon-Suhl through the Wilhelm Gustloff Foundation.

Flick succeeded in making Goering change his mind, bringing him around to a peaceable solution on an economic basis and in

wringing from the Four Year Plan, by tenacious perseverance and after innumerable attempts and discussions, foreign currencies for the United Continental Corporation deal. From political authorities strict measures, special laws, including expropriation, were demanded again and again. The defendants also considered personally the pros and cons of such special measures, not, however, to introduce them or have them applied, but in order to be prepared for clever, tactical encounters with the representatives of prevailing politics. Goering, Koerner, Neumann, Wohlthat, Keppler, and other influential government officials were urgently warned at every opportunity not to take forced measures,† that is, no forced measures against Julius Petschek nor against the Ignaz Petschek group.

† St. Doc. Bk. 4, Exs. 60, 61, 62 and 68. Doc. St. 364, 364a, 365, and 369 respectively.

On 25 May 1938, the Four Year Plan gave a new order to Flick concerning his participation in the solution of the Ignaz Petschek problem. By the end of 1938 Flick returned his order to Goering, as all his endeavors to negotiate with the Ignaz Petschek group failed, due to Karl Petschek's uncompromising attitude. It is important to point out that despite this fact neither drastic measures nor any special actions were taken even against Ignaz Petschek as long as Flick held Goering's order. Only after the commission had been returned, the trustee was appointed on 19 January 1939. Flick, still hoping that Petschek would give in, even then was ready to conduct negotiations on a basis of private enterprise. But the opportunity did not arise, though Flick continued to make favorable propositions to Petschek's trusted men concerning the exchange of their brown coal property for other equivalent assets.

The defendants were not satisfied with their endeavors to solve the problem on a friendly basis, which was being handled just then, but made a number of other propositions in order to protect the Ignaz Petschek group from political action and from the effect of the law directed against Jews. Similar to Julius Petschek, who had transferred his voting rights in the brown coal transaction to the American United Continental Corporation, the Ignaz Petschek group, in accordance with Steinbrinck's proposition, was to transfer its voting rights to a German confidential agent and was to appoint men to the Aufsichtsrat and Vorstand who enjoyed the confidence of the Petscheks as well as that of the authorities. Though the regulations of the laws concerning Jews were opposed to this, the defendants hoped to be able to impress Aryan character on the Petschek groups and to protect them from the effects of the laws concerning Jews

by carrying out these propositions. The appropriate authorities appreciated this way out, but not Karl Petschek and his trusted men, who would thereby have retained their property, even if they themselves would have been deprived of any personal and direct influence on the brown coal companies for a number of years. The Ignaz Petschek group also disregarded the previous suggestions, which were repeated from time to time, namely, to exchange the brown coal shares for equivalent shares in other enterprises. In any case, Flick never received a concrete answer to his suggestions, though he continued to make them even after the very drastic decree concerning Jews of 3 December 1938 was published.†

† Prosecution Document Book 10-B, Exhibits 446 and 452, Documents NI-3309 and NI-3286, respectively.

From the very beginning the defendants endeavored in an untiring manner to prevent radical measures and to find a solution which would be legally justifiable under the prevailing circumstances and acceptable to the Petscheks, always with the aim of saving their assets.

The expert opinion of attorney Dietrich runs along the same lines. The prosecution referred to it several times in order to prove the alleged endeavors of the defendants to extend the scope of the Aryanization laws. With regard to the importance which is attached to this letter, written by the lawyer to my client, I have to explain once more, in detail, the purpose and the significance of the idea of my client. I shall prove thereby that also this trend of thought only served the purpose of obtaining an extenuation of the measures taken by the government against the Petscheks and did not, as the prosecution contended, further the severity and the scope of application of the Aryanization laws.

May I remind the Tribunal on this occasion that the first executive regulations on the law concerning the elimination of the Jews from the economy, of 26 April 1938, were issued by the decree dated 15 June 1938. After this decree was issued, it was absolutely clear that the brown coal enterprises of the Ignaz Petschek group had to be considered as Jewish companies and were therefore affected by the decree dated 26 April 1938, for the purpose of incorporation in compliance with the interests of the German national economy by the Plenipotentiary General for the Four Year Plan.

It signifies the attitude of the defendants that Steinbrinck, a few days after the publication of this decree dated 15 June, which was so decisive for the Petscheks, apparently at the instigation of Neumann or Wohlthat, proposed several possibilities

in order to protect the Petschek group from the effects of this decree. The one way out consisted of the following propositions: to make the brown coal enterprises appear Aryan and thereby to safeguard them against the effects of the laws against Jews, that is, by appointing personalities to the Aufsichtsrat and Vorstand of each company, who enjoyed the confidence of the Petscheks as well as that of the State, and to make the Petscheks renounce their voting rights in favor of a trustee, who would be equally agreeable to both the Petscheks as well as to the State.† In case these protective measures should not prove sufficient, Dietrich, at Steinbrinck's instigation, developed a proposition for a decree by which the owners, namely the Petscheks, would be guaranteed just and adequate compensation in case their property should be used by the Four Year Plan in the interests of the German national economy. No such regulation was contained in the decrees issued so far, and also later on no legal guarantees were created which would have prevented the selling of the seized Jewish properties below their real value. This and nothing else was the intention and the aim of the so-called Dietrich expert opinion, as the author himself explains absolutely clearly from a judicial point of view in a Steinbrinck document book.‡ The procedure which Dietrich developed in his proposition, actually is the creation of a legal guarantee to ascertain a just compensation, whereby it would be guaranteed that the adequate purchase price was actually paid for the assets which were to be taken over. Dietrich recommended the introduction of stages of appeal in order to be able to rectify any wrong decision which might possibly have been reached by a higher authority.

† Pros. Ex. 440, Doc. NI-3227.

‡ St. Doc. Bk. 3, Doc. 347, Ex. 73.

My client believes he is able to remember that the suggestion for such a proposal guaranteeing just compensation for seized Jewish property originated from a joint conference which he held with Neumann and Wohlthat on 18 June 1938. On this day he reported to these two officials that the payment of foreign exchange, due on 21 June in New York to the United Continental Corporation, would be effected in time.

The special haste with which lawyer Dietrich carried out his commission on 20 June accounts for the fact that he received this commission on the very same day. Furthermore, it accounts for the fact that Steinbrinck forwarded Dietrich's comment to Neumann already on 22 June, and to Wohlthat on 14 July 1938, together with an accompanying letter with literally the same wording. It will be quite clear to everybody who knew the con-

ditions in Germany at that time that such a proposition, in its form and wording, had to conform to the mentality prevailing at that time, if it was not to be flatly denied by the competent departments. Both Neumann and Wohlthat were inclined to follow along lines which would bring about a reasonable solution. This becomes evident from the numerous documents which have been submitted by the defense. Wohlthat's attitude becomes particularly evident from the file note dated 6 February 1939, which clearly proves his fear of radical measures being taken during his absence, but also his confidence that the defendants would, in the meantime, continue to follow along lines which would safeguard a solution on a basis of private enterprise, as had been the practice so far.

* * * * *

Had Karl Petschek and his advisers—in the course of 1938, when the danger to Jewish enterprises became more apparent—exhibited the same far-sightedness with regard to political and commercial affairs as Julius Petschek, then it would not be necessary to discuss a Petschek case before this Tribunal, and, with the help of the defendants, Karl Petschek and his business partners would have been able to save the greater part of their property, which today has been Sovietized; for the former Petschek enterprises, which later were united in the Anhaltische Kohlenwerke, are today Soviet corporations.

Neither legally nor morally can the defendants be considered guilty as far as this development is concerned. Their possibilities to act in the Third Reich were limited. Within the scope of the commission given to them by Goering, Flick and Steinbrinck did more to safeguard the interests of the Petscheks than the appointed representatives and trusted men of the owners of the Concern. The defendants really never lacked the willingness—always seen in the light of the conditions at that time—to give due consideration to the interests of the Petscheks. The fact that their endeavors proved to be a failure is not their fault, since this could not be determined by their own free will.

Since it cannot be proved that the defendants have a personal share in the guilt in the sense of the indictment, the prosecution attempted to indict the defendants as abettors, accessories to, as supporters and instigators of measures taken by the State against the Petscheks, which the prosecution considers to be crimes against humanity. The prosecution claims that Flick and Steinbrinck had helped with the measures taken by the State against the Ignaz Petschek group as regards taxation matters, in the procuring of the soft coal shares for the Hermann Goering Works, etc. These incidents are not directly connected with

Aryanization. They are independent events, which have to be considered from a different angle than that of Aryanization, even if they did occur at the same time. At any rate, there is no factual connection.

* * * * *

The most important man for the Hermann Goering Works, Pleiger, unequivocally stated on the witness stand how the Hermann Goering Works, and not Flick, took the initiative in exchanging soft coal for brown coal. He stated as a witness, "I, needing it for the Hermann Goering Works for purposes of national economy, first claimed the soft coal from Flick, offering him brown coal in exchange." These categorical demands for the cession of valuable pits from the possession of Harpen and for soft coal fields from the property of Essener Steinkohle and Maxhuetten, were repeated from time to time in an unmistakable manner. For technical, geological, and economic reasons, Pleiger demanded, in his own drastic way, the eastern coal possessions of Harpen and Essen, justifying his demands by requirements, for reason of State policy, of the Hermann Goering Works. He had these demands supported by articles in the Party daily and professional newspapers, where they were intermingled with unmistakable attacks on the "intractable" combines. Not reaching his goal as quickly as he would have liked, and Goering's critical attitude towards the Ruhr industry consequently reaching a climax, and leading men in the Ruhr mining industry being prepared for drastic action by the government directed against the very core of the Reich coal industry to insure their own coal basis for the Hermann Goering Works, Pleiger remained reserved and completely silent when an attempt was made by Flick to find a solution to this question by way of negotiations. When Hermann Goering, visiting "his works" in Salzgitter for the second time learned that the coal supplies had not been assured yet, Steinbrinck summed up his impression of the situation in the following remark: "In view of the Field Marshal's present attitude to the economy, the danger is imminent, on the occasion of the Party rally, of immediate interference with the coal economy, which we must forestall by our offer."

The most prominent German mining authority, Dr. Knepper, said, about the same time: "If Flick succeeds in reaching an understanding with Pleiger, he will have saved the Ruhr mining industry from expropriation." These entreaties, directed toward Flick, to give way finally to the demands of the Hermann Goering Works, with regard to State policy, hardly correspond to the picture presented by the prosecution, according to which Flick had been ready from the first to complete the exchange deal, even

taking the initiative. Flick had learned from the bitter experiences of other concerns that one had to keep in line with Pleiger and the Hermann Goering Works. On the one hand, he was quite aware that by meeting Pleiger's demand he would jeopardize the existence of Harpen; on the other hand, he did not wish to accept the Petschek inheritance offered him by Pleiger. He therefore endeavored to find partners possessing soft coal as well as brown coal. He considered the de Wendel pits, that is the "Konkordia" group which was part of the Schering concern, the I.G. Rheinstahl, and the Deutsche Erdoel A.G. for Pleiger. As the latter ones were out of the question for reasons of quality, there remained only Salzdettfurth with the Sachsen pit which bordered on Flick's eastern soft coal possessions. Pleiger recognized it as a relief for Harpen and it was included in the combination. If this method of the Hermann Goering Works were adopted in negotiations with a non-Aryan concern, the prosecution would not have had any doubt that the State or a State-owned enterprise had put the owners under pressure to make them agreeable to sell. But Flick and his fellow workers knew the powerful will of the almighty Third Reich, and the consequences which a refusal of such a demand would entail better than Karl Petschek did. They did not let it come to an open break. This would have been disastrous for their enterprises. They only gave way when the equivalent value originally offered for the demanded soft coal became less and less and settlement became more uncertain.

What then were they offered? Since Pleiger had neither cash nor valuables, he offered his shares of the Petschek company. Already before their confiscation, the Hermann Goering Works had secured a claim to the major part of the Ignaz Petschek company's possessions, obviously for the purpose of exchanging these values for the coal basis vitally needed for the technical development of the Hermann Goering Works. When, on the first of June 1939, the first preliminary arrangements were made, the defendants had no clear conception of the legal title and the financial means by which the Hermann Goering Works intended to acquire the right to dispose of the brown coal enterprises; this was the Hermann Goering Works' own concern. However, after the first serious preliminary negotiations with the Hermann Goering Works, the defendants realized that the planned exchange could not have the character of a private economic arrangement between a private company and a government combine and, in addition, that such a transaction could be ordered and carried out only by way of a special government decree. As early as April 1939, my client gave a broad outline of how the

defendants imagined in detail the winding-up of the transaction with which they had been commissioned.†

† St. Doc. Book 2, Ex. 75, St. Doc. 333.

According to this, the State had to acquire the coal deposits of the Petschek enterprises with the definite purpose of procuring a soft coal basis for the Hermann Goering Works. The second act had to consist in covering, by way of confiscation, the soft coal deposits envisaged for the exchange, and in requesting the owner to transfer these soft coal possessions to the Herman Goering Works in compensation for brown coal deposits to be surrendered by the Hermann Goering Works. The defendants established three guiding principles which, if observed, would have made the transaction admissible, both for them and for the State. Had these three program points been followed in a faithful and just manner, there would be no Petschek case.

* * * * *

Now I come to count four of the indictment. "At least one of the defendants was an eager Party member," General Taylor declared and obviously alluded to Steinbrinck.

It is true Steinbrinck was a Party member, honorary leader of the SS, and member of the Keppler Circle. But what crimes has he committed? In four weighty volumes (14 A-D), the prosecution has submitted a large amount of material of a general nature, which until then had been almost completely unknown to the defendants. "The really important point," the prosecution maintained on page 133, "is the fact that the defendants supported the SS and the National Socialist government with open eyes and their hearts in harmony with its principal aims." As far as the defendant Steinbrinck is concerned, the prosecution has failed to furnish any proof for this contention, except for the allocation of public funds as contribution to Himmler's "Culture" ["Kultur"] funds. The exhibits submitted to the Tribunal mostly consist of harmless letters, from which nobody can infer guilt. Therefore, the prosecution has put the burden of evidence on my client, refusing *a priori* to consider extenuating circumstances (page 147), though the prosecution has declared on page 149: "It is their actions which are relevant in these proceedings, not their feelings and sentiments!" Since criminal actions under counts four and five have not been substantiated by evidence which I could refute, I am forced to deal with my client's feelings and sentiments. In other words, I have to explain his inner attitude toward the Party and the SS. "What are we the veterans of the First World War, to learn from the National Socialists?" was his question before the seizure of power and on the occasion of

conversations with Himmler during the years of 1933-34. "No group was more Nationalist than that of the true professional soldier, no other circle in Germany had such a social conscience as that of the real front line officer, the U-Boat or torpedo-boat commanding officer." "We can only learn from you the power of propaganda and it remains to be seen whether it will be a blessing or a curse."

Brought up at home in a social-minded atmosphere and working as an apprentice in a bicycle shop during his school vacations he had from childhood an understanding for the workers' point of view. As a young officer of the watch and commanding officer, he spent hours in the company of the dock laborers working on his U-boats, who in 1918 presented him with a gift accompanied by the beautiful words: "The tribute of the common man, who knew his work to be in good hands."

He witnessed the uprising of the Red army in the Ruhr and in Saxony. During the Kapp Putsch, knowing the mentality of the workers and that they would go on strike, he advised his former superior, Captain Erhardt, to give in in time. He himself was averse to any political activity and therefore, in 1923, he preferred to give up his profitable permanent position in the economic political main organization of the German steel industry, rather than devote himself intensively to the political problems which he would not have been able to evade there. But the amazing economic success of the Flick Concern soon attracted the open interest of press and parties. Flick wished to pursue his plans undisturbed by the public. From this defense against newspaper criticism and parliamentary influences develop Steinbrinck's close relations to the press and its political organs of information, which gave him an idea of the increasing effects which the economic crises in 1930-32 had on the masses. It was the fear of the radical tendencies of the leftists and of the increasing tension prevailing in the areas under Communist influence in Saxony, Brandenburg and northern Bavaria, where the main plants of the concern are located, which prompted Steinbrinck in 1931-32 to seek once again political contact and to establish relations with the "Stahlhelm" and the other right-wing leagues, the SA and SS. The Bruening government used the instability of the credit market to acquire the majority interest in the Vereinigte Stahlwerke in order to use this block of shares in connection with far-reaching plans in foreign policy.

When this transaction became known it aroused a general cry of indignation in wide anti-capitalist circles. In this economic chaos, in this political confusion, all parties, without exception, applied for contributions and subsidies to their election funds. At Steinbrinck's instigation a total of 60,000 to 70,000 RM was

contributed in 1931-32; they were usually small amounts which went to the Stahlhelm, Vaterlaendische Verbaende, SA, and SS, as well as to the NSDAP. But amounts twenty times as big were contributed to the other parties and in particular to the Hindenburg funds. Statements to this effect were made independently of each other, by Flick and Steinbrinck even before the indictment was served, and have been repeated in this Court. By pointing to Goebbels' diary and other publications the prosecution has tried to make it seem as if these payments helped Hitler to seize power and saved the Party and the SS from financial ruin. If the extent of financial subsidies were responsible for the course of tremendous popular movements, then, according to the contributions and wishes of the Flick Concern at any rate, Germany's political fate ought to have taken a different course. But after the disappointments of the last decade the highly agitated electoral masses could no longer be confined to the old bourgeois track, no matter how ample the election funds. They threatened to steer the ship of State either to the extreme left or strongly to the right.

When General Taylor in his opening statement (page 149) expresses his doubts concerning the apprehensions on the part of the Flick group as to the threat of communism and the defensive purpose of the contributions to the organizations, his remarks may now be considered pointless in view of the fact that responsible American statesmen, fully realizing the danger which communism constitutes to the world, are giving millionfold those amounts to whole countries in order to strengthen their defense potential. Compared with such astronomical figures what then mean the 5,000 marks which at the end of 1938, on Steinbrinck's recommendation, were given by the Maxhuette to the SA men of the impoverished Bohemian-Bavarian Forest [area]?

Your Honors, if you apply the apprehensions which make Europe tremble today to the conditions existing in Germany in 1932-33, a Germany torn by party strife and economic distress, you will understand more easily why on 30 April 1933 Steinbrinck, for the first time in his life, decided to join a political party for which the membership lists had already been closed. When Keppler personally visited him on his sickbed to enlist him, and Himmler acted as sponsor, he did not refuse. After all, he did not do it for his own sake but in order to ease the position for his Concern, which at that time was engaged in major business transactions. It was not his ideological conviction which led him into the ranks of the Party nor was it the belief in superman or race hatred. He knew the anti-Concern and anticapitalist attitude of influential Party sections and hoped that his friendship with

Keppler, Hitler's economic adviser and chief of the Party Central Office for Economic Policy, would protect the Flick Concern. This was the reason why he first obtained Keppler's approval for every transaction and measure carried out by the Concern which to serve he had made the purpose of his life. The totalitarian claims of the Party extended also to all economic spheres, and practical politics demanded that he should keep up his close relations with Keppler throughout the years so as to be in a position to prevent in time and to the advantage of private enterprise the realization of often revolutionary and wild ideas.

Steinbrinck never played any part in Party politics or as a Party member, nor did he perform any Party functions. He has said that he stayed away from meetings and that apart from the annual Party rallies he attended only one Party demonstration in 1932. He did not have time for these things, because until the beginning of 1939 he was an influential member of the Vorstand of the Mitteldeutsche Stahlwerke and of the Maxhuetten, and until 1935 also a member of the Vorstand of the Charlottenhuetten and the Linke-Hofmann-Buschwerke. In addition, he represented or assisted Flick in the large annual transaction for the expansion or reorganization of the Concern. It seems that the prosecution has very little idea of the amount of work a German industrialist did during the years before the war, when they expect that, apart from his nerve-racking duties in the office, on journeys and in the plants under construction, in the midst of battle for the elimination of unemployment and the reconstruction of international relations, he should have found time to read the innumerable speeches, books, newspaper articles and confidential memoranda with which they have confronted the defendants in their presentation of documents. Your Honors may believe that in Germany Hitler's *Mein Kampf*; Goebbels' speeches and articles; Rosenberg's *Mythos*; and Streicher's *Stuermer* may have been advertised everywhere and sold in many copies, but were read only by a relatively small number of people. I would, therefore, ask the Tribunal to believe my client's assurance that a man so busily engaged, especially during the war, had to attend to more important matters than the reading of these documents of National Socialist philosophy. I then may save myself detailed answers to the very general arguments of the prosecution in this respect, and can now turn to Steinbrinck's activities in the Keppler Circle: Already the prosecution have been very anxious to depict the Keppler Circle or the Circle of Friends as an association of criminals, and their elaborations culminate in the statement that Flick and Steinbrinck, as members of the Circle of Friends, sup-

ported the criminal acts of the SS; and they maintain further that the Circle of Friends—

a. had assisted in Hitler's rise to power,

b. had acted as constant adviser to the SS, had given it financial support, and must thus share the guilt in the crimes of which the SS has been accused,

c. had exploited its meetings for social and economic advantages, and, finally, that the Circle of Friends had known of, promoted, and abetted the measures against concentration camp inmates, the liquidation operations, and the medical experiments on living human beings.

In more than 75 documents has the prosecution unsuccessfully tried to find support for these grave accusations. Numerous other prosecution documents have been ruled out by the Tribunal as irrelevant, a number of others could not possibly have been known to the defendants such as, for example, the Kranefuss correspondence (*NI-8122, Pros. Ex. 717; NI-8121, Pros. Ex. 718; NI-8120, Pros. Ex. 719; NI-8119, Pros. Ex. 720; NI-8118, Pros. Ex. 721; NI-8106, * Pros. Ex. 722; NI-8117, Pros. Ex. 723; NI-8115, Pros. Ex. 724; NI-8497, * Pros. Ex. 725; * NI-8129, Pros. Ex. 726a; NI-8129A, Pros. Ex. 726b; NI-8107, Pros. Ex. 726c; NI-8131, Pros. Ex. 727*). For this reason they seem to me irrelevant to the indictment, and I find it unnecessary to deal with them. The prosecution has been extraordinarily thorough in interrogating in every direction all the members of the Circle of Friends on whom they could lay hands, representatives of industry as well as senior SS leaders. The Tribunal has affidavits from twelve participants in the meetings of the Circle of Friends, some as prosecution documents, some in the record as statements by witnesses interrogated in this Court, some in defense document books Flick and Steinbrinck.

Your Honor, I think it is time for the lunch recess.

PRESIDING JUDGE SEARS: We will recess for 1 hour and 20 minutes.

(Recess)

DR. FLAECHSNER: Keppler, von Schroeder, and Steinbrinck have described how the Keppler Circle was established and what was its activity, from 1932 until Hitler formed his government at the end of January 1933. Keppler had chosen 10 or 12 men from finance and industry, among them Schacht, Voegler, von Schroeder, Reinhardt, Steinbrinck, in order to discuss with them quite formally problems of employment, currency, and other general questions of the economic Party program. After the Circle had been established Hitler made a speech on 18 May 1932 in which he addressed those present and outlined his ideas. Steinbrinck

* Reproduced in section V C.

and Flick had at that time not yet been asked to join. Flick was not asked until 2 years later. Steinbrinck has described here how he participated in these discussions once in Munich and once in Berlin, when the elimination of unemployment and the attitude of the Party as regards the Concern question was discussed. A program was never drawn up, no decisions were arrived at, no laws were ever drafted. How, then, can the prosecution maintain that in these discussions the plans for an economic reorganization were prepared? Where does one want to see a shred of evidence that, through these harmless utterances, Hitler had been helped to power? Keppler, the father of the idea and the center of this Circle, declared that the main purpose of these meetings—he states there were three or four of them—were intended for his own instruction. Hence, there were “hours of instruction” for a man who was “no great economic administrator,” and who had to arrive at “an opinion for himself on the several problems” from these conversations.

When, after Hitler’s rise to power Keppler became Hitler’s adjutant for economic questions at the Chancellery, he probably asked some of his friends, or several of them, for advice occasionally. Meetings of the Circle itself, even for a joint discussion of economic questions, have, according to corroborating statements by witnesses, never again taken place from there on, that is, the first half of 1933. If individual friends, who, in the course of the years became presidents of Chambers of Commerce, like Hecker, Reinhardt, von Schroeder, assisted in the reorganization of the German economy, their activities were due to their private or personal positions, and not due to a decision or an act by the Circle of Friends. Up to the collapse and the last meeting, economic or social problems were never again jointly discussed by the Circle of Friends, much less were they formulated into decisions or proposals.

This is unequivocally clear. This proves irrevocably that the assertions of the prosecution that the Circle of Friends continuously advised the Party, government representatives and the SS, have not been proved in any way and cannot be maintained.

How did it happen, then, that two dozen prominent men of industry came together from all parts of Germany, two to three times per year, and since approximately 1939, even ten to twelve times per year, although not only every active collaboration in the economic development of the situation was denied to them—but every kind of a joint statement and criticism was forbidden?

To this Keppler gives a simple, and, from his point of view, convincing answer. “We had become friends, and we felt the need

to speak our mind once in a while." During the first years, from 1933 to 1938, the Circle of Friends usually met on the occasion of the Party rallies and the Munich celebration of 9 November. The Nuernberg rallies were demonstrations in the greatest possible style, where tens of thousands of spectators, and thousands of guests, attended. Keppler declared that the invitations were sent out on Hitler's personal initiative. Since Hitler could not invite these gentlemen and care for them as his guests of honor, he made arrangements that Himmler take over this task, just as Ribbentrop and Rosenberg sent invitations to scores of foreigners, and Ley to representatives of employers and employees,—so Himmler, on Hitler's orders, undertook the lodging, the securing of seats for the rally, and the accommodation of the Circle of Friends during the Party rallies. Himmler's deputy was Kranefuss; he was supported by junior SS members from Keppler's staff. Kranefuss also spoke on behalf of Himmler who already at that time, was considered as the organizer and policeman, and whose orders had to be carried out unconditionally so that people remarked jokingly that on arriving in Nuernberg the guests would have to surrender to him their free will together with their luggage. I shall still try to explain the peculiar part which Kranefuss played in the Circle of Friends and which even the prosecution, supported by Document [NI-8106, Prosecution Exhibit 722], makes look peculiar. On Thursday evening of the week of the Nuernberg rally, Himmler himself regularly appeared in the Circle of Friends and also brought along some foreign guests. He always invited the Circle for a visit to the camp of the SS which, together with the SA, organized a huge parade in Nuernberg, for one of the days. The fact that on such an occasion to entertain and show around his guests Himmler introduced men of the staff around him into the Circle of Friends, appears to be a social matter of course. Can one, as the prosecution tries to do, blame the men of the Circle of Friends for taking part in such rallies, when the whole diplomatic corps, the military attachés of all larger countries, and numerous representatives of the press of every country attended there? One could counter this by asking: "No, that is not meant. This connection of the Circle of Friends with Himmler is understandable, but what was the purpose of visiting the concentration camp Dachau together with Himmler? What was the purpose of the yearly donations of money?" I believe that, based on the statements of the witnesses Pohl, Lindemann and Flick, I can give the Court a simple explanation of this. Very early Hitler himself developed manifold artistic tendencies. Every year at the Nuernberg Party rally he gave an extensive review and prediction of the cultural-political developments, and afterwards he

distributed the "Kulturpreis" for art, literature, and science. Goebbels was the protector in chief of the film world; Goering acted as general manager in chief of the stage and theater life, at least in Prussia. The preservation of cultural assets was, if not part of the obligations, yet part of the *bon ton* of the highest chief of the Third Reich. Therefore, the third or fourth highest in the hierarchy would be anxious not to lag behind, and Heinrich Himmler selected for himself a special cultural field. The popularization of prehistoric Teutonism and old Germanic customs was just the thing for him. His conviction of the close cultural link amongst the Indo-Germanic peoples went so far as to lead him to believe that far-reaching parallels could be drawn between Japanese characters and Gothic runic writing. This was told to my client several years ago by the Spanish naval attaché, Captain Meno. The blue swastika of the Dalai Lama Himmler considered as a common symbol. This was the initial reason for Dr. Schaefer's Tibet expedition and his colored film photographs of the Holy Temple in Lhasa were shown to the Circle of Friends. Himmler arranged for a popular book being written about Genghis Khan, the blue-eyed, auburn-haired Mongol prince, a book which was widely distributed. For information concerning prehistoric Teutonism he founded the Ahnenerbe, a studying circle which originally had no connection whatever with the medical experiments with which it was secretly commissioned—not until the next to the last year of the war. Besides the preservation and promotion of historical excavations and research, Himmler concerned himself with craftsmanship and arts and crafts; training workshops for weaving, pottery, and carving were set up. The porcelain factory Allach was established—not far from Dachau. The Wevelsburg was reconstructed as a collecting place for old Germanic cultural treasures. There, right in the country of the Saxon Duke Widukind, a place of worship—a museum planned on a large scale and dedicated to the care and preservation of German history, was to be erected. According to the statement made by the banker von Schroeder, Himmler ordered credits to be taken up with two German banks to a total amount of 13 million Reichsmarks for the promotion of this idea of his. The interest and repayment installments on this sum and the money spent on his other cultural hobbies constitute expenses for which he could not use money belonging to the State or Party funds. Therefore, he turns to the Circle of Friends in a personal appeal made subsequent to a visit to Allach and the royal tombs in Quedlinburg Cathedral; therefore, after a further request by Kranefuss and Wolff, the first propaganda appeal, signed by Schroeder and Steinbrinck, appeared, which was continued every year after that by the treasurer Freiherr von Schroeder. Accord-

ing to my client's statement, during the first years six to seven hundred thousand Reichmarks were raised annually, and after the I.G. [Farben], Brabag, and the Vereinigte Stahlwerke had given their support, each subscribing 100,000 RM, as well as other firms—that is, from about 1940–41 onward—about 1 million Reichsmarks were raised annually. Such an annual contribution for hobbies may seem at first to be extraordinarily high, but if interest and repayment installments on the Wevelsburg loan had to be paid out of it, there could not have been much left for other purposes.

* * * * *

I have tried to portray to the Tribunal, with single strokes of the pen, the soldierly characteristics which allowed Steinbrinck originally to enter the SS. His noble human qualities, his relationship to the church, his moral conscience, have been shown to the Tribunal by various witnesses' testimonies and documents. During discussions of the other counts of the indictment he has been recognized as a social-minded and warm-hearted employer, a painstakingly exact attorney of the State in the occupied territories, a correct and objective adviser for matters of State and economy. In the First World War he risked his ship and the lives of his crew in order to save two members of the crew of the torpedoed English submarine in the face of three more attacking submarines. In the Second World War he brought hundreds of French and Belgian soldiers from prison camps back to their homes and civilian employment; he fought for the fate of a hundred thousand evacuees and foreign workers. Such a chivalrous, humanely sensitive character as Steinbrinck is simply not capable of taking an active part in crimes against humanity. He could not have borne to be even a secret accessory to such crimes as are attributed to the SS. His frank, upright soldier's mind could not have endured to keep silent; he would have acted, even at the risk of his life!

So much for the human and personal judgment of the case. As a jurist I must also throw some light on the legal side.

The assertion of the defendant Steinbrinck that he was an honorary leader [Ehrenfuhrer] has been doubted by the prosecution. The prosecution has based its doubts on the staff index card and it emanates from the entry that Steinbrinck is only to be regarded as honorary leader until 2 September 1934. This conception is incorrect. As honorary leaders were to be regarded those SS leaders who had played no active part whatsoever in the SS. Steinbrinck has stated that he had no position of command nor any official function within the SS and also that he was only once attached to the staff of the Reich Leader SS, when

on the occasion of the funeral of Reich President von Hindenburg he was appointed honorary escort to the family. This was purely a function of representation, for which he was appointed to the staff of the Reich Leader SS. He was discharged from this post on 1 April 1936 and was appointed merely leader attached to the staff, i.e., he was merely formally carried on the staff as leader, without performing any function whatever. A person who was only nominally carried on the staff as leader was an honorary leader. According to the publication of the Bavarian Special Ministry [Bayerisches Sonderministerium] honorary leaders are not to be regarded as members of a criminal organization. This classification is in conformity with the principles of the IMT judgment. The IMT judgment declares punishable those members of an organization declared criminal, who either collaborated for criminal purposes or who became members with knowledge of the fact that the organization pursued criminal aims. Neither of these things is true in the case of Steinbrinck. There can be no question of his cooperation with others for criminal purposes. The prosecution has attempted to prove that the criminal activities of the SS must have been general knowledge. They did not succeed in proving this. Thus the defendant Steinbrinck cannot be sentenced under count five of the indictment. May I also refer to the principles which were arrived at in the judgment in the case against Pohl, et al., in which an active colonel of the Waffen SS was acquitted with the explanation that his knowledge of the criminal activities of the organization could not be proved. If, on the other hand, in the opening statement the view is taken that the defendant must prove that he had no knowledge of the crimes of the SS, then this assertion is in direct contradiction of the principles arrived at in the afore-mentioned judgment. It also contradicts the general rules of criminal procedure in all countries, according to which the guilt of the defendants must be proved.

In this trial, which has now run for more than 7 months before this High Tribunal, both the prosecution and the defense have tried to draw a clear picture of the events on which the charges are based. We must now make a decision on the question of whether men who hitherto stood at the head of their country's economy are to be pronounced guilty of violations of international law. The questions significant in international law as to whether private individuals—and all the defendants are in this category—can become guilty of violations of international law, is to be ignored here. Did the defendants, in the execution of government instructions and orders commit a crime under international law? Could they become guilty if they acted in conformity with the laws of their country? It has repeatedly

been demonstrated here that the happenings under discussion here were always in conformity with the German legislation, and at no time constituted violations of it. International law disapproves of the decrees issued by the German Government, so far as they conflict with general principles of international law. But can we expect the individual to disregard the laws of his own country for the sake of international concepts? Can we expect the individual to submit to the sanctions of his country's legislation, because he regards this legislation as contrary to international law? Can we demand of a private individual such an attitude with all its consequences, which under the intensified National Socialist dictatorship under wartime conditions would have meant the sacrifice of his existence? To pose this question is to answer "No." Can one, therefore, accuse the defendants here of having participated in the enslavement of foreign peoples, the spoliation of occupied territories, crimes against humanity, and the fostering of trends which the IMT has declared criminal? I have already commented upon the material side of the individual counts in the foregoing statements; I have yet to give an opinion on the character of my client.

Steinbrinck, as a young naval officer, had completed a short career, but rich in achievements and successes, and he had won recognition, even among his enemies, on a large scale. The qualities which he exhibited as an officer, i.e., a sense of honor, correctness, a sense of duty and chivalry, remained decisive also in the further course of his life, and he remained an officer in spirit even when his military career had ended. The inscription in the Seebruegge Naval War Museum, with which the former enemy describes his personality, reads "Cet officier était très correct." [This officer was very correct]. These words were binding also for him, when he returned to France and Belgium a second time during the war, this time not as a soldier. Then again, economic circles with which he came into contact described his attitude as correct and chivalrous. He carried out orders received from his superiors like an officer complying with an order but trying at the same time to avoid hardships as far as possible. He went a long way in his efforts to spare the occupied territories. His agency took its instructions to act as the friend and adviser of indigenous industrial enterprises so seriously that it even warned the latter of imminent confiscation drives, so that these enterprises could take preventive measures in good time, and thus frustrate the occupation authorities in their plans. When military orders, given at a time when strikes were making the situation difficult, caused hardships for the civilian population, and the tension became so critical as to threaten clashes between the military forces of

occupation and the population, Steinbrinck, by his personal intervention, achieved the cancellation of these orders.

This attitude of his toward the indigenous industry of the occupied countries and their population was not considered forceful enough by those in power in the government of the Third Reich, and led to his dismissal as Plenipotentiary General for Iron and Steel. Is a man of this type supposed to have plundered? Is a man like this supposed to have forced the population of occupied territories into slave labor? He, the very man who endeavored, as the Belgians and French testified, to stop the recruitment of workers for Germany!

