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The Belsen Trials 1945-48:
an investigation and analysis

by

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Abbreviations

BAOR: British Army of the Rhine

DJAG: Deputy Judge Advocate General

DP: Displaced Person

FO: Foreign Office

IMT: International Military Tribunal

IWM: Imperial War Museum

JAG: Judge Advocate General

SS: *Schutzstaffel*

UNWCC: United Nations War Crimes Commission

WO: War Office

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Abstract

This dissertation examines three sets of trials relating to war crimes committed at Bergen-Belsen concentration camp in Germany and elsewhere, conducted by British military tribunals between 1945 and 1948, in the British Zone of Occupation and in the Bizone in Germany. It will consider how the British came to be prosecuting Germans in Germany for committing war crimes in Germany (and Poland) against people who were almost exclusively foreign nationals.

After a survey of the relevant background literature and sources, the formation of British war crimes policy will be reviewed to reveal that the British lacked enthusiasm for war crimes trials and procrastinated over the issue as long as possible. There will be an examination of the legal framework that was improvised to allow war crimes trials to take place, the relevant provisions of international law and the defence of superior orders. A brief look at the camp system and the two main camps which featured in the trials, Belsen and Auschwitz, will set the scene for a study of the trials.

These trials will be investigated to establish their subject matter, their outcomes and how various parties reacted to them. Changes in procedure to meet criticisms of the process will also be examined and there will be a discussion of sentencing issues. Two other relevant cases will be visited briefly, for comparison purposes.

The attitude of the German public to the conviction and sentencing of war criminals will be viewed through three case studies. The end of the trial programme will be examined to show how these attitudes contributed to the British abandoning their war crimes policy when it became politically expedient to do so. The conclusion will be that, although the aims of the trials generally were not achieved, any perceived success was soon to be eroded by the change in British and Allied policy towards Germany.

Introduction

This dissertation will consider in detail three sets of war crimes trials conducted by British Military Tribunals in Germany between 1945 and 1948. These trials, known collectively as the Belsen trials, concerned the ill treatment and killing of Allied nationals at Bergen-Belsen concentration camp and elsewhere. These trials dealt only with war crimes as traditionally defined and were distinct from trials for crimes against humanity, which were carried out under different procedures by different courts.

The liberation of Bergen-Belsen concentration camp in northern Germany by British soldiers in April 1945 brought home to the British public, perhaps for the first time, the reality of Nazi war crimes. It was given a great deal of media attention and the progress of the first trial was regularly reported in the British press. (1) The liberation of this camp and the subsequent trials of the SS guards and functionaries who ran it, remain important in British social and cultural history. Indeed, the word “Belsen” had penetrated the British psyche to such an extent that, even more than twenty years after the verdicts in the first trial, the Belsen case was capable of provoking angry debate in the British press, stirring up such important figures as Brigadier Hugh Llewelyn Glyn Hughes and the historian, A.J.P.Taylor. (2) The press continues to this day to report on the liberation of Belsen, occasional mention being made of the first trial. (3)

1 Reilly, Joanne. *Belsen: The Liberation of a Concentration Camp*. London: Routledge, 1998; Bloxham, Donald. *Genocide on Trial: The War Crimes Trials and the Formation of History and Memory*. Oxford: Oxford University Press, 2003, pp.97-101. Belsen was the only concentration camp liberated by the British.

2 In 1968, a flurry of letters was sent to *The Times*, concerning articles by Dr. Russell Barton, a psychiatrist, which had appeared on 21st and 28th November, in which he had written that conditions at Belsen were “not so bad” and that there had been no deliberate policy to starve inmates there.

On 29th November, a Mr. R.W. Cooper wrote in saying that Barton’s remarks were, “...essentially the defence advanced by Kramer....Does Dr Barton now imply that the Belsen sentences were a miscarriage of justice?” Glyn Hughes was Vice-Director of Medical Services, BAOR, was present at the Liberation of Belsen and testified at the first Belsen trial.

3 For example, in the obituary of the Rev. Leslie Hardman, *The Times*, 8/10/08. See chapter 10 infra.

For all of these reasons, almost every British adult will have heard of Belsen, but not many will know that the trial of Josef Kramer and forty-four others was the first war crimes trial conducted by the British in Germany in 1945.

