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P e t i t i o n

of the prisoner Gottlob B e r g e r, born 16 July, 1886, in Gerstetten/Wuerttemberg

to the

HIGH COMMISSIONER
of the United States Government in Germany
General John M c C l o y

through

Clemency Board, Munich.

Petitioning for

remitting the rest of my conviction to 25 years
imprisonment, inflicted on me by Military Tribunal
No. IV, Case XL with the verdict of 11 April, 1949.

I submit the following:

Part I.

I should like to begin my petition with a letter from Major General USAF Arthur W. Vanaman and Brigadier General USAF Delmar T. Spivey, dated 10 February, 1950, as an example for similar letters, which I received in prison. The original is attached to the English text, and a photographic copy is attached to the German text.

The sentence

"It was you who did so much to safeguard us and take care of us while we were prisoners of war."

expresses facts, owing to which I confidently expect this petition to be successful.

In the following paragraph the words of the above mentioned favoured persons themselves will prove these facts.

I personally restrict myself for self-explanatory reasons to a connecting text.

Preamble

The British Dictator and Lord Protector of the United Republic of England, Scotland and Ireland, Oliver Cromwell, said once - according to a biographer -
to the General Resident Ministers:

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"Do not use your power sparingly, not there, where you have to be severe, but still less where you may be kind!"

I have always endeavoured to act according to these words, and I always strove for doing justice to them in my attitude towards my subordinates.

It will be of great importance for the result of my petition how far I succeeded in this endeavour, and whether the effects give a true picture of my character.

A) Personal Interfering in Favour of Foreigners

Following to the treatise of the accusation regarding Count V - Crimes against Humanity - the sentence stated:

"During the last months of the war the defendant Berger - according to the documents - saved the lives of American officers and soldiers, who were in great danger as they were either to be executed or to be treated as hostages, on the ground of Hitler's orders.

By acting against the orders given to him and taking steps in favour of these men Berger risked his own security."

Such facts are shown in the following paragraphs 1 - 7, the reality of which was recognized by the Tribunal.

1. Congress of Doctors Berlin-SchwaneWerder

In autumn 1944 after my nomination as Chief of Prisoners-of-war Affairs there was - owing to the break-down of transport and food conditions in consequence of air-raids - a sanitary crisis on the largest scale in the prisoner-of-war-camps.

From the first it seemed to be of no use to ask for action from the highest authorities - OKW/Himmler/Hitler. The answer would have been like it had already been before in similar cases: The enemies themselves have caused these conditions by their air-raids, why except the prisoners-of-war of their own nationality from the consequences?

Together with the German Red Cross and the Delegation of the International Red Cross for Germany I succeeded in preventing the dangers for the prisoners' lives and health or at least in moderating them. Owing to my endeavours a congress of German physicians, under the leadership of the Chief of the Foreign Department of the Reichsärztekammer in Berlin, Professor Dr. med. Helmut Haubold, and eight American army doctors took place in Berlin-SchwaneWerder from 28 March until 30 March, 1945, inclusive. The highest ranking American prisoner-of-war, Brigadier

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General USAF Arthur W. Vanaman and his staffleader Colonel USAF Delmar T. Spivey took part in this congress. I enclose herewith the protocol done by these officers together with the American army doctor Capt. USMC Gordon Keppel, dated 30 March, 1945, as

Appendix 1.

It is supplemented by an affidavit given by Professor Dr. Haubold on 2 July, 1948,

Appendix 2.

Summing up Item 20 it reads:

"I got to know General Berger only in February 1945, when his decisions as Chief of Prisoners-of-War Affairs were absolutely necessary on account of the deterioration of the sanitary position. At that time he immediately acted on the doctors' appeal to do everything he could for safeguarding the situation of the American and British prisoners, as far as special sanitary dangers were concerned. Knowing the sanitary problems which were at stake, he even warded off an attempt of Dr. Goebbels to prohibit the Doctors' Congress at Schwanenwerder, who tried to reprimand the German doctors. He (Berger) gave the order that the Doctors' Congress should be continued under his protection."

2. Mission Vanaman and Spivey

During this Doctors' Congress General Vanaman and Colonel Spivey, who were my guests, and I talked in my fixed quarters frankly about all difficulties caused by the war situation. Both of them agreed in general to my proposal to save them from a danger for their lives, which they apparently had not been aware of, and to return to the United States in order to take all steps which were necessary for warding off immeasurable dangers for the prisoners of war. Moreover it was my wish to express with the help of these two generals my apprehension connected for me as a German general with the Russian invasion of Europe.

This is proved by the affidavit of Major General Arthur W. Vanaman, dated 24 May, 1948,

Appendix 3,

and of Colonel Delmar T. Spivey, dated 12 May, 1948,

Appendix 4.

I wrote out for the two prisoners-of-war officers a certificate signed by me and provided with the seal of the SS-Hauptamt, which read:

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"The bearer of this certificate, General Vanaman (respectively Colonel Spivey) was discharged by me from the German war imprisonment and is under my personal protection."

I informed SS-Brigadeführer Schellenberg about this and asked him to issue the two American officers with a certificate, which made it possible for them to enter Switzerland immediately. Dr. Lange got the order to accompany the two officers into Switzerland, from where they intended to fly via Paris to the United States to hasten the execution of the measures talked over by us. About two weeks later - I thought the two officers to be in Washington already - I heard that both of them, according to an order Hitler-Himmler, had only advanced as far as Konstanz, where they should serve as a dead pledge and perhaps should be treated as hostages. Referring to my orders and being protected by the above mentioned certificate, Dr. Lange did not pay attention to these orders and on my and his responsibility removed both of them from Himmler's power by sending them over the Swiss border. These facts are proved by the affidavit of Studienrat Dr. Heinz Lange, dated 24 February, 1948,

Appendix 5.

For the sake of completeness I may cite Appendix 2, Item 19:

"Moreover the question was discussed if possibly General Vanaman should go himself to Geneva to arrange that the prisoners-of-war were provided with food and medicaments, and after these negotiations should return to Germany. General Vanaman seemed to be very suitable for this task, knowing from own experience the difficulties among the prisoners-of-war, who lived under the unfavourable sanitary conditions of the German break-down. General Berger then - as far as I know - ordered on his own that General Vanaman and his staff-officer could go to Switzerland before the end of the war without having to return to Germany."

3. Prisoners of War Agreement with General Eisenhower and the Transfer of Prisoners of War in the East.

On my own initiative I tried by other means to do everything to save first of all the Anglo-American prisoners-of-war from the great dangers they were exposed to by living in the zone of active war operations. How far I succeeded in this is to be seen from the affidavit of the Secretary of the Swiss Embassy, Max Kunig, dated 10 March, 1948,

Appendix 6.

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Contrary to the West this could only be achieved for prisoners of war living in camps near the Eastern German border by a resolution of organising and carrying through a transfer by dangerous foot-marches. This very difficult resolution was made easier to me by corresponding requests of the prisoners of war themselves, who did not want to be "liberated" by the Red Army, and by the following event:

During a surprising advance of the Red Army near Aldrewitz the inmates of the American prisoner-of-war-camp had to decide whether they wanted to stay or try to break through the frozen Oder. They did not hesitate for one moment and successfully broke through, after by the guns of Soviet tanks about 200 Americans had been killed or wounded, though the camp had been clearly marked with American flags etc.

At the pleading I was accused of having caused starvation and the death of many thousands of prisoners-of-war, because under the most difficult weather conditions the prisoners had to march in two groups without sufficient rest, accommodation, food, clothing and sanitary care. Though I was not found guilty in this Court, I believe that the reason of this acquittal - owing to insufficient proof of guilt - does not do justice to the actual facts. In Karlsbad a representative of the Swiss Schutzmacht thanked me in front of the prisoners-of-war in the name of their governments for this deed, which saved the lives of thousands of them.

In the conception of the OKW the saving of the prisoners of war was not necessarily the most important thing. The plans for one of the groups were such that they had to pass mountains, and according to my calculations on the map and to personal inspections daily differences of altitude of at least 100 m, mostly up to 200 m had to be overcome. It was clear that many prisoners of war could not cope with such strains and, therefore, would have died on the road-side. It is my personal merit that this was prevented. All on my own I sent the group through Czechoslovakia, where sufficient food, security from air-raids and snowless roads in a plain country guaranteed for the saving of the prisoners-of-war. The Reichsprotaktor of that time protested energetically against my plans. I was ordered to give a personal account of my orders. Only after I had overcome the strongest resistance I was successful. How difficult it was to get Hitler's permission - and even that only by the help of Mrs. Eva Braun - I hope to be able to explain verbally to the Petition Board.

The fact that their own and German medical personnel stayed with those prisoners-of-war, who, being exhausted or ill, could not walk any longer, shows the character of these transfers. Moreover these prisoners were provided with sufficient food and medicaments. According to reliable information, however, not only the German

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medical personnel were shot by the Russians immediately but also the ill prisoners-of-war were liquidated. It was for this reason that from then on all prisoners-of-war, who were ill or were unable to march, were sent in advance by cars to military hospitals or elsewhere for recovery. As soon as by this means they were able to walk again they returned to their group. All this consequently formed a unique community. I myself saw more than a hundred English and American prisoners-of-war (Air Force), who helped German families to escape from the Red Army. There was no difference at all between German civilians and allied prisoners-of-war.