In the so-called Aryanization cases, too, Steinbrinck advocated an objective, correct, and clear line being taken, a line for which the government authorities, and also the other negotiating parties did not always have the right understanding. Could the defendant's refusal to cooperate have been of any avail to the victims? Could not the State have carried out its measures regardless of whether Steinbrinck accepted the proposition or not? Even if one were to adopt the line of thought of the prosecution in this connection, the defendant could not be pronounced guilty, and the same applies to the last count, a promotion of criminal tendencies of organizations declared criminal by IMT ruling. Here too there is not a shadow of proof that Steinbrinck had identified himself in any way with tendencies which must be condemned from a moral point of view.

I move, Your Honors, that my client be acquitted.

E. Extracts from the Closing Statement for Defendant Weiss*

DR. SIEMERS (counsel for defendant Weiss): Your Honors!

The up to now greatest trial of industrialists is coming to its end, a trial of industrialists based on penal law. The prosecution has set a wide and large frame to which the defense had to adhere, and the result was, that these proceedings from their first day until today have lasted over 8 months. The prosecution presented more than 30 document books with three to four thousand pages, and the defense did about the same. Is the Flick Concern actually that big? Are the relevant criminal acts of the six defendants really that extensive that they correspond to the material presented? I believe that everybody who witnesses this trial will answer this question with "no" and feel that there was another reason for the prosecution to choose

* Complete closing statement is recorded in mimeographed transcript, 28 and 29 November 1947, pp. 10787-10884.

this large scope. This first trial of industrialists is not an attack on Dr. Flick and his assistants, but an attack on the entire German economy, on German capitalism and its industrialists.

In my opening statement of 18 July 1948,* I pointed out this fact and the peculiarity of this attempt of the prosecution.

* * * * *

Still lacking are the two last firms of the department of Weiss, namely, the two railroad car factories in Silesia and Saxony. Regarding these two plants, both the prosecution and myself have in common that we can produce little evidence. The representative sent by Dr. Kranzbuehler and myself into the Russian Zone, has, as the Court will recall, brought back little, if any, usable data. This failure must be attributed to the conception about democratic freedom prevailing in that zone. The American prosecution, too, could obviously not get any documents from the allied Russian friend of the United States of America, apart from data of a general nature which had already been submitted in the IMT trial by the Soviet Union, and of which the defendants had no knowledge.

The prosecution has raised against both railroad car factories three common charges—and beyond this brought up other argumentation against Weiss with regard to the Linke-Hofmann Works which it thinks is of an incriminating character. Apart from the material with regard to this argumentation the following legal questions—in default of evidence—are concerned:

First, both firms are said to have employed, contrary to the Geneva Convention, prisoners of war. Second, both firms are said to have, contrary to law, employed concentration camp inmates. Third, foreigners, prisoners of war, and concentration camp inmates are said to have been ill-treated. Fourth, Weiss is said to have taken steps in Berlin in order to obtain prisoners of war for the Linke-Hofmann Werke though he always asserts that it was an affair of the plant with which he had nothing to do.

Item one.—The allegation that prisoners of war had been employed in the railroad car factory is correct. How this fact is said to constitute a violation of the rules of the Geneva Convention—that, in spite of all efforts, I could not understand. The related rule of the Geneva Convention is Article 31, paragraph 1, which says as follows, and I quote:

“Labor furnished by prisoners of war shall have *no direct relation with war operations*. It is especially prohibited to use prisoners for *manufacturing and transporting arms or muni-*

* Reproduced in section III F.

tions of any kind, or for transporting material intended for combatant units." [Emphasis supplied.]

From this it is quite clear that prisoners of war may be employed for the construction of railroad carriages because they are not included in the conception of "arms and ammunition" and have no relation to actions of war. As far as railroad carriages are used by the armed forces they constitute a *means* of transport for war material. However, the *manufacture* of means of transport is not provided for by Article 31 but only the work performed by the prisoners of war in the transportation itself. With all good intentions to conceive the train of thought of the prosecution, I really do not know under which regulation of the Geneva Convention the prosecution is classifying the work of prisoners of war in the construction of railroad carriages for the Reich railways.

It is true that Linke-Hofmann as well as Busch-Bautzen also carried out other constructions—this has also been proved by the prosecution—for example, armored trains, tank transporters, flat-bed trailers, ambulance cars, equipment for dismantling rails, etc. But also in these cases it does not concern "arms" in the sense of Article 31 of the Geneva Convention; these are rather vehicles on rails, that is means of transport, or other vehicles serving the conveyance of material of any kind. If, in spite of this, the prosecution made it a count it can only be for the reason that contrary to the Geneva Convention, the prosecution is of the opinion that prisoners of war are not to be employed in the construction of means of transport.

But even if the Geneva Convention should apply to the last named constructions, the prosecution has not proved that prisoners of war were participating in *these* constructions. In this connection it is important to note that according to the documents of the prosecution the share of Russian prisoners of war at Linke-Hofmann was less than 25 percent while according to my findings in the case of Busch-Bautzen no percentage is mentioned by the prosecution with the exception that in 1943 apparently all the foreigners amounted to only 17 percent of the total workers, that is, the prisoners of war being of a still lower percentage. Therefore, it is quite improbable that prisoners of war who had to be employed principally in groups should not have been employed in the construction of railroad carriages although the construction of railroad carriages was the main line of the two firms. Even if all my argumentations should be wrong, yet there could be no cause for assuming a violation of international law by the defendants for the following reasons:

α. The defendants would not be found guilty in the sense of penal law, because they did not participate in labor allocation;

above all, they were only informed afterwards by monthly reports; and besides they could not know in which branch of construction the prisoners of war were employed, but were obliged to presume that prisoners of war were employed in the main line of production, that is, the construction of railroad carriages.

I would like to add here that the prosecution documents, as I would point out, refer only to the construction of railroad carriages.

b. The employment was ordered by the State authorities and it would have been considered a sabotage if the production had declined on account of Mr. Flick or any of his coworkers prohibiting the employment in the plant for construction of railroad carriages. Apart from that, an industrialist had no possibilities of judging such fine points of international regulations.

c. It would not be the case of a serious offense and consequently no war crime in the sense of the Control Council Law. In this connection I may refer to my explanations given in reference to Russian officers at the Fella works.

d. Finally, it must be added that the High Command of the Armed Forces was in charge of the prisoners of war, attended to their allocation and supervised their proper employment. The Reich Labor Gazette of 1940 expressly states "war important construction work of the Reich railways." These regulations contained in the Reich Labor Gazette are in conformity with Article 2 of the Geneva Convention, according to which prisoners of war are subordinate to the authority of the enemy power, that is, to the State and the armed forces, and with Article 28 according to which the "state of custody" has to accept full responsibility for prisoners of war even in such cases where they work for the "account of private persons."

Your Honor, I would like to omit pages 91 to 96,* and would ask the Tribunal to take judicial notice of them as far as the central points are concerned. These pages deal with the concentration camp inmates, which I need mention only shortly because they have been dealt with by Dr. Kranzbuehler. They also deal with ill-treatment, which has been discussed very often, and with a special activity of Mr. Weiss in Berlin with regard to the employment of prisoners of war in the Linke-Hofmann Works. All this I am going to pass over because as the Tribunal will recall that during the rebuttal I had an argument with Mr. Stone, and

* Counsel refers to a mimeographed translation of the closing statement which counsel proposed to render and which was made available to the Tribunal prior to the actual delivery of the argument.

I do not want to repeat what was said then. I now continue on page 97.

With that I have dealt with all firms within Weiss' jurisdiction and would like to state the following:

1. No criminal charge can be made against the defendant Weiss for having employed foreign workers.

2. No instance has been proved where the individual plants within Weiss' jurisdiction have either maltreated or treated as slaves one single foreign worker, prisoner of war, or concentration camp inmate, that is neither at the instigation nor merely with the consent of the Vorstand, the factory leader or one of the chief employees of these works, much less on the instruction or with the approval of the defendant Weiss. However, without guilt no conviction is possible.

I now turn to page 98 and leave out the rest of page 97.

3. The prosecution has failed to prove one single case where in the plants which came under Weiss' supervision any single prisoner of war was either employed or treated in a manner contrary to international law, or still worse, in any way which constitutes a war crime.

Nevertheless, I still have a few statements to make regarding the theme "Prisoners of War under International Law," because within the framework of the subject-distribution I have taken over this theme and apart from this, I must cover my client in case, contrary to expectation, on one point or another, the Tribunal does not agree with my conclusion up till now.

The high Tribunal will remember that in my statement so far I dealt already with various questions of international law in connection with the subject of prisoners of war, that is, in the case of the mining industry, in the case of railway car factories, and of the FellaWorks, so that on these points I can refer to my former statements.

Already at the beginning of my final plea, I pointed out that a private individual cannot be charged with a violation of the provisions of international law. I have proved this in detail, and for the rest have referred to the expert opinion of the specialist on international law, Dr. Herbert Kraus. This opinion applies particularly to the regulations relating to prisoners of war, thus to the Geneva Convention of 1929, and furthermore applies in spite of the Control Council Law. For in this respect, the Control Council Law neither creates nor wishes to create any new law, for in the definition of the War Crimes in Article II, it expressly states "Violation of the laws or customs of war." Thus, the Geneva Convention remains decisive. According to Article 2, prisoners of war are subject to the authority of the enemy

power and, in Article 4, paragraph 1, the following literal specification is given:

“The power detaining prisoners of war is bound to provide for their maintenance.”

According to that it is established that the state—or, if one wishes to carry the interpretation further, according to the IMT judgment, those officials who act on behalf of the state—are responsible for the prisoners of war and thus for everything which happens to the prisoners of war. Those officials who acted on behalf of the state were, however, as we have seen, the High Command of the Armed Forces, with the individual Stalags, and the Plenipotentiary General for Labor Allocation, with the divisions of the Reich Ministry of Labor.

In Article 28 the responsibility of the state is again laid down *expressis verbis*, and I quote:

“The *detaining power* shall assume *entire responsibility* for the maintenance, care, treatment, and payment of wages of prisoners of war *working for the account of private persons.*” [Emphasis supplied.]

It is indisputably established by this article that the state bears the responsibility, and not the private individual for whom the prisoner of war is working. It is of importance that this article is to be found in the second chapter of the Geneva Convention under the heading: “Organization of Labor.” This fundamental article is followed by Articles 29 to 32 which provide that prisoners of war are not to be used for excessive, unhealthy or dangerous work or for work which is directly connected with war activities.

The fundamental point of view that the state or, in accordance with the IMT verdict, the leading personalities of the High Command of the Armed Forces, Keitel, or the Plenipotentiary General for Labor Allocation, Sauckel, are responsible, has been confirmed by the IMT verdict and the sentencing of the above-mentioned persons. This idea is also the guiding principle of the Geneva Convention, consisting of 97 articles and the same idea is thus also contained in the numerous regulations of the OKW or of the Plenipotentiary General for the Four Year Plan, Goering, or his assistant and subordinate, the Plenipotentiary General for Labor Allocation, Sauckel. As, for example, in the order by the Chief of the High Command of the Armed Forces, Keitel, dated 24 December 1941, referring to an order by Hitler which provides for the employment of all suitable prisoners of war in the armament industry; and in the Reich Labor Gazette for 1940 and 1942 which regulates the legal basis of the employment of prisoners of war by private firms to the effect that prisoners of

war are to be allocated to the private firms concerned by the individual prisoner-of-war camps with the cooperation of the regional labor office or [local] labor office.

It even goes so far that no direct legal relationship exists between the industrial firm and the prisoner of war, but legal obligations exist only between the industrial firm and the prisoner-of-war camp, to the commandant of which the care of the prisoner-of-war is handed over.

It is due to this fact that the individual industrialist had no control over whether he got prisoners of war or which ones he got but that that depended entirely on State direction. In pursuance of this, the State quite clearly ruled where the prisoners of war were to be assigned, namely through the Reich Ministry of Labor, later the Plenipotentiary General for Labor Allocation, Main Department VI A, which was directed by the witness for the prosecution, Ministerial Counselor Dr. Letsch, in conjunction with the High Command of the Armed Forces, also through the labor offices in conjunction with the individual prisoner-of-war camps.

Reference has also been made clearly enough to the fact that there was no possibility of rejecting instructions of that kind. The industrialist concerned would then not have been able to complete production and would have been brought before the People's Court because of sabotage, and condemned to death, a necessary consequence which causes no surprise in a dictatorial state. This aspect becomes quite particularly decisive from the moment when there was in existence a clear order from the Dictator or his equally dictatorial representative, the Plenipotentiary General for the Four Year Plan, who was authoritative where economy was concerned, namely Goering. I submitted these regulations to the Tribunal: they concern the allocation of Soviet prisoners of war, about whom it is a question in this case. These documents are based on an instruction of Hitler. The order was given by Goering in the conference of 7 November 1941. *

The two documents speak, which I point out, expressly of an order of Hitler's. It is laid down in both documents—the signatures are of Goering's collaborator, State Secretary Koerner—to which industrial branches the Russian prisoners of war are to be allocated, and that, in the form of an order of precedence. It is fixed there, and I quote:

“A. In the lead is coal mining.—Fuehrer order that all pits should be examined for suitability for assignment of Russians. If occasion arises whole plants to be staffed by Russian workers.

“B. *Transport matters*.—(construction of engines and railway cars, repair plants, etc.) * * *.

* Document Weiss 1038, Defense Exhibit 65 and Document Weiss 1039, Defense Exhibit 66 (not reproduced herein). These documents were introduced before the IMT as 1206-PS (USA-215) and 1193-PS (USA-785) respectively.

“C. *Armament factories.*—Mainly tank and gun production * * *.”

I ask you to notice from this order that, according to this regulation, there existed an express instruction for coal mining and railroad car building. In case, therefore, there should still be any doubts as to my previous legal deduction, the fact must be taken into account that in view of conditions during the war under National Socialist leadership, it would have been madness and suicide, in fact, to oppose an order of Hitler's.

I believe, at all events, that I do not require this argumentation with reference to the mining and the railway car building industry. In any case, these arguments hold, however, for orders cited under the heading “Armament Plants” which say that Russians are to be allocated to tank and gun factories.

In this connection I should like further to refer to the cross-examination of Goering by Justice Jackson on 20 March 1946 before the International Military Tribunal which I have introduced in this case, where Goering affirms that he himself gave the general directions in the meeting of 7 November 1941 for the allocation of Russian prisoners of war.

Independent of the preceding, I should like to marshal the following points of view in reply to the question of alleged allocation in violation of international law:

1. The Soviet Union was not a cosignatory of the Geneva Convention, and the prosecution does not appear justified in applying, without further ado, all the provisions of the Geneva Convention. The Russians have shown themselves that, in their opinion, the Geneva Convention and the Hague Rules for Land Warfare were not to be taken into consideration in the war between Germany and Russia. It is generally known—and therefore no collective proof is needed—that the Soviet Union, during and after the war, violated the provisions of the Geneva Convention. To have a basis for my argumentation, I have, with consent of the Tribunal, introduced numerous documents to prove that the Soviet Union disregarded the provisions of Article 31 and other articles and in that way showed that she herself adopted the point of view that the codified regulations pertaining to international law were not to be applied as international common law either.

I have furnished five affidavits from which it can be seen that German prisoners of war had been employed, during and after the war, in direct connection with acts of war and indeed partly in the manufacture of arms and ammunition, partly in the transport of material for fighting forces, especially in the theater of operations.† I would like to add that I would point to the list in

my footnotes where I have listed the individual points where and to what extent the violations took place.

† Weiss Ex. No. 72, 73, 75-77, Doc. Book 3, pp. 60/4, 68/78. Weiss Ex. No. 208, Doc. Book 8, pp. 58/61

e.g. Ex. No. 73: Loading of ammunition, July 1944 to February 1945.

Ex. No. 75: Committed in main fighting line and concerns numerous cases of commitment in operational area.

Ex. No. 76: Prisoners of war active in tank construction from August 1944 to end of August 1946—made tanks serviceable.

Ex. No. 77: Employed in tank construction with roughly 200 other prisoners of war, since 1943 busy with building of tanks.

Treatment worthy of a human being is partly described in this affidavit and moreover in affidavits 78 and 79, pp. 79/80.

2. Even if one is of the opinion that the industrialist was obligated to apply the entirely uncertain international common law towards Russian prisoners of war, then it must at least be taken as a basis that only those points of the Geneva Convention may be acknowledged as common law, which, according to the opinion of a justly thinking man, are being considered as a violation against the principles of humanity. May I in this connection point to my statements which I made as legal justification in the treatment of the Fella Works?

There can be no doubt that murder or mistreatment of prisoners of war violates the principles of humanity. However, I have considerable doubt if the questions of the employment for work according to Article 31 can be brought under this notion of humanity, if the prisoners of war are treated humanely during their employment.

3. The situation is similar in regard to the Control Council Law. The wording and the meaning of Article II, paragraph 1(b) of Control Council Law No. 10 shows absolutely clearly that under the notion "war crimes" only real offenses against humanity are to be understood. I may also, here, for legal reasons, point to my earlier statements, where I pointed out that the examples given by the Control Council Law, namely the use of the words "murder," "killing of hostages," and "devastation," support my argumentation. The following, apart from that, seemed to me of decisive importance:

In the mentioned part of the Control Council Law the following examples are given:

"Murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas,
* * *"

There must be a reason, why in regard to the civilian population, apart from the two examples murder and mistreatments, forced

labor is also mentioned; while in connection with the prisoners of war the forbidden employment is *not* mentioned outside the examples of murder and mistreatment.

One could argue against it that in giving examples the law says expressly that the enumeration is not an exhaustive one. However, this argument is not sound; for the higher notion in Article II, paragraph 1 (*b*) expressly says: "Atrocities or offences against persons or property" and accordingly Article 31 of the Geneva Convention which forbids employment for the manufacture of arms and ammunition cannot be so understood. From that it follows that the violation of Article 31 of the Geneva Convention, namely the forbidden employment in regard to arms and ammunition, can neither be considered a "war crime" in the sense of the Control Council Law nor according to the letter of it.

Finally in all these questions the fact will have to be considered, as I already pointed out in my opening statement, that international law is in a state of evolution and that it is not so easily possible to consider the painstakingly codified regulations as entirely free of any doubts. This can be shown by looking back to the time of 1907, that is the time of The Hague Convention on Land Warfare until the Geneva Convention of 1929, as well as a consideration of the forms of the Second World War.

The comprehension of the rules governing prisoners of war has undergone changes from the time of The Hague Convention on Land Warfare until the Geneva Convention, on the basis of developments in international law, and especially on the basis of the forms of the First World War. This follows easily from a comparison of The Hague Convention on Land Warfare with the Geneva Convention. This becomes especially clear just in regard to the rules on employment. According to Article 6 of The Hague Convention, the employment of prisoners of war must "have no relation with war operation," while in 1929 in Article 31 of the Geneva Convention the word "direct" was added and it was now ruled that the work must have "no direct relation with war operations." According to Article 6 of The Hague Convention on Land Warfare of 1907 also the indirect relation to war acts was forbidden, and the Geneva Convention has, on the basis of the development in international law, altered this rule deliberately, that is, they limited it, as follows in particular from the examples mentioned in Article 31 of the Geneva Convention. And in the same way international law has changed since 1929.

I merely mention the war in the air. In Article 25 of the Hague Convention it says and, I quote:

"The attack or bombardment, by whatever means, of towns,

villages, dwellings, or buildings which are undefended is prohibited.”

In spite of that the Allies considered themselves justified throughout the war to attack incessantly cities, villages, residences, and buildings with the most cruel weapons, to turn them into rubble and ashes and to spread hunger and misery, and not only German cities but in the later course of the war French cities and villages too. By that I have settled the questions in regard to international law in as far as they concern these defendants here except for two minor special questions which, however, can be omitted here. I would ask the Tribunal to read these statements, in case they consider them relevant. That is the special case of the French prisoners of war, although none of the cases has been proved by the prosecution, and the other special case of the Italian military internees. Both are matters which I think I have clarified quite definitely during my case in chief.

[The argument immediately following was devoted to a discussion of count two, the spoliation charges]

* * * * *

May it please the Tribunal, at the end of my final plea I want to apologize because in the course of my case-in-chief and during my final plea I probably bored the Court at times, but it is easier to defend with brilliant eloquence a guilty man than an innocent person, in which latter case the sense of duty compels one to deal with each factual charge and this led me perhaps to becoming too factual and thus tedious. And yet, at the close, I would like to carry along on this line and abstain from giving you a glittering picture of Mr. Weiss' personality. I have tried to give some details on his personal character in my document books and this may suffice. A lot could be said, but what for? It is not Weiss' personality that is accused, nor is he arraigned for offenses committed by him personally; he has the singular honor of being here as the representative of German industry and of being accused for offenses which concern every German industrialist because, with him, thousands of decent industrialists and employees committed the same alleged crime of employing alien workers and exercised the same economic activities in the occupied territories. Therefore, I have produced personal material only so far as it shows my client as an industrialist at his native place at Dahlbruch in Siegerland, as an industrialist and respected person for whom intervened the Regierungspraesident, as a leading member of the Social Democratic Party, the Landrat of Siegen, as a leading member of the Christian Democratic Party, and the Workers Council of his plant, the Siemens, whose chairman is a Communist.

There were petitions lodged in his behalf by the 600 citizens of the small community of Dahlbruch, who turned to me on their own initiative. What all these persons share with me is that they are unable to comprehend the prosecution which, with its charge, defames a decent man.

But especially because the significance of this trial reaches beyond the sphere of this man so much respected at his native place by his workers and in economic circles, permit me to say a few words more.

In my plea I have pointed out that the Directive JCS 1067,¹ which was issued when General Eisenhower's troops entered Germany, is in contradiction to international law, that is to say, to the basic principles upon which this trial is based, and I have furthermore pointed to the precariousness of international law as far as the occupied territories are concerned and to the untenable thesis of the prosecution which with regard to international law wants to consider Germany as being in a vacuum. During the time I have had to live at Nuernberg for professional reasons, that is, since the IMT trial started, which was 2 years ago, many things have changed. The Directive JCS 1067 no longer exists and the new directive of General Clay dated 17 July 1947 speaks explicitly of complying with international conventions and intents to prevent all arbitrary measures.

I have the fervent hope that the Court will agree with my conviction and legal opinion: Weiss is *not* a criminal. I ask you, the judges, that my client, who like thousands of other industrialists at home and abroad, thought that he was doing his duty during the war, may not be made to suffer for being a German industrialist and I ask you therefore to acquit Bernhard Weiss.

F. Closing Statement for Defendant Flick ²

DR. DIX (counsel for defendant Flick) : May it please the Tribunal!

In the English manuscript of my final plea, which is before you, you will find two enclosures which will not be read out in court.³ The first enclosure, which follows page 57, is a legal expert opinion by the well-known expert in corporation law, Dr. Walter Schmidt, who is a coauthor of one of the important books

¹ Joint Chiefs of Staff "Directive to Commander in Chief of U.S. Forces of Occupation Regarding the Military Government of Germany", approved on 3 October 1944.

² Transcript pages 10885-10951, 29 November 1947.

³ A mimeographed translation of the closing statement which counsel proposed to render was ordinarily made available to the Tribunal prior to the actual delivery of the argument. Only the text of the closing statement as actually delivered is reproduced here.

on the subject. This expert opinion refers to the question of the Vorstand and of the Aufsichtsrat. I assume that you will welcome it if I do not read this statement and only ask you to take judicial notice of it.

PRESIDING JUDGE SEARS: We will consider it in the usual way of a learned opinion on a question of German law.

DR. DIX: There is a short introduction to this expert opinion by myself. This again I shall not read. These notes were made because I had asked my colleague Schmidt to keep his statement as brief and as condensed as possible. The result was that on one point the text may be misleading for anybody who does not know the German law. In order to counteract this danger of misunderstanding I have added those short introductory notes. That is all I want to say to enclosure 1.

Then there is enclosure 2, the reasons for which are the following:

I was in the happy position of finishing my evidence very early, since I was the first one to present evidence. Therefore, I did not have to use the translation department at the end of the proceedings. Therefore, these written manuscripts of my final plea were finished very early, that is, even before the producing of evidence had been concluded, indeed, even before my last document book was presented here. Now this, my industry, as every other virtue, has some disadvantages. Some documents were ruled out, among those were some which I wanted to present. However, I had already mentioned them in the notes of my final plea, so I had to cross them off and make some other similar amendments. Now these amendments and deletions you will find in my second enclosure.

Apart from that I was in a position to read through the English wording and I found some faults, which in some respects, misrepresented the sense. These corrections too are mentioned in the second enclosure. However, I cannot guarantee that my knowledge of the English language was sufficient to find all mistakes and therefore I would be grateful to the interpreter if she would correct any mistakes which may occur as she goes along.

This is what I would like to say about that part of my final plea which I am not going to read out. Now in my written final plea, there is not one word about the reasons for the motions which we have put on and filed at the end of the case-in-chief. Originally it was not my intention to discuss these motions and their reasons in my final plea.

However, since General Taylor in his closing statement, not only orally, but also in writing, has referred to these motions, I would

like, before starting the reading of my final argument, to mention very briefly one of the more important points of view on the difference of opinion between General Taylor and ourselves. Once before, although in a different connection, has General Taylor commented on this question of the legality, or let us say nationality, of these proceedings. That was in his opening statement to this proceeding. Even then General Taylor said, and I quote: "Although constituted by the American occupation authorities, and composed of American judges, it [this Tribunal] is, in short an international tribunal." Now, this point of view the General has adhered to in his final plea, with some modifications, however. In his final plea he broached indeed the expert opinion of OMGUS which was filed in the I.G. Farben case. OMGUS called this Tribunal a German occupation tribunal. Now, General Taylor attempts to combine those two points of view by arguing that an occupation tribunal composed of four occupation powers is an international tribunal, but with regard to the point of importance which has caused us to call for the help of American colleagues, which call for help resulted in those motions, the general has not commented on. Now, this point of importance is the fact that a local tribunal, that is, the Tribunal in the Milch case, has determined the nationality of these Tribunals in its verdict. They have used the following words, I quote, in English: *

"It must be constantly borne in mind that this is an American court of justice, applying the ancient and fundamental concepts of Anglo-Saxon jurisprudence which have sunk their roots into the English common law and have been stoutly defended in the United States since its birth."

Therefore, in my opinion there can be no doubt that the Tribunal in the case of Milch had an opinion which is directly opposed to that of General Taylor, and conforms with the opinion stated in our motion. This contradiction and this opinion which comes from the Tribunal's side and confirms our opinion, has not been mentioned by the general. Neither can I follow the general in his argument when he says that the American Military Governor has appointed you, Your Honors, as judges, and that the appointment by the President of the United States of 31 May is nothing else than an approval of the earlier appointment which had been carried out by the American Military Government. This argument is in no way convincing. If the opinion of the general is correct, that it was the Military Governor who was appropriate to appoint you, Your Honors, then this appointment did not need a later approval by the President. The wording of this state docu-

* Section VII, Volume II, page 778, this series.

ment of the President of the United States contained no approval, but, quite simply, an appointment as judges. Also in these deliberations the general could not convince us. If it were correct that it was the sovereignty of the Control Council from which you derive your judicial power, then it would not be necessary to bring the President of the United States into it. The President of the United States is the representative of the sovereignty of those States. He cannot be a delegate of the International Control Council. On behalf of the United States he can, on the strength of his power, make agreements with any other power, and, therefore, also with the Control Council, but only as a lateral partner, among the States of the same sovereignty, but he is not in a position to interfere as delegate of the Control Council, that is, not in a subordinate position.

That is all I want to say to this point which is legally, certainly, of importance.

I shall now begin with my proper and final plea.

The occurrences which shall be subject of your judgment, Gentlemen of the Court, have been under thorough examination since April. The problems of jurisprudence, especially those of international law under which these occurrences have to be considered, have been thoroughly discussed before you by my learned friends of the defense. The same applies to the corporation law and the initial reform law, to the well-known law of the national legislation of international order with regard to criminal law, not only in the state, as also of international law. It also applies to Control Council Law No. 10, and to tax and foreign currency regulations which were of importance in our case.

Your Honor, any difficult path on a mountainside has, if I may use alpinistic language, many individual, so-called "difficult points," which should be dutifully pointed out to the mountain climber in a written description of the path. I will remain with this alpinistic picture, since I know that the President of this Tribunal is a keen alpinist himself. The clever alpinist, however, recognizes this path, at least in the general contours of its outlay when viewing the mountainside, and might be able to climb the path successfully without having been instructed in detail previously, because the full view of the mountainside presents him with the possibilities of approach based upon the laws of nature. Thus a good judge who has to decide on a case involving many and difficult facts will appreciate the presentation and examination of the details: He will, however, always remember the over-all picture, and he will base his judgment, as the last word of wisdom, upon the basic principles of the facts he has been confronted with. Such basic principles are part of any complicated matter. I will try to show to you the basic principles of the entire problem and of each

individual count of the indictment considering the important characteristics of the facts of the case as well as the legal points of view under which these characteristics of the facts of the case should be considered.

In proper continuation of my above-presented trend of thought and referring to the legal consideration involved, the following has to be said, first of all, above all jurisprudence stands sound common sense and the sound sense of justice. A victory of jurisprudence, as a matter of future science, over common sense and over the sense of justice is always an altogether too costly victory. Common sense is higher than even the common law. May I explain these abstract theses by a simple example, the subject of which I compare to count three of the indictment. Assume, for example, the following: during the war, a Czechoslovakian approaches a Sudeten German and says to him, "You Germans will lose the war; I do not doubt that after the victory of the Allied troops a new Czechoslovakian Government will eject all Germans and confiscate their property. Sell me your property in the territory of the Sudeten Gau and the Protectorate. I am prepared to place the sales price at your disposal in a neutral country in the form of foreign exchange. In addition, I am giving you the advice to cross the border as soon as possible, if at all possible. You can live very well abroad on the money you will receive from the sale." The German objects, being sure of victory, but finally allows himself to be convinced by the Czechoslovakian. Today he blesses this Czechoslovakian. No one dares to rebuke the Czechoslovakian, although he anticipated "persecution of a certain layer of society for political and racial reasons" and used it in advance for his own purposes. The analogy and, to a certain degree, even the identity with the Petschek case is obvious. I ask you furthermore, does the reaction of the stock exchange to anticipated or expected measures of the state, which might harm certain layers of society or economic groups, lie in a different sphere of morals, good manners, and justice since that reaction has never been questioned?

In passing moral and legal judgment in such cases, must one not concentrate only on the following question: Who is the responsible perpetrator of such force or pressure, the state or the individual in question? How is the force and pressure exerted by the state, upon his person and upon his person only, to be judged morally and legally? Has the individual person in utilizing such an action by the state for his own benefit, i.e., through collective force, a force created through the structure of the state which the individual in question could not change, taken an additional personal guilt upon himself? We will have to remember this question

when we consider at a later point count three of the indictment particularly the Petschek case, as well as the fact that also in the factories of the Flick Concern, in accordance with the laws and decrees of the German Government, civilian foreign workers, prisoners of war, and concentration camp inmates of German and foreign nationality have been employed.

Let us consider the Petschek problem first and let us investigate: What has actually been found and definitely established beyond any reasonable doubt? The Nazi government took over the power with a most severe anti-Semitic demonstration, namely the Boycott Day of 14 April 1933. Jews were beaten up, the doors of their shops locked and marked with the Star of David. Jewish judges and attorneys, some of them still wearing their robes, were ejected from the courthouses. Some were kicked out by force. Even the blindest person had to realize that this government would follow the course of an extreme anti-Semitism, the so-called rowdy anti-Semitism, which would by no means be a civilized affair. The annoyances of individual Jews continued, although some Jews, particularly prominent Jews, cabled at that time to the United States, that it wasn't quite so bad and that the press over-played the matter. It should be realized that many of these prominent Jews concealed the truth for patriotic reasons because they justifiably believed that the truth would result in severe harm to Germany, particularly to Germany's moral prestige. On the other hand, however, the fact cannot be denied, strangely enough, that quite a few Jews, though only those of prominent Jewish circles, showed a certain amount of liking for national socialism, since they underestimated the anti-Semitic course and over-estimated the political and administrative talents of the Nazis, because of some obvious superficial achievements. This type of top-layer Jew most probably considered Hitler's seizure of power to be politically unavoidable and believed, since they unfortunately only thought in terms of economy, that he would very soon go bankrupt and disappear or change his attitude. This point of view was also represented in confidential talks and reports by very prominent diplomats. At this point I have to elaborate a little more because otherwise the attitude of the Petscheks, particularly of the Ignaz Petschek group, cannot be understood, especially their confidential cooperation with prominent Nazis, as for instance with Staatsrat Reinhart,† whose name as friend and adviser of the Petscheks has shown up repeatedly in this trial.

† See testimony Flick and Steinbrinck.

The patriotism and the faithfulness of many Jews toward their mother country, Jews who not only remained in Germany during these years but in part even in public or semi-public jobs (as it is

known, they could remain judges, lawyers, doctors, etc., for a few years), is somewhat touching and should, of course, be highly appreciated. It was based, however, upon the belief that their position in Nazi Germany could be upheld, a belief which was apparently also held by the family of Ignaz Petschek. The Jewish state employees, lawyers, and notaries swore the prescribed personal oath of allegiance to Hitler, the same Hitler who tortured and disrespected them. They fulfilled their official duties in accordance with German tradition. It is, however, a complex, even a grotesque picture; one has to know all these, if I may say so, perverted conditions and circumstances, as unbelievable as they may be, in order to pass judgment on actions which took place in the Reich; a Reich, which during the course of time lost more of its moral equilibrium; a Reich, in which actually only a cynic could feel at ease if he had recognized not only its obvious but also its hidden aspect. This anti-Semitic course increased intensively in the course of time. The Party was its motor, the brake was applied by the higher officials. This, too, has to be said once, and it has to be said in this trial, since many high officials from various ministries have appeared on this stage. I have the impression that the occupation powers base the introduction and execution of criminal proceedings upon false assumptions by prosecuting the higher State officials more than the higher Party officials. The body of officials retained, in spite of some kind of narrow interpretation, the sense for correctness and justice instilled from the time of the emperors and kings.

Referring in particular to the internal administration, it has to be said in recognition of the long-time Minister of the Interior of the Weimar Republic, the excellent Severing, a man of high character, that he has not only been a good example for his Ministry but has also continually developed such a good spirit in his employees. The lawyers who during the Third Reich fought for the rights of the suppressed and persecuted are appropriate and expert witnesses for the fact that, together with them, a large part of the higher employees of the State administration led the fight against the terror policy of the Party; the employees finally lost this fight because, in the course of the years, the Party infiltrated the Ministries and the entire administration, and many high ministerial and administrative employees, who employed the art of administrative technique against the terror of the Party, were forced to resign. It is definitely false and would create a severe historical error if the consideration of the Petschek case would be based upon the fact that all high officials of the different Ministries and Reich authorities, appearing on the stage of this play, were exclusively obedient servants of Party politics. Many

of them fought, in vain however, for a hopeless cause to which they were forcibly committed; a tragic picture as described in my opening statement,¹ and which continued in the person of the people indicted here, so far as they had to fight together with these employees against other employees and Party officials.

The Honorable President of this Tribunal has repeatedly taken the initiative in an attempt to penetrate the difficult, exceptionally difficult foreign exchange law and tax law conditions under whose domination the Petschek complex developed. We were exceptionally thankful of this and appreciated it heartily as an absolutely necessary basis for a just verdict. What, however, applies for these administrative questions, applies much more for the sociological conditions under which the Germans have lived from 1933 until 1945, experiencing constant changes and intensification. Whoever does not recognize, at least generally, those facts cannot pass a fair and just judgment for such acts as they are subject to the jurisdiction of this Court. I understand that the Court rejected one of my motions to submit certain evidence in this direction; I do realize that certain limitations have to be imposed in the matter of evidence. I am speaking about my motion referring to the attitude of the entire industry and their influence upon Adolf Hitler's seizure of power, with the intention to disprove the known thesis of the indictment which took an important place in the opening statement of the prosecution by General Taylor,² and which was repeated as to content in his opening statement of the I.G. [Farben] trial,³ a proof for the fact that he had not been convinced of my statements up to that time. Against the procedural reason of the rejections, namely that statements without evidence do not require counterevidence, I will not say anything right now. I beg, however, not to hold it against me if I, quite frankly and in all seriousness, emphasizing my deep respect for this Court, dare to say that it is not possible in the case before us, to find the basic truth if one does not recognize the sociological structure of the Reich in its origin and its development. By no means am I an adherent of the theory that any person, and therefore also the one who commits a crime, is only a product of his environments. This theory is an exaggeration of the grain of truth which it contains. However, it is undoubtedly true that one just cannot understand at all acts and utterances of people who lived in such a sick, perverted, contradictional, and torn communal body, subjected to undescrivable terror as produced by the Third Reich; one is therefore not in a position to pass fair judg-

¹ Reproduced above in section III B.