4. Preservation of Western Prisoners-of-War from Retaliatory Death by the Anglo-American Air Force

Already towards the end of the year 1944 and, more emphasized, during the last months of the war (end of February, 1945, and later) Hitler had repeatedly given orders to transfer every night 5,000 western prisoners-of-war to Berlin so that they would have been liable to being killed by their own Air Force. This applied also to General Vanaman and Colonel Spivey. Hitler had been informed of the fact that Major General Vanaman had once been Air Force Attache in Berlin and had been a personal friend of President Roosevelt. This caused Hitler to make Major General Vanaman and Staff-Officer Colonel Spivey hostages. When I came to know this I invited both of them to participate as my guests in the Doctors' Congress in Berlin, which actually had nothing to do with them. My personal protection meant safety to them, and when after the Doctors' Congress - see Item 1 - I sent them to Switzerland I did this mainly because I wanted to save them from the fate of the French General Meszney.

Similar orders - like those for Berlin - had been given to further towns, for which there was the danger of permanent air-raids, and the American officers and corporals had been selected individually.

Fully aware of the consequences and irrespective of my own security I disobeyed those orders. I stayed in Berlin myself because this was the only possibility of protecting the prisoners-of-war.

These circumstances are described in the affidavit of an officer of the Finnish Board of Health, Mr. Felix Kersten, dated 18 October, 1948, in

Appendix 7,

Paragraph 5:

"In the beginning of December 1944 Himmler told me that he had been informed by Hitler that 5,000 English and American officers and corporals should be shot as reprisals on English and American

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aeroplanes, which fired at German civilians.

Himmler said that General Berger had been ordered to carry out these executions, but that he (Berger) had disobeyed and not done it.

Himmler was very excited and said furthermore that it was colossal that a SS-General did not obey the Fushrer's orders, and that he should like to take this matter up before a War Tribunal for mutiny. But the war situation at that time was very severe, and therefore he did not want to make such a fuss about it and was going to leave it until the end of the war."

5. The Rescue of Prominent Prisoners-of-war from the Danger of Being Killed as Hostages

Opposed to one of Hitler's orders and staking my own life I transferred American and English prisoners-of-war and a group of high-ranking Polish officers to Switzerland, who had been in the same danger as the two American officers, General Vanaman and Colonel Spivey. I wanted to save them also from General Mesney's fate, and I was successful. As evidence I attach:

my own affidavit with appendix, dated 16 April, 1948,

Appendix 8,

Lord Elphinstone's affidavit, dated 23 March, 1948,

Appendix 9,

a letter from the Swiss Ambassador Dr. Peter Anton Feldscher, dated 10 March, 1948,

Appendix 10,

an affidavit from Dr. med. Kurt Krause, dated 25 March, 1948,

Appendix 11.

The same applies to a group of 35,000 Anglo-American prisoners-of-war, who, according to Hitler's personal order, were supposed to be sent as dead pledge into the "Fortress of the Tyrol" and to lose their lives together with his last adherents.

6. The Rescue of Two US-Pilots, who had Made a Forced Landing, by Risking My Own Life

The witness Dr. Eppenauer described in his statement (Prot. German 8328, English 8140) how I rescued an allied air-pilot from the rage of owing to air-raids on their homes extremely excited Berlin civilians.

It is hardly imaginable, which revolting atmosphere I had to face by this action. The undescrivable misfortune that had come over the German population, the rage

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against the originators of this distress, and the extremely strained instincts of reprisal seemed to have swept away all order and human propriety. The American sergeant, who had to make a forced landing, seemed to be the victim of all those feelings. Without my interfering he undoubtedly would have become the victim of this fury and would have been exposed to the mob-law. For a single person the rescue of the American sergeant from danger to life was possible only by risking my own life. I tried to beat the masses, and I succeeded.

This event is confirmed by the affidavit of the Reich Youth Leader of that time, Mr. Arthur Axmann, dated 1 March, 1948,

Appendix 12.

Moreover it is stated that on our way through the burning Berlin the raging masses tried once more to get hold of the American sergeant, when they recognized him in my car. Again I had to risk my life to protect him from the furious civilians. In my fixed quarters I gave him food and arranged that he was sent into the respective prisoner-of-war camp.

As witness in my own case I described upon my oath a second event of similar character (Prot. German 6411, English 6411/42).

7. Radical Re-Organization of the Eastern Prisoners' Living Conditions

During the trial the Prosecutorial Board tried to depreciate the from 1_x to 6_x mentioned measures - which partly had only been quoted as examples - for purely speculative reasons. It is, however, very easy to perceive from the simultaneous improvements of the terrible fate the Soviet prisoners-of-war until then suffered, from, how much I was concerned about the prisoners' lives.

a) The Empowering of the Witness Karl J. Albrecht with Special Unlimited Authorizations.

One of the very first things I did after I had been made Chief of the Prisoners-of-War Affairs was to appoint to my personal adviser the author of the book "The Betrayed Socialism", who was a witness in the trial.

Albrecht was not "somebody". Several times he had addressed memorandums to all high authorities, which dealt with eastern labourers and eastern prisoners-of-war: to the Ministry Rosenberg, to the OKW, to Dr. Ley, the leader of the Deutsche Arbeitsfront, to the Reichspropagandaministerium and to the authorized person for the labour program. In these memorandums he asked categorically for equality of rights for the eastern people, realization of all practical consequences following this fundamental principle, the same rights for eastern labourers and prisoners as for western prisoners-of-war, and for the administration of all internal affairs

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on a democratic bases. The esteem he had for the eastern people was linked in the memorandums with a very clear opposition against the Bolshevist ideology in the reality of the Soviet system.

This is quoted in order to prove that by appointing Albrecht to my personal adviser for all problems concerning the eastern prisoners I never intended to ensure myself of the favour of the Bolshevists in the case of a German defeat.

This re-organization was at the same time a unique and permanent riot against the until then existing doctrine of the Party. I was quite aware of the fact that I could be sent to a concentration camp daily. Hitler himself threatened me with this possibility several times. But at that time I was not yet aware of the consequences, which are now well known to the whole world.

b) The Principal Features of the Great Re-Organization.

Albrecht had told me everything he planned to do for the main problem of the Russian prisoners according to the equality of rights, and I was of the same opinion. Without any hesitation I had given him far-reaching authorities for the realization of his program.

As a witness in the trial he stated upon his oath:

"Berger gave me full liberty of action. He knew my personal attitude, and I saw that he was really full of compassion for these people.

Berger is a youth educator by profession, and being a teacher he has probably an exceptionally good heart. This is what I always noticed until the end of the war.

Following his orders I formed, together with Russian prisoners-of-war, whom he had discharged, a staff, the so-called Landeseigene Inspektion

Furthermore the statement reads:

"I made the proposal and I carried it out that in many German industrial firms so called Landeseigene Ingenieurburros were established. Reliable engineers, technical specialists from the camps of eastern prisoners-of-war were discharged and employed as free workers in a so called Landeseigene Ingenieurburo in those factories."

Regarding the equality of rights of the eastern prisoners corresponding to the conditions of the western prisoners it says:

"Owing to an order, given by Dr. Ley, who took care of the living conditions in the prisoners-of-war and eastern labourers camps,

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there existed a so called eastern and a western maintenance. This order was given in agreement with the army and originated from Hitler. The labourers from the western countries and first of all the western prisoners-of-war were treated far better, whereas the helpless eastern prisoners were very badly treated, because they did not belong to the International Red Cross.

Berger ordered me to treat the prisoners-of-war and labourers from the east according to the same principles as the western prisoners-of-war. He had to obtain in advance the consent of the Highest Leadership of the Reich, which was very difficult, indeed."

The labour program was re-organized right from the bottom:

"Against the wish of the Deutsche Arbeitsfront Berger succeeded in uniting all eastern prisoners-of-war and labourers in the big factories by the above mentioned Russian engineers' offices. The Russian people executed under their own leaders the plans of the Germans. The ready-made goods were given to the Germans, and the Russians and Germans figured out together the wages."

I drew special attention to the medical care. I appointed to the chief doctor for the eastern prisoners-of-war an experienced staff-surgeon, who had for 18 years been the successful chief doctor of a big spa. Referring to this fact Albrecht's statement reads:

"She took Russian prisoner-of-war doctors and medical personnel from the camps, and established special sick bays - for instance a special department for T. B. - in the camps of eastern prisoners-of-war. The SS-Eauptant gave the necessary medicaments, which were to be had nowhere else, and which only Berger could get hold of. Everybody else said: "There is not even sufficient for the German population. How can we give our few medicaments and equipments to these eastern people?" Thus Berger did all he could with regard to the medical care in order to help, to prevent epidemics, to reduce diseases, and to help the ill people to recover."

Regarding the re-organization of disciplinary matters and matters of complaints the statement says:

"Everywhere in the prisoner-of-war camps I established so called courts of comrades. They consisted of soldiers of the Red Army, officers, commissars, who were elected by the prisoners-of-war themselves, and

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who in the event of offences in the camps could act accordingly."

Whenever persons, who for evil reasons were

"against humanity in the camps, because then the Soviet agitation would have broken down, tried to set against this humanity the Russian prisoners-of-war themselves always asked for the transfer of such people into another camp. And this was always done for the sake of order and peace in the camps and in the interest of the Russian prisoners-of-war themselves."

To the question, whether there was ill-treatment of the prisoners-of-war, and if I knew about it and let it occur, the witness Albrecht answered that he knew quite a lot of such occurrences of ill-treatment, exploitation and enslavement from the time before I had anything to do with the prisoners-of-war affairs:

"In my memorandum I complained about several of these cases, and I drew the attention to them in conversations with Rosenberg, Speer and Goebbels, in the Reichsamt Parteikanzlei and in lectures at officers' meetings. But all this was done in vain; at that time there was nobody who said: I shall see to it that this will never happen again. Only later, when by the Landessigene Inspektion, which we had established, Berger learnt that even in the beginning of his time the situation was still the same, and when we told him about several cruel actions of some Germans, Berger immediately stopped it, taking the assistance of the German officer of the court, who was at his disposal, or of the courts of the generals, who were in charge of the prisoners-of-war affairs in their areas (Wehrkreise)."

The witness Albrecht describes how the first measures were taken and what the consequences were:

"Following to my proposal Berger had discussions with Speer, the Minister for Armament, with Dr. Ley from the Deutsche Arbeitsfront and his main representative Dr. Hupfauer, to the effect that it was tried to treat the eastern people in the six biggest factories of Berlin, which had many eastern labourers, according to those new methods. About 15,000 were treated for several months according to these points of view. It was a matter of course that after the improvement of conditions for the prisoners-of-war had been carried out the same had to be done for the eastern labourers. In the factories both eastern labourers and eastern prisoners-of-war did the same work on the same place."

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After the end of the war the witness Albrecht received many grateful letters from eastern prisoners-of-war. At first former Russian officers had been witnesses in the course of his denazification. (He has been declared to be not the concern of the statute.) Meanwhile

"there came also confirming letters from abroad: from American and Austria, which all expressed the gratitude of those formerly helpless people."

The above mentioned re-organizations are confirmed by the affidavit from my former Staff-Leader of my staff Chief of Prisoners-of-War affairs, Colonel Meurer, dated 5 July, 1950,

Appendix 13.

B) Measures Against Prosecutions for Political, Racial and Confessional Reasons Beyond my Official Duties

It is only conditionally right that my readiness for actions against crimes against humanity and against intentions directed against humanity was restricted to the last months of the war, as the Tribunal stated in the quotation of the verdict given under A). When I was appointed to the Chief of the Prisoners-of-war Affairs there was opened to me a large sphere of activity for personal actions in favour of western and eastern prisoners-of-war. The innermost readiness, however, had always been there and was shown whenever I met any injustice.

The following events have already been described to the Tribunal; they were, however, not at all considered by the verdict, because it seemed that as evidence they had no judicial relation to the concrete charges of the Prosecutorial Board.

1. Assistance for Norwegian Students.

In the affidavit of the Officer of the Finnish Board of Health, Mr. Felix Kersten, dated 18 October, 1948, attached as Appendix 7, it reads:

"Moreover I should like to mention that General Berger several times assisted the Scandinavian countries, especially the Norwegian students, and that he always supported my endeavours as strongly as he could.

Terboven had imprisoned a large number of Norwegian students and sent them into the concentration camp Buchenwald. After a discussion with Berger he declared himself ready to help immediately, and he was very upset about Terboven's actions. Berger succeeded in setting the students free, and he transferred them to a training-camp at Sennheim, where they - as far as the situation of that time allowed - were fed and treated well."

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It will be remembered from the trial that these students were members of the Norwegian resistance movement and were brought to Germany in spring 1944 by order of Terboven. In spite of Himmler's resist I succeeded in setting free the Norwegian students and made it possible that they could study at the universities of Freiburg and Heidelberg. A monthly amount of 35.000.- RM was placed at their disposal for this purpose. It will further be well known that these students were saved and sent back to Norway. Mr. Kersten states in his affidavit:

"Berger was very upset about Terboven's actions in Norway and called it a disgrace to civilization."

2. Support of Help Coming from Abroad.

In Appendix 7 Mr. Felix Kersten confirms the following:

"During the years 1943/45 I worked for the rescue of people according to instructions I had received from the Swedish Government and the Jewish World Congress in New York. It was my task to set free from the German concentration camps as many people as possible, and in this I was very actively supported by General Berger. In this connection I may mention that I succeeded in setting free 3,500 Jews, whom I sent to Sweden. On the whole about 20,000 people were freed by my actions and sent to Sweden."

3. Assistance for Robert Bosch and his Factory, especially when He Was Persecuted Political and Racial Reasons.

My respect for the Stuttgart industrialist Robert Bosch was based on the high esteem I had for the life-work of this unique man, and the political contrariety of that time did not affect my opinion. In the hearts of all Wuerttemberg people he held a place, which the National Socialists envied him, and they meant to get rid of the people's attitude by confiscating his firm.

I attach as

Appendix 14

an affidavit of Mr. Hans Walz, the then being president of the board of directors of the Robert Bosch GmbH, dated 6 March, 1948. This affidavit deals with a mechanic of the firm, who had been sentenced to death, and with Hans Walz himself: In the first case my endeavours for pardoning were successful, in the second case I was as well successful in protecting Mr. Walz from a trial for high treason before the People's Court. I also assisted Mr. Bosch's friends. Though I could not save the government architect Mr. Fischer from a several months' imprisonment in a concentration camp and the director of the police Mr. Hahn from imprisonment because

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they had taken part in the attempt on Hitler's life, I could at least save them from death by being hanged. In this connection Mr. Walz states the following:

"It is mainly Berger's merit that I am still alive. Berger was by this a real protection for the firm of Mr. Robert Bosch. Whenever I asked for his assistance with regard to Mr. Fischer, Mr. Hahn and Mr. Schlosstein he declared positively that he would protect the firm as much as he could. He would always be ready to do everything to protect the firm from the political control of the NS-Party."

This statement is confirmed by the affidavit of the government architect Mr. Albrecht Fischer, dated 2 March, 1948,

Appendix 15,

which reads:

"I may, therefore, state that I was saved from the death sentence and released from the concentration camp only owing to Mr. Berger's interference, whom I did not know personally at that time. On my opinion he had done this only for human reasons."

The Jewish race has never been a criterion to me to diminish the rights of a free citizen in a free country. This is shown by the affidavit of the business-man Willi Schlosstein, dated 4 March, 1948,

Appendix 16.

I was quite aware of the personal risk when I

"managed the emigration to America of the German Anti-fascist Mr. Pulkowski and his wife, who were living in Holland. (I did not know the couple personally.) Mrs. Pulkowski was of Jewish descent." They emigrated via Germany and Switzerland."

Mr. Schlosstein's imprisonment owing to his participation in the attempt on Hitler's life on 20 July, 1944, stresses the meaning of his statement that without my interference

"..... he and probably his wife also (half-Jewish) would not be alive today."

4. Personal Actions Against Persecutions for Confessional Reasons.

I attach as

Appendix 17

the affidavit from Mr. Felix Olpp, dated 5 March, 1948. From this affidavit one can clearly perceive the danger the Catholic Oberjäger Hosp was in because of his Catholic faith, when I helped him in 1941. Mr. Olpp states:

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"Though I did not agree at all with Berger's political attitude I must admit that he behaved excellently from both the human and official point of view in the case of Hosp. I am still of the opinion today that our Oberjager Hosp probably would have died in a concentration camp if it had not been for Berger's great assistance."

The affidavit of the clergyman Friedrich Schroter, dated 19 December, 1948, see Appendix 16,

may serve for another description of my attitude. I did not know this Protestant clergyman and his comrade until the latter asked me for help. I did not hesitate to help immediately. Mr. Schroter was set free from Gestapo imprisonment, and I saved him from a trial that had already started, charging him with the sedition of the vigorous wish for mental independence of the German people. I am still very glad about this deed today, because Mr. Schroter's attitude was a capital crime.

Mr. Schroter closes his affidavit with the statement:

"It is my Christian duty to let the Court know about this noble-minded deed of Mr. Berger, in order to prove in public Berger's human attitude."

Part II.

The following part will give a short survey of my personal life and of the mental, physical and wanted factors, which show the motive powers for my actions and neglects. This part will show as well, why I believe that my character and the circumstances of my being in the past and present time do at least not speak against the mercy I am asking for.

1. Descent and Family.

I was born on 16 July, 1886, in Gerstetten/Wuerttemberg. My father was a carpenter and owner of a sawmill. My father's firm is at present managed by an elder brother of mine. My father comes from an old family of workmen, my mother from a farmer's family. I had 7 brothers and sister, 4 of whom are still alive: 2 of my brothers were killed in the First World War, one of them emigrated to America and died as a citizen of the United States. We 8 children were brought up in humility and respect to The Lord.

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2. Education and Profession.

According to my own wish I attended the training college for teachers at Nurlingen from 1910 till 1914 after having finished school. This college is similar to a monastery school and is known not only in Wuerttemberg. I passed my first official examination there, and after a special course in Retel I passed the school leaving examination in 1916. From 1919 till 1921 I was employed as teacher at the training college for teachers at Lichtenstern. This college was under the auspices of the church. During that time I attended special training courses for sports at first in Stuttgart, later at the Academy of Sports at Spandau. Moreover, I attended lectures on history, physiology and psychology.

Having been provided with all the above mentioned knowledge I worked for 13 years firstly as chief master in my home town Gerstetten, and from 1929 on as head-master at Wankheim, near Tubingen. In my home town they still tell stories about the time, which was the happiest period of my life.