² Reproduced in section III A.

³ Reproduced in Volume VII, this series.

ment if one cannot achieve a fairly correct view about the nature and structure of this type of society. This nature and this structure must at first appear completely incomprehensible to any foreigner who not only lived under quite different social conditions but who is also the child of a completely different political and sociological tradition even if he was the greatest genius, the most passionate seeker of the truth, and the most religious servant of the divine idea of justice. This is the reason that I ask you to understand why I ask your permission to include such sociological general considerations into my final plea, since it was technically not possible to make them part of the evidence.

I now refer again to the constantly increasing anti-Semitic course which began in 1933. The Jewish lawyers, for instance, very soon lost their positions as notaries. There was no compulsory Aryanization of Jewish enterprises yet, but the pressure exerted on the businessmen by the Party through its Gauleiter, Gau Economic Adviser [Gauwirtschaftsberater], Ortsgruppenleiter, etc., became stronger every day, although this pressure was quite outside the law and even against the law. Investigations by the state police, even the institution of criminal proceedings based on artificially construed motives against obstinate Jewish businessmen, became more and more frequent. An interpretation of the criminal facts of embezzlement which was too far-reaching and in complete contrast to the idea of the law provided the possibility to involve nearly every businessman of good reputation into a criminal procedure with the danger of being convicted. A Jewish department store, like the well-known store of Israel Brothers in Berlin, in which British money was invested, had to ask the Ambassador of His British Majesty, for assistance. In short, a long time before the State laws of February, June, and December 1938 were proclaimed, the dynamics and the terrorism of the Party anticipated in practice the position which was finally settled by the laws mentioned above. When considering the then German conditions it would be wrong to imagine that the State or its officials were the last source of State authority. The Party drove forward; the Party established facts by terror and the above-mentioned laws only sanctioned conditions which already existed and measures which already had been taken before. Your Honors, please do not overlook that the National Socialist Party was not a party in the meaning of the constitutional state, but became already in 1933 by law a corporation according to public law, which existed formally besides the State and terrorized it, the State, in its more conservative organs, and which pushed forward on the road of a fanatic interpretation of the Party program.

The Nuernberg laws concerning race and citizenship were the first legal fanfare of a public anti-Semitic legislation and it is

typical that the then Reich Minister of Justice Guertner was not asked to participate in the preparation of these laws. He himself told me at the Party rally in Nuernberg that they came as a surprise to him. A thing like that, just had to happen to the Minister of Justice. The same happened to Schacht, who was Reich Minister of Economics, although it could not be denied that these laws would greatly effect the economic life, especially in its international relations. It therefore would be a wrong inference if anybody would conclude from the fact that the legislation concerning the compulsory Aryanization only was begun in 1938, that this development only occurred in 1938. Every person living in Germany who had any power of judgment, was convinced, at least since 1935, that a free economic activity of the Jews in Germany under the Nazi rule would come to an end within a not quite calculable but certainly very short period, according to the speed of the so-called National Socialist work of "reconstruction." This is still far more true with regard to the maintaining of an economic position of power within the German economy. If therefore the Julius Petschek group realized in 1937 that it was high time to dispose of their German property, these gentlemen did not show a specially clever foresight, because even a blind man would have realized the justification of this act. Their decision, however, to dispose at the same time of their property in Sudetenland and in northern Bohemia must be considered as a very clever and prudent move.†

† See document book 4, Documents Flick 84 and 85, Flick Exhibits 79 and 80, [parts excluded].

With regard to their German property, they have been very lucky to receive from their German purchasers, who are sitting now in the defendants' dock, a very considerable sum paid in the United States in the best currency of the world, while their Czech purchasers, their countrymen, only paid them in Czech crowns and obviously also only paid in Czechoslovakia. The Julius Petschek deal was transacted on the whole, as we know, in that way that the Petscheks, as it is customary with such transactions, extended their feelers in Germany through their agents, amongst whom we met Mr. Wetzell, to the Flick group, which was the obvious purchaser, and thus it came to responsible and decisive negotiations between the representatives of the Petschek group and Flick, according to program.

Flick has often admitted that he had an interest in the brown coal property. It is therefore not understandable why the document in which a commission is paid to Hermann Goering should be so relevant; it was quite logical that such a commission should be paid. In fact, no agreement was made as to the amount, only

later on, concerning a different transaction. The relevancy of the contents of this document cannot easily be recognized in view of the facts which have been admitted. Apart from that, a document without signature and without any initials should not really be admissible, but I have not made any individual objections because in that period of rebuttal I was tired of objections. The defendants Flick and Steinbrinck have repeatedly and in detail explained Goering's interference with the carrying out of this business. It is not the task of a final plea to repeat things which have already been discussed frequently. The argumentation is its task. It has to be added that such a transaction in the economic sphere could not be made in Germany without the authorization by a top official agency, because the necessary official authorization concerning the providing of foreign exchange, the payment of foreign exchange, the transfer of real estates had to be obtained for this transaction. The official monopoly order [Monopolauftrag] given by Goering to Flick conformed with the general custom concerning purchases made by foreigners. This custom was based on unobjectionable and sensible deliberations with regard to political and private economy, in order to prevent a forcing up of the sales price by the competition which would have rested heavily on the foreign exchange account of the Reich. In the case of Julius Petschek, however, no competition which would have been able to pay a higher sum of foreign currency was kept out. The respective statements of the prosecution with regard to the I.G. and Wintershall could not be proved, as becomes evident from the affidavits of Dr. Krueger and Gierlichs. Also Jantzen has admitted during his cross-examination that he had not been informed completely by his chief, Rosterg; he could not maintain his statement that Wintershall could have paid a higher sum in foreign exchange and that he only was hindered by the monopoly order given by Goering to Flick. Besides, the arguments concerning the possibility of a higher payment are irrelevant from the criminal point of view and, therefore, not worth while to be discussed. The price of 6.3 millions of dollars had been agreed upon voluntarily by the two parties without any pressure from the Flick group. This fact is sufficient to exclude any criminal character of the business. As becomes evident from the testimony given by Schacht, one can get at the facts only with regard to this business if one states that it could not have been transacted without Goering, at least not in this form so favorable for the vendor. Schacht relinquished to Goering at this time, as he stated, as a result of his constant struggle with him, supreme foreign currency control. Goering alone was in the position to grant such permit with regard to foreign currencies which was contrary to all the principles of

the policy concerning foreign exchange. Schacht stated that he never would have agreed to this business; that means that he never would have consented to the price of 6.3 millions of dollars. The violent criticism by the interested economic circles with regard to this payment of foreign currency has been justified, as evidence proved. Only Goering who in this sphere had dictatorial powers, had the power and the formal right to carry out this extraordinary preference given to the Petschek group. Therefore, Flick was acting correctly by turning to Goering when this business deal appeared on the horizon. It was also in the interest of the vendor and completely unobjectionable. The anti-Semitic tendency of the Party and of the State, following it up, was certainly a pressure; it was, however, a pressure lying outside the sphere of power and influence of Flick and his collaborators. This pressure constituted for him an act beyond control to the same degree as it did for the Petscheks and for all the Jews and Jewish groups who at that time, in true realization of the position, disposed of their property in Germany. I should like to know whether there is anybody who did so well in this matter as the Julius Petschek group. I do not think so. Therefore, it is a very interesting fact that the District Court of Appeals in Berlin [Kammergericht], the composition of which at present is certainly not favorable to capitalism, ruled in its verdict of 19 December 1946 that such an illegal collective coercion would render such a transaction subject to challenge according to civic law, but that the transaction could not be considered as contrary to business morals if no duress was exerted on any individual.

PRESIDING JUDGE SEARS: Could such a transaction be contested or not? That is what you wanted to say, isn't it?

DR. DIX: The District Court of Appeals in Berlin ruled that the collective coercion by the Reich would render such a transaction subject to challenge according to civic law, but that the transaction in no way—

PRESIDING JUDGE SEARS: I think the translation is quite accurate.

DR. DIX: The evidence has proved that not the slightest pressure was exerted by Flick or the other gentlemen, either in the form of a threat or in any other way. This statement does not only prove that no threat and no individual pressure has been exerted, but even on the contrary it is evident from letters sent by Mur-nane to Viscount Stratthallan that the gentlemen acting for the selling party, the victims of the allegedly committed crime against humanity, acknowledged with gratitude the fairness with which the negotiations were led by the alleged criminal Flick. A contract like the Petschek contract does not constitute a problem with regard to penal law but at the best a problem according to

civil law, as is evident from the verdict of the District Court of Appeals, mentioned above.

The prosecution has pointed out that the same verdict of the District Court of Appeals in Berlin, in its reasons, has called the laws of December 1938 immoral and therefore legally invalid. This verdict of the District Court of Appeals in Berlin is correct, but it has no legal relevance for judging the personal behavior of Flick and his associates.

Since the prosecution has not yet substantiated the charge of the indictment, that is, it has not declared yet whether it considered every Aryanization as a crime against humanity or only especially qualified Aryanizations—I have to discuss the fundamental problem of Aryanization and its historical aspects from the criminal as well as from the moral points of view, before I turn to the problem of Ignaz Petschek.

As mentioned already, it cannot clearly be recognized from the statements of the prosecution whether it wants to charge each Aryanization as a crime against humanity, or only those when the buyer employed unfair means of threat, pressure, exploitation or similar intrigues. Hitherto it never has been objected to in the history of economics, still less declared as punishable, if business men took advantage of plights, not instigated or brought about by themselves, and used them for their private economic transactions. If this principle were relinquished, intolerable consequences, also from a moral aspect, would ensue. Let us consider only the instance mentioned in the foregoing, about the sales contract of a Czech concerning German property in the Protectorate. This man would have been a benefactor to the German, indeed a savior, and at the same time would have made a good deal himself. If one would prohibit such an action, the political and race persecutees would suffer the most. In fact I want to go even further by asserting that such a man must be considered on a higher moral level than someone who rejects the pleas of a racial or political persecutee to purchase his property, and thus denies him the opportunity to leave the country where he is persecuted and to start again in some other place. Such cases, too, took place in Germany concerning Jews; I saw them happen during my own law practice. The Jew would go so far as to beg that his business or real estate should be bought, in order to have the means to emigrate from Germany. The party he negotiated with, however, declined for the purely egotistical motive that he might be reproached for the purchase after a subsequent political change; he opined that in such an event one would only generalize and not investigate individual cases. “Suspecting Angel” [“Ahnungsvoller Engel”]. But ethically certainly he is of greater stature

who, in spite of this worry, went right ahead to help and to enable the Jew to emigrate.

Consequently, it will not be possible to declare Aryanization as such to be punishable. Aryanization can be as much a service to humanity as a crime against it. Stock exchange operators have at all times claimed the right, which has never been contested, to guide their transactions according to surmised political developments or the political conditions extant. Hence, one will have to investigate the individual cases. Completely independent of this is the judging of those who are responsible for such a policy of racial or political persecution, in the present case therefore the Party or State leadership. But this question is of no interest here. That the Flick group resorted to no immoral measures when initiating and carrying out the Julius Petschek deal becomes evident from the evidence of this trial and the pleas I have just made. The Julius Petschek transaction is a healthy and unobjectionable *do et des* (give and take) relationship, which is always the test basis for a business deal. Buyers and sellers both had their advantage, and this applies to the Rawack-Gruenfeld and the Hochofenwerk Luebeck deals. It would be a waste of time to repeat here the evidence. It has been determined beyond any objection that the initiative for this business transaction never issued from Flick, but rather at the beginning, from Benjamin, and subsequently from State agencies which demanded that they be carried through in the interest of the principles which guided the State leadership. Flick was willing to be satisfied with less than offered to him, to wit, with only one-half of the holdings; moreover, he wanted to pay the countervalue in substantial values, namely, in shares instead of money, but money was asked for on Hahn's part because it was needed for investment purposes at the Hahn tube works, apparently in order to make them easier to sell. From Rudolf Hahn's affidavit it becomes evident that Hanneken's certificate of protection was not planned to be in force forever but only a few months, obviously for the interval necessary to sell the Hahn tube works on better terms. With that purchase Flick had nothing to do; he only helped Hahn by making an effort to obtain the certificate of protection. Whether it was violated by the Ministry of Economics, or terminated by the expiration of the period of protection mentioned by Rudolf Hahn, is an open question. Even if the former had been the case, Flick would have had no opportunity to help because he was not informed of Hahn's complaint about the non-observance of the declaration of protection. These two transactions, the Hochofenwerk Luebeck and the Rawack-Gruenfeld deals, can be explained by the conditions prevailing at that

time, and they put neither a moral, nor, still less so, a criminal blame on Flick.

The same situation applies to the Ignaz Petschek deal; its consummation, however, is somewhat more difficult to comprehend because it required continuous contact with many different official agencies. An additional difficulty arises because a great many file notes and letters, some of them verbatim, were submitted which could arouse, as I would readily admit, *prima vista* suspicion and misinterpretation, unless the connections and the intentions of these documents were laid open. This of course happened by means of the interrogations of the authors of these documents, mostly Flick and Steinbrinck themselves. I shall subsequently refer to them.

I would state that the prosecution has in no way countered in their final plea the reasonable conclusions and conclusive statements by the defendants. The so-called Goering order already mentioned was concerned with the entire Petschek properties. With regard to Julius Petschek, Flick himself was a prospective buyer. However, he was not interested in the Ignaz Petschek holdings, because his requirements for brown coal were satisfied after the conclusion of the Julius Petschek deal, and he did not have sufficient funds on hand for new acquisitions, as is shown by his credit application for 15 millions RM to the Four Year Plan. Since the order extended to the entire Julius and Ignaz Petschek properties, Flick, of course, did not find it possible to withdraw from it solely because his own private economic interests were satisfied. This was shown already from his contractual obligations with regard to Goering's order, without having to take into consideration the special conditions prevailing in the Third Reich. The maintenance of the position of power by the Ignaz Petschek group within the Third Reich was objectively a political impossibility. In this case one can't even reproach the Reich policies or the Reich leadership; for surely every sovereign state must retain the right to restrict or to eliminate foreign domination of its own natural resources. It was in the interest of the Petscheks that Goering, in his capacity as Plenipotentiary for the Four Year Plan, used at the consummation of this transaction the advice and aid of a man who in his heart did not care for the Nazis and the anti-Semitic policies of the Reich leadership, and who from his outlook as an exponent of a liberal economic philosophy had to stress in his own interest that the Ignaz Petschek group was not to fall victim to violence, but rather that it should be treated, within the frame of the political conditions of power in being, commercially as fair as it was in any way possible. Such a viewpoint was not one of morality but the well-understood egotism of a man of Flick's position. For him it was common sense that what happened today

to the Ignaz Petschek group might some future day befall Flick himself, indeed was bound to happen in view of the circumstances and historic experience. *Vestigia terrent*: With this purpose in mind Flick acted. He tried to preserve for the Petscheks the ownership of at least substantial values commensurate to property values. He could not preserve for them their influence and their power. That the Ignaz Petschek group did not cross this bridge was a gross blunder, and is in addition a riddle. It is idle to make guesses on what hopes and chances the representatives of this group based their partly declining, partly passive attitude. It is also idle to speculate why their confidential representative, Staatsrat Reinhart, who enjoyed an esteemed reputation in the Third Reich, did not support Flick's plans. For the consideration of this high court it will suffice to determine that this error was committed. The consequence of this mistake was, however, that the solution of the Ignaz Petschek question became—due to the force of circumstances—ever more unfavorable the more the anti-Semitic wave rose, until in the end it was not resolved at all,—even when it reached its climax and the murder of Embassy Counselor vom Rath by a Jew was taken as the occasion by Hitler to order the final solution of the Jewish problem. Not a clear, but a ghastly conception. There followed the laws of December 1938, concerning the forced Aryanization by the State. With these laws which ordered the forced sale of Jewish property by a State trustee, the Ignaz Petschek group lost all freedom of action and became the victim of State sequestration and of a forced sale ordered by the State. Only if it were proved that Flick at that time had used his influence on the State agencies to promote the drafting of these laws, could he be charged with moral or criminal blame. The same would be the case if proof were submitted that he influenced or instigated the Ministry of Finance, which had sole jurisdiction in financial matters, and tax matters, to impose unjustified fines for tax and foreign exchange violations, and thus to strip the Petscheks of their share of the proceeds deriving from this action. It is out of the question to speak here of the prosecution having successfully proved their case. The prosecution submitted file notes of the defendants Flick and Steinbrinck, correspondence with official agencies, and the well-known expert opinion of Dietrich to prove their charges. This proof, however, has failed to materialize in every respect. It is evident that these two defendants, when they drafted their speeches for the meetings of such an anti-Semitic body as was the Sauckel Commission, had to speak to a certain degree the language of these people in order not to condemn in advance their suggestions to failure. That the defendants had to remain in constant contact with the competent

official agencies in order to keep their ears posted concerning the political and legal developments also is self-evident.

That the defendants regretted the obstinacy of Ignaz Petschek, whom they wanted to help, and sometimes, in anger, expressed the hope that the Petscheks, through the events that had taken place, through the legal measures that were easily foreseeable and through the tax suit that had been known to the defendants, would, in their own best interest, at least become weak-kneed and come to reason, is quite self-evident. I may come back to my former example of the Czech. Assuming the German had refused, but the Czech had maintained his offer and repeated it when the American troops stood before Eger, and the German had again refused, in unreasoning obstinacy and in the foolish belief in the fortunes of war of his so-called Fuehrer, and the Czech had said or written: "When the American artillery bombards the Hradschin he will become weak-kneed." Would not this be quite understandable and only prove the continual readiness to help on the part of the Czech and not prove at all the eventual intention of the Czech to persecute the German in his plight and to commit therewith a crime against humanity? And if, furthermore, it was established that there would be a forced sale, isn't it in consequent continuation of his decent conduct that Steinbrinck accepted legal opinion on how, under such a law, the compensation claim or the claim for the purchase price on the part of the Jew could be legally strengthened as much as possible? This testimony of Steinbrinck's is quite a plausible explanation for the Dietrich expert opinion along the lines of thought, along which Flick and Steinbrinck always tried to look after the interests of the Ignaz Petschek group, taking a realistic view of the possibilities at that time, and I want to mention, for completeness' sake only, that it has been established through the Dietrich affidavit, apart from Flick's and Steinbrinck's testimony, that Flick did not know the expert opinion at all, let alone order it to be obtained.

The prosecution with regard to Flick's statements, has adhered to this Dietrich expert opinion, or rather to the question whether he, Dietrich, had discussed this expert opinion with Flick, and has charged Flick, in order to impeach his credibility, with having stated something different in the preliminary interrogation than what he said in cross-examination. To this charge of the prosecution I want to comment; I however, I think that this comment would last until after 3 o'clock; so that is why I suggest, Your Honor, that we take the usual recess at this time, so that I can then present the whole point clearly.

PRESIDING JUDGE SEARS: The Tribunal will recess for fifteen minutes.

(Recess)

DR. DIX: In my interpolation when I was extemporizing just now I had stopped with the prosecution's charge that Flick, in the preliminary proceedings, had, in connection with his conversation with Dietrich, given different testimony to that given in the trial, and that in so doing he proved that he was not a responsible witness. This charge of the prosecution does not do psychological justice to the judgment of the evidence. Quite the contrary. This varying testimony shows Flick's conscientiousness and his efforts to adhere to the truth. In the preliminary proceedings he could only remember that he had once talked to Dietrich about one expert opinion, and cautiously thought that it had been the opinion about the Jewish laws, because at the moment that was the only one he could remember. So he chose the way which incriminated him; but in the trial he became convinced that this conversation had referred to a different opinion—that is, the opinion concerning mineral deposits. This version stresses his credibility, but the prosecution makes such errors more frequently. Flick was their victim on other points, too, which I would like to take up now. When the financing of the Hindenburg election was discussed in the preliminary interrogation Flick did, indeed, remember that he had paid a lot of money towards Hindenburg's election—that is, against Hitler's election, but he had forgotten the exact sum. He remembered exactly that he had paid 500,000 marks. He had a feeling that probably it had been a lot more. But he wanted to stick to the absolute truth, as he saw it at the moment. Later, from the documents, he became convinced that his feelings, his vague recollection, that it was actually and, in fact, double the amount, turned out to be true. This again is only a proof of his credibility. Furthermore, Flick is a victim—not, indeed, of a crime against humanity, but anyway, of an incorrect psychological violation of his attitude by the prosecution in varying his testimony about his ignorance or knowledge of the voluntary or involuntary coming of the foreign workers. Here the prosecution quoted Flick's testimony, but not in its complete form. The prosecution omitted that Flick, summing up at the end, said—"I did not know anything—that is, I did not know any facts from which I conclude for certain that these people had come involuntarily." But because he is so much addicted to the truth he openly admitted that owing to a number of circumstances, especially the large number of workers, and the rumors which reached him, he had developed doubts. The prosecution is trying to interpret this truth-loving and careful denial of knowledge as being an admission of knowledge. An interpretation of this kind—of a careful and utterly truthful statement, is one to which I, as his counsel, must strongly object. I myself, too, am a victim of such misunderstanding of my remarks and my explanations. In my

opening statement I said that I submitted as a hypothesis that the view of the prosecution about the punishability of the employment of forced labor, seen objectively, was the right one—but that even if this submission were a true one, Flick was innocent because the terror and compulsion prevailing at the time prevented him from putting a stop to the employment of such workers. I emphasized that expressly on several occasions—that this was a hypothetical submission. In spite of this, the prosecution claims that the reference to compulsion is an admission of the deed as such.

Now, after this divergence, I return to evidence of the prosecution to which I object, that is, to the Petschek case. I admit that all the prosecution documents, without explanation, and torn out of their context, might appear to a prosecutor the proper media of evidence *prima vista*. The circumstances in which they came into existence, the purpose which they served, the explanations which the defendants gave you, take away all their stings. It has been shown that the legislation of December 1938 was decided upon on Hitler's order, at the November meeting at Goering's place, by the departments concerned; that Flick had not the slightest influence upon the decision and did not participate at all in the preparation of these laws. It has been established through the affidavit of the competent Ministerial Referent of the Reich Minister of Finance, Gebhardt, that Flick had no connection whatsoever with this affair. It is none of my concern to defend the Finance Minister, but I may be allowed to add the marginal note that to make this fiscal claim, be it under the terms of the tax laws or the currency laws, was to follow an absolutely normal course in view of the legal provisions, and it resulted in the end in about 100 millions of Reichsmarks being deposited at the Reich Treasury; a sum which, assuming a rate of 200 percent would about equal the Petschek claim for the liquidation price. This, however, has no relevancy for these proceedings, because it has been shown that Flick did not wield the weapon of fiscal measures in order to bring pressure to bear upon the Petscheks or even to rob them of the last remnant of the proceeds of their lost property, an action which, by the way, would be completely incompatible with the policy Flick has demonstrably always pursued, namely, to safeguard the Petscheks' property as far as possible.

The prosecution in their final plea attached importance to mentioning that the elasticity and the arbitrary character of this tax claim is incriminating for Flick. I ask you, what affair was it of Flick's? What had Flick to do with it? He would not have had to give up one ton less of soft coal, and he would not have received one ton of brown coal—no matter how this tax demand had been fixed in the end. This charge is utterly irrelevant and inconclusive.

During the whole of this period until the date when all the Ignaz Petschek property passed into the hands of the Hermann Goering Works out of the hands of the Dekobe * which, prior to this, had obtained it from the trustee or liquidator acting as the new legal representative of the Petschek companies, the whole affair is nothing but a political and State action. Only representatives of the State, including the legal representatives of the Dekobe and the Hermann Goering Works, as well as, naturally, the trustee and liquidator of the Petschek companies, have the moral and legal responsibilities for these legal measures and transactions. Flick and his collaborators did not appear as interested parties but only as consultants according to their mandate, and always advised the Petschek group in order to serve their best interests. The result was just the contrary of what Flick wanted. Flick wanted to preserve the Petschek property as to its value. They have only to blame their own obstinacy and their complete refusal to understand the political situation and development for their not even entering into possession of the liquidation proceeds of their shares deposited with the Reich Treasury. With this in mind, I justly used the metaphor of Flick as the counsel for the Petscheks.

The prosecution describes this argumentation as being absurd. I am not sensitive. I even understand that someone coming from a country with a liberal economy must consider it absurd if somebody claims that a buyer, that is somebody who is interested in a low purchase price, attempts to get the highest possible purchase price for the seller. If I had time I could enumerate countless such absurdities in the Third Reich for the benefit of the prosecution. Time forbids, and I can only assure you, that fair-minded Aryan buyers, in the case of Aryanization in the Flick case, in particular in the Petschek case and others too, for instance in buying the estate of Friedmann it happened frequently, that it was Flick who went to the responsible party and government agencies to try and get the purchase price raised. If you try to punish what Flick has done here, I insist that you must punish every attorney who, under the Nazi regime, in the case of Aryanization, represented a Jewish party. This attorney too would have been unable to prevent Aryanization and knew it. His efforts too would only have been directed to getting the highest possible sum for his Jewish clients in this deal.

Such activity has sometimes involved loss of life and liberty. This exaggerated example, in my opinion, brings out in sharp

* Dekobe as well as DKG was used as abbreviation for this newly founded firm. For related information, see Documents NI-3373, Prosecution Exhibit 468; 1409-PS, Prosecution Exhibit 343; and NI-3439, Prosecution Exhibit 673, reproduced in section VI B.

relief the legal impossibility of defining in the terms of the penal law Flick's activity, such as it has been shown here. This activity as such is not objectionable. There is no need, therefore, to examine from a legal point of view whether at that time the Ignaz Petschek enterprises had to be considered as Jewish at all. This should *per se* be the conceivable premise for the existence of Aryanization. The same goes for Julius Petschek. Many proofs and authoritative statements in this trial point toward the fact that this property was already in Aryan hands at that time, at least in its greater part. On the other hand, the witness Brockhues has already referred to the agreements between the Aryan purchasers on the one hand and the Ignaz Petschek group on the other hand. The Tribunal knows the life and usages of capitalistic practice. The agreements will probably have had a front as well as a back. The front flaunted the Aryan nature of the enterprises, which was to be presented to the Third Reich. The back showed that the Petscheks had remained proprietors, and it is this back which now, so I assume, after the collapse of the Third Reich, will be presented [praesentiert]. The truth will probably never be tracked down. I even consider it irrelevant in this case, because the Flick defense stands in no need of taking its line of battle back to the plea that there was no Aryanization at all. Its legal position is so strong that it can forego using this weapon. We know that this acquisition of the Ignaz Petschek property by the Dekobe [Deutsche Kohlenbergbau-Gesellschaft mit beschränkter Haftung], and from the Dekobe by the Hermann Goering Works, was followed by the well-known exchange of lignite against soft coal between Harpen and the Hermann Goering Works. This is a transaction which is quite outside the Aryanization process. Harpen, in which Flick's interests—I want to stress this—amounted to only 49 percent as to the substance, with a voting power of 70 percent, acquired this lignite of Ignaz Petschek origin in exchange for soft coal after the Aryanization had been completed. It would in itself be legally impossible to prosecute an alleged criminal Aryanization into the second or third generation, that is to say to define what the third acquirer of the Aryanized object, in our case Harpen, did as a form of criminal participation in Aryanization. The discussions, therefore, whether Flick, and through him Harpen, were subjected to any pressure during these exchange operations, appear to me to be completely irrelevant for the determination of guilt under this count of the indictment. Pleiger has stated that the Petschek lignite had been promised him by Goering in order to use it as an exchange medium for the creation of the soft coal basis which the Hermann Goering Works needed. On the strength of this promise of Goering's, he negotiated with Flick and Steinbrinck long before he acquired this

Petschek lignite property via the Dekobe. But this does not suffice under the penal law to charge them with criminal participation in the Aryanization itself, which was effected between the Reich and the Petschek companies. The issue at stake, therefore, is no longer whether Flick and Harpen were acting under duress when they concluded this exchange business and whether they were cheated by the Reich when it withheld from them the Ilse reserve fields. It cannot, in the face of the evidence, be doubted that they were under coercion, at least to the extent that if they did not agree to the exchange transaction voluntarily as it were, they had to expect still further expropriation through legal compulsory measures. The same applies, according to the statements of the Minister of Economics, Funk, to their having been cheated out of the Ilse reserve fields. Nor is the question of whether the Flick group, in the shape of Harpen, did so very well out of this exchange, in any way relevant for the decision of this Court. According to what has been demonstrated and according to our general experience of life, we shall have to believe that Flick as well as the directors of Harpen found it very hard, in spite of the higher profits lignite showed at that time, to exchange the by far more valuable soft coal against lignite. The soft coal man, as experience has shown, looks down in contempt upon lignite, his judgment colored by departmental pride. It was, therefore, nothing but the idle talk of a time-server—I say this here on purpose and after strict self-examination — when the so-called General von Hanneken in his affidavit for the prosecution spoke of a “simple and good business deal” and a business which Flick was only too pleased to conclude. This witness of the prosecution who, according to his own version, promoted himself again to the rank of a general after his degradation, has proved himself to be unworthy of belief. We knew exactly why we put pressure on Mr. von Hanneken during his cross-examination. Acquainted with the phraseology used in German criminal verdicts we recognized from von Hanneken’s statements,* in spite of his denial, that his sentence had been based on a much more serious offense than he was ready to admit. The foregoing is evidenced by the affidavits which I have presented, namely by the affidavits of the expert members of the Supreme Military Court, the then President of the Supreme Military Court, Hans Karl von Scheele, who pronounced sentence on von Hanneken, and by the affidavit of the former superior judge of a court martial attached to the Supreme Military Court, Hans Georg Desczyk, who had conducted the

* In 1945, General von Hanneken, then military commander of the German Army of Occupation in Denmark, was indicted before a German Military Court for illegal use of army transportation. He was demoted to major and put in command of a combat unit with which he was captured in April 1945.

hearing. Being acquainted with the diverse methods of procedure, we also knew that von Hanneken lied when he said he had only been demoted to the rank of a major. Such demotion, as a judicial punishment, does not exist. The term "degradation" means the loss of any rank. He had concealed the fact that his protector Hitler—he was one of Hitler's favorite generals—had at once promoted him again to the rank of major as an act of pardon. The case of von Hanneken, therefore, is not only an ugly case of corruption, but also represents a criminal case of nepotism. Consequently, the testimony of this witness does not carry any weight.

Flick has attached decisive importance to the fact that responsibilities in regard to this exchange be clearly established, that is by a repeated explanation of the Four Year Plan, confirmed in conclusion by a similar statement of the Reich Ministry of Economics that State political necessity had been involved in this exchange. Only on this basis was Flick ready to acquire Petschek lignite for Harpen on an exchange basis, thus emphasizing and establishing the fact that at that time he was not personally interested in acquiring lignite from that source. This State political necessity, repeatedly confirmed by the authorities, was the prerequisite to enable the administration of Harpen to justify before their stockholders the surrender of Harpen pit coal. Flick has always maintained a clear line in this respect and consequently also declined to contract directly with the Petschek companies.

Now the prosecution in its final plea sees an aggravating factor for Flick in this, that Harpen did not sell for money. To this I would like to say, I have seen from the case in chief that Pleiger at that time had no money at all to pay for this soft coal in cash.

Furthermore, this question is entirely irrelevant. After all if I have to pay for the soft coal, surely it must be at my discretion to choose the form of payment, whether it be money or in goods. Now, on this occasion Mr. Lyon, in the prosecution's final plea, produced a new construction for the punishability of the Petschek case by linking it with the Four Year Plan, that is, taking as his foundation the idea of a preparation for aggressive war, which purpose the Four Year Plan served. This cannot be done. If a crime against humanity on the basis of the IMT judgment cannot be assumed either because there is no connection with war or because Control Council Law No. 10 is only a supplementary decree of the charter, it is not possible that if the front door for introducing a crime against humanity is closed, to attempt to drag in this punishability by the back door opened in this manner.

In conclusion I would like to state, as a matter of principle, the following in regard to the *corpus delicti* of the so-called punishable Aryanization as charged to the defendant Flick: as an attorney at

law I had been in the position to observe many hideous acts of Aryanization where prospective so-called Aryan buyers actually, and in the truest meaning of the word, had plundered the Jews who were forced to sell by employing any and all means of pressure against them. I have also heard many rumors of such events. I have always hoped that such criminals would meet their punishment in due time. It is this fundamental attitude which makes me regret the fact that it is Flick, of all people, who had to appear in court as a defendant, charged with such alleged Aryanization acts, being even the first exponent of this crime in the dock; Flick, of whom it was known already during the Nazi period that owing to his capital resources and his decent character he was in the habit of treating such matters in a fair manner. But he could not turn back the clock of world history as far as the fate of Germany was concerned. This reputation has even reached Paris with result that the Baroness von Goldschmidt-Rothschild and the circle of French colleagues and French business people advising her in Paris, requested me in 1937 or 1938—as he had confirmed during his cross-examination—to sound out, whether Flick would not interest himself for the mine Rybnik in Upper Silesia, in view of the fact that much pressure was being brought to bear upon her for the purpose of Aryanizing this mine. Telegrams and letters from Murnane, Strathallan, and also from Paul Petschek point in the same general direction. Letters of this nature are not written to a man or about a man, if the writer was the victim of a crime against humanity committed by this man.

COUNT ONE

This very same man is accused of having been a slave holder. Previous speakers, from an objective scientific aspect, have disclosed to you the problematic nature of having international law deal with the utilization of the labor of enemy civilians and PW's and of the labor of concentration camp inmates. I abstain from repeating what has already been said. In accordance with the announcement contained in my opening statement I intend to examine the question of guilt in regard to this point from the hypothetical supposition—I repeat for the benefit of the prosecution, hypothetical supposition—that these problems have to be solved in compliance with the legal views held by the prosecution. To be brief I may refer in this respect to what I have said in my opening statement. There exists no penal statute which, in establishing the criteria of a punishable act, does not take into consideration: the personal guilt of the perpetrator and the causal connection that exists between the acts of the perpetrator and the realization of the punishable facts in the case. A law doing this would put itself beyond the pale of universal moral order

and thus would be void on moral grounds and legally ineffective. The National Socialist government has been rightfully charged with just this very same matter, namely, that they had believed or at least had acted as though notorious wrongs could be righted by a legal act. To persecute human beings solely because of their race or even to persecute otherwise innocent human beings for belonging to some association, be it of a political, religious or cultural nature, will always be an act of injustice and can never become right. Where governments believe that they can infringe upon this divine law pertaining to all humanity they will have to take into account that in some form or other the divine master builder of this universe will drastically correct them. It is, therefore, completely out of the question to interpret Article II of Control Council Law No. 10 to the effect that it had been the intention of the Control Council, in its capacity as a legislative authority, to classify punishable acts and to declare as irrelevant or even to disregard the personal guilt of the perpetrator and the causal connection that exists between his commission or omission and the crime as set out in the penal regulation. It is true, the regulations as set out in Article II, paragraph 2 (c), (d) and (f) have been given a loose formulation such as is seldom the case in a penal law. However, as already stated by a Roman jurist, personal guilt and causal connection are considered to be "*conditiones juris*", that is legally self-evident conditions. Participation by consent in accordance with (c) cannot then be assumed when the perpetrator, without his fault, has become involved somehow in the outer frame of the act, but had disapproved of it in his mind, yet was not able to prevent it; and his so-called participation only consisted in his attempt, as far as he was able to do so, to mitigate the possible consequences of the wrong, as it is the case in regard to the Petscheks as I have stated, and also in the case of slave labor as I am about to describe it. The term "to be connected with" according to (d) can only be understood to mean a culpable and causal connection. The same applies to the term "connected with" according to (e). Furthermore, this regulation of penal law, as interpreted in every civilized country, also presumes that a person voluntarily had joined one of the organizations or associations in question, and that the person joining it knew or must be held to have known the criminal aim of this organization. In connection with the count of slave labor this has considerable importance for the membership in the "Reich Association Coal" and the "Reich Association Iron" which were, as is well known, compulsory organizations and as such did not exist for the express purpose of recruiting and impressing workers for slave labor. Even the Reich Association Coal and the Reich Association Iron were only

inmates of the big concentration camp, Germany, not more and not less than every individual industrialist. Their responsible heads, Roechling and Pleiger, were competent and responsible for the fulfillment of the government production orders, and had nothing to do with labor allocation.