After I had been elected Government Inspector of Schools at Esalingen and head-master for the vocational training of young teachers, I was appointed Inspector of Schools in the Wuerttemberg Board of Education on 10 October, 1935. I managed the department of sports and the Wuerttemberg Academy of Sports successfully.

Disregarding all changes in the past I still enjoy the reputation of a good youth educator, devoted to my duty. This respect was still given to me in prison by the sworn statement of the present President of the Wuertt. -Bad. Board of Education, Mr. Theodor Bauerle, dated 13 March, 1948, which was entered into the Court documents,

Appendix 19.

3. Military Service and Further Military Career.

My life was given a military character by the experience of army life and comradeship during the First World War. I entered the army voluntarily, became officer in the reserve, and was wounded four times, once dangerously. Later I became an active officer, and was promoted first lieutenant before the end of the war.

When the German Army was re-established on 1 July, 1935, I became captain, took part in several military manoeuvres, and was promoted Major in 1938 and lieutenant-colonel in the reserve in 1939. At the outbreak of the Second World War I was transferred from the army to the SS, which happened - I may add - automatically.

During the Second World War it was my main task to organize the recruitment of volunteers for the Waffen-SS: Firstly within Germany and later in the

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Germanic and Romance countries of the neighbourhood. The front activity of the European volunteers in the Waffen-SS was limited to the fight against USSR. My work was interrupted several times, when I took part in the battles at the front. My last military rank was that of a General of the Waffen-SS.

During the Second World War I was wounded three times - once dangerously - and was twice buried under ruins in Berlin. Owing to this I had a concussion of my brain, and an injury of the spine, and I am still suffering from pains at present.

4. Family Life.

On 23 April, 1921, I married Miss Maria Dambach. Our married life was a very happy one. We had 4 children, 2 sons and 2 daughters. My eldest son at the age of 20 was killed fighting the Red Army as captain. My eldest daughter, who was married, died under very tragic circumstances after having given birth to a child in Siebenburgen.

Our son-in-law was also killed in the fight against Bolshevism, and our first grandchild, being an orphan, was, therefore, brought up in our home.

5. The Present Situation of My Family.

My wife and I lost all our property by an air-raid. The money we had, had been deposited at the Berlin Stadtbank. We lost it as well, together with the few necessary things we had bought again, when the Soviets occupied Berlin in 1945. Today my wife has a shop of works of arts and crafts and thus earns her living and that of our two children, our first grandchild and the not yet one year old child of our second daughter, who is also a widow. My wife is suffering from a gall-bladder disease already for years. Her eyes are getting worse constantly, which is of course a great handicap for her needle-work. The doctors advised her strongly to undergo an operation of the gall-bladder, but she cannot leave her family - even for a short time - because she is the only money-earner.

6. My Political Past.

All my actions and neglects were due to two factors: The front experiences of the First World War and the perception of the Communist Doctrine as a deadly danger not only to Germany and Europe but to the whole civilized world.

In spring 1919 I put up a voluntary defence for Wuertt. -Nord with the approval of the government of the country Wuerttemberg. This defence was subordinate to the Wuerttemberg democratic government and fought several times riots of the right and left wing. This defence existed until 1923 and was called the "Schwabenbanner".

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In 1931 groups of the Tubingen students asked me to help them fight against the steady increase of Communists. These students, who had a national attitude, had joined the only active counter-organization, the SA. I did the same, and by this became simultaneously a member of the NSDAP. This step, by the way, was known and approved by the government of that time. I was the leader of that SA group for the following years, and there have never been any riots. We managed to avoid all battles and bloodshed.

When the doctrinal influences of the "big shots" of the Party became stronger and stronger, I was dismissed from the SA on 30 June, 1933, because I was of a different opinion. My last rank in the SA was that of an honorary Standartenfuhrer. From October, 1934, till September, 1935, I did not belong to the Party.

On 30 January, 1936, I was made honorary leader in the SS as an appreciation of my successful work for the Wuerttemberg Academy of Sports. I was a member of the General SS until the end of the war.

During the years 1938 and 1939 the SS-Hauptamt had been divided into several parts. The most important departments, which until then had justified the name of a main-office, had become independent. These departments had dealt with administration, personnel affairs, jurisdiction and tactics. They were from then on independent main-offices: WVHA:SS-Personalhauptamt:SS-Hauptamt SS: Gericht - SS: Führungshauptamt. Owing to my organisatory talents I was appointed Chief of the SS-Hauptamt for the re-organization of this office on 1 April, 1940. This re-organization was of a tolerant character, which will be seen from

Appendix 21 - 20,

which is an exposition written by the university teacher and army psychologist Prof. Dr. Eckstein, who had nothing to do with the SS. It is a fact that no member of my area has ever been before a tribunal because of war crimes or crimes against humanity, neither at an allied nor a German court of justice, inclusive denazification boards.

7. My Present Opinion of the Past and the Future.

History has given a verdict to my former political views as a National Socialist. It would have been better for the world and humanity if there would have been a statesman in my native country and in the neighbourhood, owing to whose peaceableness and wisdom it would have been possible that all free nations by united efforts of intellect and will-power would have been able to repulse Bolshevism.

I did not know anything about an organized system of those crimes, which became known to the world by the trial before the International Military Tribunal.

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Whenever I met anything that was wrong I fought it. In general, however, I was of the opinion that those were accompanying phenomena of temporary character, which are usually the consequences of a revolution and a national re-organization.

Personally I went my way with an honest heart and clean hands, having the only wish to serve the general welfare. I never held any position in the NSDAP, and in the SS I never strove for such for personal ambition. Many actions and neglects of the circles I had joined by entering the NS-Party and the SS seemed wrong and almost unbearable to me. But the idea, which made me overlook all this, was to do as much as possible as a soldier and as a human being to save my country from the danger of Bolshevism, and I think this idea was not important for Europe only. I could not be inactive because of some things I disliked in view of a danger to life, and I believe that today I may still be of the same opinion. Like at the time before 1945 I still see only one great danger for all of us: The World Bolshevism. All opponent countries are in the process of a re-organization, and consequently there will be made mistakes. I personally am against these mistakes and I fight them, and I believe that the whole German nation dislikes them. But that seems to me to be of no importance in comparison with my readiness to forget all resentments for one task: The removal of the Bolshevik Danger to the World.

8. About the Freedom I ask to Regain.

Should I regain my freedom it will be devoted to the benefit of my family, and I will earn a living for my wife, my children and my grandchildren. In my father's sawmill I will find a job, which will enable me to do this.

I paid very heavily for the experiences I have in the resistance against the Bolshevik aggression, but I believe that these experiences are of great value. I studied the people of the large Russian country and came to know their character very well. From the political and historical mistakes the National Socialist leaders did in treating these people wrongly I learnt what to do. I am still convinced that the civilized countries are threatened by extermination. If there will not be formed a united defense - regardless of all former quarrels -, which is prepared to act immediately, the end of culture and civilization has doubtlessly come.

Everybody will have to take part in this defence with all his power. Should I be called I would have to go already for the reason that my son and son-in-law and one million of European soldiers in the SS-uniform have been killed in the fight against Bolshevism. In view of this terrible danger of Stalinism I do not feel any bitterness because of the things which have happened to me during the past five years.

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Part III.

I have no right to discuss in this petition for mercy the legal questions of my verdict with the help of legal arguments.

It is my intention to submit in the next paragraph new facts and new evidence in view of some verdicts of guilty, and to prove that owing to facts these verdicts were not right. I hope that the Board will have a right understanding of this intention as it was the case with the judge Mr. Leon W. Powers during the trial.

A. The Murder of the French General Mesny.

1) Basical Remarks on the Verdict.

The plan to shoot a French general originated from Hitler himself. Hitler gave order for the execution of this measure of reprisal, and the world knows today that it meant death if one did not obey this Fuhrer order. Field Marshal Keitel as Chief of the OKW was ordered by Hitler to carry out this order. Before doing this Keitel got in connection with the office of the Inspector of the Prisoners-of-War Affairs, the chief of which was the army Major General Westhoff. According to a mutual agreement between Keitel and Westhoff the French general de Boisse was chosen the victim of the murder. Up to that moment I, respectively my office Chief of the Prisoners-of-War Affairs, had nothing to do with this plan. I did not even know about it. These are basical remarks of the verdict itself.

The later events show as an example Hitler's imperturbability with regard to the ruthless execution of his orders against all resistance. Therefore everything which I or my staff-leader Colonel Meurer did in the following time can be completely disregarded: The fact of the murder of a French general will remain the same terrible fate.

2) My Own Participation.

a. Hitler's order regarding the re-organization of the prisoners-of-war affairs, dated 25 September, 1944, reads:

"All prisoners-of-war and interned people as well as the prisoners-of-war camps and establishments with their guards will be subordinate to the Commander of the Recruiting Army (Ersatzheer) with effect from 1 October, 1944.

The OKW will be competent as before for all matters connected with the agreement of 1929, with all matters of the Schutzmacht and assistant organizations, and with all matters regarding the German prisoners-of-war in the hands of the enemies. All details concerning the hand-over and

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the limits of actions will be dealt with by the Chief of the OKW together with the Commander of the Recruiting Army (Ersatzheer) and the army departments."

The Geneva agreement concerning prisoners-of-war from 27 July, 1929, mentioned in this order, dated 25 September, 1944, says in paragraph II:

"..... They (the prisoners-of-war) have always to be treated with humanity, and have to be protected from violence, offence and public inquisitiveness. It is prohibited to execute on them measures of reprisal."

The murder of the French general ordered by the highest authorities was therefore a reprisal from the OKW. Only General Westhoff, Inspector of the Prisoners-of-War Affairs, was competent for this.

b. Though I cannot be held responsible because I was not competent I went into the matter and studied it.

Under such circumstances a personal decision for action is only possible on the grounds of one's personal opinion: either to assist by all means at the murder of the French general, i.e. to be the murdered, or to do everything to prevent such a terrible measure. The sentence explains the verdict of guilty as follows (Page 222):

"If Berger had any remorse in this matter he suppressed them, the execution of this crime"

It can be seen from this sentence that even the court - at least in the beginning - admitted that I had remorse. When I - though not competent - interfered I can only have done it because I wanted to save the French general from his fate (whatever his name was - de Boisse or Mesny). I cannot yet understand why - with exception of the judge Mr. Leon W. Powers - the court, when thinking this over, did not see that I was not guilty.

c. I was of the opinion that without my interference the murder would not be prevented. As it was confirmed by the witness Meurer during the trial I intended to do it by interventions with Himmler and Hitler. The fact that I answered to the failing of my endeavours with my resignation, may stress the character of my intentions. I did not draw any consequences from the refusal of my request. In a Christmas letter to me, which I received on 21 December, Himmler promised me partly that this plan had been given up.

On 10 January I had to make an official trip to Thuringia. Owing to an alarming telephone call from Fegelsin from the Fuhrerhauptquartier

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regarding the case Mesny I had told my staff-leader for the prisoners-of-war affairs very emphatically to be on the alert and contact me immediately. Colonel Meurer's telephone call did not come through, which had never happened before. Upon my return from Thuringia on 25 January, 1945, I heard that General Mesny had already been killed on 19 January.

The notarial protocol, dated 19 June, 1950, shows that I did not "suppress my remorse",

Appendix 21.

The witness Dr. Walter Hennings states in this protocol (under Item IIA):

"I was in Berger's office when he heard that the French General had been shot. His reaction was an almost complete physical break-down. He told me that he had already planned, of necessity, to kidnap the French general and hide him from the Gestapo, but to pretend to have shot him and to have obeyed Hitler's order.

I told General Berger that only the office of Major General Westhoff, Inspector of the Prisoners-of-War Affairs was competent in this case, and that it was his, and not General Berger's duty to do everything to prevent this murder. General Berger made his mind easy with the words that even before his conscience it was not his fault that the general had been killed, who as a prisoner-of-war was under his protection. He had prepared everything to save his life."

d) Furthermore it will be seen from Item a-d) of this document that the biased declarations of General Westhoff, which were called "clear and unambiguous" in the verdict, were not true. According to his statement I was the highest ranking officer of the whole department of Prisoners-of-War Affairs and had unlimited powers regarding the prisoners, whereas Field Marshal Keitel and the OKW had not much to do with it. As a matter of fact I was neither allowed to give orders nor to inflict a punishment but could only act according to recommendations. I was autocratic and self-responsible only with regard to the welfare of the prisoners-of-war.

3) Recapitulation.

I know very well that I have no right to doubt the verdict in this petition for mercy after I have been condemned according to a trial, which started with the question of guilt on 20 December, 1947, and ended with the final reports on 18 November, 1948.

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The Dissenting Opinion of the Judge Mr. Leon W. Powers, however, defends also my innocence in the exposition on Page 61-65, attached as an extract,

Appendix 22.

I hope that especially in this point there will be a readiness to look over again the question of guilt. I am fully convinced that the two other judges would not have declared me guilty if they had seen the attached evidence. For, what else could I have done? An open resistance would have cost my head, without having saved the General's.

B. Participation in the Persecution of Jews.

1) Preamble.

I was declared guilty with regard to the murder of General Mesny, and in this case I am first of all affected from the point of view of the point d'honneur. But I am as well deeply interested in clearing my honour and my name from the reputation of "Having participated in the persecution, enslavement and murder of Jews". It would be the most terrible feeling to know that the Tribunal started the trial with the prejudice that I, having been the Chief of the SS-Hauptamt, was prima facie guilty in this systematically organized mass murder of defenceless people. The Prosecutorial Board had collected all facts that had allegedly occurred in Poland and Russia and partly these terrible events had actually taken place, and from these facts they drew the conclusion that I was the only responsible person. I was thankful for the expositions of the judge Mr. Leon W. Powers, which are attached as an extract of his Dissenting Opinion, Page 66-68,

Appendix 24 - 23.

I may state that I knew that Jews were interned for racial reasons, but I did not know anything of their enslavement or even their extermination.

2) My Personal Opinion of the Jewish Problem.

The anti-Jewish tendency of the NSDAP was known to me. When in Part II, Item 6, Para. 4, I talked about the doctrinal influences of the "big shots", I also referred to the persecution of Jews immediately after 30 January, 1933, which caused my opposition against the measures chosen officially by the Party. I had a feeling of thankfulness for several Jews, and I was not prepared to sacrifice these feelings to opportunists and leave in the lurch people, of whom I was very fond. I was very glad when as Chief of the SS-Hauptamt I was able to thank these persons by protecting them from the Gestapo, staking my own life.

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It may be said that this was not done for purely human reasons. I can understand the objection that these Jews were lucky because they did not have to suffer like so many others had to, having no friends, who were National Socialists and protected them. And I could understand the reproach that I did not make use of several opportunities to help Jews, who were unknown to me.

But this is not the case. On the contrary, wherever I heard about such persecutions, in the office or at home, I always spoke and acted in favour of Jews, who were not known to me at all. I am glad that I am able today to attach new evidence.

In advance I may quote Para. 3 from the affidavit of the officer of the Finnish Board of Health, Mr. Felix Kersten, dated 18 October, 1948, which was already seen during the trial (Case Mesny).

"During the years 1943/45 I worked for the rescue of people according to instructions I had received from the Swedish Government and the Jewish World Congress in New York. It was my task to set free from the German concentration camps as many people as possible, and in this I was very actively supported by General Berger."

I attach as a new evidence the affidavit of the Hamburg-Bremen business-man Albert Meyer-Mahrendorff, who is still unknown to me, dated 8 July, 1950, as

Appendix 24,

and add the confirmation from the lawyer Dr. Hennings,

Appendix 25.

All actions, confirmed by Appendix 7, 24 and 25 were done by me only for human reasons, according to my wish to help as many persecuted Jews as possible.

The verdict quoted proclamations from me, which may be understood wrongly. Quite apart from the fact that I am not the originator of these proclamations it seems to be worth mentioning to quote what is said in the "Recapitulation" of Appendix 25:

"Having worked in the SS-Hauptamt as special representative I do not know about any case, in which Berger or one of his officers had participated in persecutions for racial, religious or political reasons. For a person of Berger's rank it was only possible to help if he pretended in words to be anti-Jewish so that nobody could have any doubt. I myself heard Berger say several times that he was only"

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"anti-Jewish" as far as the Jews were "pro-Communists" and therefore anti-Christian. If the Bolshevism, led by the Jews, would not be beaten immediately, the whole civilized world would be in danger."

This recapitulation shows the way anti-Jewism was explained, when I was responsible for the SS-Hauptamt. What, for instance, had the SS-Hauptamt to do, with a book "The Sub-human Being"? The verdict of the Military Court II, Case IV, dated 3 November, 1947, against Oswald Pohl and others, shows clearly that there are no connections at all by mentioning in the statement concerning Horst Klein, "that this horrible thing had been issued by the Nordland-Edition". I was, however, strongly rebuked by Himmler when I tried to alter the official anti-Jewish opinion in the above-mentioned way. I got a letter from Himmler, dated 28 July, 1942:

"1. You are urgently requested not to issue any orders about the meaning "Jew". With such silly definitions we make ourselves our own obstacles. The territories occupied in the east will be free of Jews. The Fuhrer ordered me to execute this very difficult task. Nobody can take the responsibility off me, anyway. Therefore I do not want other people to interfere."

This letter shows that I not only was not competent for the crime of the "Persecution of Jews", but that I had an official order that I was not allowed to interfere.

I, therefore, think that I am not responsible for this chapter of the German history.

3) My Personal Participation in those Crimes.

I do for the above mentioned reasons not understand that I am held responsible for proceedings against Hungarian Jews in December 1944.

All I can say to the statement upon the oath of the former Hungarian Minister of the Home Department, Gabor Vajna, apart from Appendix 7, 24 and 25, was written in details by my advocate Dr. Froeschmann in a petition to General Lucius W. Clay, dated 28 April, 1949. It would only be a repetition if I would explain my opinion. The affidavit of Mr. Otto Winkelmann, dated 12 October, 1948,

Appendix 26,

may show that I neither knew anything about the persecution of Hungarian Jews nor took part in the execution. It can be of no doubt to every unbiased person that Vajna would have to confirm the details of his affidavit completely. He could, however, not be cross-examined during the trial because he had been sentenced to

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death already before and the sentence had been executed. A statement which is not clear from the point of view of origin can hardly be the reason for declaring me guilty.