Paragraph (f) does not interest us here in this connection, because it only refers to paragraph 1 (a) of Article II, that is, to crimes against the peace, which crimes the defendants are not charged with. In addition, paragraph 4 (b) is of consequence, which paragraph does not free an individual from guilt for having acted on orders of his own government, that is, having had influence exerted upon him on the part of the State. This legal norm, interpreted correctly, that is with a legally trained and educated mind, is nothing new. Even military law, namely, German military law, punishes the one who executes a criminal order recognized as such. This and nothing else must have been the meaning and intention of the law of the Control Council. This statute cannot mean and concern the act of a person who has no causal connection with the punishable acts and who, therefore, neither could have created nor prevented these punishable acts, nor the act of a human being who acted free from guilt, because he neither was aware of the criminal nature, that is he was not conscious of its illegality, or because he had acted under physical compulsion. However, the term "physical compulsion" must be understood to include everything commonly summed up as terror. Terror means that any resistance against it would bring about a useless martyr's death or a useless loss of liberty. Useless in the sense that he cannot prevent anything by continuation of the punishable acts.

When I apply this abstract thesis to a concrete case and suppose in this connection that the voluntary employment of foreign workers, etc., is a crime in accordance with international law, then, expressed precisely, the defense of the defendant is as follows: the managers of my plants were forced to comply with production orders imposed by the government. This was only possible by employing the above-mentioned involuntary workers, after the respective intercession "Speer, Rohland, Pleiger" with Hitler personally failed to produce results. Voluntary workers were not available in sufficient numbers. The competent State authorities assigned the involuntary workers. Refusing this assignment would have meant the refusal to comply with imposed production orders. For such refusal the person making it would have undoubtedly paid with his life. Perhaps I would have taken upon myself this death of a martyr if by doing so I could have prevented the employment of these involuntary workers in the German war production. But it would not have done this, not even by way of a mitigation for we know from experience that in

dictatorships such acts of resistance only cause stronger counterblasts. From this defense of the defendant the legal conclusion must be drawn that the acts he has been charged with did not constitute—even by his so-called consent—the *corpus delicti*, and that the refusal to employ unfree labor would not have removed or mitigated this employment situation of unfree labor—criminal from a hypothetical point of view. Thus there is no causal connection between the inactivity or “omission” of the defendant and the criminal facts of the case and situation. There is no guilt either because nowhere in the world is there a moral law requiring that one should suffer a useless martyr’s death or a useless loss of liberty, and because the defendant even then, if he had had legal scruples concerning the objective admissibility of employing such labor, would not have been able to do anything about the general terror of the competent administrative departments.

Terror, however, is something else than an order or a law of a government as mentioned by the law of the Control Council. Whoever pleads terror, does not plead compliance with order and law, but with measures of force and a state of force stronger than law or order. Thus in order to judge correctly the situation in which a person like the defendant found himself at that time, it is necessary to discuss shortly these three concepts, namely; the refusal to obey an order, refusal to obey a law, and terror.

In my introduction to this subject I would like to point out the serious consequences arising for every state from a strict application of this provision of Article II, paragraph 4 (b) of Control Council Law No. 10, if carried out to the last conclusions. Introducing a legal obligation to disobey orders, i.e., particularly to disobey the laws of one’s own state would be tantamount to suicide on the part of every state authority and sovereignty and would result in anarchy. The French judge Donnedieu de Vabres has also pointed out these fundamental objections before the Association des Études Internationales and Association des Études Criminologique in March 1947, as my colleague Dr. Nath pointed out. To establish as an unrestricted principle the above-named statute of the Control Council Law No. 10 would mean the dissolution of every state to which this principle shall be applied. Particularly one has to keep before one’s mind that this obligation to obey constitutes a vital necessity for every state in times of war. “This is the obedience which one owes me, without which a state of war is unthinkable,” Schiller lets Wallenstein say in regard to Suys’ disobedience, and rightfully so. The wisdom of your highest court, Your Honors, has pronounced this in a judgment of the Supreme Court of 25 May 1931 in the matter of Macintosh.* It

* See United States vs. Macintosh, 283 United States 605, 635 (1931).

concerned in that case an application for naturalization which contained the reservation to be permitted to refuse military service at one's own discretion, independent of the principles and the practice of Congress concerning the treatment of true conscientious objectors. The judgment states, and I quote: "If, in his opinion, the war is not morally justified,"—that is the opinion of the applicant—"the opinion of the Nation as expressed by Congress to the contrary notwithstanding." The Supreme Court was right in rejecting this point of view of the applicant by stating, and I quote: "If the attitude of this applicant, shown by his presentation and the consequences to be drawn therefrom, should be considered irrelevant for the question of his being admitted as a citizen, where shall the line be drawn?"

It is not possible to let citizens decide individually with regard to vital problems of the nation. Among these are also the controversial issues of international laws of which there are a great many, as everyone knows. If one does not want to give up the concept of the state, international responsibility must be restricted to the state, and at most to those representatives of the state in a responsible position.

In my manuscript I have quoted the same passage, which has already been quoted three times in these proceedings, the words of the French prosecutor de Menthon. I think I need hardly repeat it again. This remark of de Menthon's has been criticized by General Taylor and defended by my colleagues Nath and Siemers. The criticism was undeserved because Menthon expressly talks of state orders, and only for these demands that state functions should be alone responsible, denying the responsibility of individuals—and for good reason.

The whole intellectual world bows down today before the authority of Immanuel Kant, the pacifist and philosopher. He also has refused to recognize any obligation to resist his own legal government as being the legal obligation of the individual citizen, and laid down the principle: "To even suffer the unbearable abuse of the supreme power." This is not an unhealthy exaggeration of the concept of obedience which has been explained in publications of your country, from the attitude of Protestantism in the case of Germany, i.e., from Luther's attitude toward the state and from the specifically Prussian concept of state. The moral political right of doing away with wicked and criminal government by so-called high treason and revolution and the recognition that high treason sometimes constitutes highest patriotism does not at all run counter to a negation of such a legal obligation. I myself advocated this thesis in the big trial when the moral quality and thus the credibility of witnesses

was attacked on the grounds that they had, as Germans, committed high treason and treason during the war. This moral judgment, however, has nothing to do with the legal evaluation. I know that in history the obligation of resisting and refusing obedience to one's own state has been regarded sometimes as a legal obligation and not only as a moral right or perhaps a moral obligation. The scholastics of the Middle Ages have advocated this theory. But one forgets completely that these scholastic theologians stood on the firm ground of the *ordo spiritualis* [spiritual order] of their church. The supra-national authority of the Catholic church which at that time was generally recognized, its *potestas spiritualis* [spiritual power] also afforded the protection of his church to a person refusing to obey. These teachings fall upon arid soil as long as firm international institutions have not been created again which give authoritative advice to the individual citizen, conscience stricken in a conflict between international and national duty of obedience and can protect him in his battle against his state. So far there are no such international and supra-national institutions. The League of Nations has not achieved such a supra-national position, even in a spiritual sense. There is no just person to whom the dignity of humanity means anything, who does not hope that these new endeavors for creating such an institution may be successful. During the time of the Nazis a different view was taken. Fighters against the regime were not even supported morally by foreign governments; on the contrary, the moral authority of the Nazi regime was strengthened by the great honors bestowed upon it from abroad and by its successes. In this connection I have set forth detailed arguments in my closing plea for Schacht in the IMT trial; there I have dealt with these facts in presenting evidence. To save time I should like to refer to them. In the new book of Allan Welsh Dulles, "Germany's Underground," we are told how calls for help, sent out abroad by resistance groups, did not find any response. In order to revert to the problem of the legal obligation to refuse obedience to one's own state, I should like to point out that the principle of mutual relation between obedience and protection, the *protego ergo obligo*, is known to Anglo-Saxon common law also. Whoever established legal obligations must protect compliance with them.

General Taylor, according to his final plea, seems to demand such a form of resistance, however useless, and to demand it of these defendants, too. From a safe harbor it is easy to give good advice. Let the prosecution spend 12 years in a country where, if the bell rang at 5:30 in the morning, one did not know if it was the baker's boy or the Gestapo.

Thus one will have to interpret Article II, paragraph 4(b) in

a very restricted way, unless one wants to bring about unbearable consequences for every nation. However, in evaluating the fact in law that the individual industrialist as well as industry as a whole was not in a position to refuse the filling of production orders of the armament command, behind which stood the might, or shall I say, the almightiness of the Ministry of Armaments, the fact must not be overlooked that the dictatorship of Hitler and his followers did not work only by means of law and order, as defined by constitutional law and administrative law, but by means of terror. The complete suspension of laws protecting personal liberty and life in the face of the demands of these rulers no longer constitutes a state of legality. In a country where justice has largely given up itself and has debased itself to act as handmaiden to the political will, one cannot speak anymore of law and order in the meaning of legal concepts, but only of terroristic measures; these, however, stand outside of every law. They can be only considered as psychological and physical coercion. To everybody who has really known the Third Reich, it is evident that the industrialist who would have refused to fill his production order on the grounds that he was unwilling to employ either foreign workers or prisoners of war or concentration camp inmates for the purposes of war production, would have lost his head without much ceremony by verdict of the People's Court or otherwise by way of a cold liquidation or he would have made the acquaintance of the gallows. Such a legal state or, to be more specific, illegal state, has nothing to do anymore with law and order, but only with terror and tyranny. This is evident to anyone who has lived through the 12 years of Nazi regime in Germany, even half awake and with a chance of insight.

We can only hope that the defense has succeeded in making this credible and clear to the Court, whose members have lived far away from these conditions, in a constitutional state with a tradition of freedom. Legally this shows, however, that it is impossible to make one individual industrialist criminally liable for these facts concerning the so-called slave labor. Responsible are only the representatives of the State on whom judgment has already been pronounced. Flick has also been indicted regarding these facts in his capacity as a member of the "Praesidium" of the Reich Association Iron and Coal. My colleague has already put forward the necessary arguments in this respect. I should therefore only like to make a short supplementary remark concerning a statement of the witness Stothfang. He has stated quite correctly that the Reich Association Coal had nothing to do with the procurement of labor. Only Pleiger of his own accord took part once in this recruitment of labor, namely from the

Ukraine. I need hardly give further proof that such acting on his own accord, of which Flick could not know and did not know anything, cannot charge him either as an individual member, or as a member of the Praesidium, with a personal responsibility, since it is an established fact that this association had been built up according to the rules of the leader principle, and the character of the leader, namely Pleiger, with his authoritarian tendency has been made quite clear by this evidence. If, therefore, this association had competent authority with regard to the question of allocation of labor and the technical carrying out thereof, and this was not the case, the responsibility would lie with their leaders, but not with the members of the Praesidium: the latter had in the two associations no authority whatever to decide or represent. Authority is a condition for responsibility. If one loses sight of this principle, it would mean the end of all order.

I only want once more to emphasize the fact that Law No. 10 is only an explanatory law of the London Agreement of 8 August 1945, the so-called Charter. Therefore, it is restricted to the frame of this Charter and cannot extend it. As the IMT judgment is an authentic interpretation of this principle, the Charter, Law No. 10, too, is limited by the frame of the IMT judgment. This has, of necessity, the result that there is no punishable crime against humanity unconnected with war, thus being, at the same time, war crimes. I request to take this into legal consideration, especially when considering count three and also count four of the indictment.

As to the rest, I concur with the arguments of the previous speakers. I can do the same in the question dealing with the treatment of these workers in the plants of the Flick Concern, and regarding the arguments of my colleagues as to who is responsible in the plants for the treatment and care of these workers. I have already clearly illustrated during the interrogation of the witness Kimmich that it is absolutely grotesque to think that the leader of a concern, as such, should be responsible; to see in the majority of shares "the entrepreneur" in the meaning of the "Law for the Control of National Labor" is a construction which already breaks down on the fact that the larger part of this majority was anonymous. But even where one physical person holds the majority of shares, or even 100 percent, this does not give him the definite characteristic of an entrepreneur for the personal management and control of the individual plant and the individual factory. Giving Ford as an example, the examination of Kimmich showed how it would in practice be impossible to regard the holder of the majority of shares, who is not acquainted with the plants and factories, as the responsible entrepreneur.

It is on the whole not quite correct in technical language to speak of an entrepreneur in the case of a legal entity. The legal entity is only an enterprise with physical persons as its legal representatives, who are as such employees of this enterprise. What, however, actually constitutes an employer is the independence of a physical person. Mr. Kimmich may have managed his department duly within the framework of the Ministry of Labor with the knowledge required therefor. It is easily perceptible that he had no idea of capitalist economics and commercial law. Please do not be led astray either by having looked for months at that assiduous chart on the wall over there,* on which Flick sits enthroned with the Kommanditgesellschaft as an Olympic Zeus of the Olympic concern. This chart only represents the building up of the holdings, but not the building up of the hierarchy of responsibility and factory management. The chart is even misleading as far as the representation of the building up of the holdings is concerned, as it only gives the position of the year 1945. It is not quite correct for that year. I remind the Court of the probable invalidity of the transfer of the Fella Werke to Flick.

Regarding the sphere of responsibility of a member of the Aufsichtsrat and chairman of the Aufsichtsrat, I refer to the arguments of the previous speaker and to the extracts from the commentary submitted in my document book 1, Document 22 [Flick Ex. 22] the corporate law [Aktienrecht und des Recht der G-m-b-H.] concerning the rights and duties of the Vorstand and the Aufsichtsrat, and to the supplement of my final plea, mentioned before, containing the expert opinion of the prominent corporation lawyer, Dr. Walter Schmidt. But here, recalling a most interesting interpolation by Judge Richman, I would like to insert some remarks. From the point of view of factual politics I would like to consider the following problem. My colleague, Dr. Nath, correctly told the Court that the Aufsichtsrat is in a position and entitled to dismiss the Vorstand if there is a sufficiently important reason. Now comes the objection—highly hypothetical—from the prosecution. Perhaps in the rebuttal statement they would have quoted it too, but I am pleased to take such remarks away from them in advance in order to save myself from having to deal with them later. The objection is: the Aufsichtsrat of Harpen or the Vorstand of Essener Steinkohle, under Flick's chairmanship, could have dismissed the Vorstand of these companies because, in their sphere, they had committed a criminal act—that is, a crime against

* The chart referred to is reproduced in the opening statement of the prosecution. See section III A.

humanity—in the form of the employment of foreign workers. It's all wrong, in view of the complete impotence of the Aufsichtsrat. Theoretically, yes! But let us imagine that Flick had sent off an urgent invitation to an Aufsichtsrat member, agenda—dismissal of the Vorstand member of Harpen or of Essener Steinkohle for important reasons, consisting in the employment of foreign workers. I will be daring enough to suppose that the Aufsichtsrat member actually appeared at this meeting, which already seems very doubtful to me, and let us suppose Flick had submitted his proposal to this assembly. Without any doubt at all several would have left the conference room straightaway in order to whisper in a corner, "Is Flick committing suicide, or has he lost his senses"? Now, I will further theoretically suppose that the Aufsichtsrat had taken such a decision. If a majority had agreed, a completely unreal supposition, I have no doubt whatsoever that the dissenting minority would, only to cover themselves, have reported the incident to some government agency or other. The result would have been that the majority would, within an hour, have sat behind lock and key. But this doesn't happen. The Aufsichtsrat decides, and the notice of dismissal, signed by Flick, is sent out to the Vorstand. The Vorstand [member] receives it. He goes to his attorney and tells him: "I don't intend to leave my office for even 1 minute. Please have an injunction issued that I be permitted, for the time being, to continue to manage the affairs of Harpen. Furthermore, start a law suit against the company to prove that this dismissal is illegal." The idea that there would have been a single judge in Germany who would have refused to issue such an injunction and who would not have rendered judgment in favor of the plaintiff is absolutely unthinkable. "Yes," says the prosecution as advocate of the devil, "Maybe, but Flick was a majority shareholder." Herr Nath told us that the general meeting can issue a vote of lack of confidence in him. In that case the Vorstand has to go.

Now, Your Honor, just imagine a general meeting of such a representative company as Harpen and Essener Steinkohle: The press is there; the members of the Aufsichtsrat, consisting of the managers of big banks, are present; responsible men of the big banks are present; and a majority shareholder appears and, without discussion, wants to decide on a vote of no confidence in the Vorstand.

Do you not believe that this is a completely unimaginable construction? Do you believe for a moment that the big banks would have permitted that, without any reason being given, a Vorstand member was dismissed and had a lack of confidence expressed in

him by power of a majority shareholder? It is absolutely impossible, for if the reason had become public—and it would have had to become public—then Flick's fate would also have been decided. After all, we know how these things happen. There are always people who are keen enough to telephone. Well, then, Flick would have been collected with the well-known car in 10 minutes' time or so. In no way, even by the widest stretch of imagination can one remove the fact that in this question everyone, Vorstand manager, Aufsichtsrat, shareholders, all had their hands tied.

I therefore sum up my defense thesis as follows: Even if the fact of procuring and employing such workers should objectively constitute a crime against humanity, the responsible perpetrators of this crime are those representatives of the sovereign power who alone have instigated and caused this circumstance. Symptomatic or systematic inhumane treatment of these workers in the factories has neither been substantially demonstrated by the prosecution nor been established by the evidence. Individual mistakes in the form of brutalities by subordinates can in such cases not be avoided, even with the greatest care taken by the competent supervisory authorities. The works managers were the competent and thus responsible supervisory authorities in the plants. Flick, as holder of the majority of shares and chairman of the Aufsichtsrat was not one of them. He was careful in selecting responsible personnel. Besides he has, going far beyond what was his legal duty, always reminded the responsible works managers not to fear any additional expense, in order to provide these people with food and accommodation, worthy of a human being, and never heard of a fact or even a situation which could have given him cause to intervene. Even if one wished to regard his duties and responsibility in a manner analogous with the views of the judgment of the Supreme Court of the United States in the Yamashita case,¹ or with that of the Military Tribunal here in the case against the doctors² in the matter of chief physician Handloser, it does not establish a state of affairs which would appear to make him guilty of having neglected such duty.

COUNT TWO

Now I come to the count two, spoliation.

This count dealing with spoliation has been pleaded in detail. In principle I should still like to refer to the following: Not every infringement of international law is a crime against humanity, or a war crime. We must not place the facts of the crime against humanity or a war crime on a level of triteness. Such belittling

¹ In re Yamashita, 327 U.S. 1.

² United States vs. Karl Brandt, et al., Case 1, Volumes I and II, this series.

would degrade the high conception of humanity and the dignity of man. The rights attached to human dignity are the greatest on this earth. To attack them demands a criminal intention of the highest tenacity and intensity. A crime against humanity or a war crime demands inhumane intention and conduct. As long as we move within the problematical spheres of international law, i.e., in a sphere of academic controversy, there can be no question at all of a war crime or a crime against humanity. It can definitely not be disputed that the Hague Convention on Land Warfare, and even the Geneva Convention, are lagging behind the development of war. Modern total warfare, including economic warfare, air warfare, culminating in atomic warfare, has not yet been civilized by rules of war. All efforts in this direction will have the blessing of all people of good will. The justification of my fear already expressed in my opening speech, namely that such a war in itself probably makes civilized standardization regarding international law impossible, cannot be disputed. If war as such is ever inhumane, one will hardly be able to punish the one individual, who did not cause it, on account of being inhumane. These principles applied to the case before us, exclude from the beginning a verdict of guilty against Flick on account of spoliation. Moreover, not every infringement of international law and violation of any law on warfare is immediately a "war crime." Here too, a criminal mind and criminal intentions of the highest intensity are prerequisites for the punishable acts. The text of Article II, paragraph 1 (b) and (c), shows moreover that the acts of the crime against humanity and the war crime overlap. This is already shown by the identity of the two examples mentioned. Both include murder. The extermination, enslavement, deportation, imprisonment, torture, rape of the civilian population, mentioned under (c) occurs again in the ill-treatment of the civilian population, the deportation, the enslavement mentioned under (b). The spoliation also, mentioned under (b), can only then be regarded as a war crime when it represents more than a formal offense concerning property, namely a crime against humanity. When, for instance, a soldier plunders a barbershop and steals a toothbrush, hair tonic, and such like, he is punishable for spoliation according to the war law of all civilized nations. He is and should be punished according to the deed he has committed. He is not a war criminal or perpetrator of crimes against humanity. The standard for the intensity of the criminal intention according to paragraph 1 (b) and (c), Article II, i.e., for war crimes and crimes against humanity, is the same. War crimes and crimes against humanity in time of war are uniform and according to our legal usage absolutely competitive facts. All the factories in the East, in the manage-

ment of which the Flick Concern participated in one way or another, were State-owned factories, in which Germany had the usufruct according to the international law in force, that is to say, Germany had the right to utilize their production power while keeping them going.

It has been established that this utilization consisted mainly in expenditure of considerable sums for the rebuilding of the plants, and that therefore the so-called advantage was a bill of exchange on the future. It would be idle to consider what would have happened if this advantage had been realized, which would have been the case in the event of a German victory. It is of no interest here whether perhaps the exploitation, even the dismantling, would have been included by the victor in the conception of current reparations. For this reason the actions of Flick in the East, also in his capacity as a member of the Verwaltungsrat of the Berghuette Ost, must be eliminated as criminal facts. With regard to Rombach, I should like to make a few short remarks to elucidate the statements of my colleagues: Acquisition was only planned in case the war should end by a decisive victory. No one anywhere will doubt that the works in Lorraine and Alsace would in the event of a German victory have become German territory as in 1871, and that these plants would have been transferred to German ownership the same as they were transferred to French ownership in 1919. Such transitory belief in a German victory on the part of Flick, together with the intended acquisition after victory as just described, can however not constitute a criminal fact. Never yet have civilized rules of law anywhere regarded a mere intention which was based on wrong political assumptions, as a criminal fact. Concerning the fact that Rombach was put into operation, it must be pointed out that the prosecution has not established whether, and in how far, this production served Germany's war potential. If one wished to assume this as a matter of course, at least to a certain extent, and if this constituted an infringement on international law, such action would, as argued before, by no means be a crime against humanity and by no means a war crime. Moreover, the fact should not be left out of consideration that the maintenance of the technical plant of the Rombach Steel Works which had been evacuated by the French management, prevented its dilapidation. This fact also eliminates the assumption of a war crime or of a crime against humanity, because anyone who maintains the assets of a national of an enemy state even with means not permitted by international law, does at least not injure human dignity.

That is why the actual victim of this alleged war crime, M.

Laurent, testified here on 14 October that there could be no question of any "plunder" having taken place in Rombach.

COUNT FOUR

Now the Circle of Friends.

The so-called Circle of Friends, was, according to the facts established in this trial, not an organization within the meaning of the last paragraph of Article II. It was not an organization at all. It lacked every conception which constitutes an organization; it did not have statutes or a Vorstand; it consisted of a circle of people who were invited to pleasant social gatherings. It has not been proved that the contributions placed at the disposal of Himmler served any other purpose than the scientific and representative ones alleged by Himmler. Incidentally, Flick never even heard about the representative reasons which were given. The contributors had no reason to doubt this. Even if one regards Himmler personally as a criminal, he had, like all criminals, a private sphere which had no connection with his criminal acts. Nor were these contributions made to the SS as such, i.e., the organization of the SS.

Flick had no idea of the account with the Dredsner Bank. It can, therefore not be said that these contributions were made to an organization which had been declared criminal by the IMT. In rebuttal the prosecution submitted a number of documents to prove that these contributions were also diverted to criminal purposes, or, at least, not social and scientific purposes. The most peculiar sums were listed. There was one sum which mentions a certain Lydia, who got a fur coat. Another item mentions knitted pants for some other squaw of an SS man. I freely admit that this expenditure can hardly be classified as cultural; with a certain amount of benevolence and pressure one might classify it under representation purposes. It indicates a certain amount of corruption, but most certainly not criminal. Now, I ask you, what on earth has all this to do with the grave question—whether Flick supported a criminal organization? He had only heard of cultural purposes, and it has not been disproved. In cross-examination I was unable to ask the witness Wolff whether he wanted to maintain that Flick in 1936 also had heard of so-called social and representative purposes. This would have been inadmissible in cross-examination during rebuttal. And, anyway, it was really not necessary, and I freely admit that I was sick and tired of dealing with such bagatelles in a case which can only be seen and judged in its main outlines. The fact that later on even higher SS leaders also took part in these social gatherings is not suited to give these meetings a

criminal character. Almost every dinner of accredited diplomats in Germany was attended by some SS leaders, more and more of them as time went on. This was a matter of necessity in the course of representative duties of these diplomats in dealing with a government and a regime to which they had been accredited and remained thus even after they and their governments, in contrast to a large portion of the German people, had learned of the atrocities of the SS through the foreign press: The Dutch Government, for instance, recalled its first Ambassador during the Nazi regime because as an outspoken Nazi-hater he refused to receive any representative of the Party or its organizations. He was an outstanding man—I found him exceptionally congenial—I consider it as an honor to have known him. But I agree with the Dutch Government that it was of no use to a country to keep an Ambassador in a place where he refused to have any social dealings with the regime. I cite this example to illustrate the fact that the presence of higher SS leaders at certain social functions was inevitable but in no way did it indicate that these functions or the circle of people at such regular functions bore the stamp of criminality. This Circle came into existence because Hitler evidently fully realized that his economic program was absolutely hollow and only a lot of phrases. Therefore he asked Keppler, whom he knew well, and who he thought—erroneously—understood something of economics and hence could advise him, Hitler, on economic life, to contact all the so-called prominent economists or industrialists for the purpose of exchange of opinions. When, soon after, Keppler's star as adviser was extinguished Himmler became interested in this Circle and gradually took it under his patronage, the motives on both sides for participation in this Circle can readily be seen. Himmler was interested in the money of these industrialists in order to be able to pursue his hobbies of a non-criminal nature as they have been described above. For already in 1936 he expressed his wishes as to contributions. On the other hand, the upper strata of industry which, like every upper strata in Germany, was in its majority not National-Socialist minded and felt more or less in need of a certain patronage for itself or its enterprises, as is always the case under such governmental conditions, and they felt that a participation in this Circle gave them some support and a certain outward identification of political reliability. And that is why, in the course of time, we find most of the great enterprises and concerns represented in this Circle. It was quite a natural *do et des* relationship. The one party wanted money—the other wanted a certain protection. Such sociological aspects you are likely to find in any nation where political intolerance, political

persecution, and, with it, political denunciation and terrorism have the upper hand. The nature of this Circle also can only be understood if one has learned to understand the nature and sociological structure of the Third Reich. To get a correct opinion of it brings out again that a thorough knowledge of the Third Reich and the various conditions prevailing there is the preliminary condition for enabling one to judge correctly the actions of individuals living there. And even then, the judge must in humility, before the "human, all too human" aspect of the actions of the individual persons under such circumstances, approach the facts of the case submitted to his wisdom and justice with the question: Would my average fellow citizens have acted quite differently under such circumstances? I am to deal only with Flick here. He justly thought that he had a very bad political record because, in 1932, in spite of Hitler's request for help in his election against Hindenburg, he had helped Hindenburg against Hitler with about one million Reichsmarks, at that time of crisis a tremendous sum. On the basis of this position he did not want to become a member either of the Party or of one of its organizations at that time. Only later on he found this to be inevitable. To belong to this circle seemed to him a tolerable means of self-protection. To refuse to make the contributions desired by Himmler in 1936, or later on to discontinue them, would probably have been suicidal. I would like to call your attention to the affidavit of Medicinalarst Kersten, and the affidavit of the former employee of the defendant Flick, Karl Schroeder. From these you know that Himmler wanted to annihilate Flick for the reasons stated there. Imagine, please, what would have happened if, for instance, at that time, when Kersten dissuaded Himmler from doing the worst, Kranefuss had reported to Himmler that Flick no longer needed the invitations to the Circle of Friends and that he had discontinued his contributions. The prosecution then tried to attack the creditability of the witness Kersten. That is why they are speaking of the "ghostly voice of a Finnish masseur." The prosecution did not succeed in casting doubts on Kersten's credibility during Wolff's examination. May I refer to the transcript of 4 November, page 9714 to 9723 of the German text (English tr. pp. 10023-10033), in particular Wolff's replies to my questions in cross-examination during the rebuttal. Now, the prosecution is being somewhat ironical about his profession and is trying to belittle it and his nationality—but I think that I need say no more to protect Kersten and his credibility.

The Dutch friend and codirector of the witness Blessing was absolutely right when he advised Blessing to join the Circle

although he was a bitter Nazi hater and knew that the same was true of Blessing. The example of the umbrella is an excellent illustration. Permit me to stick to it. The witnesses von Schroeder and Keppler testified that one could, of course, have withdrawn from the Circle at any time and also could at any time have discontinued the contributions. From their standpoint these witnesses were absolutely right. Looking at it abstractly one can certainly turn down an invitation to an informal circle at any time, and can discontinue a voluntary contribution at any time, exactly as one can—to use the same illustration—close an umbrella at any time; this latter, however, at the risk of getting very wet if one happens not to have a raincoat on. Flick, however—again to use a metaphor—had no coat that would have protected him. On the contrary, his clothing was very pervious to political rain. One cannot judge such things from an abstract point of view. One must also consider the concrete actual situation of the individual case. There are, in this country, too many self-righteous people today who consider it at the least the most blamable opportunism to belong to such a Circle. Those shouting so loudly in self-righteousness were not the most courageous fighters of the opposition movement that existed, and its endeavors. One can only exclaim here, “He who is without sin among you, let him throw the first stone.” My viewpoint is expressed in the sentence, *Homo sum, humani nil a me alienum puto.*

Therefore, I believe that he who loves justice cannot condemn Flick simply because this Circle appeared under Himmler’s name and because he, Flick, made his contributions for the intended purpose of unrefuted good faith. He was not, as the prosecution claims, a financial source for the SS as such. For the rest, I would like to point out the following. The prosecution has repeatedly thought it could accuse the defense of being illogical. When the IMT judgment declares the SS to be criminal the prosecution is very pleased to acknowledge this verdict; but when the prosecution describes facts before the war as being incriminating, as crimes against humanity, then they won’t want to hear anything about such legal validity of the judgment, and criticize the IMT as having interpreted the statute in too narrow a sense. This is just a small act of revenge on my part against the accusation of inconsistency.

Enough crimes against humanity were committed under this cruel regime. It is there one should look for the criminals who ought to be punished. But the cause of justice, and thereby the cause of humanity, cannot be furthered by being content with outward forms of appearance in the search for the guilty,

and not penetrating deeply into the sociological and political background of all the events and all the actions of the individual. Only a correct knowledge of these will make it possible to find those who are truly guilty, and mete out correspondingly severe punishment. This, Your Honors, leads me to the Catonian *ceterum censeo* of my opening statement. Therein I represented the view, which was the only correct one according to my conviction, namely that in the opening statement as well as in the final plea, in the course of argumentation, to every statement contained in the prosecution's opening speech, even if not supported by evidence, a reply can be made on my part, also in like manner. It is my firm personal conviction that this charge would never have been brought against Mr. Flick, and all the leading defendants in the industrial trials, if the prosecutor, and in this instance the representative of the United States of America, were not of the opinion which he repeatedly and very unmistakably expressed in his opening speech, and which was repeated by him in his opening speech for the I.G. Farben trial.* I again quote an excerpt:

“Krupp, Flick, Thyssen, and a few others swayed the industrial group; Beck, Fritsch, Rundstedt, and other martial exemplars ruled the military clique. On the shoulders of these groups Hitler rose to power, and from power to conquest.”

In reply to this, as far as the generals mentioned are concerned, I can refer to what I said in my opening speech. In addition to it I will read just one sentence by a man who really must know. In the “*Deutsche Rundschau*,” published by the well-known Rudolf Pechel—one of the most courageous opponents of nazism and a concentration camp inmate—there appeared in issue number 7 of July 1947, a letter from the former Reich Chancellor Bruening addressed to Pechel, which contains a description of the essential circumstances which helped Hitler to rise to power. It says in this letter, on page 18: “From the experience of the past 18 months” (namely before the spring of 1933), “we both” (that is General von Schleicher and he) “knew that the *only* active general who wanted to see the Nazis in power was Blomberg.” Concerning the so-called “reaction,” apparently the indefinable scapegoat of every regime, which has been accused by General Taylor on the same lines, there is on page 10 of this letter the following sentence:

“Later on, I (that is Bruening) found out that this change in my favor was to be attributed to the intervention of a number of members of the oldest aristocracy of East Prussia

* Reproduced in Volume VII, the first of two volumes of this series on the I. G. Farben case.

and Silesia, who had never wavered in their enmity against the Nazis, and most of whom ended in concentration camps or were executed.”

On the occasion of Steinbrinck’s and Reichert’s examinations we pointed out that the masses of employees and workers who were gathered together on the May field, on the occasion of Hitler’s first May Day celebrations, and learned of the dissolution of their trade unions and the arrest of the best-known leaders, did not manifest any discontent but shouted “Heil Hitler” and marched in a group with their colleagues to the strains of music, singing the Horst Wessel song, to and from the May field. Who took up the case of the trade union leaders? The reactionary and militarist, General von Mackensen. On page 20 of this letter we find the following sentence:

“Through Field Marshal von Mackensen having access to the Reich President, it was, for instance, still possible to have many people, including the leaders of the free trade unions, released from the concentration camps and prisons.”

Whether Krupp helped Hitler to seize power will be clarified here in another trial.* It would not be good forensic manners to express an opinion in a matter *subjudice*.

Thyssen and Kirdof, when sponsoring Hitler, were not representatives of the heavy industry circle as such but isolated figures, in the same way that some obscure bankers, also mentioned in this letter, were not the representatives of the German banking chiefs either. Thyssen has confessed his error like a man and has courageously paid a heavy penalty for it. On the other side stand men like Reusch of the Gutehoffnungshuette, Karl Bosch, the late chairman of the I.G. Farben Aufsichtsrat, who would very likely have come to a sad end, had he not died in time. Their feelings were shared by the deputy chairman of the Aufsichtsrat of Kalle. The Siemens and AEG companies which, next to I.G. Farben, were the most powerful German concerns, and they were determined opponents of national socialism. I know that this unfriendly attitude on the part of the Siemens concern to the Nazis resulted in the firm receiving rather rough treatment. The Director General of the AEG [Allgemeine Elektrizitaets Gesellschaft], Geheimrat Buecher, whom I knew from my stay in the colonies, was anything but a Nazi. I can assure General Taylor that it is certainly wrong to assert that the leading industrialists as such favored Hitler before his seizure of power. As regards the conduct of this class after the seizure of power, I can appropriate for myself the testimony of Schacht. The

* *United States vs. Alfred Krupp, et al.*, case 10, volume IX, this series.