This is hardly at all the case in view of the journal "Israelitisches Wochenblatt", dated 1 September, 1944, which was produced by the Prosecution Board as document Nr. NG-5797 during the trial. On page 4, at the bottom, it reads:

" I n H u n g a r y

the Ministers' crisis is in an acute state.....It is, however, the question whether there are still Jews living in these districts, most of them have already been sent away, and it is not yet certain, whether they really stopped the deportation from Budapest. It is necessary that the International Committee of the Red Cross sees to it that the promises, which have been given, will be kept, and that the world public will be informed about it, if my mission should fail."

C. Enlistment of Guards for Concentration Camps.

1) Preamble

Like in the First World War the subjects of all countries engaged in the war were interned during the last war. It was a matter of course that in all countries, which took part in the war, even the own subjects were politically supervised, and, if necessary, were imprisoned for security reasons. In this respect it is of no importance whether the camp is called an internment camp or a concentration camp. Only the fact that the concentration camps were places of slave labour, terrorism, extermination, executions and other abuses gives them the character of a regular instrument for committing crimes against humanity.

The above mentioned (under B.) "final solution" of the Jewish problem in the meaning of "extermination of Jews" was Hitler's own plan, and the execution was the task of a few initiated persons, the so-called "secret officials" of Himmler. Therefore, these events were not known to a third person. By this means I did as well not know anything about the committal of crimes against humanity connected with the establishment and existence of concentration camps until the end of the war. Only through the Dachau trials I heard reliable facts, as it is to be seen from the extract of my direct trial in the witness-box.

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2) Competence.

With

Appendix 27

I attach the in the trial mentioned order of the Reichsführer Himmler, dated 3 March, 1942. The order of the execution was given by the Chief of the SS-Führungshauptamt, Justtner, dated 16 March, 1942. According to this order the concentration camps were under the control of the SS-Führungshauptamt until 16 March, 1942, and from then on they were under the control of the SS-Wirtschafts- und Verwaltungshauptamt. The SS-Hauptamt had nothing to do with this matter, neither before nor later. Every different version is historically wrong. The Recruiting Office of the Waffen-SS as a sub-office of the SS-Hauptamt has never disposed of guards for the concentration camps, neither by recruiting volunteers nor by special selections. Until the beginning of the war this was the job of SS-Obergruppenführer Zicke, and afterwards of SS-Gruppenführer Petri and SS-Gruppenführer Gluecks. Petri and Gluecks were subordinate to the SS-Führungshauptamt until 16 March, 1942, and from then on to the SS-Wirtschafts- und Verwaltungshauptamt, but never have they been under the command of the SS-Hauptamt or in coordination with it.

3) Recruiting of Guards.

It was the task of the SS-Hauptamt to provide the army with the necessary number of volunteers of the Waffen-SS, required for the war actions. The Recruiting Office did this by the following means:

a) By starting a propaganda under the slogan: Volunteer for the defence of your country in the Waffen-SS!

b) By a physical examination of those men, who followed the call, in order to determine their military fitness. The medical judgment of the physicians, who worked together with each enrolling commission, decided whether a volunteer was fit for military service at the front or only in the garrison.

By this the volunteers were enrolled with the Waffen-SS, and the task of the SS-Hauptamt was finished. It was the concern of the SS-Führungshauptamt and not of the SS-Hauptamt to fix the time and unit for the summoning.

Only the SS-Führungsamt - which was, according to Appendix 11, the competent office for the concentration camps - knew that there were men amongst their guards, who were fit to serve at the front. The SS-Hauptamt could not know anything about this fact. The SS-Führungshauptamt ordered that for each person, who was fit for military service at the front, there was taken in exchange one person from those

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who were declared to be fit for military garrison service only, as guards for the concentration camps. This actually happened, and I agreed to it, I may stress that these men, who were fit for garrison service only had not been enrolled as members of the commanding staff, but as guards of the concentration camps, and that by this way of exchange the staffs of the concentration camps did not increase.

It is probably rather difficult for an outsider to recognize these facts, and the verdict does not consider them. I am fully convinced that otherwise the Court would have acquitted me in the Court. I, therefore, prove the above mentioned facts by an affidavit of the lawyer Dr. Hellmuth Kiener, one of SS-Gruppenfuhrer Gluecks' closest co-operators, the Inspector of the Concentration Camps Affairs, dated 13 June, 1950,

Appendix 28.

4) Recapitulation.

According to the fact that I did not know the actual circumstances inside the concentration camps I could not act in another way. But the following event, mentioned in the notarial protocol Appendix 21 under Item IIb), shows my reactions on ill-treatment of defenceless prisoners:

"A labour group of Soviet prisoners had been transferred from a prisoner-of-war camp near Berlin to a recruiting unit of the Waffen-SS. By this the recruiting unit had to provide them with guards. A young recruit, who acted as a guard when the group was at work, had injured 3 prisoners dangerously with a knotted stick. One of the prisoners died, the other two of them were in danger of life. This occurrence was trifled by the commander of the recruiting unit and the commander of the prisoner-of-war camp. They came to the agreement that in future the unit commander would prohibit to provide the guards with knotted sticks. General Berger, who had heard of this treatment, called me in and ordered the following:

- 1) The whole affair was to be reported to the for the recruiting unit competent SS - and Police Court III. The chief of the prisoners-of-war affairs expected that the guard would be sentenced to death, and that this sentence would be executed immediately.
- 2) After the execution of this procedure a trial should be started by the SS - and Police Court competent

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for the commander of the prisoner-of-war camp
with the aim of the death sentence for both of
them.

D. The Battalion "Dirlewanger".

1) The Reasons for the Verdict.

The following facts served the Court for the justification of the verdict of guilty according to the accusation raised against me because of the actions of the unit Dirlewanger.

a) The brigade had doubtlessly been put up for the reason of committing crimes against humanity, and this was my idea. I was it, who put up the unit.

b) In the battle-field the unit was not under my military command, but - according to its purpose - it committed crimes against humanity against Jews and the population of the eastern territories to such an extent that even the National Socialist commissars were upset. I had been instructed by repeated reports about this cruel and barbarous conduct of the troops.

c) If Dirlewanger had committed cruelties it would have been my duty to go into the matter and bring a procedure against him; in face of that I protected the unit and its commander and did not only allow this conduct again, but try to justify it.

d) I had fought every attempt to transfer or disband the unit.

These statements were derived from the declarations of the witnesses SS-Obergruppenführer v.d. Bach-Zelewski, SS-Gruppenführer Juttner, SS-Untersuchungsführer Morgen and the criminal SS-Rottenführer Gefreiter Vogel. These men were mainly responsible themselves for the battalion Dirlewagne in the sense of the accusation.

2) My Point of View.

a) In General

Also in this point I do not object against the legal consequences as such, which the Court drew from facts given to them. I have no right to do this in a petition for mercy. But I should like to stress that I would come to the same result, provided that the given statements and facts were true.

b) In Particular.

What I am definitely objecting to are the actual suppositions for the verdict. These confirmations of the Court are according to their character not on an internal level. The judge had not to deal with the difficulties

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of showing circumstantial proof. But, these confirmations are either right or wrong, and therefore, it is possible to control them. Stressing that I would be able to call in many witnesses, who could prove that in this point the Court is wrong, I restricted myself to mention the names of a few persons, who are well acquainted with the facts. These persons are:

aa) The former assistant of the government August Meine as personal reporter of Reichsfuhrer Himmler - affidavit, dated 29 June, 1950,

Appendix 29.

bb) The physician Dr. Max Specht as a specialist for Russian matters - he masters the Russian language - and member of the staff of the Chief der Bandenkampfverbände SS-Obergruppenfuhrer v.d. Bach-Zelewski - affidavit, dated 12 July, 1950,

Appendix 30.

cc) The chief judge of the police-court Russland-Mitte competent for Dirlwanger, Horst Kaminsky - affidavit, dated 18 June, 1950,

Appendix 31.

dd) The deputy of the former Reichstag, Friedrich Boschmann, who - for the sake of studying voluntarily joined Dirlwanger's unit - affidavit, dated 4 July, 1950,

Appendix 32.

ee) The chief of the office Hauptamt SS-Gericht Gunther Burneister - affidavit, dated 22 June, 1950,

Appendix 33.

To a: For which purpose and why was the unit Dirlwanger put up? This question is answered by the competent witness Meine in Appendix 29, Item 3, Para. 3, as follows:

"Hitler had ordered the establishment of a special unit, belonging to the Waffen-SS. This unit should consist of poachers because he thought these poachers especially useful for the fighting of partisans in the east. It was Berger's task to draft these men for army service by his recruiting office."

I may also quote the first sentence of Item 3, Appendix 32:

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"The battalion Dirlewanger had been put up mainly for the fighting of partisans."

According to these words the purpose of this special unit was not the committal of crimes but the fighting of criminals. I know the admiration the Allies have for these fights against partisans. It does not reduce the admiration for these people, who risked everything in these fights, if counter-actions are officially sanctioned. Every army has to protect itself. The order of General Eisenhower and the first order of the Council of Control, attached as a photographic copy as

Appendix 34,

threatened with the same punishment, including the sentence to death, for offences, which were also punished by the German Highest War Command. It is only due to the fact that the Allies did not have to fight against partisans that they did not make true their threat. I could not and cannot consider the fighting of partisans a crime against humanity in view of the actions of the UNO against the partisans of North Korea. Therefore I did not hesitate to execute the order given to me by Himmler in Hitler's name to put up those special units.

I did not and could not appoint Dirlewanger commander of this battalion - the strength of which was 450 - 600 men - which was not a "brigade", as it is called in the verdict, referring to the time of its coming into existence. I objected strongly to the fact that Dirlewanger joined the Waffen-SS, which will be seen from Appendix 29, Item 3:

"Though Berger repeatedly referred Dirlewanger to the Army....."

To b: Did the battalion Dirlewanger commit crimes against humanity and did I know about it?

The unit Dirlewanger was as it will be seen from

Appendix 35

neither under my command during the battles nor with regard to other matters. At least from 29 January, 1942, the SS-Führungshauptamt (Chief: Witness of the prosecution Juttner I) was - next to Himmler - the top organization responsible for the Dirlewanger unit. I could ask about complaints about this unit: 1) Himmler, 2) Chef der Bündenkampfverbände v.d. Bach-Zelewski (also witness of the prosecution), 3) the Chief of the SS-Führungshauptamt, 4) within certain limits; Members of the unit, who were known to me. Even if complaints would have been confirmed by these four authorities, it would not have been within my power to prevent them. But I never heard anything definite about an illegal or criminal fight of this unit. Items 6, 7 and 8 of Appendix 29 explain that according to Himmler's description

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this unit fought the partisans in a clean and military way. In Appendix 30, Item 1-3 and 5 it is shown that - if the fight against partisans is considered to be a total war - the battles were fought irrespective of everything on both sides, but that there was never done any harm to civilians, and that - if such offences occurred - they were punished severely. In Appendix 31 it reads - based on repeated statements of Obergruppenfuhrer v. d. Bach - that the unit Dirlewanger was his most reliable unit in the fight against the partisans: One did not have the impression that Dirlewanger fought with illegal methods. Appendix 32 says that the Dirlewanger unit consisted partly of Russian volunteers, and that, therefore, the fight against the partisans was a fight against Soviet Bolshevism. There was a very good discipline in the battalion Dirlewanger.

To c: For which reasons should I have interfered with a cruel and barbarous conduct of the troops? The Court told me about the duties of a judge, when they cited - completely misleadingly - the words of the witness Walter Hennings in the verdict:

"If Dirlewanger had committed cruelties, it would have been Berger's duty to go into the matter and make a trial on him."

Especially this witness confirmed without any misunderstanding that I could never be the judge for Dirlewanger's unit. This is confirmed by the newly mentioned witnesses:

Affidavit Mr. Meine, Appendix 29, Item 5:

"Competent for legal affairs concerning Dirlewanger and his unit during their fight in the east were until the end of 1941/beginning of 1942: the Hoherer SS- und Polizeifuhrer in the General government, until the end of 1944: the Hoherer SS- und Polizeifuhrer Russland Mitte, and after the unit had become an independent division, Dr. Dirlewanger himself."

Affidavit Dr. Specht, Appendix 30, Item 4:

".... was subordinate to the jurisdiction of the SS- und Polizei Richter Russland Mitte."

Affidavit Kaminski, Appendix 31:

"Competent for the jurisdiction was the Hoherer SS- und Polizeifuhrer Russland Mitte. This was from the time I joined the unit in May 1942 until approximately spring 1943 Obergruppenfuhrer v. d. Bach, then for a short time Gruppenfuhrer Korsemann, and finally Gruppenfuhrer

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v. Gottberg. These persons had the functions, fixed by the law, as there were for instance orders for the beginning of a procedure....."

Affidavit Boschmann, Appendix 32, Item 7:

"I never heard the name of General Berger in the battalion Dirlewanger. The competent person for jurisdiction was at that time the local Hoherer SS- und Polizeiführer Gen. Ltn. d. Waffen-SS v. Gottberg."

Affidavit Burmeister, Appendix 34:

"The respective Hoherer SS- und Polizeiführer, in whose district the unit was, was competent for the jurisdiction, as it was an independent battalion."

Moreover I never allowed any conduct, which was a crime against humanity, nor did I ever justify it. On the contrary: The report, dated 19 October, 1943, which was quoted in the verdict, mentions an "unqualified conduct" of the special unit Dirlewanger, which "did not behave properly" at all. This statement refers to alcoholic outrages against members of the Amt des Reichskommissar Kube, which have nothing to do with crimes against humanity.

I should like to interpret the term "My special unit". Himmler usually did not remain objective when complaining, and he used to mention words like "Ihr Haufen" etc. It was only a matter of persiflage of his rudeness, when I used the sarcastic expression "My special unit".

To d: I have never heard anything about an attempt to transfer or disband the unit. Hitler as the Highest Military Commander had ordered to put it up, and where to send it. Only Hitler could order a transfer or disbandment. I did not have the power and competence to oppose such an order, and I did not know about any crimes against humanity as a justification.

3) Recapitulation

The reasons for my detailed efforts of justification in this point are:

The verdict cites evidence 2370, which says that allegedly 363,211 Jews were executed. It is said that the battalion Dirlewanger is partly responsible and I myself am completely responsible for this occurrence. I strongly object against this.

Dr. Specht declares in his affidavit, Appendix 30, Item 3, Para 2:

"When I and other members of the staff heard about the losses of the partisans, which were reported by the Hoherer SS- und

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Polizeiführer, we had the impression that these figures were intentionally exaggerated in order to receive medals and promotions. And these figures, which were reported by the staff to Berlin, have never been confirmed by the men, who had taken part in the fights."

Mr. Boschmann confirms in Appendix 32, Item 6:

"There were no Jews in the districts of Minsk and Mogilew, when I belonged to the battalion Dirlewanger. That is, I never saw any. To my questions I got the reply that they had probably been the originators of the partisan movement, and had already been transferred to the district Russland-Mitte, before the battalion Dirlewanger came."

Mr. Meine stresses in Appendix 29, Item 7:

"I never heard Himmler say anything about the fact that this unit had any special police tasks, apart from the fight against the partisans."

These "special police tasks" are doubtlessly referring to the "extermination of Jews". This was, as it is today known to the Court - the task of the police, i.e. the so-called Einsatzgruppen des SD. The battalion Dirlewanger had apparently nothing to do with it. I did not even hear any rumors about it.

I am fully convinced that the Tribunal would not have found me guilty in view of all this evidence. Today freedom cannot be given to me by the law, but only by mercy. Therefore I ask to consider the Dirlewanger affair from the point of view of my innocence.

E. Drafting of Foreigners for Military Service Against the International Law.

1) Preamble.

Also in this point I agree with my judges that it is a crime to draft foreigners compulsorily by the own army and let them fight and die.

In view of the fact, however, that as long as I was the commander of the recruiting office of the Waffen-SS it was a principle to take only volunteers into the Waffen-SS, it is impossible to imagine that I as the responsible chief would have broken this law.

The International Military Tribunal decided in the paragraph of trials and verdicts regarding the Waffen-SS that those persons will be excluded from the criminal group, "who were forced by the state to join the Waffen-SS in a way which left them no other possibilities."

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It is easy to understand from the human point of view that from then on everybody, who until then had stated that they joined the Waffen-SS voluntarily for good motives, were on the look-out for possibilities, which proved that they had been forced to join the Waffen-SS, because they did not want to be called criminals. I should like to attach in connection herewith the affidavit of the former Oberlit. der Waffen-SS Freeman, dated 25 June, 1948,

Appendix 36.

This soldier had to have a strong character to tell the truth, though it was threatened by severe punishment. The truth is expressed by the sentence, which was the first order in the recruiting office of the Waffen-SS:

"Voluntarily - you may wear the uniform of the Waffen-SS".

"Against your will - then the Waffen-SS does not want you."

The Tribunal stated:

"In our opinion it is not against the law to enroll prisoners-of-war, who want to join voluntarily the fight against their home country."

I may add to this that foreigners and prisoners-of-war, as far as they joined the Waffen-SS voluntarily, did never have to fight against their home country but only against Soviet Bolshevism.

2) The Establishment of the Voluntary SS-Division "Prinz Eugen" in Croatia.

As new evidence I submit the following 3 affidavits:

a) affidavit of the commander of the division "Prinz Eugen", former Gen. Ltn. der Waffen-SS, Otto Kumm, dated 26 June, 1950.

Appendix 37.

b) affidavit of the former Major der Waffen-SS in the staff of the commander of the division, Eggert Neumann, dated 16 June, 1950.

Appendix 38.

c) affidavit of the Batl. commander "Prinz Eugen", former Major der Waffen-SS, Leo-Michael Schulz, dated 23 June, 1950.

Appendix 39.

I should only like to add the fact that I had nothing to do with the establishment of the division "Prinz Eugen" in 1942, and that from 1942 on everybody had joined the division voluntarily.

Owing to this evidence I am convinced that the Tribunal would not have found me guilty, and I, therefore, hope that this point will be no obstacle if I should be given mercy.

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3) The Establishment of the Liberating Army of Wlassow.

a) Preamble.

"Wlassow had only voluntary troops. There was no member of the Wlassow Army, who was not a volunteer," reads the sworn statement of the witness Karl I. Albrecht, the best expert, who can be found.