National Socialist Party answered the negative attitude of the leading industrialists by harming their enterprises. Who is going to condemn the chiefs because they felt responsible for the prosperity of these enterprises? Why, then, did the Party, with the support of the government, carry out the so-called purge of industry in 1933? Would not this have been unnecessary if industry as such had helped Hitler to power? Upright men, such as the former Minister of the Weimar Republic, von Raumer, my colleague of colonial days, Geheimrat Kastl, and the well-known Dr. Lammers, were removed from the directorate of the Reichsverband. No, Hitler owes his rise to the fact that the trade unions, which in 1920 in the Kapp Putsch defeated by a general strike this movement thought by them to be reactionary, and had been broken down by 1933 through years of unemployment, because they no longer had behind them the masses who had lost their belief in the trade unions. Six million unemployed had been crowding the streets, some of them for years, and the trade unions, which for decades had promised them the Socialist heaven, were unable to help them. Then there rose from the ranks of the proletariat the "saviour" who promised them salvation, salvation from misery, and all these masses of the lower middle class and the proletariat followed this "Pied Piper." Where did the number of votes he received come from? It was the masses that carried Hitler, not the elite, using this expression here in a sociological sense. Please do not think that I am being a snob in using this expression; it is just a technical term. The elite, however, is powerless without the masses. Any regulation in an enterprise which the body of employees and workers would have considered as opposed to national socialism and, consequently, to their beloved Fuehrer, would have resulted in the revolt of the workers and employees, and the chief would have been thrown out. One need only remember the course Aryanization took. Jewish chiefs and higher employees were for the greater part not eliminated by outside action, but by the workers and employees themselves. There were, for instance, some great technical experts, such as the director general of Telefunken, Emil Meyer, whom the Defense Ministry would have very much liked to keep, but the workers and employees asked for his dismissal. Today the legend is spread that the whole of the former electorate of Social Democrats and Communists had been in opposition to national socialism. How mistaken and how untrue this assertion is, is shown from the votes cast at the Reichstag elections. All these facts have been distorted by a maze of myths which today have already assumed the nature of incontestable facts and have become the basis of so-called ideologies. But in criminal proceedings, where

the truth is sought, the facts must be sifted from these myths. Far be it from me to blame the deluded masses. Wise and enlightened statecraft does not consist in making people responsible for their errors and in blaming them for them. Were this to become the fashion, the profession of statesmen would become impossible, for the world is governed through error more than through wisdom. But I feel it to be my duty to resist here any possibility that myths might blur the view of the judges in their search for truth.

As regards the much discussed 3 million marks donation of the business world in February 1933, which has also been made a subject of the accusation, the fact is overlooked that it was paid after the seizure of power, and on account of its ridiculous amount for such a purpose could hardly have brought about much strengthening of this power. I refer in this respect to Schacht's testimony. It would better serve the purpose of finding the truth, and with it the enlightenment of the peoples, and also the re-education not only of the Germans but also of all nations, if the search would be directed elsewhere. As a sort of marginal note I shall now read another short passage from the same Bruening letter (page 22); I quote:

“One of the main factors for Hitler's rise, which I have only mentioned in passing, was the fact that he received large sums of money from foreign countries in 1923 and subsequently, and that he was well paid for the sabotage of the passive resistance in the Ruhr district. In later years he was paid for provoking unrest and for encouraging revolutionary tendencies in Germany by men who thought this would weaken Germany permanently and render impossible the existence of any constitutional central government. Those who have tried so long to suppress these facts, are mistaken if they believe that they could do so permanently.”

One should turn to this witness, and to other equally well-informed witnesses, if one wants to get to the bottom of the question as to what the circumstances, powers and men were who helped Hitler to power, and one should not take as one's starting point a “resentment” which is mainly conditioned by considerations of internal policy. In the sanctified atmosphere of this courtroom, where one strives for truth and justice, these problems must be removed from the bitterness of persecution and from high-sounding phrases.

I conclude by acting upon the advice contained in the poem of Goethe's Permanency in Change, and going back to the opening words of my opening statement and to the authority of the man who is recognized by all constitutions and communities based

upon Christian ideologies, namely to the words of St. Augustine, which I quote:

“What matter under whose government mortal man lives, as long as those who govern do not compel him to commit impious and iniquitous acts.”

The defendants lived in the Third Reich under a government which forced those they governed to do impious and iniquitous acts. It was their tragedy, but not their guilt, not even their tragic guilt.

I therefore ask that the defendant Flick be declared not guilty.

G. Rebuttal Statement of the Prosecution to the Closing Statements of the Defense*

PRESIDING JUDGE SEARS: General Taylor, you have the attention of the Court.

GENERAL TAYLOR: Your Honors, I will not take the Court's attention for more than an hour—and probably about 45 minutes.

Having read or heard the closing arguments for the defense, it seems to me clearer than ever that, as stated in the prosecution's closing, there are relatively few important issues of fact to be resolved in this case, and that for the most part we are confronted with pleas by way of confession and avoidance or demurrer. I do not at all mean to suggest that prosecution agrees with the statements of facts in the several closing statements for the defense. Once again we have heard it argued that Flick, Steinbrinck, and Kaletsch were really acting as attorneys or agents for the Petscheks; and once again it has been urged that the defendants were all appallingly ignorant of the most elementary factors in the labor situation at their plants. On such matters, we will rely on our briefs. It has become quite clear, we think, that other arguments than these constitute the main hope and reliance of the defendants.

There is a well-known figure of speech in the English language about being led up the garden path. It is just such a path that we are invited to tread by the defense counsel; it winds back and forth through a pleasant grove of trees, and behind each tree that we approach waits a defense counsel with a ready answer to assuage our doubts, pointing the way to the next tree along the way. We set off down this path with some misgivings, but many initial doubts are set at rest behind the very first tree, where Dr. Kranzbuehler awaits us with a series of highly in-

* Tr. pp. 10952-10970, 29 November 1947.

teresting and novel propositions; by the time we have left him we have learned that total war is an Anglo-Saxon concept, that deporting civilians from occupied territories against their will and forcing them to work for Germany is not a crime at all, and that the whole legal basis of the Hague Convention and, in consequence, of this trial, rests upon an obsolete liberal, bourgeois ideology.

Considerably relieved, we proceed on down the path, encouraged by Dr. Pelckmann and Dr. Nath, from whom we learn that the defendants, since they are private businessmen, are privileged and immune to the duties and responsibilities which international law lays upon us humble military men or civil servants. When we reach Dr. Flaechsner's tree, we are momentarily assailed by doubts again when we hear that the prosecution, in count three of the indictment, has quite overlooked the fact that Flick no longer acted as a private businessman, but was under the orders of the delegate of the Four Year Plan. But this hesitation is only temporary, as we now learn on unimpeachable authority that the defendants were really attorneys for the Petscheks. By the time we reach Dr. Siemer's tree, we are beginning to feel a little bit ashamed that we ever had any doubts at all about the safety of this path. Here we learn that the fact that these and other leading German industrialists are undergoing trial is a principal obstacle to the reconstruction of Germany.

And when we finally reach the very end of the garden path we find Dr. Dix, accompanied by Medizinalrat Kersten. The combination of the spell woven by Dr. Dix and the message administered by Dr. Kersten is entirely too much for us, and it is only some hours later that we manage to shake ourselves out of the trance and realize what actually happened to us on the garden path.

As is usually the case under such circumstances, most of the real damage was done behind the first tree, where we met Dr. Kranzbuehler even though our experiences at the end of the path with Dr. Dix and Dr. Kersten were perhaps more exotic. And accordingly Dr. Kranzbuehler's argument will receive our principal attention, after a few very brief words on other matters.

I cannot see that any useful purpose will be served by further discussion of the question of fear and coercion, on which Dr. Dix has just laid great emphasis. We have expressed our view in the prosecution's closing statement that the record furnishes no basis for such a plea, and we have stated our views on the applicable law.

As to the charges under count three, closing statements of defense counsel have offered numerous interpretations of the

facts which we submit are impossible in the light of the documents in the record written by the defendants themselves. I do not propose to discuss them now, but I do wish to say a very few words with respect to the legal arguments as to whether the acts charged as crimes are cognizable under [Control Council] Law No. 10.

The defense urges that Law No. 10, like the Charter as applied by the IMT, is limited to crimes occurring after 1 September 1939. This question I have discussed in our opening statement, and at this time I merely want to point out the difficulties defense counsel have experienced in seeking protection for their clients even under the IMT decision.

In an effort to push the Ignaz Petschek transaction before 1 September 1939, Dr. Nath has told us that everything of importance happened before that date. This overlooks the simple fact, among others, that the divestment of title be placed after that date. His argument also seems strange when contrasted with the attempted defense of coercion in connection with the Ignaz Petschek transaction. When the defendants are pleading coercion they refer to an alleged order issued by the government in December 1939; and in that phase of the case one would certainly gather that something new and substantial had indeed been added after 1 September 1939.

The defense has also argued that persecutions on racial, religious, and political grounds must be physical acts directed against the person of a member of the persecuted group analogous to murder, torture, rape, etc. This argument has been made before and has been rejected by the IMT. For example, in its enumerations of the crimes of the Leadership Corps of the Nazi Party the IMT stated that that group had "played its part in the persecution of the Jews. It was involved in the economic and political discrimination against the Jews which was put into effect shortly after the Nazis came into power."¹ Likewise in its enumeration of the criminal activities of Seyss-Inquart, the IMT stated that "One of Seyss-Inquart's first steps as Reich Commissioner of the Netherlands was to put into effect a series of laws imposing economic discriminations against the Jews."² Likewise as to the crimes of Walther Funk, the IMT stated that he "had participated in the early Nazi program of economic discrimination against the Jews."³ In the enumeration of the crimes of Wilhelm Frick the IMT stated that he "drafted, signed,

¹ Trial of the Major War Criminals, *op. cit.*, volume I, page 259.

² *Ibid.*, p. 329.

³ *Ibid.*, p. 305.

and administered many laws designed to eliminate Jews from German life and economy.”*

Thus, we submit, this question raised by defense counsel has been conclusively determined by the IMT on the basis of a full record and it is unnecessary to labor the obvious point that the crimes charged against the defendants were not isolated episodes, but were an integral part of a program. The defense counsel themselves insisted that this was true when they tried to lay the blame on others. And this obvious fact is illuminated even more clearly by the defendants' personal participation in efforts to extend anti-Jewish legislation.

It is generally true that arguments are most effectively and convincingly put forward when they are believed thoroughly by the persons advancing them. It is human nature that, if one does not believe in one's own position, the chance of anyone else believing it seems remote and the argument is advanced at best half-heartedly. On the other hand, an argument which is thoroughly believed in acquires a convincing and compelling swing. That is why I think that, of all the defense pleas, Dr. Kranzbuehler's is the most important. I do not wish it to be thought that the prosecution is presuming to comment on the comparative competence of these pleas; that would be not only gratuitous but in very bad taste. But it is plain, I think, that the defense put what it thought were its best arguments forward at the outset, and that the considerations urged by Dr. Kranzbuehler are those in which the defendants and defense counsel themselves believed most firmly.

I will forbear to characterize the over-all pattern of these arguments until we have analyzed them more closely. The foundation stone of Dr. Kranzbuehler's presentation, and by far the most fundamental defense which has been advanced to the charges in count one of the indictment, is the legal proposition that I quote from his statement: "A belligerent power, therefore, is at liberty to use manpower from an occupied territory to the extent that, and in the place that, the necessities of economic warfare dictate." (*Tr. pp. 10491-92.*) In short, it is not a violation of the Hague Conventions, nor of international law, nor is it a crime cognizable by this or any other Tribunal, to deport the civilian population of occupied territories away, and force them to work in the territory of the occupying power.

In support of his proposition, Dr. Kranzbuehler points first to the fact that the Hague Regulations nowhere say in so many words that civilians in occupied territory shall not be deported away to work for the occupying power. It is perfectly true that

* *Ibid.*, p. 300.

the Hague rules were drawn before the first modern example of this practice, which the Germans furnished in Belgium during the First World War. But the Hague rules do tell us in Article 52 that contributions and services can only be demanded for the requirements of the occupation army, and other general provisions of the Hague Regulations are wholly inconsistent in principle with the carrying off from their homes of civilians in occupied territory. I know of no authority except Dr. Kranzbuehler for the proposition that the Hague rules do not cover this matter and, indeed, since the Germans first made the problem a practical one 30 years ago in Belgium, the practice has been emphatically and uniformly condemned by the authorities, except in very rare instances. Dr. Kranzbuehler attempts to buttress his argument by suggesting that the occupying power can deport labor under compulsion in order to avoid unemployment or to remove men fit for military service from the operational area, but I do not find any serious suggestion that these purposes have anything to do with the case at hand.

He next observes that the deportation of foreign workers was justified on the ground of "self-defense," which is described as a "fundamental right which justifies unlawful acts." This, as we will see in a moment, lies much closer to the heart of Dr. Kranzbuehler's real argument; but is not an argument which need give us any pause under the Hague Conventions, since the laws of war, of course, were not solemnly adopted only in order to be disregarded should any single country find their observance slightly awkward.

In fact, as we read on, it becomes apparent that, to Dr. Kranzbuehler, what the Hague Regulations say or do not say is a matter of no importance whatsoever. The whole question is one of the evolution of warfare and the changing requirements of military necessity. The flexible nature of international law is first stressed. Then we are told that the Hague Conventions are based "on the moral and political ideologies of a world essentially liberal and bourgeois," a world which, we are led to imply, is dead and gone, and no longer affords practical basis for such rules. It is pointed out that the rules concerning submarine warfare, and the practices regarding aerial warfare have changed everything; and then it is suggested that these unhappy consequences are the work of the "Anglo-Saxons." I am constrained to quote a few sentences from his statement:

"This distinction is not accidental but significant, for the Hague Convention, which originated under the dominant influence of the continental major powers, Russia, Germany, and France, is based on the continental conception of war as a conflict solely between the military forces of the opponents.

"The Anglo-Saxon world has never recognized this continental concept of war. In its view, war is directed not only against the enemy state and its army, but against every enemy national. There can be no doubt that the Anglo-Saxon concept of war as a fight between the people, down to the last individual, has prevailed. I doubt whether this is progress, but it is a fact."

I must confess that I find these expressions bewildering, particularly coming as they do from a former naval officer. It would have been quite irrelevant in this case whether the concept of "total war" is Anglo-Saxon or Teutonic, but for the fact that Dr. Kranzbuehler is urging us to throw overboard the whole doctrine of binding laws of war because of the changes which, it is alleged, the "Anglo-Saxons"—presumably meaning by that the English and Americans—have brought about in naval and aerial warfare. Apparently we are expected to forget entirely that the two weapons of warfare which Dr. Kranzbuehler uses as examples—the submarine and the airplane—were first used as a major weapon by the Germans, and that modern warfare on the sea and in the air has largely developed by way of reaction to the German example.

Beyond this, of course, at least since the dawn of the 20th century and probably for many decades before, it has been obvious and generally realized that warfare cannot be restricted to the activities of professional armies. This discovery is certainly not an Anglo-Saxon monopoly—the most famous early statement of the so-called doctrine of "total warfare" was made by the German General Moltke, in his well-known correspondence with the Swiss jurist, Bluntschli; the famous German War Book of 1902 tells us the following in the introduction, from which I quote briefly:

"A war conducted with energy cannot be directed merely against the combatants of the enemy state and the positions they occupy, but it will and must in like manner seek to destroy the total intellectual and material resources of the latter. Humanitarian claims such as the protection of men and their goods can only be taken into consideration insofar as the nature and object of the war permit."

Pushing his reasoning another step further, Dr. Kranzbuehler takes up "economic warfare" which, he tells us, was "an unknown concept in 1907." One can hardly believe one's ears. We need not go back so far as the wars between the Romans and the Carthaginians, in which economic considerations played no small part. Every schoolboy and, I am sure, Dr. Kranzbuehler, knows generally about the Napoleonic wars, the continental blockade,

and the English naval blockade. In fact, it was largely because of the economic aspects of the Napoleonic wars that our own infant nation was drawn into it; I do not suppose that Dr. Kranzbuehler has ever heard of the war of 1812, which was fought largely with frigates and small arms but which, under the definitions he employs, is surely an example of Anglo-Saxon "total warfare" because the blockade was involved.

Now the only germ of truth in all this is that the methods of warfare do change, and that the laws and usages of war change too. I have signed no indictments charging anyone with the unlawful wartime use of submarines or, indeed, of airplanes. In opening Case 7 against the German generals, the prosecution stated:* "The prosecution fully recognizes that the laws and usages of warfare must be altered and adapted to reflect the developments in this terrible art which man has learned to practice with such appalling proficiency. We have not sought and will not seek in this case to make murderers out of soldiers for the violation of rules framed in 1907, if those rules today are outmoded and generally disregarded."

But this does not mean that the laws and usages of war can be immediately changed by unilateral repudiation. It must appear that they are, as stated above, "generally disregarded." Dr. Kranzbuehler's technique is, by pointing to one or two instances where the general usage of war undeniably has changed, to swing us gently to the conclusion that all laws of war are outmoded and should be disregarded. But here the argument breaks down, for he is unable to point to any general usage which justifies the wholesale deporting on a compulsory basis of millions of members of the civilian population of occupied territories. His efforts to fill this gap in logic are, as we will now see, not convincing.

Dr. Kranzbuehler starts off with a gloomy Spenglerian observation that "the foundations of western civilization, uncontested in 1907, are by no means any longer generally recognized." (*Tr. p. 10485.*) Alas, how true; anyone who, like Dr. Kranzbuehler and myself, has spent 2 years in Nuernberg studying slave labor and Einsatzgruppen and commando and Commissar Orders, and dozens of other such matters, can testify. Western civilization has just encountered the most violent and barbaric challenge to its fundamental tenets in its entire history, and it is certainly too soon to tell whether or not it has survived this challenge. Certainly it is resting upon slender underpinnings, and now comes Dr. Kranzbuehler, speaking on behalf of Ger-

* *United States vs. Wilhelm List, et al., Volume XI, this series, page 787.*

many, and invites us to knock out one of the few remaining props. The voice of destruction is still to be heard.

The next step in support of this thesis is drawn by analogy from the fact that a number of countries have instituted compulsory labor service or compulsory labor for their own citizens. Since I quote from his statement "the Hague Convention * * * does not intend, during the war, to put the enemy national in a better condition than the citizens of his own state, but only wants to prevent that he is put in a worse condition" (*Tr. p. 10486*), it follows, according to Dr. Kranzbuehler, that Germans may legitimately compel Frenchmen or Poles to work in and for Germany. The glaring gap in logic is filled up by references to Allied practices in the occupation of Germany, and one or two Allied documents written soon after the conclusion of hostilities, which show, according to Dr. Kranzbuehler, that the legal position urged by him is in accordance with the views of the Allied governments and therefore represents general usage.

It would be silly to contend, and the prosecution would not suggest that all violations of international law stopped immediately upon the surrender of Germany on 8 May 1945, or that since that time no one has ever advocated a course of action which contravenes international law. Such a perfect state of affairs has never existed, and it would be least likely to exist in the abrupt aftermath of this most terrible of all wars and the prolonged occupation of most of Europe by Germany. But the few examples cited by Dr. Kranzbuehler are utterly, we submit, insufficient to support the conclusion that international law with respect to the deportation of civilian populations has changed. The provisions of the Yalta Conference quoted by Dr. Kranzbuehler were written even before the end of the war, have never been implemented, and it is a matter of public record that the official position and actual view of the United States Government was that no Germans other than judicially convicted war criminals should be sent to forced labor outside Germany.

Dr. Kranzbuehler also cites the proclamation of Control Council Law No. 2, of 20 September 1945, which does contain a reference to the availability of German services "outside of Germany." (*Tr. p. 10487.*) But the Control Council has never taken any action whatsoever in furtherance of this clause. In fact, mention of this proclamation provides an interesting illustration of the shortsighted view which defense counsel have taken in such matters. It is a matter of public record that there has been a recent controversy concerning the question whether this provision justifies requiring German scientists to leave Germany to work for the occupying powers; the Soviet Union took the posi-

tion that this provision does justify such a conclusion; the other three members of the Control Council violently opposed this view. It has thus remained the official view and actual practice of the Control Council not to require Germans for compulsory labor outside of Germany. But we may be assured that this result would be seriously undermined if the arguments now being advanced by Dr. Kranzbuehler should prevail with this Tribunal and result in a judicial decision in accordance with his views.

Of course, the circumstance that a country may, in time of military or economic emergency, require its own citizens to work, affords no basis, in logic, law, or morals, for the conclusion that a belligerent may therefore carry off the civilians of an occupied territory to work in the mines and factories of the occupying power. The same flaw underlies Dr. Kranzbuehler's conclusion that such deportation is criminal only if accompanied by brutal and degrading treatment. Certainly these accompanying circumstances aggravate the crime, and in the nature of things are almost bound to occur anyhow, but their proof is not an essential part of the crime of deportation. Again, I am surprised that Dr. Kranzbuehler has seen fit to pass over in complete silence one very elementary factor. A Frenchman who, in time of peace or war, is called upon by his own government for services to meet a national emergency may, depending upon his political views, feel depressed or resentful and he may strike or riot, or he may eagerly and willingly comply with the order. But he does not feel like a traitor to his country. The Frenchman who was ordered off during the war to work in a German factory, did feel degraded and forced into traitorous conduct. The laws and usages of war are full of illustrations of this deep-seated feeling that it is a disgraceful thing to force a man to act contrary to basic feelings of patriotism; examples are so numerous that there is no need for citation. If we carry Dr. Kranzbuehler's principle to its logical conclusion, we might as well muster all captured prisoners of war into the armed forces of the capturing power. For the most part, this was not done by the Germans even during the last war for reasons which, as a former naval officer, Dr. Kranzbuehler will surely understand. And yet the practice was not entirely unknown, and I myself remember seeing in Italy in 1944, the unfortunate, ignorant, and terrorized Russians whom the Germans had mobilized into so-called "Ost-battalions" and who were rendering not very efficient service with the Wehrmacht. These practices are not only wrong, they do not pay.

I want to comment very briefly on a few other particular arguments made by Dr. Kranzbuehler. I shall not attempt to concern

myself at this late stage with Dr. Kranzbuehler's factual analysis of the record in this case on count one of the indictment, but rather with certain other general propositions and points of law which seem to me quite fundamental.

His discussion of the differing circumstances in the several occupied countries with respect to the slave-labor program need not detain us long. It was justified in Czechoslovakia because we are told "the Czech Government trustfully laid the fate of the Czech nation into the hands of the Fuehrer of the German Reich" and "the very same day German troops marched in without meeting opposition." It was justified in France because done by agreement with the Vichy government, "the origin of the Pétain government, the personality of the Marshal, and the territorial independence in the unoccupied part clearly refute the thesis that it was a German puppet government" (*Tr. p. 10497*). Decrees of the French Government with reference to conscripted labor are cited then which were promulgated in February 1943 and February 1944. Dr. Kranzbuehler does not call to our attention that by 1943 there was no unoccupied part of France. Enslavement in the Soviet Union is justified on the basis, already discussed by us, that the laws of war should not be applied as between Germany and the Soviet Union, both of which were totalitarian nations. No mention whatsoever is made of Poland—here, we must assume, none of these supposed defenses would be applicable.

In this sphere, perhaps one more word is necessary about the Soviet Union. I suppose very few of the major events of history are so well documented as the plans and preparations leading up to the German attack on the Soviet Union. These documents, the more important of which are set forth in the IMT judgment, make it clear beyond question that the government of the Third Reich determined to lay aside all considerations of legality months before the attack itself. Decree after decree and secret order after secret order during the period from March to June of 1941 called for the most violent and clearly criminal policies on the part of the armed forces and the civilian administration. German troops were ordered to kill political commissars fighting in the uniform of and as part of the Soviet armies, the civilian population was denied the right of access to military court-martial; crime by German soldiers against the population was encouraged, and the mechanism for its punishment suspended; special groups of SD men were charged with the mission of killing Jews and other categories, and among all these criminal measures, of course was included the program for the economic exploitation of Soviet territory. To all this overwhelming mass

of evidence that the German criminal policies in the Soviet Union were carefully calculated well in advance, Dr. Kranzbuehler replies only that the "question as to who started this business" is "idle." I can easily understand that he wishes this were so.

The arguments which the defense has put forward in connection with count two follow very much the same pattern as for count one. Both as to Rombach and the Soviet Union, we are told that the initiative and the responsibility lay with the government; the fact that the defendants may have wanted these factories is dismissed as irrelevant; they did not harm the factories and, since Germany lost the war, the original owners have them back now anyhow. Dr. Dix' summary of the defense in the case of Rombach is that a "transitory belief in a German victory on the part of Flick, together with the intended acquisition after victory" and the annexation of Lorraine "cannot constitute a criminal act." In short, a mere intention based on "wrong political assumptions" is not criminal. Because the defendants guessed wrong about the outcome of the war and the ultimate political future of Lorraine, we are asked to disregard both the spirit and the letter of the Hague Conventions and the laws of war. Thus, the loss of the war becomes an excellent insurance against the consequences of unlawful acts committed in the course of it.

Running throughout Dr. Kranzbuehler's arguments, both on slave labor and on spoliation, is the argument, at first quietly suggested but later swelling into the principal refrain, that all the acts charged in counts one and two of the indictment were justified because the Allies bombed German cities. At the close of his presentation, this argument is stated most boldly (*Tr. pp. 10569-70*) and I quote:

"While major powers in a battle of giants fight for victory or destruction with the most modern means for the conduct of war, while rockets are racing through the ether and while the valuable secret of mass annihilation through atomic energy is slowly ripening towards perfection, are these six businessmen supposed to live their own war in accordance with the Hague Rules of Land Warfare of 1907? While one German city, while one German factory after another was destroyed to rubble and ashes, should they have considered it as forbidden to utilize the enemy's factories? Should they have considered it a crime to force foreign workers to work while the enemy considered it his right to kill German workers with their wives and children through air attacks? If that really was to be expected of them, then one cannot be surprised at the resigned statement of one of the best known German experts on international law—"from

now on there are two kinds of international law, one for German nationals and one for the rest of the world'."

I will not pause to do more than observe that much of Europe for half a decade had indeed two kinds of law, one for German nationals and one for Poles, Jews, and others. I stress rather that this attempted defense is based upon deliberate and inexcusable distortion of dates, times, and places. The defendants laid plans for the acquisition of Rombach in June and July of 1940. As the record in this case and before the IMT shows, compulsory labor was introduced by German decree in Poland in October 1939, and forced Polish labor had begun to be used in the Reich in 1940. By July of 1940, the war in the air had not yet scarred or marred a single German city. The English had, I believe, made one or two rather unsuccessful efforts to bomb naval bases such as Wilhelmshaven. Two cities, however, had suffered badly; one was Warsaw and the other was Rotterdam.

Even by the early part of 1942, bomb damage in Germany was utterly insignificant compared to what might be seen in other places. On the continent, Belgrade was added to the list of Rotterdam and Warsaw. In England, much of London was flattened or burned out and many other towns and villages in England presented a sorry appearance. I will make no further point of who started all this bombing business, because Dr. Kranzbuehler has admonished me that it is an "idle question." Most unhappily, the destruction of industries and centers of population from the air has become an accepted part of modern warfare. But any suggestion that the crimes committed by the Third Reich can all be explained and justified by Allied bombing of German cities can only be based upon a wanton indifference to facts and to the order in which certain events took place. Such an attempted justification would be far more objectionable than a "Gallic inconsistency." It would be, to use the most innocuous expression possible, a Teutonic myth.

Let us look at the over-all pattern of the defense. What do the defendants and their counsel believe? We have from Dr. Kranzbuehler the following:

Total war permits any act, however unlawful, in the name of "military necessity."

Laws regulating the rules of conduct for war must be narrowly and grudgingly interpreted without regard to, and even to the extent of contravening, the letter and spirit of such treaties.

A nation sorely pressed is not bound by the international law of war.

The Hague Regulations are based on obsolete bourgeois liberal

ideology. Man has progressed and become more efficient and, consequently, we must disregard the Hague Regulations.

Rights of inhabitants of occupied territories are not inviolable, they are violable. Therefore, we have the right to deport non-combatant men, women, and children who are under domination.

We Germans deported Belgians in 1917. Let us forget world public opinion at that time. But let us remember that our Reichstag decided in 1919 that that act did not contravene international law. Therefore, it was permissible in the Second World War.

Let us forget the fact that Germany waged an aggressive war. Let us forget the infamous acts at Lidice and Auschwitz. Who started all this is an "idle question." But let us remember the retaliatory measures taken by the Allies, including economic war, to restrain Germany from a continuance of her "justified" war aims. Since these effective retaliatory measures also incidentally affected the non-combatant population in our country, we were more than justified in waging our kind of economic warfare—that is, to remove and enslave the populations of occupied countries.

Since all nations conscripted the services of their own nationals to war against us, it was proper for Germany to conscript the labor or the populations under our control in order to maintain our position.

We are told, in fact, that—nobody on the European continent had the right to live better than Germans. There can be no complaint if non-Germans lived as well. Since Germans were conscripted, we could conscript non-Germans. The Hague Regulations only guarantee that their lot is no worse than the Germans.

We are told, in fact, that—Hitler, Himmler, Sauckel, Speer and a handful of others are the only persons responsible for countless crimes that resulted in the deaths of millions and in the pain and suffering of many millions more, despite the necessary collaboration of many others in such a vast program.

Because national law is superior to international law, a man can participate in murder and pillage, even against the people of other lands, so long as the laws of his own nation permit it. In short, there is no such thing as international law for individuals.

And finally—Since there is no such thing as international law, and since the Allies devastated German cities by bombing, Germany (including the defendants) was justified in impressing foreign workers and seizing foreign factories.

In the above list of enlightened propositions, there is no mention of racial superiority; Dr. Kranzbuehler has expressly excluded

and criticized that doctrine in his presentation. But, with that one notable omission, the rest of it has a highly familiar ring; when I read it, I had the same "peculiar, uncanny sort of feeling" which Dr. Kranzbuehler's client, Burkart, says he felt whenever concentration camps were mentioned. And it is this kind of law in fact which we are asked to accept as being suited to restore the German faith in justice. In the same breath, we are warned that the "Nuernberg administration of justice" is following a "horrifying erroneous course" which is "bound to end in nihilism." This, we are told, is bound to result from any qualification of the proposition that a man is bound to follow the policies laid down by his government even to the extent of committing what he knows to be serious crimes under recognized general principles of law. It seems to me again that Dr. Kranzbuehler has overlooked some very recent history. Germany has just passed 12 years under a legal regime which required just this unquestioning and unthinking obedience, and which enacted a great number of criminal laws and decrees. I will not say that, under these circumstances, the slavish adherence to Dr. Kranzbuehler's legal precepts ended in nihilism, but it certainly ended in something very shattering and disastrous indeed. I should think that, after such unhappy experiences, defense counsel might at least consider the possible merits of another point of view.

Your Honor, the balance of what we have to say in conclusion will be contained in the briefs. That is all.

X. FINAL STATEMENT BY DEFENDANT FLICK ON BEHALF OF ALL DEFENDANTS *

PRESIDING JUDGE SEARS: As I had begun to say, the case is now completed so far as the presentation of the evidence is concerned and so far as the argumentation is concerned. The rules under which we are acting allow the defendants to make a statement not under oath, freely, not under oath and not as witnesses, and we are ready to hear the defendants in such order as they see fit.

DR. DIX (counsel for the defendant Flick): With reference to this last statement, I would ask the Tribunal to take note of the fact that only Dr. Flick intends to speak and that he is speaking for his associates at the same time.

PRESIDING JUDGE SEARS: Well, the defendant Flick may stand at the counsel's desk. You may stand at the counsel's desk and speak from there.

DEFENDANT FLICK: May it please the Tribunal.

For my friends indicted with me and for myself, I should like

* Complete final statement is recorded in the mimeographed record, 29 November 1947, pages 10970-10973.

to make a final statement. The indictment charges "Flick and others." What is meant by this is stated at the beginning of the opening statement of 7 April and culminates in the sentence, "The defendants are leading representatives of one of the two centers of power in Germany."

According to the prosecution's own statement this means German industry, and particularly Germany's heavy industry.

I am here as an exponent of German industry. By having sentence passed on me, the prosecution is endeavoring to lend truth to their contention that it was German industry which lifted Hitler into the saddle, which encouraged him to wage aggressive wars, and instigated the ruthless exploitation of the human and economic potential of the occupied territories. By this contention not only am I held to be responsible for all methods of economic war, but also some of my associates, selected more or less arbitrarily by the prosecution.

In this trial the prosecution has not even attempted to prove the decisive part of their thesis, that is, the alleged assistance in the seizure of power and participation in the planning and preparation of aggressive war; but even an unproven contention can have certain effect, especially if it is continuously propagated by press and radio. Nobody could have had a greater interest in a peaceful development than we had. Our colleagues in England, Belgium, and France cannot but confirm that we cooperated with them without reserve, without ulterior motives, and without friction right up to the outbreak of the war. The charge of spoliation in the occupied territories is without foundation. There was no witness from the coal or steel industry of neighboring countries who was able to testify against me. I object to these charges made in such a general form against German industry. I protest against them in particular so far as they refer to me and my friends here accused with me. The evidence has shown that I did in fact do everything in my power to prevent two things, first, the seizure of power by national socialism; second, the outbreak of war. Nevertheless, once this hapless war had broken out, we considered it a matter of course to fulfill our duty to our fatherland. We would feel ashamed had it been otherwise, and had we deserted our sons and brothers who stood before the enemy. Moreover, I protest against the fact that in my person German industrialists are being stigmatized in the eyes of the world as slave owners and spoliators. For the rest, I see no reason to go into any detail, in view of the evidence introduced in this case by the defense. Just as my old and trusted associates know how greatly I regret seeing them involved in this trial, so they, too, thanks to our association over many years, know that I have always endeavored to be an honest

and socially-minded businessman. The fact that I succeeded in this endeavor is, I think, proved both by the course of my own life and by the course of this trial. Nobody of the large circle of persons who know my fellow defendants and myself, will be willing to believe that we committed crimes against humanity, and nothing will convince us that we are war criminals.

PRESIDING JUDGE SEARS: The other defendants waive the right to address the Court, not under oath.

There is nothing further before the Tribunal this afternoon. We will now stand in recess, subject to the call of the Tribunal. I will say for the Tribunal, however, that we shall not expect to come back at least during the next 2 weeks, unless some emergency occurs which requires a session; but when the final session of the Court and the delivery of the judgment will be made, is impossible to say this afternoon.

The Tribunal stands in recess.

XI. OPINION AND JUDGMENT *

PRESIDING JUDGE SEARS: Before proceeding with our decision and judgment the Tribunal wishes to put on record its appreciation of the services rendered by counsel for both the prosecution and the defense in this case. In our American system of forensic jurisprudence, counsel are officers of the Court representing their clients, of course, but also assisting the Court in finding the truth and upholding the integrity of the law. We have so considered the counsel one and all who have appeared before us here. The counsel for prosecution and defense have all performed their professional duties with earnestness, diligence, and ability. They have been of great service to the Tribunal and in no instance has any one of them failed in the loyalest duty or overstepped the limits of honorable service. For the help they have rendered the Tribunal they have our thanks.

I will now read the decision on the motions.

At the close of the proceedings on 8 November, the defendants jointly and severally made a series of motions, among other things attacking the jurisdiction of this Tribunal and asking for the dismissal of the various counts of the indictment as to the defendants charged therein, and seeking to strike from the record hearsay testimony and affidavits on various grounds, and on 12 November defendant Flick moved to strike documents offered by prosecution on rebuttal, and on 14 November defendant Steinbrinck made a further motion.

We have examined all of these motions with care and hereby deny them all except the motion to dismiss the third count which

* Tr. pp. 10974-11026, 22 December 1947.

we will determine in that part of the judgment itself which relates to that count. We find the motions otherwise fully and conclusively answered in the brief interposed by the prosecution in objection to the motion.

In order to avoid any misunderstanding, however, we make these summary statements.

As to the Tribunal, its nature, and competence: The Tribunal is not a court of the United States as that term is used in the Constitution of the United States. It is not a court martial. It is not a military commission. It is an international tribunal established by the International Control Council, the high legislative branch of the four Allied Powers now controlling Germany (*Control Council Law No. 10, 20 Dec. 1945*). The judges were legally appointed by the Military Governor and the later act of the President of the United States in respect to this was nothing more than a confirmation of the appointments by the Military Governor. The Tribunal administers international law. It is not bound by the general statutes of the United States or even by those parts of its Constitution which relate to courts of the United States.