I was, therefore, not accused of having forcibly drafted Soviet Russian citizens for the Wlassow Army within the section Prisoners-of-War Affairs. Firstly I was not competent, for the Wlassow Army was put up only by the former Military Attache in Moscow, the general of cavalry v. Kostring, who was the supervisor and the responsible person. Secondly a large number of Soviet Russian prisoners-of-war volunteered on their own for the Wlassow Army. They knew the character and the methods of Soviet Bolshevism: Everyone of them would have been liquidated as a traitor, because he had become alive a prisoner of the enemy. They knew the fate, which would happen to them, if they would be "liberated" by the Red Army. The only chance to save their lives was to join the Wlassow Army. The problem was not to recruit volunteers for the Wlassow Army, but to guarantee for the fact that only convinced anti-Bolshevists were accepted from the many volunteers.

b) The Verdict of Guilty.

In connection herewith the Tribunal stated that I had tried by means, which were against the international law, to suppress a propagandistic counter-action on the part of the Soviet Russian prisoners-of-war against the volunteering: that I called those persons to account, who, by their counter-propaganda had caused discontent amongst the prisoners-of-war.

c) My Point of View.

According to the German military penal law everybody is to be punished, who on his own or together with others causes discontent with regard to the service. Therefore it cannot be against the international law to call to disciplinary or legal account prisoners-of-war, who are guilty from this point of view. The verdict does not accuse me of the fact as such, but of the way I wanted it to be done, according to an "order" given by me on 24 January, 1945.

According to a general order from the OKW, which I found when I was appointed Chief of the Prisoners-of-War Affairs, all saboteurs among the Soviet Russian prisoners-of-war were to be removed from their working

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place and to be handed over to the SD. I could not give any orders but only recommendations to the so-called commanders of the prisoners-of-war, army officers of the rank of a general, who were the only persons competent for jurisdictions. When I gave my "order" on 24 January, 1945, I only reminded those commanders of the above mentioned OKW order. I could not imagine that the OKW order was against the conventions of 1929, and I never had the idea that the term "handing over to the SD" meant death. With regard to the prisoner-of-war affairs I do not believe it even today. I have never heard anything about such procedures. Regarding the Prisoners-of-War Affairs a "hand-over to the SD" meant that the respective Soviet Russian prisoner-of-war were isolated from their comrades and the German population. The Court apparently changed by mistake the with regard to their contents completely different terms: "Hand-over to the SD" and "hand-over for special treatment". The affidavit of the witness Karl J. Albrecht, dated 20 July, 1950,

Appendix 40,

shows that his explanation is right.

4) Compulsory Naturalization of Foreigners from Serbia, Croatia, Czechoslovakia, Latvia, Lithuania, Poland, Russia, Luxembourg and Alsace and Lorraine for the Purpose of Forcing them to Serve in the German Army.

Neither I nor the SS-Hauptamt had ever anything to do with the naturalizations.

Neither I nor the SS-Hauptamt had ever anything to do with the calling in of Germans or foreigners by the German Army. My task and that of the SS-Hauptamt was to recruit volunteers for the Waffen-SS for the fight against World-Bolshevism. Even if they volunteered, Polish, Czech and Slav citizens were never accepted by Waffen-SS units.

Moreover I may draw the attention to the detailed exposition on page 75-79 of the petition, which the lawyer Dr. Froeschmann sent on my behalf to General Lucius D. Clay on 28 April, 1949.

F. Participation in the Slave Labour Program in the Occupied Eastern Territories.

1) Preamble

The verdict, dated 11 April, 1949, describes my allegedly close connection with the forcible recruiting program of foreign workers in the occupied eastern territories, the by the Court a priori as "infamous" compromised Heu-Aktion. It is called "a conscription of children from the territories in the east, owing to

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the evacuation of these territories by the German Army because of the approach of the Allies (that is, the Red Army)."

In the same verdict it reads that during the time from September 1944 until May 1945 forced marches of hundreds of thousands of American and English prisoners of war were carried out under my responsibility, which led to terrible privations and to the death of many thousands of prisoners. In the definition of my acquittal insofar it reads:

"Berger's actions cannot be judged according to a later knowledge, but for what he knew at that time or had any reason to believe, and on the grounds of the circumstances he had to face at that time. It is obvious that there was a state of emergency. At this status of the war the German railway connections were seriously damaged, especially in the east. It will be known as well that the Russian advance went very quickly, and that the German front in the east was breaking up rapidly. We confirm that there were only two possibilities for him: He could either leave the prisoners to the Russian army, or he could transfer them in the above mentioned way. If he would have left them they necessarily would have been in a zone of active war operations and exposed to extreme danger for some time.... If Berger believed honestly, though without any reason, that the prisoners would have been exposed to a greater danger in the camps than on a forced march, that is sufficient. We have no evidence which objects against this fact. The unanswered evidence proves that he gave the prisoners as much food, clothing and medical care as he could, even if it was not sufficient."

The prisoners-of-war were transferred owing to their own request. They preferred to suffer from privation and emergencies to being liberated by the Red Army. For the same reasons there were measures planned to transfer White-Ruthenian youths to Germany, but these measures could be carried out only on a small scale. In comparison with the dangers of active war operations and the "liberation" by the Red Army this evacuation was a better solution.

I do not understand why I was acquitted in one case and declared guilty in another case, parallel to the first one through the same facts.

2) The Heu-Aktion.

At the moment when I heard for the first time of the plans which led to this trial, I had to face the following situation:

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Military necessities had caused the Heeresgruppe Russland-Mitte to draft all Russian civilians to construct defences for the rather weakened German troops. Though this work was not done near the front the children were left without their parents, if they were not orphans already. This problem was solved by the Heeresgruppe Mitte by the establishment of so called children's villages. By the middle of the year 1944 the development at the front had become worse and worse, and there was the danger of a military catastrophe. There were reports of the German signal corps, according to which the advancing Red Army had liquidated all civilians by pretending they had been suspicious because of collaboration. Hitler had ordered to transfer these children's villages on the whole to German Kinderlandverschickungslager, training camps of the Germany industry etc. to save them from the same fate of mass murder.

That was the meaning of the Heu-Aktion. Owing to the pressure of the Soviet Russian advance there were already planned similar measures for other territories behind the eastern front.

At this state of affairs I was made responsible for carrying out the Hitler order. Its execution failed due to the German military break-down. There was no forced labour by then or later.

Owing to a report from the HJ-Bannfuhrer Nickel, dated 1 August, 1944, the Court thought that this really human affair, the Heu-Aktion, was a part of the forced labour program of Saukel. In the report it reads for instance that 2,500 more youths could have been evacuated into the Reich, but the plan had not been carried out. Regarding the 2,500-youths Nickel's report mentions further - more that "they are now already working the Junkers-Werke". This is the only objective and controllable proof of the question, if this was a forcible recruiting of youths and children of the age of 10 up to 15 for industrial purposes. I submit an affidavit from Otto Wendlandt, dated 7 July, 1950, as

Appendix 41.

Mr. Wendlandt had been Hauptwerkschutzleiter and Abwehrbeauftragter of the whole Junker-Konzern from the beginning of 1941, and he confirms that these White Ruthenian youths were not forced to work, but if they wanted, to they could do so as apprentices. For the procedure of production this was a strain and not a help.

This new fact removes the basis of my verdict of guilty in this point. At the same time this affidavit shows that I did not send youths of child's age to forced labour, when there was asked for 100 selected youths for the factory hunting outfit at Zella-Mehlis.

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3) The Luftwaffenhelferaktion and the Aktion KOK-SAGYS.

For the time being I can only draw the attention to the detailed exposition of my Counsel for the Defence Dr. Froschmann on page 87-97 of the petition, dated 18 April, 1949. I may, however, mention that according to news I received the former HJ-Bannfuhrer Nickel returned recently from Russian captivity. He is said to live in the British Zone of Germany. Inquiries about his residence are already dealt with. As soon as they will be successful I will not hesitate to submit an explanation by an affidavit, which will prove my innocence also in this respect.

G. Membership in Criminal Organizations.

It is known to me that the statute of the International Military Court, Appendix to the London Agreement of the Allies, dated 8 August, 1945, says in Article 10:

- 1) The commanding officers of the occupied zones are empowered to bring persons before a national military court or an occupational court only because they belonged to one of the groups or organizations, which have been declared to be criminal by the above mentioned Tribunal, and that
- 2) the criminal character of such a group or organization will be considered as a fact and cannot be objected to.

Furthermore I know that the Commanding Officer of the British Zone made use of this, and many thousands of members of the SS and Waffen-SS got criminal punishment because they had belonged to such an organization.

From his affidavit, dated 25 June, 1948, I know that a man with the high morals of Oberlttn. der Waffen-SS Benson Bailton Metcar Freeman was condemned.

And finally I know of the Bolshevist labour camps in Siberia, in which only a few months ago hundreds of thousands of German soldiers were sent as "war criminals" for the purpose of a life-time slavery. In view of these facts it would be against the ethos of leaders if I would ask for freedom because I was only a member of the organization.

Moreover I have the feeling that the accuse of having been a member in a criminal organization would not be removed by legal proceedings for mercy, as long as I am declared to be individually guilty of those plans, which the SS executed as regular crimes.

I consider all statements, given to this item rather important, but they do not have to be prosecuted in the course of the present trial.

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SUMMING - UP

It is the purpose of the preceding account that the freedom I am striving for, and which I hope to regain, will be an honorable one.

With exception of my wife and my children there is nothing left in this world, for which I lived. Everything was destroyed.

So there is nothing left to me but honour.

Landsberg/Lech, 29 July, 1950
War Criminal Prison Nr. 1

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