Some safeguards written in the Constitution and statutes of the United States as to persons charged with crime, among others such as the presumption of innocence, the rule that conviction is dependent upon proof of the crime charged beyond a reasonable doubt, and the right of the accused to be advised and defended by counsel, are recognized as binding on the Tribunal, as they were recognized by the International Military Tribunal (IMT). This is not because of their inclusion in the Constitution and statutes of the United States but because they are deeply ingrained in our Anglo-American system of jurisprudence as principles of a fair trial. In committing to the occupying authorities of the various zones the duty to try war criminals, it is implicit therein that persons charged with crime are to be given a fair trial according to the jurisprudence prevalent in the courts of the power conducting the trials.

As to hearsay evidence and affidavits.—A fair trial does not necessarily exclude hearsay testimony and *ex parte* affidavits, and exclusion and acceptance of such matters relate to procedure and procedure is regulated for the Tribunal by Article VII of Ordinance 7 issued by order of the Military Government and effective 18 October 1946. By this Article, the Tribunal is freed from the restraints of the common law rules of evidence and given wide power to receive relevant hearsay and *ex parte* affidavits as such evidence was received by IMT. The Tribunal has followed that practice here.

As to counsel and witnesses.—The defendants have not been

denied the right to be advised and defended by counsel of their own choice. Defendants have not been denied the right to call any witness to give relevant testimony nor has the production of any available relevant document been denied by the Court.

As to the law administered.—The Tribunal is giving no *ex post facto* application to Control Council Law No. 10. It is administering that law as a statement of international law which previously was at least partly uncodified. Codification is not essential to the validity of law in our Anglo-American system. No act is adjudged criminal by the Tribunal which was not criminal under international law as it existed when the act was committed.

Now I will read the opinion and judgment as to Case 5.

Facing this Tribunal are private citizens of a conquered state being tried for alleged international crimes. Their judges are citizens of one of the victor states selected by its war department. There may well be misgivings as to the fairness of such a trial. These considerations have made the judges of the Tribunal keenly aware of their grave responsibility and of the danger to the cause of justice if the conduct of the trial and the conclusions reached should even seem to justify these misgivings. To err is human, but if error must occur it is right that the error must not be prejudicial to the defendants. That, we think, is the spirit of the law of civilized nations. It finds expression in the following principles well-known to students of Anglo-American criminal law.

1. There can be no conviction without proof of personal guilt.
2. Such guilt must be proved beyond a reasonable doubt.
3. The presumption of innocence follows each defendant throughout the trial.
4. The burden of proof is at all times upon the prosecution.
5. If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must be taken.

We cannot imagine that German law contains concepts more favorable to defendants. Any less favorable, we, as American judges trained in Anglo-American criminal jurisprudence, would be reluctant to apply even though this is not an American court but a special tribunal constituted pursuant to a four-power agreement administering public international law.

To the extent required by article 10 of Military Government Ordinance No. 7 the Tribunal is bound by the judgment of the International Military Tribunal (hereinafter referred to as IMT) in Case 1 against Goering *et al*, but we shall indulge no implications therefrom to the prejudice of the defendants against whom the judgment would not be *res judicata* except for this article.

There is no similar mandate either as to findings of fact or conclusions of law contained in judgments of coordinate Tribunals. The Tribunal will take judicial notice of the judgments but will treat them as advisory only.

The indictment is in five counts. The first charges all six defendants, but in different capacities, with participation in the slave-labor program of the Third Reich and the use of prisoners of war in armament production. The second accuses all defendants except Terberger of spoliation of public and private property in occupied territories. In count three, Flick, Steinbrinck, and Kaletsch are accused of crimes against humanity in compelling by means of anti-Semitic economic pressure the owners of certain industrial properties to part with title thereto. The fourth count alleges that Flick and Steinbrinck, as members of the Keppler Circle or Friends of Himmler, with knowledge of its criminal activities, contributed large sums to the financing of Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (hereinafter called the SS). In the last count Steinbrinck's membership in the SS is claimed to incriminate him under the ruling of IMT that it was a criminal organization. The theories upon which the several counts proceed will be elaborated as each is discussed.

Each count, except five, concludes with the averment that the acts and conducts of defendants were committed unlawfully, willfully, and knowingly, and constitute violations of various laws including Article II of Control Council Law No. 10. This article is not set out in the indictment but for convenience the portion thereof defining crimes is quoted, as follows:

“ARTICLE II

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

“(a) *Crimes against Peace.* Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

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

cities, towns or villages, or devastation not justified by military necessity.

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

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

It is noteworthy that defendants were not charged with planning, preparation, initiation, or waging a war of aggression or with conspiring or cooperating with anyone to that end. Except as to some of Steinbrinck's activities the defendants were not officially connected with the Nazi government but were private citizens engaged as businessmen in the heavy industry of Germany. Their counsel, and Flick in his closing unsworn statement, contended that in their persons industry itself is being persecuted. They have some shade of justification for so believing since the prosecution at the very beginning of the case made this statement—

“The defendants in this case are leading representatives of one of the two principal concentrations of power in Germany. In the final analysis, Germany's capacity for conquest derived from its heavy industry and attendant scientific techniques, and from its millions of able-bodied men, obedient, amenable to discipline, and overly susceptible to panoply and fanfare. Krupp, Flick, Thyssen, and a few others swayed the industrial group; Beck, Fritsch, Rundstedt, and other martial exemplars ruled the military clique. On the shoulders of these groups Hitler rode to power, and from power to conquest.”

But the prosecution made no attempt to prove this charge and when the defendants, presenting their case, proposed to call witnesses to disprove it, upon the prosecution's objection that it was not in issue, the Tribunal excluded the testimony.

The question of the responsibility of individuals for such breaches of international law as constitute crimes has been widely discussed and is settled in part by the judgment of IMT. It cannot longer be successfully maintained that international law is concerned only with the actions of sovereign states and provides no punishment for individuals.

“That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized. In

the recent case of *ex parte Quirin* (1942, 317 U.S. 1, 63 S Ct. 2, 87 L. Ed. 3), before the Supreme Court of the United States, persons were charged during the war with landing in the United States for purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

“From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribed for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals’.”*

But IMT was dealing with officials and agencies of the State, and it is urged that individuals holding no public offices and not representing the State, do not, and should not come within the class of persons criminally responsible for a breach of international law. It is asserted that international law is a matter wholly outside the work, interest, and knowledge of private individuals. The distinction is unsound. International law, as such, binds every citizen just as does ordinary municipal law. Acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual. The guilt differs only in magnitude, not in quality. The offender in either case is charged with personal wrong and punishment falls on the offender in *propria persona*. The application of international law to individuals is no novelty. (See The Nuernberg Trial and Aggressive War by Sheldon Glueck, ch. V, pp. 60-67, incl., and cases there cited.) There is no justification for a limitation of responsibility to public officials.

As background for all of the counts, the following brief history of the Flick organization with its personnel will suffice. The industrial career of defendant Flick had small beginnings. His first employment was as Prokurist or confidential clerk in a foundry. His first major capital acquisition was in the Charlottenhuetten, a steel rolling mill, in 1915. Since then steel has been his principal interest, though he extended his organization to include iron and coal mining companies as foundation for steel production. Incidentally plants have been acquired for the further fabrication of the steel. His genius for corporate organization enabled him to obtain voting control of numerous companies in which he did not have a majority capital interest. At the height of his career, through the Friedrich Flick Kommanditgesellschaft, the top holding company, he had voting control of a dozen companies employing at least 120,000 persons engaged in mining coal and iron, making steel and building machinery and other products which required steel as raw material.

He has always been an advocate of individual enterprise and

* Trials of the Major War Criminals, op cit., volume I, page 223.

concerned in maintaining as his own against socialization the industries so acquired. As companies came under his voting domination, it was his policy to leave in charge the management which had proved itself and until the end of the war the Vorstaende (managing boards) of the different companies were in a large degree autonomous. There were no central buying, selling, or accounting agencies. Each company was administered by its own Vorstand. He was not a member of the Vorstand of any of the companies but confined his activities to the Aufsichtsraete (supervisory boards) which dealt chiefly with financial questions. As chairman of the Aufsichtsrat of several companies, he had a voice beyond that of the ordinary member in the selection of members of the Vorstand. These companies were scattered over Germany. For the purpose of coordinating the companies into one system, he established offices in Berlin where he spent most of his time. The total office force did not exceed 100 persons including secretaries, statisticians, file clerks, drivers, and messengers.

Until 1940 defendant Steinbrinck was Flick's chief assistant with defendants Burkart and Kaletsch having lesser roles but not necessarily subordinate to Steinbrinck. When Steinbrinck resigned in December 1939 defendant Weiss, who is a nephew of Flick, was called to the Berlin office as Flick's assistant but with permission to devote about one-fourth of his time to his own company, Siegener Maschinenbau A.G. (Siemag), in the Siegerland with about 2000 employees. Thereafter Weiss, Burkart, and Kaletsch, each in his own field, acted as assistants to Flick in the Berlin office. Weiss supervised the hard [soft] coal mining companies and finishing plants; Burkart the soft [brown] coal mining companies and steel plants, while Kaletsch acted as financial expert. Defendant Terberger was not in the Berlin office but was a part of a local administration as a member of the Vorstand of Eisenwerk Gesellschaft Maximilianshuetten, A.G., commonly called Maxhuetten, an important subsidiary operating plant in Bavaria and through stock ownership controlling other plants in Thuringia and south Germany.

The record comprises 10,343 pages. Not included therein are those portions of documents which were admitted without reading. The Court sat 5 days a week for 6 full months exclusive of recesses. Objection to evidence was rare until the prosecution was engaged in rebuttal. It is not too much to say that practically all the substantial evidence was received without objection.

Few of the legal questions in this case were suggested, much less argued and briefed, until the evidence had all been received. Arguments occupied the whole of the last week of November.

Only since then has the Tribunal been able to obtain a comprehensive view of the evidence in the light of the legal principles sought to be applied by counsel. In reaching its conclusions, therefore, the Tribunal has been compelled to rely upon authority presented in the arguments and briefs, supplemented by such independent research as is possible with very inadequate library facilities. All of these Tribunals, no doubt, have suffered from the same handicap. This recital will serve to explain, if not to excuse, the lack of cited authority and the general summarization of the evidence.

PRESIDING JUDGE SEARS: Judge Christianson will continue reading the judgment.

COUNT ONE

JUDGE CHRISTIANSON: The allegations in this count are substantially as follows: between September 1939 and May 1945 all the defendants committed war crimes and crimes against humanity as defined by Article II [paragraph 2] of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with, enslavement and deportation to slave labor on a gigantic scale of members of the civilian populations of countries and territories under the belligerent occupation of or otherwise controlled by Germany. This charge also involved the enslavement of concentration camp inmates, including German nationals, and the use of prisoners of war in war operations and work having a direct relation to war operations. More specifically, it is alleged that between the dates above-mentioned the defendants sought and utilized such slave labor program [by using] tens of thousands of slave laborers, including concentration camp inmates and prisoners of war, in the industrial enterprises and establishments owned, controlled, or influenced by them.

It is asserted that defendant Flick, as a member of the Praesidium of the Reichsvereinigung Eisen, commonly referred to as RVE (May 1942-45), and of the Praesidium of the Reichsvereinigung Kohle, commonly referred to as RVK (Mar. 1941-Apr. 1945), and as a member of the Beirat (advisory council) of the Wirtschaftsgruppe Eisenschaffende Industrie (Economic Group of the Iron Producing Industry) (Sept. 1939 to Apr. 1945), participated in the formulation and execution of such slave-labor program. It is further alleged that Flick's influence and control over policies and actions of these organizations were extended

through officials of his companies who also held positions in RVE and RVK.

It is further claimed that defendant Steinbrinck also was a member of the Praesidium of RVE (1941-45) and in that capacity exerted extensive influence upon the formulation and administration of the slave-labor program and that between September 1939 and April 1945 defendant Steinbrinck held the position of Beauftragter Kohle-West, also known as Bekowest (Plenipotentiary for Coal in the Occupied Western Territories) of France, Holland, Belgium, and Luxembourg and the position of Generalbeauftragter fuer die Stahlindustrie (Plenipotentiary General for the Steel Industry) in northern France, Belgium, and Luxembourg, and that by virtue of these positions, he exercised wide authority over the procurement, use, treatment, allocation, and transportation of thousands of slave laborers and prisoners of war.

It is further alleged that between September 1939 and May 1945, in the utilization of tens of thousands of slave laborers and prisoners of war in the industrial enterprises and establishments owned, controlled, and influenced by them, the defendants exploited such laborers under inhumane conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health, and that the defendants used prisoners of war in work having a direct relation with war operations, including the manufacture and transportation of armament and munitions. It must here be noted that the defendants Flick, Burkart, Kaletsch, and Weiss are charged with the inhumane and repressive acts referred to in this paragraph with respect to the plants generally making up what is called the Flick Concern and that defendant Terberger is charged with such acts only insofar as they relate to one company in the Flick Concern known as Eisenwerk Gesellschaft Maximilianshuetten A.G., commonly referred to as Maxhuetten. The defendant Weiss is further charged with such acts as they relate to Siegener Maschinenbau A.G., commonly referred to as Siemag, a concern owned and controlled by him.

Count one then concludes,

"7. The acts and conduct of the defendants set forth in this count were committed unlawfully, wilfully, and knowingly and constitute violations of international conventions, particularly of Articles 3-7, 14, 18, 23, 43, 46, and 52 of the Hague Regulations, 1907, and of Articles 2-4, 6, 9-15, 23, 25, 27-34, 46-48, 50, 51, 54, 56, 57, 60, 62, 63, 65-68, and 76 of the Prisoners of War Convention (Geneva, 1929), of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal

laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.”

A great deal of oral and documentary evidence was adduced by both the prosecution and defense with respect to the charges in this count. Although all of this evidence has had the Tribunal's close scrutiny and consideration, it is neither practicable nor necessary that a detailed discussion of this great mass of evidence be included in this opinion. We will make only such general references to the evidence as may be necessary to explain and justify the conclusions reached by the Tribunal.

It is not necessary that we dwell at length upon the origin and extent of the notorious slave-labor program, as it is treated fully in the judgment of IMT. It is important to note, however, that on the basis of the proof submitted, it is clear that the slave-labor program had its origin in Reich governmental circles and was a governmental program, and that the defendants had no part in creating or launching this program. It should be observed also that for a considerable period of time prior to the institution of the slave-labor program here under consideration, the employment of labor in German industry had been directed and implemented by the Reich government.

The evidence with respect to this count clearly establishes that laborers procured under Reich regulations, including voluntary and involuntary foreign civilian workers, prisoners of war and concentration camp inmates, were employed in some of the plants of the Flick Concern and similarly some foreign workers and a few prisoners of war in Siemag. It further appears that in some of the Flick enterprises prisoners of war were engaged in work bearing a direct relation to war operations.

The evidence indicates that the defendants had no actual control of the administration of such program even where it affected their own plants. On the contrary, the evidence shows that the program thus created by the State was rigorously detailed and supervised by the State, its supervision even extending into prisoner-of-war labor camps and concentration camp inmate labor camps, established and maintained near the plants to which such prisoners of war and concentration camp inmates had been allocated. Such prisoner-of-war camps were in charge of the Wehrmacht [Armed Forces], and the concentration camp inmate labor camps were under the control and supervision of the SS. Foreign civilian labor camps were under camp guards appointed by the plant management subject to the approval of State Police officials. The evidence shows that the managers of the plants here involved did not have free access to the prisoner-of-war labor camps or the concentration

labor camps connected with their plants, but were allowed to visit them only at the pleasure of those in charge.

The evacuation by the SS of sick concentration camp laborers from the concentration labor camp at the Groeditz plant for the purpose of "liquidating" them was done despite the efforts of the plant manager to frustrate the perpetration of the atrocity and illustrates all too graphically the extent and supremacy of the control and supervision vested in and exercised by the SS over concentration labor camps and their inmates.

With the specific exception hereinafter referred to and discussed, the following appears to have been the procedure with respect to the procurement and allocation of workers. Workers were allocated to the plants needing labor through the governmental labor offices. No plant management could effectively object to such allocation. Quotas for production were set for industry by the Reich authorities. Without labor, quotas could not be filled. Penalties were provided for those who failed to meet such quotas. Notification by the plant management to the effect that labor was needed resulted in the allocation of workers to such plant by the governmental authorities. This was the only way workers could be procured.

With the specific exception above alluded to and as hereinafter discussed, it appears that the defendants here involved were not desirous of employing foreign labor or prisoners of war. It further appears, however, that they were conscious of the fact that it was both futile and dangerous to object to the allocation of such labor. It was known that any act that could be construed as tending to hinder or retard the war economy programs of the Reich would be construed as sabotage and would be treated with summary and severe penalties, sometimes resulting in the imposition of death sentences. Numerous proclamations and decrees of the Reich kept such threats and penalties before the people. There were frequent examples of severe punishment imposed for infractions. Of this, all of the defendants were ever conscious. Moreover, the prosecution admits that the defendants were justified in their fear that the Reich authorities would take drastic action against anyone who might refuse to submit to the slave-labor program, for, in its final brief on this phase of the case, the prosecution states,

"It is undoubtedly true that if Flick had suddenly said in so many words, 'I will shut down all my plants immediately because I don't like this idea of using forced foreign labor', the result would at least have been that management of his plants would have been taken away from him, and there was a possibility that he might even have been sent to a concentration camp."

Under such compulsion, despite the misgivings which it appears were entertained by some of the defendants with respect to the matter, they submitted to the program and, as a result, foreign workers, prisoners of war, or concentration camp inmates became employed in some of the plants of the Flick Concern and in Siemag. Such written reports and other documents as from time to time may have been signed or initialed by the defendants in connection with the employment of foreign slave labor and prisoners of war in their plants were for the most part obligatory and necessary to a compliance with the rigid and harsh Reich regulations relative to the administration of its program.

The exception to the foregoing, to which exception we have hereinbefore alluded, was the active participation of defendant Weiss, with the knowledge and approval of defendant Flick, in the solicitation of increased freight car production quota for the Linke-Hofmann Werke, a plant in the Flick Concern. This indisputably appears from the evidence. It likewise appears that Weiss took an active and leading part in securing an allocation of Russian prisoners of war for use in the work of manufacturing such increased quotas. It appears that in both efforts the defendants were successful.

The proof fails to show that defendant Flick, as a member of the Praesidium of RVE and RVK or as a member of the Beirat of the Economic Group of the Iron Producing Industry, exerted any influence or took any part in the formation, administration or furtherance of the slave-labor program. The same may be said with respect to defendant Steinbrinck's membership on the Praesidium of RVK. With respect to defendant Steinbrinck's activities and participation in the slave-labor program as Bekowest and as Plenipotentiary General or Commissioner for the Steel Industry in northern France, Belgium, and Luxembourg, it must be borne in mind that he entered these positions long after the slave-labor program had been created and put in operation by the Reich. His duties and activities in these positions insofar as they involved the slave-labor program were obligatory. His only alternative to complying was to refuse to carry out the policies and programs of the government in the course of his duties, which, as hereinbefore indicated, would have been a desperately hazardous choice. It appears, however, that his actions in these positions as they affected labor were characterized by a distinctly humane attitude.

The charges in this count to the effect that the laborers thus employed in the defendants' plants were exploited by the defendants under inhuman conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health are not

sustained by the proof. The evidence offered in support of these charges was sketchy and far outweighed by the substantial and impressive evidence submitted by the defendants to the contrary. We must conclude that the cruel and atrocious practices which are known to have characterized the slave labor program in many places where it was employed did not prevail in the plants and establishments under the control of the defendants. Isolated instances of ill treatment or neglect shown by the evidence were not the result of a policy of the plants' managements, but were in direct opposition to it.

This is true even though, as hereinbefore indicated, the defendants did not have actual control and supervision over the labor camps connected with their plants. It clearly appears that the duties of defendants as members of the governing boards of various companies in the Flick Concern required their presence most of the time in the general offices of the Concern at Berlin. Thus they were generally quite far removed from day to day administration and conduct of such plants and labor conditions therein. It is equally clear, however, that the defendants authorized and caused to be carried out measures conducive to humane treatment and good working conditions for all laborers in their plants. This is strongly evidenced by the fact that it was the policy and practice of the managers of the plants with which defendants were associated to do what was within their power to provide healthful housing for such laborers, to provide them with not only better but more food than permitted by governmental regulations, to give them adequate medical care and necessary recreation and amusement. That such efforts generally bore fruit is clear from the evidence.

Following the collapse of Germany and the liberation of the slave laborers within the plants here under consideration, there were a number of striking demonstrations of gratitude by them toward the management of such plants for the humane treatment accorded while they were there employed. It thus appears that the charges of exploitation and mistreatment of the laborers allocated to the plants with which defendants were associated are not sustained by the proof.

Recognizing the criminality of the Reich labor program as such, the only question remaining for our decision with respect to this count is whether the defendants are guilty of having employed conscripted foreign workers, concentration camp inmates or prisoners of war allocated to them through the slave-labor program of the Reich under the circumstances of compulsion under which such employment came about. The circumstances have hereinbefore been discussed. The prosecution has called attention to the fact that defendants Walther Funk and Albert

Speer were convicted by IMT because of their participation in the slave-labor program. It is clear, however, that relation of Speer and Funk to such program differs substantially from the nature of the participation in such program by the defendants in this case. Speer and Funk were numbered among the group of top public officials responsible for the slave-labor program.

We are not unmindful of the provision of paragraph 2 of Article II of Control Council Law No. 10 which states that—

“2. Any person without regard to the 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 * * *.”

Nor have we overlooked the provision in paragraph 4(b) of Article II of such Control Council Law No. 10 which states—

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

In our opinion, it is not intended that these provisions are to be employed to deprive a defendant of the defense of necessity under such circumstances as obtained in this case with respect to defendants Steinbrinck, Burkart, Kaletsch, and Terberger. This Tribunal might be reproached for wreaking vengeance rather than administering justice if it were to declare as unavailable to defendants the defense of necessity here urged in their behalf. This principle has had wide acceptance in American and English courts and is recognized elsewhere.

Wharton's Criminal Law, volume I, chapter III, subdivision VII, paragraph 126 contains the following statement with respect to the defense of necessity citing cases in support thereof:

“Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportioned to the evil.”

A note under paragraph 384 in chapter XIII, Wharton's Criminal Law, volume I, gives the underlying principle of the defense of necessity as follows:

“Necessity forcing a man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind. When a man is absolutely, by natural necessity,

forced, his will does not go along with the act. Lord Mansfield in Stratton's Case, 21 How. St. Tr. (Eng.) 1046-1223."

The prosecution, on final argument, contended that the defendants are barred from interposing the defense of necessity. In the course of its argument, the prosecution referred to paragraph 4 (b), of Article II of Control Council Law No. 10 and stated:

"This principle has been most frequently applied and interpreted in military cases * * *."

Further on in the argument, it was said:

"The defendants in this case, as they have repeatedly and plaintively told us, were not military men or government officials. None of the acts with which they are charged under any count of the indictment were committed under 'orders' of the type we have been discussing. By their own admissions, it seems to us they are in no position to claim the benefits of the doctrine of 'superior orders' even by way of mitigation."

The foregoing statement was then closely followed by another, as follows:

"The defense of 'coercion' or 'duress' has a certain application in ordinary civilian jurisprudence. But despite the most desperate efforts, the defendants have not, we believe, succeeded in bringing themselves within the purview of these concepts."

The prosecution then asserted that this defense has no application unless the defendants acted under what is described as "clear and present danger." Reference was made to certain rules and cases in support of such position.

The evidence with respect to defendants Steinbrinck, Burkart, Kaletsch, and Terberger in our opinion, however, clearly established that there was in the instant case "clear and present danger" within the contemplation of that phrase. We have already discussed the Reich reign of terror. The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always "present," ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees.

In considering the application of rules to the defense of necessity, attention may well be called to the following statement:

"The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supersedes rules, and whatever is reasonable and just in such cases is likewise legal. It is not to be considered as matter of surprise, therefore, if much instituted rule is not to be found on such subject."

(Wharton's Criminal Law, vol. I, ch. III, subdivision VII, par. 126, and cases cited.)

In this case, in our opinion, the testimony establishes a factual situation which makes clearly applicable the defense of necessity as urged in behalf of the defendants Steinbrinck, Burkart, Kaletsch, and Terberger.

The active steps taken by Weiss with the knowledge and approval of Flick to procure for the Linke-Hofmann Works increased production quota of freight cars which constitute military equipment within the contemplation of the Hague Convention, and Weiss' part in the procurement of a large number of Russian prisoners of war for work in the manufacture of such equipment deprive the defendants Flick and Weiss of the complete defense of necessity. In judging the conduct of Weiss in this transaction, we must, however, remember that obtaining more materials than necessary was forbidden by the authorities just as falling short in filling orders was forbidden. The war effort required all persons involved to use all facilities to bring the war production to its fullest capacity. The steps taken in this instance, however, were initiated not in governmental circles but in the plant management. They were not taken as a result of compulsion or fear, but admittedly for the purpose of keeping the plant as near capacity production as possible.

It is, accordingly, adjudged that the defendants Steinbrinck, Burkart, Kaletsch, and Terberger are not guilty on count one and that defendants Flick and Weiss are guilty on this count.

Judge Richman will continue reading the decision and judgment.

COUNT TWO

JUDGE RICHMAN: There is no necessity for detailing the averments of count two which deals with spoliation and plunder of occupied territories. It follows the pattern of count one with general recitals of facts as to the over-all Nazi program described in the IMT judgment followed by charges that defendants participated therein. Specific instances of the alleged participation are then cited. The count concludes with the accusation, in substance, that these activities were violations of the laws and customs of war, Articles 45-56 of the Hague Regulations of 1907, general principles of criminal law, internal penal laws of countries where the acts were committed and of Article II of Control Council Law No. 10.

After giving effect to the prosecution's withdrawal of certain charges, there remain the following. Flick and his assistants Weiss, Burkart and Kaletsch are accused of exploiting properties which for convenience during the trial have been called Rombach,

in Lorraine; Vairogs, in Latvia; and Dnjepr Stahl [Dnepr Steel], in the Ukraine. Steinbrinck's activities as Plenipotentiary General for the Steel Industry and Plenipotentiary for Coal in certain occupied western territories are also claimed to be criminal. Flick and Steinbrinck are accused of participating in spoliation plans and programs through connections with RVE, RVK and their predecessor and subsidiary organizations. This accusation is not sustained by the evidence. Flick alone is charged with participation in the spoliation plans and program in Russia through his position as a member of the Verwaltungsrat (supervisory board) of the Berg-und Huettenwerke Ost (BHO). His influence therein, if any, was negligible.

IMT dealt with spoliation under the title "Pillage of Public and Private Property". Much that is said therein has no application to this case. No defendant is shown by the evidence to have been responsible for any act of pillage as that word is commonly understood. There were moveables brought from Latvia and the Ukraine upon the approach of the returning Russian armies. A large part thereof had been taken there from Germany to equip industrial plants which had been stripped by the Russians in their retreat. What movables the Russians left were doubtless of little value. It is not established with any certainty that they were shipped to Germany. But of more importance is the fact that the evidence does not connect any of these defendants with responsibility for the evacuation. The ten barges that disappeared from the plant at Rombach were all found by the French owners upon their return. Some had been used and sunk or damaged in the retreat of the fleeing German Army but for this defendants cannot be held [responsible]. Steinbrinck was responsible for no such pillage but may be credited with its prevention in several instances shown by the evidence.

The important questions center in Steinbrinck's activities directing the production of coal and steel in the western territories, the Flick administration of the Rombach plant and the occupation and use of the Vairogs and Dnjepr Stahl plants in the East.

No crimes against humanity are here involved. Nor are war crimes except as they may be embodied in the Hague Regulations. The prosecution so admits in its concluding brief, saying: "Thus, the charge amounts to, and it need only be proved, that the defendants participated in the systematic plunder of property which was held to be in violation of the Hague Regulations." The words "systematic plunder" came from the IMT judgment. They are not very helpful in enabling us to point to the specific regulations which defendants' acts are supposed to violate.

In the listed Articles we find that "private property * * * must

be respected * * *” and “cannot be confiscated.” (Article 46.) “Pillage is formally forbidden.” (Article 47.) There is nothing pertinent in 48, 49, 50, and 51. From 52, IMT gets some of the language of its judgment. The Article reads:

“Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

“Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

“Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.”

We quote also, as bearing on the questions before us, Article 53:

“An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

“All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.”

Submarine cables, treated in 54, and properties referred to in 56 are not here involved. This leaves only 55 which reads:

“The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

From Articles 48, 49, 52, 53, 55, and 56, IMT deduced that “under the rules of war, the economy of an occupied country can only be required to bear the expense(s) of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear.” Following this lead the prosecution in the first paragraph of count two says that defendants’ “acts bore no relation to the needs of the army of occupation and were out of all proportion to the resources of the occupied territories.” A legal concept no more specific than this leaves much room for controversy when an attempt is made to apply it to a

factual situation. This becomes evident when Rombach is considered.

Prior to the First World War when Lorraine was German, a large plant was built by German capital near the town of Rombach. After that war it was expropriated by France from whom the title was acquired by a French corporation dominated by the Laurent family. The enterprise consisted in 1940 principally of blast furnaces, Thomas works, rolling mills and cement works. It furnished employment and the means of livelihood for a large indigenous population. When the German Army invaded Lorraine in 1940, the management fled but many of the workers including technicians remained. Key installations had been removed or destroyed so that the plant was inoperable until extensive repairs had been made. In the meanwhile the workers were idle except as they were employed to renovate the plant. After the occupation of western territories, the Supreme Commander of the German Army issued a "Decree concerning the orderly management and administration of enterprises and concerns in the occupied territories" dated 23 June 1940. It stated that should an orderly management or administration of enterprises, including concerns dedicated to industry, not be insured owing to the absence of the persons authorized or for other compelling reasons, public commissioners should be appointed during whose administration the powers of the property holders or owners were to be suspended. The costs of the administration were to be borne by the enterprise. The commissioner was obligated to exercise the care of a prudent business man in the conduct of the enterprise. He was "not empowered to transfer his administration to a third party." On 27 July 1940, the same commander issued a directive for compliance with the decree of 23 June 1940. We do not find this directive in the record but an affidavit states that the appointment of "administrators had to take place exclusively through the chief for the civil administration." There seem to have been other directives which also are not in evidence. In any event a public commissioner or administrator was appointed for the Rombach plant and ultimately executed a contract with the Friedrich Flick Kommanditgesellschaft called "use of enterprise conveyance agreement" dated 15 December 1942 but effective as of 1 March 1941 when the Flick group took possession. The agreement recites an order of the Plenipotentiary for the Four Year Plan to the effect that the iron foundries situated in Lorraine are "in the name of the Reich to be controlled, managed, and operated by single individuals or enterprises on their own account." However, the contract designates the Flick Kommanditgesellschaft as trustee, not grantee. Prior to taking possession the Flick group had learned through governmental agencies that a number of plants

in Lorraine were to be parceled out for administration by German firms. These firms, including Flick, had the hope of ultimately acquiring title to the respective properties and this trusteeship was sought to that end. There are provisions in the contract providing terms of purchase and also providing for remuneration for capital investment by the lessee in the event the purchase should not materialize. At no time, however, was there any definite sale commitment and of course the hope of its realization was frustrated by the fortunes of war. Charles Laurent as a witness testified that he was expelled from Lorraine in 1940 and that the Flick administration had nothing to do therewith. It does not appear that he tried to regain possession of the plant but he may have deemed futile such an attempt. A corporation called Rombacher Huettenwerke, G.m.b.H., was organized by Flick to operate the plant. Operations continued from March 1941 until the Allied invasion about 1 September 1944. All the profits were invested in repairs, improvements and new installations. As the Allied armies approached Rombach, the German military authorities gave orders to destroy the plants which were disobeyed by the officials of the trustee. When the French management returned, the plants were intact. There was conflicting testimony as to their condition in early 1941 and again in September 1944. The evidence satisfied us that the trustee left the properties in better condition than when they were taken over. Approximately one-third of the production of the blast furnaces in this district went to Germany, the rest to France, Belgium, and other countries. This general ratio of exports existed before the war. There are no separate figures for the Rombach plant.

The seizure of Rombach in the first instance may be defended upon the ground of military necessity. The possibility of its use by the French, the absence of responsible management and the need for finding work for the idle population are all factors that the German authorities may have taken into consideration. Military necessity is a broad term. Its interpretation involves the exercise of some discretion. If after seizure the German authorities had treated their possession as conservatory for the rightful owners' interests, little fault could be found with the subsequent conduct of those in possession.

But some time after the seizure, the Reich government in the person of Goering, Plenipotentiary for the Four Year Plan, manifested the intention that it should be operated as the property of the Reich. This is clearly shown by the quoted statement in the contract which Flick signed. It was, no doubt, Goering's intention to exploit it to the fullest extent for the German war effort. We do not believe that this intent was shared by Flick. Certainly

what was done by his company in the course of its management falls far short of such exploitation.

Flick was interested in extending his organization through the acquisition of additional steel plants. Lorraine was German territory before the First World War and many Germans felt that in its seizure Germany would be getting back merely what was already her own. In many respects during the occupation Germany treated Lorraine as Reich territory. Flick saw the possibilities resulting from the invasion and sought to add the Rombach property to his concern. But governmental policy was otherwise. It does not appear upon what grounds this decision was based. There may have been thought of the Hague Regulations under which private property must be respected and cannot be confiscated. But we recall no hint in the evidence that Flick or his associates gave any thought to the international law affecting the transaction. The Flick management of Rombach was conservative, not, however, with the intent of benefiting the French owners. It was suggested at one time that French management be included to which Flick did not agree. He knew that he did not have title and might never acquire it. Anticipating this possibility he inserted provisions by which he would be protected against the loss of any of his own capital that might be invested in the course of the company's operations. His expectation of ownership caused him to plow back into the physical property the profits of operation. This policy ultimately resulted to the advantage of the owners. In all of this we find no exploitation either for Flick's present personal advantage or to fulfill the aims of Goering.

Obviously the formula taken from the IMT judgment cannot apply to any part of the transaction except the distribution of the steel. There are no figures in the record showing the needs of the army of occupation. There are no Rombach statistics tending to show the effect of its production and distribution on the French economy. Therefore, criminal liability must be tested by a different rule.

While the original seizure may not have been unlawful, its subsequent detention from the rightful owners was wrongful. For this and other damage they may be compensated. Laurent, as a witness, told of his intention to claim reparations. For suggesting an element of damage of which he had not thought, he thanked one of defendants' counsel. It may be added that he agreed with counsel that the factory had not been "mismanaged or ransacked."

But there may be both civil and criminal liability growing out of the same transaction. In this case Flick's acts and con-

duct contributed to a violation of Hague Regulation 46 that is, that private property must be respected. Of this there can be no doubt. But his acts were not within his knowledge intended to contribute to a program of "systematic plunder" conceived by the Hitler regime and for which many of the major war criminals have been punished. If they added anything to this program of spoliation, it was in a very small degree.

The purpose of the Hague Convention, as disclosed in the preamble of chapter II, was "to revise the general laws and customs of war, either with a view to defining them with greater precision or to confine them within such limits as would mitigate their severity so far as possible." It is also stated that "these provisions, the wording of which has been inspired by a desire to diminish the evils of war, as far as military requirements will permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants." This explains the generality of the provisions. They were written in a day when armies traveled on foot, in horse-drawn vehicles and on railroad trains; the automobile was in its Ford model-T stage. Use of the airplane as an instrument of war was merely a dream. The atomic bomb was beyond the realms of imagination. Concentration of industry into huge organizations transcending national boundaries had barely begun. Blockades were the principal means of "economic warfare." "Total warfare" only became a reality in the recent conflict. These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered.

It was stated in the beginning that responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own state, he must be expected to ascertain and keep within applicable law. Ignorance thereof will not excuse guilt but may mitigate punishment. The Tribunal will find defendant Flick guilty in respect to the Rombach matter but will take fully into consideration in fixing his punishment all the circumstances under which he acted.

Weiss, Burkart, and Kaletsch had minor roles in this transaction. They were Flick's salaried employees without capital interest in his enterprises. They furnished him with information and advice. But the decisions were his. He alone could gain or lose by the transaction. They did not conspire with him or state officials in any plan of "systematic plunder." We cannot

see in their conduct any culpability for which they should now be punished.

Vairogs and Dnjepr Stahl have similar factual situations. The former was a railroad car and engine factory in Riga, once owned by a Flick subsidiary, sold to the Latvian State about 1936 and expropriated in 1940 as the property of the Soviet Government. Dnjepr Stahl was a large industrial group—three foundries, two tube plants, a rolling mill, and machine factory—also owned by the Russian Government. These plants had been stripped of usable movables when the Russian Army retreated eastward and further steps had been taken to render them useless to the Germans. Dnjepr Stahl particularly had been largely dismantled and immovables seriously damaged or destroyed. Over one million Reichsmarks of German funds at Vairogs and 20 million at Dnjepr Stahl were spent in reactivating the plants. They were in the possession of Flick subsidiary companies as trustees, the former for less than 2 years, beginning in October 1942, the latter for the first 8 months of 1943.

At the railway car plant the trustee not only manufactured and repaired cars and equipment for the German railway but also nails, horseshoes, locks, and some other products. The source of the raw materials is not shown except that iron and steel were bought from German firms. The evidence does not sustain the prosecution's claim that gun carriages were manufactured. At Dnjepr Stahl the plants barely got into production, which consisted of sheet steel, bar iron, structural products, light railroad rails and a small quantity of semi-finished shell products. When the German civilians departed all plants were undamaged and in the absence of evidence to the contrary we may assume so remained when the Russians returned.

The only activity of the individual defendants in respect to these industries was in negotiating the procurement of trustee contracts. Operations were solely under the direction of technicians lent to the trustees. Their salaries were paid from funds furnished by governmental agencies and they were responsible only to Reich officials. The Dnjepr Stahl contract was made with BHO which, under the direction of Goering for the Four Year Plan, assumed as trustee to take over all Soviet industrial property under a decree which declared the same to be "marshaled for the national economy and belonging to the German State." The contract for Vairogs was with a Reich commissioner, as a part of the civil administration of Latvia that was set up in the wake of the invading German Army. The capital for operation

was furnished by BHO and the commissioner whose directives were exclusive.

These activities stand on a different legal basis from those at Rombach. Both properties belonged to the Soviet Government. The Dnjepr Stahl plant had been used for armament production by the Russians. The other was devoted principally to production of railroad cars and equipment. No single one of the Hague regulations above quoted is exactly in point, but, adopting the method used by IMT, we deduce from all of them, considered as a whole, the principle that state-owned property of this character may be seized and operated for the benefit of the belligerent occupant for the duration of the occupancy. The attempt of the German Government to seize them as the property of the Reich of course was not effective. Title was not acquired nor could it be conveyed by the German Government. The occupant, however, had a usufructuary privilege. Property which the government itself could have operated for its benefit could also legally be operated by a trustee. We regard as immaterial Flick's purpose ultimately to acquire title. To covet is a sin under the Decalogue but not a violation of the Hague Regulations nor a war crime. We have already expressed our views as to the evacuation of movables from these plants. Weiss congratulated the manager of Vairogs upon his success in moving out machinery and equipment. In this we see nothing incriminating since Weiss neither had nor attempted to exercise any control of the evacuation and learned of it only after it was accomplished. We conclude, therefore, that there was no criminal offense for which any of the defendants may be punished in connection with Vairogs and Dnjepr Stahl.

Steinbrinck served as Commissioner for Steel (Luxembourg, Belgium and northern France) from May 1941 until July 1942 and as Bekowest (Holland, Belgium, Luxembourg, and northern France excepting Lorraine) from March 1942 until September 1944. In the former capacity his salary was paid by a corporation owned by the Prussian State and the salary of his small staff of assistants by German steel companies from which they came. It does not appear how he was paid as Bekowest. The two positions involved similar tasks, to get the steel plants into operation in the districts under his supervision and to bring into production the collieries of his territory as Bekowest. As Commissioner for Steel his directives came from General von Hanneken whose authority stemmed from Goering as Plenipotentiary for the Four Year Plan. As Bekowest he was given discretionary powers by Paul Pleiger, Plenipotentiary General for Coal in Germany and the occupied territories under a harsh program formulated and directed by Goering. His liability must be

judged however, not by what Goering ordered, but by what Steinbrinck did. His policies of administration brought him into conflict with other German administrators including Roehling and led to his resignation as Commissioner for Steel 2 July 1942. In obtaining steel production he worked in cooperation with local industrialists most of whom after their first flight from the German Army returned to their tasks. There is no evidence that on Steinbrinck's orders any of them were displaced or excluded. His relations with them were cordial and their respect for his ability and conduct is shown by numerous affidavits in the record, some also from representatives of the coal industry. It must be borne in mind that in both commodities there was before the war close cooperation between the German economy, particularly that of the Ruhr, and the economy of the several neighboring states. In his administration he endeavored to disturb as little as possible the peacetime flow of coal and steel between industries in these countries. Of course the German economy benefited but not by confiscation or ruthless exploitation attributable to Steinbrinck. With respect to Belgium and Luxembourg the ratio of steel export to home consumption under his regime was not materially different from that in peacetime. There is credible evidence that the steel produced in northern France remained there either for home consumption or for processing. It is not shown that he had anything to do with the processing industries. The different companies were paid for their shipments in some cases at better prices than in peacetime.

Prior to the occupation, France had been receiving annually about 20 million tons of coal from England which, of course, ceased with the German invasion. Vichelonne, a Frenchman, in charge of coal production in southern France, attempted there by maximum production to make up this shortage. His lack of success caused Steinbrinck as Bekowest to turn over to Vichelonne 68 percent of the coal produced in northern France. He also sent coal to Vichelonne from Belgium and Holland and some from Germany. The prosecution submitted few statistics in its case in chief but attempted on rebuttal to contradict figures submitted in behalf of Steinbrinck. This information at best was fragmentary. From the figures submitted we cannot determine that Steinbrinck was incorrect in this testimony that the ratio between export and home consumption did not materially differ in the period before and that of the occupation. Coal for home consumption was rationed under his administration but it is not shown that the ration per person was materially less than for peacetime consumption. He had difficult decisions to make and on occasions may have erred in his directives apportioning pro-

duction. But the record on the whole discloses a correct attitude on his part and we believe there was no intentional discrimination against local economy. He remained as Bekowest until the approach of the Allied armies. Despite the Wehrmacht's order to the contrary, he left the mines in operable condition. In this conduct we find no criminality.

In summation the Tribunal finds Flick alone guilty on count two. Steinbrinck, Weiss, Burkart, and Kaletsch each is acquitted.

COUNT THREE

Count three attempts to charge crimes against humanity. The evidence deals exclusively with four separate transactions by which the Flick interests acquired industrial property formerly owned or controlled by Jews. Three were outright sales of controlling shares in manufacturing and mining corporations. In the fourth, involving the Ignaz Petschek brown coal mines in central Germany, there was an expropriation by the Third Reich, from which afterward the Flick interests and others ultimately acquired the substance of the properties. There is no contention that the defendants in any way participated in the Nazi persecution of Jews other than in taking advantage of the so-called Aryanization program by seeking and using State economic pressure to obtain from the owners, not all of whom were Jewish, the four properties in question.

These transactions were completed prior to the war. Concerning the first three, there can be no controversy. The Ignaz Petschek property was expropriated by a general governmental decree dated 3 December 1938, pursuant to which trustees therefore were appointed 19 January 1939 and given power to sell 1 March 1939. That the written instrument of sale to a governmental holding company bears date of 8 September 1939, and that later there were sales through which Flick acquired some of the property, we do not regard as conflicting with our view that the expropriation, if not effective by the decree, certainly was completed by the appointment of the trustees.

In the IMT trial the Tribunal declined to take jurisdiction of crimes against humanity occurring before 1 September 1939, basing its ruling on the modifying phrase "in execution of or in connection with any crime within the jurisdiction of the Tribunal" found in Article 6 (a) of the Charter attached to the London Agreement of 8 August 1945. It is argued that the omission of this phrase from Control Council Law No. 10 evidences an intent to broaden the jurisdiction of this Tribunal to include such crimes. We find no support for the argument in express language of Law No. 10. To reach the desired conclusion its advocates must resolve ambiguity by a process of statutory construction. Jurisdic-

tion is not to be presumed. A court should not reach out for power beyond the clearly defined bounds of its chartering legislation.

Law No. 10 was enacted 20 December 1945, but not all of its content was written at that time. Article I expressly states:

“The Moscow Declaration of 30 October 1943 ‘Concerning Responsibility of Hitlerites for Committed Atrocities’ and the London Agreement of 8 August 1945 ‘Concerning Prosecution and Punishment of Major War Criminals of the European Axis’ are made integral parts of this law. * * *”

The Charter was not merely attached to the London Agreement, but by Article 2 thereof, was incorporated therein as an “integral part.” The construction placed on the Charter by IMT can hardly be separated therefrom. These documents constitute the chartering legislation of this Tribunal. The only purpose of the London Agreement was to bring to trial “war criminals.”

I am quoting the words “war criminals,” found in many sections of the London Agreement.

The only purpose of the Charter was to bring to trial “major war criminals.” We conceive the only purpose of this Tribunal is to bring to trial war criminals that have not already been tried. Implicit in all of this chartering legislation is the purpose to provide for punishment of crimes committed during the war or in connection with the war. We look in vain for language evincing any other purpose. Crimes committed before the war and having no connection therewith were not in contemplation.

To try war crimes is a task so large, as the numerous prosecutions prove, that there is neither necessity nor excuse for expecting this Tribunal to try persons for offenses wholly unconnected with the war. So far as we are advised no one else has been prosecuted to date in any of these courts including IMT for crimes committed before and wholly unconnected with the war. We can see no purpose nor mandate in the chartering legislation of this Tribunal requiring it to take jurisdiction of such cases.

There was no pleading questioning jurisdiction until the conclusion of the evidence. During the long trial the conduct of defendants claimed to incriminate them under count three was explored meticulously and exhaustively by prosecution and defense. Hundreds of documents and volumes of oral testimony are before the Tribunal. Under these circumstances we make the following statements on the merits relating to this count with full appreciation that statements as to the merits are pure *dicta* where a finding of lack of jurisdiction is also made.

The law existing when the defendants acted is controlling. To

the extent that Law No. 10 declares or codifies that law, and no further, is this Tribunal willing to go. Under the basic law of many states the taking of property by the sovereign, without just compensation, is forbidden, but usually it is not considered a crime. A sale compelled by pressure or duress may be questioned in a court of equity, but, so far as we are informed, such use of pressure, even on racial or religious grounds, has never been thought to be a crime against humanity. A distinction could be made between industrial property and the dwellings, household furnishings, and food supplies of a persecuted people. In this case, however, we are only concerned with industrial property, a large portion of which (ore and coal mines) constitutes natural resources in which the state has a peculiar interest.

Jurists and legal writers have been and are presently groping for an adequate inclusive definition of crimes against humanity. Donnedieu de Vabres recently said: "The theory of 'crimes against humanity' is dangerous: dangerous for the peoples *by the absence of precise definition*, dangerous for the States because it offers a pretext to intervention by a State in the internal affairs of weaker States." † (Our emphasis.)

† The judgment of Nuremberg and the Principle of Legality of Offenses and Penalties, Donnedieu de Vabres, published in Review of Penal Law and of Criminology in Brussels, July 1947, translated by J. Herisson, page 22.

The seventh Conference for the Unification of Penal Law held at Brussels, 10 and 11 July 1947, in which the United States of America took part, endeavored to formulate a definition. In none of the drafts presented was deprivation of property included. Eugene M. Arroneau's definition, referred to in the report of the proceedings, specified, "* * * harm done on racial, national, religious, or political grounds to *liberty or the life of a person or group of persons, etc.*" (Our emphasis.) Mentioned in the proceedings was a section from a Brazilian law decree of 18 May 1938 to the effect that it is an offense "to incite or prepare an attempt upon the life of a person or upon his goods, for doctrinaire, political or religious motives," with penalty from 2 to 5 years imprisonment. The Brazilian representative, ignoring the purport of the phrase "or upon his goods," himself submitted a definition to the conference reading: "Any act or omission which involves a serious threat of violence, moral or physical, against anyone by reason of his nationality, race, or his religion, philosophical or political opinions, is considered as a crime against humanity." A resolution was adopted evidencing agreement that—

"Any manslaughter or act which can bring about death, committed in peacetime as well as in wartime, against in-

dividuals, or groups of individuals, because of their race, nationality, religion, or opinions, constitutes a crime against humanity and must be punished as murder * * * ”

But from the report of the conference proceedings this seems to have been the extent of agreement.

In the opening statement of the prosecution are listed numerous instances of foreign intervention or diplomatic representations objecting to mistreatment of a population by its own rulers. It may be that incidental to these persecutions the oppressed peoples lost their homes, household goods, and investments in industrial property but so far as we are aware the outcry by the other nations was against the personal atrocities, not the loss of possessions. We believe that the proof does not establish a crime against humanity recognized as such by the law of nations when defendants were engaged in the property transactions here under scrutiny.

The prosecution in its concluding argument contends that the contrary has been decided in the IMT judgment. We find nothing therein in conflict with our conclusion. That Tribunal mentioned economic discrimination against the Jews as one of numerous evidentiary facts from which it reached the conclusion that the Leadership Corps was a criminal organization. Similarly when dealing with the question of Flick's guilt of war crimes and crimes against humanity, it mentioned anti-Semitic laws drafted, signed and administered by Flick. These led up to his final decree placing Jews "outside the law" and handing them over to the Gestapo which was the equivalent to an order for their extermination. Likewise in the cases of Funk and Seyss-Inquart, anti-Semitic economic discrimination is cited as one of several facts from which it is concluded that he was a war criminal. But it nowhere appears in the judgment that IMT considered, much less decided, that a person becomes guilty of a crime against humanity merely by exerting anti-Semitic pressure to procure by purchase or through state expropriation industrial property owned by Jews.

Not even under a proper construction of the section of Law No. 10 relating to crimes against humanity, do the facts warrant conviction. The "atrocities and offenses" listed therein "murder, extermination," etc., are all offenses against the person. Property is not mentioned. Under the doctrine of *ejusdem generis* the catch-all words "other persecutions" must be deemed to include only such as affect the life and liberty of the oppressed peoples. Compulsory taking of industrial property, however reprehensible, is not in that category. It may be added that the presence in this section of the words "against any civilian population," re-

cently led Tribunal III to "hold that crimes against humanity as defined in Control Council Law No. 10 must be strictly construed to exclude isolated cases of atrocity or persecution whether committed by private individuals or by governmental authority." United States vs. Altstoetter, et al., decided 4 December 1947. The transactions before us, if otherwise within the contemplation of Law No. 10 as crimes against humanity, would be excluded by this holding.

Whether we hold that we have not jurisdiction or whether we assume jurisdiction and hold that no crime against humanity has been proved, the result so far as these defendants are concerned is the same. They cannot be convicted on the fact that the evidence submitted on this count relates to subject matter not within its jurisdiction. Accordingly, count three is dismissed.

COUNTS FOUR AND FIVE

PRESIDING JUDGE SEARS: We consider together counts four and five. The latter charges Steinbrinck with membership subsequent to 1 September 1939 in the SS. The gist of count four is that as members of the Himmler Circle of Friends, Flick and Steinbrinck with knowledge of the criminal activities of the SS contributed funds and influence to its support.

The basis of liability of members of the SS, as declared by IMT, is that after 1 September 1939 they "became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter and who had committed no such crimes."¹ Steinbrinck was a member of the SS from 1933 to the time of the German collapse. There is no evidence that he was personally implicated in the commission of its crimes. It is not contended that he was drafted into membership in such a way as to give him no choice. His liability therefore must be predicated on the fact that he remained a member after 1 September 1939 with knowledge that "it was being used for the commission of acts declared criminal."

IMT also found "that knowledge of these criminal activities was sufficiently general to justify declaring that the SS was a criminal organization to the extent * * *"² later described in the judgment, namely, that "the SS was utilized for purposes which were criminal under the Charter, involving the persecution and exter-

¹ Trials of the Major War Criminals, op. cit., volume I, page 273.

² Ibid., p. 272.

mination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave-labor program and the mistreatment and murder of prisoners of war.”¹

It seems clear that mass extermination of the Jews, mass murders in the guise of experiments in concentration camps such as described in the judgment in Case 1² recently decided by Tribunal I, and other atrocities referred to generally in the above quotation from the IMT judgment, were crimes against humanity and war crimes well recognized by international law quite independent of the legislation of the four powers embodied in the Charter and Law No. 10. An organization which on a large scale is responsible for such crimes can be nothing else than criminal. One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes. So there can be no force in the argument that when, from 1939 on, these two defendants were associated with Himmler and through him with the SS they could not be liable because there had been no statute nor judgment declaring the SS a criminal organization and incriminating those who were members or in other manner contributed to its support.

Relying upon the IMT findings above quoted the prosecution took the position that it devolved upon Steinbrinck to show that he remained a member without knowledge of such criminal activities. As we have stated in the beginning the burden was all the time upon the prosecution. But in the face of the declaration of IMT that such knowledge was widespread we cannot believe that a man of Steinbrinck's intelligence and means of acquiring information could have remained wholly ignorant of the character of the SS under the administration of Himmler. The extent of his knowledge and the part he played with such knowledge will be treated later in the opinion.

Steinbrinck became a member of the Circle in 1932 in its early days when it was known as the Keppler Circle. At the instigation of Hitler or with his approval, Keppler gathered together a few industrial leaders including Steinbrinck for their advice upon economic questions including, it seems, the problem of solving the unemployment situation. There is evidence that industrialists believed Keppler would become Hitler's chief economic adviser and they were not unwilling to meet and exchange views with a man who was likely to become a powerful State leader. Flick was not drawn into the group until three years

¹ *Ibid.*, p. 273.

² Medical case, *United States vs. Brandt, et al.*, judgment, section XII, Volume II, this series.

later and then more or less casually. Keppler's influence with Hitler waned and Himmler's influence grew and his ascendancy began, so that even before the beginning of the war the group came to be known as the Circle of Friends of Himmler. In its early meetings SS leaders or officers were not present in any considerable number but as the war went on more of them came to the meetings, probably on the invitation or command of Himmler.

We do not find in the meetings themselves the sinister purposes ascribed to them by the prosecution. Kranefuss, an assistant of Keppler and Himmler, throughout its history controlled the invitations, doubtless with the approval of Himmler. There was an annual dinner in connection with the Party rally at Nuernberg. Later there were more frequent meetings taking the form of dinner parties with the usual beverages. It may be questioned whether the members of the SS who attended had any reason more compelling than Himmler's invitation and the opportunity as guests to get an excellent dinner. There was no regular seating and after dinner the party broke up into small groups of congenial acquaintances. Flick and Steinbrinck naturally drifted to groups of business men. Himmler was not always present. He did not single out Flick or Steinbrinck for attention. There is no evidence that the criminal activities of the SS were discussed. As a matter of fact, it was the policy of Himmler to conceal them. As a part of the program usually there were talks and sometimes showing of films on subjects foreign to the war such as the Tibet expedition, in which Himmler was interested, to which, with one exception later discussed, no criminal significance may be ascribed. There is credible evidence that Himmler was a man of dual personality; on the one hand a gentleman with cultural interests and on the other an inhuman monster. In these meetings we have no doubt he appeared the gentleman and genial host. So far we see nothing criminal nor immoral in the defendants' attendance at these meetings. As a group (it could hardly be called an organization) it played no part in formulating any of the policies of the Third Reich.

But Himmler was Reich Leader SS. His person can hardly be separated from his organization. Of this the defendants could not be unaware. In 1936 he took members of the Circle on an inspection trip to visit Dachau concentration camp which was under his charge. They were escorted through certain buildings including the kitchen where they tasted food. They saw nothing of the infamous atrocities perhaps already there begun. But Flick who was present got the impression that it was not a pleasant place. The members of the Circle visited at his invitation other places where money was being spent under Himmler's

direction. Some of them were cultural such as archeological excavations.

SS Obergruppenfuehrer Heydrich was one of Himmler's trusted assistants. He was assassinated in Czechoslovakia in the spring of 1942. In retaliation SS troops obliterated the village of Lidice. The incident received world-wide publicity and even in the German press it was reported. We need not deal with the horrible details. The day after Heydrich's funeral there was a meeting of the Circle of Friends. It seems reasonably clear from the evidence that both Flick and Steinbrinck were present although their recollection is vague. A Tibet film was shown which they both remembered. Preliminary thereto, Kranefuss delivered a eulogy of Heydrich which he afterward sent in written form to at least one member of the Circle. It does not appear that either Steinbrinck or Flick received it. Referring to Himmler as the Reich Leader, Kranefuss said in part: (*NI-8108, Pros. Ex. 738*)

"The Reich Leader said yesterday that he, the deceased, was feared by subhumans [Untermenschen], hated and denounced by Jews and other criminals, and at one time was misunderstood by many a German. His personality and the unusually difficult tasks assigned to him were not of a nature to make him popular in the ordinary sense of the word. He carried out many harsh measures ordered by the State and covered them with his name and person, just as the Reich Leader does every day."

We need not quote further. What was said could hardly fail to give the impression that not only Heydrich but Himmler was inhuman in his attitude and in his deeds.

After the Dachau trip members of the Circle were called upon to contribute money to Himmler. He informed them at a meeting which Flick attended that the funds were to be spent for some of his cultural hobbies and for emergencies for which he had no appropriations. Von Schroeder, a witness for the prosecution, as well as Flick and Steinbrinck, testified that they were always of the opinion that the monies they contributed were spent for these hobbies. However, the early letters requesting gifts, some of which were signed by Steinbrinck, did not mention hobbies but stated that the money was to be used for "special purposes." Of course "special purposes" might refer merely to hobbies and be so understood by the defendants. Other considerations, however, are more important.

About 40 persons were in the Circle, including bankers, industrialists, some government officials, as well as SS officers. At least half of them responded to the request for funds. There

were six donations of 100,000 Reichsmarks each and the total sum raised annually was over a million Reichsmarks. Flick and Steinbrinck each was responsible for 100,000 Reichsmarks. Apparently Flick's was paid by Mittelstahl, one of his companies, and Steinbrinck's came from Vereinigte Stahlwerke A.G., a State-owned corporation with which he was connected when the contributions began. Other officials of that corporation approved the payment. The giving began long before the war at a time when the criminal activities of the SS, if they had begun, were not generally known. The same amount was raised annually until 1944. The money went into a special fund in the Stein Bank at Cologne controlled by von Schroeder and thence, as it accumulated, into an account in the Dresdner Bank upon which Karl Wolff, Himmler's personal adjutant, drew checks. Both banks were represented in the Circle; Stein Bank, by von Schroeder who was a Brigadefuehrer SS; and the Dresdner Bank, by Dr. Meyer and Dr. Rasche. It is not shown that the defendants knew of the second account, much less, of the specific purpose of the several checks drawn thereon. Nor did the prosecution show that any part of the money was directly used for the criminal activities of the SS. It is reasonably clear that some of the funds were used purely for cultural purposes. But during the war and particularly after the beginning of the Russian campaign we cannot believe that there was much cultural activity in Germany. A hundred thousand Reichsmarks even to a wealthy man was not then a trifling but a substantial contribution. Ten times that sum annually was placed in the hands of Himmler, the Reich Leader SS, for his personal use and was continued year after year without a thought on their part, according to their testimony, that any portion of it might be used by him to maintain the organization of which he was the head. It is a strain upon credulity to believe that he needed or spent annually a million Reichsmarks solely for cultural purposes or that the members of the Circle could reasonably believe that he did.

In the beginning contributions must have been made with some thought of currying favor with a powerful State official with whom from time to time these industrialists might have to deal. Then the criminal character of the SS was not generally known. But later, after it must have been known, the contributions continued and the members regularly accepted invitations to the meetings of the Circle. It is true that a few withdrew and some of them are still living. These, however, did not enjoy the prominence of Flick and Steinbrinck. We can only guess what effect the withdrawal by prominent members of their presence and contributions would have had upon the attitude

of Himmler. When a man who for several years has contributed the same large amount to a benevolent cause withdraws or decreases his gift, such action can hardly go unnoticed. Of this, defendants were probably aware. Flick suggested in his testimony that he regarded membership in the Circle as in the nature of insurance. Steinbrinck may have had the same feeling. A hundred thousand Reichsmarks per year to a wealthy man or to one who pays from State funds is perhaps not too high a premium to insure personal safety in the fearful days of the Third Reich. This may be considered in mitigation but we are convinced that there was not any such compulsion upon their membership or contributions as we have discussed in the case of use of conscripted labor. Defendants in this count do not put their defense on the ground of fear but rather on lack of knowledge. It remains clear from the evidence that each of them gave to Himmler, the Reich Leader SS, a blank check. His criminal organization was maintained and we have no doubt that some of this money went to its maintenance. It seems to be immaterial whether it was spent on salaries or for lethal gas. So we are compelled to find from the evidence that both defendants are guilty on count four.

There is considerable to be said in mitigation. Their fear of reprisals has already been mentioned. In that respect Flick was the more vulnerable. He had backed Hindenburg with large sums when in 1932 he defeated Hitler for election to the Reich presidency. This doubtless was not forgotten. To Flick's knowledge his telephone conversations were subjected to wire tapping. He had other reasons to believe his position with Party leaders, and particularly Himmler, was none too secure. Steinbrinck, however, as an outstanding naval officer of the First World War, respected and admired by the public, had a more favorable position. This very respectability was responsible for his membership in the SS. He did not seek admission. His membership was honorary. But the honor was accorded to the SS rather than to Steinbrinck. During the entire period of his membership he had but two official tasks. The first was to attend, and perhaps stimulate the attendance of the generals, at a meeting in Godesberg in 1933 when they were convened with heads of the Party, the SA, and the SS to be addressed by Hitler. The second was to escort the family of Hindenburg at his funeral. The SS uniform, doubtless worn on these occasions, was also helpful to Steinbrinck in obtaining from the Wehrmacht compliance with his directives as Bekowest. He received two promotions in rank, the second to Brigadefuehrer (brigadier general), on his fiftieth birthday in 1938. Otherwise he had no duties, no pay, and only casual connection with SS leaders. These activities

do not connect him with the criminal program of the SS. But he may be justly reproached for voluntarily lending his good reputation to an organization whose reputation was bad.

Both defendants joined the Nazi Party, Steinbrinck earlier than Flick, but after the seizure of power. Membership in it also was to them a sort of insurance. They participated in no Party activities and did not believe in its ideologies. They were not pronouncedly anti-Jewish. Each of them helped a number of Jewish friends to obtain funds with which to emigrate. They did not give up their church affiliations. Steinbrinck was in Pastor Niemoeller's congregation and interceded twice to prevent his internment. He succeeded first through Goering. When Niemoeller was again arrested Steinbrinck had an interview with Himmler, described at length in his testimony, and persuaded Himmler to ask for Niemoeller's release which was refused by Hitler.

Defendants did not approve nor do they now condone the atrocities of the SS. It is unthinkable that Steinbrinck, a U-boat commander who risked his life and those of his crew to save survivors of a ship which he had sunk, would willingly be a party to the slaughter of thousands of defenseless persons. Flick knew in advance of the plot on Hitler's life in July 1944, and sheltered one of the conspirators. These and numerous other incidents in the lives of these defendants, some of which involve strange contradictions, we must consider in fixing their punishment. They played but a small part in the criminal program of the SS, but under the evidence and in the light of the mandate of Ordinance No. 7, giving effect to the judgment of IMT, there is in our minds no doubt of guilt.

The defendants in this case have been imprisoned for various periods. Flick was arrested 13 June 1945; Steinbrinck, 30 August 1945; Kaletsch, 8 December 1945; Terberger, 3 February 1947, and each has continuously been imprisoned since the date of his arrest. Burkart was arrested 5 December 1945, released 7 September 1946, rearrested 15 March 1947, and has since been in continuous confinement. Weiss was imprisoned from 1 February until 30 September 1946, was rearrested 5 February 1947, and has since been in prison. The indictment was not served upon any of them until 10 February 1947. Prior to that time some, if not all, were held without notification of the charges for which they were detained. The Tribunal has ruled that this fact is not ground for dismissal of the case, but previous confinement may and should be taken into consideration in determining the punishment now to be inflicted upon those found guilty. Flick is 64 years old; Steinbrinck, 59; Weiss, 42.

To resume, the Tribunal finds defendant Flick guilty on counts

one, two, and four; defendant Steinbrinck guilty on counts four and five; and defendant Weiss guilty on count one. Each of the other defendants is acquitted on the counts in which they are charged, except count three which is dismissed.

(Recess)

SENTENCES

THE MARSHAL: The Tribunal is again in session.

PRESIDING JUDGE SEARS: The Tribunal will now impose sentence upon those defendants who have been adjudged guilty in these proceedings.

The Marshal will produce defendant Flick before the Tribunal.

FRIEDRICH FLICK, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for seven (7) years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 13th day of June 1945.

The Marshal will remove defendant Flick.

The Marshal will produce before the Tribunal defendant Steinbrinck.

OTTO STEINBRINCK, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for five (5) years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 30th day of August 1945.

The Marshal will remove defendant Steinbrinck.

The Marshal will produce before the Tribunal defendant Weiss.

BERNHARD WEISS, on the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for two and one-half ($2\frac{1}{2}$) years. The periods already spent by you in confinement before and during the trial are to be credited on the term already stated and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 8th day of June 1946.

The Marshal will remove the defendant Weiss.

The defendants **ODILO BURKART, KONRAD KALETSCH,** and **HERMANN TERBERGER,** and each of them, having been acquitted, shall be discharged from custody by the Marshal when the Tribunal presently adjourns.

The Tribunal is about to adjourn.

The Tribunal now adjourns without date.

XII. CONFIRMATION OF SENTENCES BY THE MILITARY GOVERNOR OF THE UNITED STATES ZONE OF OCCUPATION

A. Introduction

Under Article XV of Ordinance No. 7, the sentences imposed by the Tribunal were subject to review. Article XVII paragraph (a) provides that "the record of each case shall be forwarded to the Military Governor who shall have the power to mitigate, reduce, or otherwise alter the sentence imposed by the tribunal, but may not increase the severity thereof."

Petitions to modify the sentence imposed on each of the convicted defendants, Flick, Steinbrinck, and Weiss, were filed by defense counsel with the Military Governor. On 30 June 1948 the Military Governor, General Lucius D. Clay, confirmed each of these sentences by separate written orders.

The order confirming the sentence imposed upon defendant Flick is reproduced below in section B. The orders confirming the sentences imposed upon defendants Steinbrinck and Weiss read the same as the order concerning defendant Flick except for the necessary variations in the references to the names of the defendants and their counsel and to the terms of the sentences.

**B. Order of the Military Governor Confirming the Sentence
Imposed on Defendant Flick**

HEADQUARTERS, EUROPEAN COMMAND

Office of the Commander-in-Chief

APO 742

[30 June 1948]

In the Case of The United States of America

vs

Friedrich Flick, et al.

Military Tribunal IV

Case No. 5

Order with Respect to Sentence of Friedrich Flick

In the case of the United States of America against Friedrich Flick, et al, tried by United States Military Tribunal IV, Case No. 5, Nuremberg, Germany, the defendant Friedrich Flick, on 22 December 1947, was sentenced by the Tribunal to imprisonment for 7 years. A petition to modify the sentence, filed on behalf of the defendant by Dr. Rudolph Dix, his defense counsel, has been referred to me pursuant to the provisions of Military Government Ordinance No. 7. I have duly considered the petition and the record of the trial, and in accordance with Article XVII of said Ordinance, it is hereby ordered that:

The sentence imposed by Military Tribunal IV on Friedrich Flick be, and hereby is, in all respects confirmed.

[Signed] LUCIUS D. CLAY

General, U.S.A.

Commander-in-Chief, European Command
and Military Governor

XIII. ORDER OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, 6 APRIL 1948, DISMISSING PETITION BY DEFENDANT FLICK FOR A WRIT OF HABEAS CORPUS *
IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Filed 7 April 1948

Harry M. Hull,

Clerk

Habeas Corpus No. 3360

In re:

Friedrich Flick

ORDER

The above matter coming on regularly to be heard on the 6th day of April 1948, and upon consideration of oral argument of counsel and of the Petition for Writ of Habeas Corpus and the return of the respondents to the rule to show cause filed herein on the 6th day of April 1948, and it appearing to the Court that the Petitioner is not confined within the District of Columbia and is therefore not within the territorial jurisdiction of this Court, it is by the Court this 6th day of April 1948:

ORDERED that the Rule to Show Cause is discharged and the Petition for a Writ of Habeas Corpus dismissed for lack of jurisdiction.

ALEXANDER HOLTZOFF

Justice

* Reported in Federal Supplement, vol. 76, p. 979 (1948).

XIV. DECISION OF THE UNITED STATES COURT OF AP-
PEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT,
11 MAY 1949, AFFIRMING ORDER OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT
No. 9883

Friedrich Flick, appellant

v.

*Louis Johnson, Secretary of Defense, et al., appellees**

Appeal from the District Court of the United States for the Dis-
trict of Columbia (now United States District Court for
the District of Columbia).

Argued December 16, 1948

Decided May 11, 1949

Messrs. George T. Davis and Earl J. Carroll of the Bar of the Supreme Court of California, *pro hac vice*, by special leave of Court, with whom *Mr. Fred W. Shields* was on the brief, for appellant.

Mr. John D. Lane, Assistant United States Attorney, with whom *Mr. George Morris Fay*, United States Attorney, was on the brief, for appellees.

Before Stephens, C. J., and Wilbur K. Miller and Proctor, J. J.

PROCTOR, J.: Appellant, a German citizen, is in custody in Germany, within the American Zone of Occupation. He is under custody of American Army forces, serving a sentence of imprisonment imposed by a tribunal sitting in said zone. A petition for writ of habeas corpus was filed in his behalf in the United States District Court for the District of Columbia. The Secretary of Defense, the Secretary of the Army, the Provost Marshal General and the Commanding General, United States Occupied Zone of Germany, were named as respondents. Upon a rule to show cause all answered except the Commanding General, who was not served. After hearing, the court discharged the rule and dismissed the

* Federal Reporter, vol. 174, 2d series, p. 983 (1949).

petition "for lack of jurisdiction," in that petitioner was not confined within the territorial jurisdiction of the court. The decision (76 F. Supp. 979, (1948)), rendered shortly before *Ahrens v. Clark*, 335 U. S. 188, was based upon *McGowan v. Moody*, 22 App. D. C. 148, approved in *Sanders v. Allan*, 69 App. D. C. 307, *Sanders v. Bennett*, 80 U. S. App. D. C. 32.

In the *Ahrens* case, the Supreme Court upheld denial of the writ upon the ground that the petitioners' confinement was not within the territorial limits of the federal court to which they applied. Their detention was, in fact, within the jurisdictional area of another district court. It is here argued that the broad language in the text of the majority opinion in that case is qualified by a marginal note (p. 192) reserving decision as to a case where confinement was beyond the territorial limits of any district court. The dissenting opinion so interprets the notation. This court did likewise in an opinion filed April 15, 1949, in *Eisentrager, et al., v. Forrestal, et al.*, No. 10053. There it is held that Germans in military custody in the American zone of occupation in Germany, serving sentences of a United States Military Commission, and thus in custody under or by color of the authority of the United States (28 U. S. C. 2241, formerly 28 U. S. C. 451, 452, 453), may sue for the writ in the District of Columbia, naming as respondents officials at the seat of Government, through whose direction the actual jailer may be required to act. In view of that decision we shall not discuss a basic question, which naturally arises, i. e., whether the writ of habeas corpus is available to an enemy alien on foreign soil.

This case presents an additional question of a fundamental character. Was the court which tried and sentenced Flick a tribunal of the United States? If it was not, no court of this country has power or authority to review, affirm, set aside or annul the judgment and sentence imposed on Flick. *Hirota, et al. v. General of the Army Douglas MacArthur, et al.*, Petitions Nos. 239, 240, 248, Misc., October Term, 1948, Supreme Court of the United States, decided December 20, 1948. We must, therefore, inquire into the origin of the Flick tribunal and the source of its power and jurisdiction to determine whether it was a court of the United States.

Upon the surrender of Germany, the four victorious powers, the United States, Great Britain, France, and Russia, completed military control of the conquered land. Agreeably to plan, the armies of each occupied a separate zone. It was agreed that supreme authority over Germany would be exercised, on instructions from their Governments by the Commanders in Chief, "each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole." At the same time a "Control Council" was constituted, composed of the four Commanders in Chief, as the supreme

governing body of Germany. This plan of operation was expressly limited to the period of occupation "while Germany is carrying out the basic requirements of unconditional surrender." (That period has continued since, and still prevails.) Arrangements for the subsequent period were to be "the subject of a separate agreement." (Declaration of Berlin, June 5, 1945, 12 U. S. Dept. of State Bull. 1054.)

In support of the foregoing arrangement for the temporary government of Germany, the President of the United States, acting through his Joint Chiefs of Staff, directed the Commander in Chief of the American Forces in Germany, in his capacity as Military Governor of the American Zone of Occupation, to carry out and support, in that Zone, the policies agreed upon in the Control Council, whose authority "to formulate policy and procedures and administrative relationships with respect to matters affecting Germany as a whole will be paramount throughout Germany." This document confirms and reinforces the supreme authority with which the American Military Governor, in his capacity as Zone Commander, was clothed by the Council. (13 U. S. Dept. of State Bull. 596, October 17, 1945.)

In order to give effect to the terms of the Moscow Declaration of October 30, 1943, (9 U. S. Dept. of State Bull. 310) and the London Agreement of August 8, 1945, and the Charter issued pursuant thereto, (13 U. S. Dept. of State Bull. 222) and "*in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal * * * **" the Control Council enacted "Law No. 10," December 20, 1945 (15 U. S. Dept. of State Bull. 862 (1946)). This act recognizes many crimes, which are classified and defined in broad terms. It prescribes punishment for those found guilty, and provides that "The Tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof *shall be determined or designated by each Zone Commander for his respective Zone.*" * (Sec. 2, Art. III, C. C. Law No. 10, *supra.*)

The Moscow Declaration and the London Agreement, referred to above, proclaimed the intention of the United Nations to bring war criminals to justice. To that end the London Agreement provided for establishment "*after consultation with the Control Council for Germany*" * of an International Military Tribunal for the trial of war criminals whose offenses had no particular geographical location. It was this court which tried Goering and other high Nazi leaders. The Agreement expressly provided that it should not prejudice the jurisdiction or the powers of any

* Italics supplied.

national or *occupation* court established in any Allied territory or in Germany for the trial of war criminals. The annexed Charter dealt, *inter alia*, with the constitution of said International Military Tribunal; the crimes cognizable thereby; the rights of persons accused, and procedural methods in prosecution and trial of such persons before that Tribunal. This Charter became a pattern for Control Council Law No. 10, referred to above, under which was constituted the tribunal that tried and sentenced Flick.

Ordinance No. 7, Military Government—Germany, was promulgated October 18, 1946, pursuant to the powers of the Military Governor for the United States Zone of Occupation and “*pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10, * * **” * Its declared purpose was “to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, * * *.” (Mil. Gov. Gazette—Germany—U. S. Zone, Issue B., 1 Dec. 1946, p. 11.) Accordingly, it was provided that each such tribunal should consist of three or more members, to be designated by the Military Governor, and laid down rules for the prosecution and trial of cases coming before those tribunals. Pursuant to the ordinance, General Clay, then Military Governor and Zone Commander, on April 12, 1947, constituted “Military Tribunal IV,” designated the members thereof, and directed them to convene at Nuremberg, Germany, to hear such cases as might be filed by the Chief of Counsel for War Crimes. (General Orders No. 21, Headquarters, European Command, April 12, 1947.) This was the tribunal before which Flick was tried, convicted and sentenced upon an indictment filed by said Counsel. The same persons, designated by the Military Governor as members of Military Tribunal IV, were later named by the President to be members “of one of the several military tribunals established by the Military Governor for the United States Zone of Occupation within Germany *pursuant to the quadripartite agreement of the Control Council for Germany, enacted December 20, 1945, as Control Council Law No. 10, * * **” * (Executive Order 9858, May 31, 1947, 12 Fed. Reg. 3555.)

We should, perhaps, advert to the fact that the Commander in Chief of the American Forces, *who by virtue of that position served as a member of the Control Council and Zone Commander in the American Zone of Occupation*, and the Military Governor of said Zone acting as such by virtue of his rank as the Commanding General, were combined in the person of a single general of the United States Army. This accounts for the fact that in some of

* Italics supplied.

the documents referred to we may find these official titles, as they are used, confusing in relation to the subjects covered thereby. In these circumstances the nature of the act itself, rather than the title indicated by the document, will best serve to show the true capacity in which the officer was acting.

The foregoing summary brings out the salient facts bearing upon the status of Military Tribunal IV, which tried and sentenced Flick. He contends that it was not an international court, but an illegally constituted body, wrongfully exercising power as a military tribunal. The argument in support of this contention overlooks important facts. It pursues the form, rather than the substance of things. If the court was not a tribunal of the United States, its actions cannot be reviewed by any court. (*Hirota v. MacArthur, supra.*) If it was an international tribunal, that ends the matter. We think it was, in all essential respects, an international court. Its power and jurisdiction arose out of the joint sovereignty of the four victorious Powers. The exercise of their supreme authority became vested in the Control Council. That body enacted Law No. 10, for the prosecution of war crimes. It vested in the Commander for the American Zone the authority to determine and designate, for his zone, the tribunal by which accused persons should be tried and the rules and procedure to govern in such cases. Pursuant to that power, and agreeably to rules duly promulgated by Ordinance No. 7, the Zone Commander constituted Military Tribunal IV, under whose judgment Flick is now confined. Thus the power and jurisdiction of that Tribunal stemmed directly from the Control Council, the supreme governing body of Germany, exercising its authority in behalf of the Four Allied Powers.

It follows that we cannot accept the argument that the sole authority for establishment of international courts for the trial of Axis war criminals was the London Agreement. That Agreement only provided for a tribunal (and, if necessary, other *identical* tribunals,) to be established, after "consultation" with the Control Council, for the trial of a special class of war criminals. (Art. 1.) The Agreement was without prejudice to "the jurisdiction or the powers of any national or occupation court established or to be established in any Allied territory or in Germany for the trial of war criminals." (Art. 6.) No similar tribunal was ever established under the London Agreement. We know that the only one which was established tried but the single case of Goering, et al.

Control Council Law No. 10, the basic authority for Military Tribunal IV, was enacted after the London Agreement. As heretofore shown, that law, in addition to defining war crimes, empowered each Zone Commander, for his zone, to designate the

tribunals to try such cases and to determine the rules and procedure for such tribunals. It also provided that nothing therein should impair the jurisdiction of the International Military Tribunal established under the London Agreement. In connection with this proviso we should note that the declared purpose of Control Council Law No. 10 was to give effect to the London Agreement and "to establish a uniform legal basis in Germany for the prosecution of war criminals * * * *other than those dealt with by the International Military Tribunal, * * **"* So we think there is no conflict between the two enactments. Rather do they complement each other. If, perchance, there be any point of conflict, it would seem that the terms of Law No. 10 should prevail, not only because it was enacted later, but by reason of these supporting circumstances: First, the President's Directive of October 17, 1945, (*supra*), issued through his Joint Chiefs of Staff to the Commanding General of the American Forces, recognizing the Control Council as the "supreme organ of control over Germany," and the American Commanding General as "clothed with supreme legislative, executive, and judicial authority" in the area occupied by his command, and Second, the President's nomination of the jurists who were designated by the Commanding General as members of Military Tribunal IV. (Executive Order, May 31, 1947, *supra*.) Those acts of the Executive, in the exercise of his war powers, furnish strong support to the series of events culminating in the establishment of Military Tribunal IV.

Concededly, the International Military Tribunal, established under the London Agreement, was a court of international character. How, then, can it be said that Military Tribunal IV was not of the same character, with its existence and jurisdiction rooted in the sovereignty of the Four Powers, exercised jointly through the supreme governing authority of the Control Council? We think, therefore, that the tribunals established under its authority were legitimate and appropriate instruments of judicial power for the trial of war criminals. (See 39 Am. J. Int'l. Law, 1945, at p. 525.)

Accordingly, we are led to the final conclusion that the tribunal which tried and sentenced Flick was not a tribunal of the United States. Hence the District Court was without power to review its judgment and sentence. (*Hirota* case, *supra*.) Therefore, the order of the District Court dismissing the petition for the writ is

Affirmed.

* Italics supplied.

XV. DECISION OF THE SUPREME COURT OF THE UNITED STATES, 14 NOVEMBER 1949, DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPREME COURT OF THE UNITED STATES

Monday, November 14, 1949

Present: Mr. Chief Justice Vinson, Mr. Justice Black, Mr. Justice Reed, Mr. Justice Frankfurter, Mr. Justice Jackson, Mr. Justice Burton, Mr. Justice Clark, and Mr. Justice Minton.

No. 317. Friedrich Flick, petitioner, *v.* Louis A. Johnson, Secretary of Defense, Gordon Gray, Secretary of the Army, et al. Petition for writ of certiorari to the Court of Appeals for the District of Columbia Circuit denied. Mr. Justice Black is of the opinion certiorari should be granted. Mr. Justice Jackson took no part in the consideration or decision of this application.*

* United States Reports, vol. 338, p. 879; rehearing denied, *ibid.*, p. 940.

APPENDIX

Glossary of Terms and Abbreviations

TERMS

Aktiengesellschaft (A.G.)	.....	Corporation.
Allgemeine SS	.....	General SS.
Aufsichtsrat *	.....	Supervisory board (of directors).
Braunkohle	.....	Brown coal (lignite).
Generaldirektor	.....	Director General.
Gau(e)	.....	Regional division(s) (usually the size of a province) of Nazi Party.
Gauleiter	.....	Leader of a Gau.
Huettenwerke	.....	Steel works.
Justizrat	.....	Title of lawyers, attorneys, and notaries.
Kleine Kreis	.....	Small Circle—a group of industrialists which exercised great influence over the coal, iron, and steel industries.
Kohlenwerke	.....	Coal works (mines).
Kommanditgesellschaft (K.G.)	.....	Company partnership in which at least one partner bears full liability and others limited liability.
Kommerzienrat	.....	Commercial counselor, honorary title for industrialists and businessmen.
Konzern	.....	Concern (term denotes all Flick enterprises).
Landrat	.....	Highest administrative official of a county (Kreis).
Oberpraesident	.....	Chief of Administration of a Prussian province; corresponds to position of Reich Governor in other German states.
Ortsgruppenleiter	.....	Leader of a subdistrict of the Nazi Party.
Praesidium	.....	Governing board (board of governors).
Prokurist	.....	Corporation or company official with full power of attorney.
Referent	.....	Supervisor of several professional officials; section chief; expert in a particular field.
Regierungspraesident	.....	Highest administrative official of a state district. Each German state is subdivided into several administrative districts (Regierungsbezirke).
Reichsbahn	.....	Reich railways.
Reichsfuehrer SS	.....	Reich Leader SS (Himmler).
Reichsgesetzblatt	.....	Reich Law Gazette, official publication of the Reich government for promulgation of all Reich laws and ordinances.

* For a further explanation of this term see section IV A, this volume.

Stahlhelm	German veterans organization of World War I, incorporated into the SA in 1933.
Standarte	Regiment in the SS, SA, etc.
Steinkohle	Soft coal (bituminous).
Verwaltungsrat	Supervisory board.
Vorstand *	Managing board (of directors); may indicate individual member of managing board.
Waffen SS	Armed SS.
Wehrmacht	German Armed Forces.
Wehrwirtschaftsfuehrer	Military economy leader.
Winterhilfswerk	Winter Welfare Fund.
Wirtschaftsgruppe Eisenschaffende Industrie	Economic Group Iron Producing Industry.

* For a further explanation of this term see section IV A, this volume.

ABBREVIATIONS

AG	..... Aktiengesellschaft	..... Corporation.
AKW	..... Anhaltische Kohlenwerke A.G.	.. Anhalt Coal Works, Inc.
Bekowest	... Beauftragter Kohle West	..... Plenipotentiary for Coal in the Occupied Western Territories.
BHO	..... Berg- und Huettenwerke Ost, G.m.b.H.	Mining and Steel Works East, Inc.
Brabag	..... Braunkohlen Benzin Aktiengesellschaft	Brown Coal Petrol Co., Inc.
Bubiag	..... Braunkohlen und Brikett Industrie A.G.	Brown Coal and Briquette Industry, Inc.
DAF	..... Deutsche Arbeitsfront	..... German Labor Front.
Dulag	..... Durchgangslager	..... Transient prisoner of war camp.
FKG (FFKG)	(Friedrich) Flick Kommanditgesellschaft	Flick parent holding company.
Gestapo	..... Geheime Staatspolizei	..... Secret State Police.
G.m.b.H.	.... Gesellschaft mit beschraenkter Haftung	Limited liability company (corporation).
HGW	..... Hermann Goering Werke (Reichswerke H. G.)	Hermann Goering Works.
Mittelstahl	.. Mitteldeutsche Stahlwerke A.G.	.. Central German Steel Works, Inc.
NKW	..... Niederlausitzer Kohlenwerke	.. Niederlausitz Coal Works.
NSDAP	..... Nationalsozialistische Deutsche Arbeiterpartei	Nazi Party.
OKW	..... Oberkommando der Wehrmacht	High Command of the German Armed Forces.
Preussag	.... Preussische Bergwerks- und Huetten A.G.	Prussian Mining and Steel Works, Inc.
RGBl	..... Reichsgesetzblatt	..... Reich Law Gazette, official publication of the Reich government for promulgation of all Reich laws and ordinances.
RVE	..... Reichsvereinigung Eisen	..... Reich Association Iron.
RVK	..... Reichsvereinigung Kohle	..... Reich Association Coal.
RWE	..... Rheinische Westfaelische Eisenwerke	Rhine-Westphalian Iron Works.
RWKS	..... Rheinisch-Westfaelisches Kohlen Syndikat	Rhine-Westphalia(n) Coal Syndicate.
SA	..... Sturmabteilung	..... "Storm Troop Force" of the Nazi Party.
SD	..... Sicherheitsdienst	..... Security and Intelligence Service of the SS.
Siemag	..... Siegener Maschinenbau A.G.	..... Siegen Machine Construction, Inc.
SS	..... Schutzstaffel	..... Elite Guard and "Protective Force" of the Nazi Party.
Stahlverein	.. Vereinigte Stahlwerke A.G.	..... United Steel Works, Inc.
Stalag	..... Stammlager	..... Permanent prisoner of war camp.

German Civil Service Ranks ¹

I. *Lower level.* ²

II. *Intermediate level.*

1. Assistant ²
2. Sekretar ²
3. Obersekretar ²

III. *Upper level.*

1. Inspektor ²
2. Oberinspektor ²
3. Amtmann ²
4. Amtsrat ²

IV. *Higher level.*

1. Regierungsrat
2. Oberregierungsrat
3. Ministerialrat
4. Ministerialdirigent
5. Ministerialdirektor
6. Staatssekretar

¹ The German Civil Service is divided into two main groups: Beamte (officials) and Angestellte (employees). Beamte are classified according to four levels: Beamte of "unteren Dienstes" (lower level), "einfachen mittleren Dienstes" (intermediate level), "gehobenen mittleren Dienstes" (upper level), and "Hoheren Dienstes" (higher level). Angestellte are mainly custodial employees, workers, and minor clerks, but the term also includes some specialists who do not have Beamten status.

² Officials of the "lower level" are usually clerical employees and are usually addressed with the title of their position (such as "Buerovorsteher," chief clerk).

³ Usually carries a prefix such as "Regierung," "Verwaltung," "Ministerial," etc.

List of Witnesses in Case 5

[*Note.*—With the exception of Albert Speer, whose testimony was taken before a commission at Spandau Prison, all witnesses in this case appeared before the Tribunal. Prosecution witnesses are designated by a "P", defense witnesses by the letter "D". The names not preceded by any designation represent defendants.]

	<i>Name</i>	<i>Date of Testimony</i>	<i>Pages (mimeographed transcript)</i>
P	ALBRECHT, Erich	4 Nov 47	9985-10023
D	BLESSING, Karl	18 Aug 47	5679-5718
D	BOGE, Eduard	22, 23 Oct 47	9224-9281
P	BRAMBUSCH, Rainer	29 May 47	2378-2430
P	BROCKKUES, Friedr. Bernhard	14, 15 Aug 47	5573-5677
	BURKART, Odilo	29 Aug; 2-5, Sep	6423-6805
P	CHEYKO, Sonia	2 May 47	802-836
P	DUDIK, Frantisek	9 May 47	1299-1333
	FLICK, Friedrich	2, 3, 7-11, 14-17, Jul 47	3150-3915; 10329
D	FLICK, Otto Ernst	15, 16 Sep 47	7350-7427
D	GEBHARDT, Josef	6 Nov 47	10046-10064
P	GRITZBACH, Erich	3, 4 Jun 47	2470-2579
P	HAHN, Rudolf	15 Oct 47	8749-8812
P	HANNEKEN VON, Hermann ..	21-23 Jul 47	4053-4226
P	HLAVAC, Josef	29 Apr 47	603-655
P	JANTZEN, Walter	14 Aug	5513-5573
	KALETSCH, Konrad	17-19, 22-24 Sep 47 ..	7492-7936
P	KEPPLER, Wilhelm	18 Aug 47	5720-5755
P	KIMMICH, Wilhelm	5, 6 Jun 47	2586-2701
P	KITTELMANN, Karl	28 May 47	2293-2355
P	KNIESS, Gustav	17 Sep 47	7457-7492
P	KRATOCHVIL, Mojmir	9 May 47	1263-1298
D	KUETTNER, Karl	5, 8 Sep 47	6805-6872
D	LAERMANN, Walter	30, 31 Oct 47	9747-9810
P	LAURENT, Jacques	14 Oct 47	8696-8748
P	LETSCH, Walter	30 Sep; 1 Oct 47	8036-8140
P	LINDEMANN, Karl	11-13 Jun 47	2907-3015; 3109-3113
P	LIPOLD, Zdenek	2, 5 May 47	836-908
P	MAUDR, Emil	5, 6 May 47	936-995
D	MILCH, Erhard	8 Oct 47	8433-8496
D	OEHME, Friedrich	11, 12 Sep 47	7151-7199
D	PLEIGER, Paul	23-25 Jul 47	4226-4423
D	REICHERT, Jakob Wilhelm ..	27, 28 Aug 47	6244-6312
P	RITTENBERG, Wladimir	28, 29 Apr 47	532-562; 575-600
D	ROECHLING, Hermann	12, 15 Sep 47	7228-7343
P	ROESSLER, Auguste	9, 10 Jun 47	2752-2856
D	ROHDE, Alfred	13 Aug 47	5461-5511
P	ROHLAND, Dr. Walter	28, 29 Aug 47	6317-6398

	<i>Name</i>	<i>Date of Testimony</i>	<i>Pages (mimeographed transcript)</i>
D	SCHACHT, Hjalmar	21 Jul 47	3981-4052
D	SCHLARB, Otto	3, 6, 7 Oct 47	8269-8408
D	SCHLEIER, Rudolf	20, 21 Aug 47	5842-5944
D	SCHROEDER VON, Kurt	28 Jul 47	4425-4464
D	SIMON, Ernst	8-10 Sep 47	6902-7011
D	SOGEMEIER, Martin	1, 2 Oct 47	8140-8226
D	SPEER, Albert	8, 9 Oct 47	9126-9153
	STEINBRINCK, Otto	30, 31 Jul; 1, 4-8, 11-13 Aug 47	4674-5460; 10329-10331
P	STOTHFANG, Walter	22, 25 Aug 47	5968-6095
D	TENGMANN, Walter	9, 13 Oct 47	8535-8678
	TERBERGER, Hermann	24, 27-29 Oct 47	9337-9657
P	TRAVERS, Fernand	30 Apr; 1 May 47	656-738
D	VOGEL, Herbert	30 Oct 47	9658-9738
P	VOYTOVITCH, Evelokia	1, 2 May 47	739-801
D	WEINHARDT, Bernhard	21, 22 Oct 47	9156-9210
	WEISS, Bernhard	16, 17, 20, 21 Oct 47 ..	8885-9125
D	WEISSER, Erich	10, 11 Sep 47	7021-7144
D	WESEMAN, Friedrich	31 Oct 47	9812-9820
P	WOLFF, Karl	4 Nov 47	10023-10033

**Photographic Reproductions
of Documentary Evidence**

NI - 10103

Berlin, den 25. Februar 1936.

Herrn

Prof. Dr. Dr. Emil H. Meyer,
SS-Untersturmführer,
Vorstandsmitglied der Dresdner Bank,

Berlin W. 56,

Persönlich!

Behrenstr. 38.

An den Freundeskreis des Reichsführers SS.

Am Schlusse der zweitägigen Münchener Besichtigungsreise, zu der uns der Reichsführer SS im Januar eingeladen hatte, war sich der Freundeskreis darüber einig, dass er - jeder nach seinem Vermögen - für gewisse ausserhalb der etatsmässigen Finanzierung liegende Aufgaben, dem Reichsführer auf einem beim Bankhaus J.H.Stein in Köln einzurichtenden Konto "Sonder-Konto S" Beträge zur Verfügung stellen wollte. Dadurch soll der Reichsführer in die Lage versetzt werden, sich auf seine Freunde insgesamt stützen zu können. Es wurde in München beschlossen, dass die Unterzeichneten sich für die Einrichtung und Betreuung dieses Kontos zur Verfügung stellen sollten. Das Konto ist inzwischen errichtet und jeder Beteiligte soll wissen, dass, wenn er - sei es aus seiner Firma oder seinem Freundeskreis - dem Reichsführer Zuwendungen für seine oben erwähnten Aufgaben machen will, die Einzahlungen an das Bankhaus J.H.Stein, Köln, (Reichsbankgirokonto der Postscheckkonto Nr. 1392) für Rechnung des Sonder-Kontos S erfolgen können.

Heil Hitler!

Baron von Schroeder *Steinbrinck*

DOCUMENT NI-10103, PROSECUTION EXHIBIT 788, SIGNED BY BARON VON SCHROEDER AND DEFENDANT STEINBRINCK, CONCERNING THE ESTABLISHMENT AND PURPOSES OF "SPECIAL ACCOUNT S," SET UP BY THE "CIRCLE OF FRIENDS." TRANSLATION APPEARS ON PAGE 238.

NI-9981

Berlin / Köln, den 26. April 1937.

Handwritten notes:
16 April 1937
Was
K 2

Herrn

Professor Dr. Emil Heinrich Meyer,
Dresdener Bank,

Berlin W 8,

Persönlich!

Behrenstr. 38.

Sehr geehrter Herr Dr. Meyer!

Als wir im vorigen Jahr mit unseren Rundschreiben an den Freundeskreis des Reichsführers SS herantraten, galt es, dem Reichsführer bei der Durchführung gewisser Aufgaben, die nicht aus etatsmässigen Mitteln zu bestreiten waren, behilflich zu sein. Der Erfolg unseres Rundschreibens war ein grosser und ist vom Reichsführer sehr dankbar anerkannt worden. Wir wissen, dass die Aufgaben des Reichsführers nicht kleiner geworden sind; sie sind uns insbesondere bei der Tägung im Februar deutlich vor Augen geführt.

Wenn wir daher den Freundeskreis des Reichsführers heute wiederum darauf hinweisen, dass in gleicher Weise wie im Vorjahr, beim Bankhaus J.H. Stein in Köln (Reichsbankgironkonto, Postscheck-Konto Köln Nr. 1392) ein "Sonder-Konto S" für dieselben Zwecke eingerichtet ist, so tun wir das im Vertrauen auf das Verständnis für die Notwendigkeiten dieser Aufgaben und hoffen, dass auch hier Wiederhall der gleiche wie im vorigen Jahr sein möge.

Gemäss dem Münchener Beschluss von 1936 haben die Unterzeichneten auch diesmal die Betreuung des Kontos übernommen.

Heil Hitler!

(Otto Steinbrinck)

(Frhr. v. Schröder)

END

NI-900

Berlin, den 31 Januar 1938.

Herrn

Dr. Friedrich Flick,

Berlin.

=====

Zur vorbereitenden Lösung des Petschek-Problems beauftrage ich Sie hierdurch mit den massgebenden Kreisen der Gruppe Ignaz Petschek und der Gruppe Julius Petschek Verhandlungen einzuleiten mit dem Ziel, die Erwerbsmoglichkeiten und Erwerbsbedingungen der Gruppen für den ganzen ~~oberschlesischen Teil dieses~~ Besitzes festzustellen. Sie sind von mir ermächtigt, allein die Verhandlungen zu führen, aber auch berechtigt, im Namen eines Konsortiums aufzutreten.

Vor dem Abschluss ist meine Entscheidung einzuholen.

mit Auftrags- und Kopie Befehl
1/31/38 215



NI 3613

~~SECRET~~

W. Str.

7.7.1943.

Notiz für Herrn Flick.

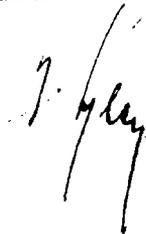
Betr.: Verlagerungen der Firma Krupp nach Schlesien.

Aufgrund der Notiz des Herrn Dr. Küttner vom 6. d. M. fragte ich heute Herrn Dr. Putze, wie sich die grossen Verlagerungen der Firma Krupp nach Schlesien arbeitseinsatzmässig auswirken würden. Herr Putze sagte mir, dass er als Rüstungsobmann und auch von seiten der Gauwirtschaftskammer selbstverständlich weitgehend darauf dringen würde, dass die Firmen, die die Fertigung von den Westen nach Schlesien verlagern, auch ihre Arbeitskräfte für diese Fertigung mitbringen. Er habe allerdings festgestellt, dass vielfach Betriebserrichtungen in Schlesien als Verlagerungen bezeichnet wurden, während es sich tatsächlich um Ausweitungen handelte. Bei seiner nächsten Anwesenheit in Berlin wolle er uns einmal Näheres hierüber erzählen.

Bei IWK ist die Arbeitseinsatzlage vorläufig noch befriedigend. In diesen Tagen sind 260 Zivilfranzosen eingetroffen. Die Zuweisung von Zivilfranzosen soll insgesamt auf 500 Mann gebracht werden. Mit diesen Zuweisungen sind die Abgänge seit Frühjahr d. Js. hauptsächlich bei den russischen Kriegsgefangenen ausgeglichen.

Ausserdem sollen wir noch zusätzlich Leute erhalten für die Fertigung des A 4-Gerätes und der Panzer.

H. K. Kaletsch
" Dr. Burkart



DOCUMENT NI-3613, PROSECUTION EXHIBIT 176, SIGNED BY DEFENDANT WEISS, WITH COPIES TO DEFENDANTS KALETSCH AND BURKART, CONCERNING THE PARTIAL TRANSFER OF KRUPP'S PRODUCTION TO SILESIA AND ITS EFFECT ON PROBLEMS OF LABOR ALLOCATION. TRANSLATION APPEARS ON PAGE 747.

INDEX OF DOCUMENTS AND TESTIMONIES

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EC-453	Pros. Ex. 682	Letter from von Schroeder to Himmler, 21 September 1943, transmitting list showing contributions by members of the Circle of Friends totaling 1,100,000 Reichsmarks, and expressing satisfaction in being of assistance to Himmler "in his special tasks."	270
EC-454	Pros. Ex. 681	Letter from von Schroeder to Himmler, 27 August 1943, congratulating him on his appointment as Reich Minister of the Interior, and announcing that the Circle of Friends has again placed a sum "slightly in excess of 1 million marks" at Himmler's disposal for "special purposes."	269
NI-028	Pros. Ex. 8	Article in "The Archive," December 1937, concerning the appointment of military economy leaders.	246
NI-048	Pros. Ex. 516	Correspondence and discussion involving claims of German iron and steel manufacturers with respect to the ownership and operation of mines and steel works in areas of western Europe newly occupied by Germany, June 1940.	873
NI-049	Pros. Ex. 534	Letter from von Hanneken to Poensgen, 31 January 1941, showing German concerns assigned to operate iron smelting works in Lorraine and Luxembourg on behalf of the Reich with conditional opportunity to purchase after the war, allotment of Rombach to Flick, and related matters.	900

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NI-456.....	Pros. Ex. 154.....	Copy of letter from Sauckel's office to two regional labor offices, 10 March 1943, reporting results of an inspection at eastern workers' camps of Ruhr factories, and undated memorandum from Sauckel's office to the Reich Association Iron, transmitting copy and requesting steps to redress grievances noted.	742
NI-784.....	Pros. Ex. 397.....	Memorandum of defendant Flick, 19 January 1938, made in preparation for an imminent conference with Hermann Goering, outlining what Flick intended to tell Goering about the Petschek question and related matters.	450
NI-889.....	Pros. Ex. 453.....	File note of defendant Steinbrinck on conversations with Voss of the Hermann Goering Works on the Petschek question, 2 February 1939, concerning possibilities of exchange of coal with the Hermann Goering Works, various claims to Petschek brown coal, and related matters.	511
NI-891.....	Pros. Ex. 451.....	Copy of a letter from Dr. Leising, trustee for the Ignaz Petschek Production Companies, to an unnamed addressee, 27 January 1939, requesting proposals for the sale of "your industrial enterprise" by 28 February 1939, and related matters.	509
NI-892.....	Pros. Ex. 450.....	Copy of letter from the Reich Ministry of Economics to an unnamed addressee 19 January 1939, directing sale of an industrial enterprise, appointing Dr. Leising as trustee of the enterprise, and related matters.	508
NI-894.....	Pros. Ex. 444.....	File note by defendant Steinbrinck, 13 October 1938, concerning measures taken with respect to the Ignaz Petschek enterprise in Aussig after Ger-	496

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		many occupied the Sudetenland, the report that the Petscheks were now prepared to sell, Flick's continuing authority to negotiate, and related matters.	
NI-895.....	Pros. Ex. 443.....	File note of defendant Steinbrinck, 7 October 1938, concerning the appointment of a commissioner for the Ignaz Petschek firm in Aussig, the transfer of firms in the Sudetenland to the Hermann Goering Works, and related matters.	495
NI-897.....	Pros. Ex. 438.....	Letter from defendant Steinbrinck to Neumann, 22 June 1938, concerning the indifferent attitude of the Ignaz Petschek group, the expediency of legal measures to achieve Aryanization, and related matters.	485
NI-898.....	Pros. Ex. 437.....	Letter from Hugo Dietrich to defendant Steinbrinck, 20 June 1938, transmitting an analysis of present and proposed German laws under which the Ignaz Petschek properties might be transferred to German hands.	480
NI-899.....	Pros. Ex. 416.....	Letter from Goering to defendant Flick, 1 February 1938, ordering Flick to make known Flick's exclusive right to negotiate the acquisition of Petschek properties, and cancelling all other negotiations.	464
NI-900.....	Pros. Ex. 411.....	Letter from Hermann Goering to defendant Flick, 21 January 1938, empowering Flick alone to conduct negotiations with representatives of the Petschek groups concerning the possibilities of acquiring the entire Petschek properties. (Photographic reproduction of this document appears on p. 1242.)	460
NI-908.....	Pros. Ex. 679.....	Affidavit of Wilhelm Keppler, 24 September 1946, concerning the establishment, membership and activities of the Circle of Friends.	285
NI-929.....	Pros. Ex. 458.....	Memorandum of defendant Steinbrinck for defendant Flick, 24 February 1939, concerning the forthcoming plan of the Reich Ministry of Economics for dis-	524

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		tributing Ignaz Petschek properties, proposed strategy for meeting associated problems, and related matters.	
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NI-932.....	Pros. Ex. 471.....	File note of defendant Steinbrinck, 8 November 1939, concerning discussions with Hahn and State Secretary Koerner on exchange negotiations between representatives of the Hermann Goering Works and Flick, the plan for exchange presented by Steinbrinck to Koerner, and related matters.	551
NI-934.....	Pros. Ex. 478.....	Draft of a directive proposed by defendant Steinbrinck for issuance by the Plenipotentiary for the Four Year Plan, 6 December 1939, and transmitted to the chief of Goering's personal staff, Dr. Gritzbach.	561
NI-935.....	Pros. Ex. 476.....	Directive of Koerner, State Secretary and Goering's permanent deputy for the execution of the Four Year Plan, to Flick, 6 December 1939, stating that special importance is attached to the rapid conclusion of the negotiations on the exchange of soft coal for brown coal.	562
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NI-1644.....	Pros. Ex. 536.....	Letter from defendant Flick to the trustee for enemy property, group industrial economy in Lorraine, 1 March 1941, concerning the assumption of trusteeship over the Rombach and	904

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NI-1988.....	Pros. Ex. 544.....	Plant lease contract for the Rombach and Machern plants, 15 December 1942, signed by the administrator of the iron foundries of Lorraine and defendant Flick, with effect as of 1 March 1941.	920
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		with government representatives, 20 January 1943, concerning proposals of the Flick Concern for revision of Rombach amortization provisions, Flick's investments in Rombach, difficulties of purchase by Flick because of Goering's position, and related matters.	
NI-2522.....	Pros. Ex. 294.....	Letter from Reich Association Iron to various officials of the association, including defendant Flick, 17 August 1942, transmitting documents to be used in preparing for an association meeting, including Roechling's report for July 1942, noting arrival of prisoners of war and Russian civilian workers pursuant to the association's request.	729
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NI-3026.....	Pros. Ex. 145.....	Extracts from the monthly report of Flick's Bautzen railroad car factory, August 1944, noting imminent employment of 800 concentration camp inmates, the change in status of Italian military internees to civilian status, and related matters.	756
NI-3125.....	Pros. Ex. 21.....	Affidavit of defendant Weiss, 18 December 1946, concerning his personal history, the distribution of duties within the Flick Concern, and related matters.	209
NI-3166.....	Pros. Ex. 127.....	Letter from Flick's Mittelstahl to various Flick plants, 26 June 1942, reporting upon information obtained from leading officials of the Labor Ministry on methods of procuring skilled labor from foreign countries.	723
NI-3194.....	Pros. Ex. 143.....	Memorandum from defendant Weiss to defendant Flick, 16 January 1942, concerning requests for Russian prisoners of war as labor replacements at the Busch railway car factory.	701
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NI-3267.....	Pros. Ex. 459.....	Letter from defendant Flick to Gritzbach, chief of Goering's personal staff, 1 March 1939, concerning Flick's mandate to negotiate with the Ignaz Petschek group, requesting Gritzbach to mention to Goering the intention to favor Flick's Lausitz group in the forthcoming distribution of coal properties, and related matters.	529
NI-3272.....	Pros. Ex. 457.....	Letter from defendant Steinbrinck to the Reich Ministry of Economics, 22 February 1939, summarizing the parceling out to German concerns of Julius Petschek properties, noting Goering's approval for increasing brown coal basis of Flick's Mittelstahl firm, and applying for specific allocations of brown coal from Ignaz Petschek group.	522
NI-3277.....	Pros. Ex. 455.....	File note of defendant Steinbrinck, 10 February 1939, with handwritten notes and underlining by defendant Flick, concerning various conferences on the Petschek question, additional persons and agencies interested in Petschek properties, and related matters.	515
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		schek group, to negotiations, and the probable consequences.	
NI-3290.....	Pros. Ex. 449.....	File note of defendant Steinbrinck on a conversation with mining counselor Gabel, 14 January 1939, concerning claims to Ignaz Petschek brown coal properties, possible exchange of Lausitz soft coal for brown coal in central Germany, position of the Hermann Goering Works, Paul Pleiger, and the impending appointment of a trustee for Ignaz Petschek properties, and related matters.	504
NI-3314.....	Pros. Ex. 442.....	File note of defendant Steinbrinck, 5 October 1938, concerning his conversation with Ministerial Director Wohlthat on State directives to control the movement of all moneys of Petschek enterprises or of closely associated enterprises and other measures taken or contemplated with respect to Petschek properties.	493
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