Although it ended before the International Military Tribunal at Nuremberg began, comparatively little is known about it, nor the 313 other war crimes trials conducted by the British in Germany between 1945 and 1949, involving almost 1000 individuals. (4)

Little has been written about the Belsen trials, especially the second and third trials. As a prosecutor with an interest in history, this encouraged me to conduct my own research into the trials to answer the many questions raised by current news reports of war crimes. Who exactly was on trial and for what crimes? Under what authority were the British prosecuting war criminals in Germany, how was this being done, what sentences were being passed and, finally, was justice done?

It will be shown in this study that the British Government would have preferred to avoid war crimes trials. Lip service was paid: its programme was restricted and attempts were made throughout its operation to restrict it even further. The emphasis was always on how few trials could be done without incurring public criticism. (5) Some SS personnel and functionaries were punished but many more escaped without punishment. From the point of view of the victim, the trials were not very successful. Limited accounting was made, while Jewish witnesses were usually treated badly by defence counsel in Court, accused of lying and their evidence denigrated. Lenient sentences were the order of the day, apart from a few token death sentences. From the accused's point of view, the trials were not conducted fairly. Most were convicted when the British amended the usual rules of evidence applicable in criminal cases

4 Dale Jones, Priscilla. 'British Policy towards German Crimes against German Jews, 1939-1945', *Leo Baeck Institute Yearbook*, 36 (1991), pp.339-366; see also Dale Jones, Priscilla. 'British Policy towards Minor Nazi War Criminals', Unpublished PhD Thesis, University of Cambridge, 1990, p11.

5 FO371/50991; Dale Jones, Priscilla, Thesis, *ibid.* p210.

to promote this. If the starting point was that all SS personnel were guilty, then why have trials at all? The accused were on trial for their lives but were denied the legal safeguards that would have applied in an ordinary criminal trial in England. These issues will be investigated and analysed in this dissertation.

Given that there has been no systematic study of the three Belsen trials and indeed, that even individually, the later trials have received very little attention, this dissertation aims to fill this gap. By an examination and consolidation of archival records, especially those held at the National Archives in London and other primary and secondary source materials, a detailed study of the Belsen trials will be conducted and an evaluation made of their role in addressing war crimes committed at Bergen-Belsen and other camps. It will be argued that the trials were, generally, unsuccessful. However, the fact that trials were conducted and that a few perpetrators were punished, was later undermined by a change in British policy towards Germany.

The Belsen trials, and hence this dissertation, are concerned only with the prosecution of those persons described as *minor* Nazi war criminals, as opposed to the *major* criminals, as defined in the Moscow Declaration, and who were judged by the International Military Tribunal at Nuremberg. (6) The *major* criminals were members of the Nazi ruling elite, whereas the *minor* criminals were lesser individuals who had committed crimes in specific locations, such as within concentration camps. Much background literature deals with the formation of British (and Allied) war crimes policy and demonstrates that the British came to the prosecution of war crimes reluctantly. (7)

6 The terms of the Moscow Declaration, November 1943, are contained in FO371/34378 C13682/31/62. See also chapter 1, p4 *infra*.

7 Dale Jones, Priscilla, Thesis, *op. cit.*, p5; see also Dale Jones, Priscilla, 'British Policy towards German Crimes against German Jews 1939-45', *op. cit.*, pp.339-366; Bloxham, Donald. 'British War Crimes Trial Policy in Germany, 1945-1957: Implementation and Collapse', *Journal of British Studies*, 42 (January 2003), pp.91-118; Kochavi, Arieh. *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment*. Chapel Hill, N.C.; London: University of North Carolina Press, 1998.

It was only under pressure from Allied governments-in-exile, Jewish groups, certain Members of Parliament and others, that the Government issued Declarations and veiled threats to those committing war crimes, at various times during the War, to no practical effect. (8)

There were two main reasons for this inertia. Firstly, reports of mass murder in the occupied territories were not believed or were thought to be exaggerated, and, secondly, government officials could remember the difficulties in trying to punish German war crimes following the First World War. The conditions and attitudes which played a part in forming British war crimes policy will be discussed in the first chapter.

A wide range of primary and secondary sources will be consulted in an attempt to find answers to the questions raised above. It will be found that there were many shortcomings in the system and the outcome of the trials pleased hardly anyone. The British soon realised that they could not live up to their commitments and began to formulate a withdrawal policy. It will be seen, through a study of these particular trials, that the German public and politicians soon began a campaign for the release of those who had been convicted of war crimes by Allied tribunals. By the time of the third Belsen trial, as a result of deteriorating relations with the Soviet Union, the British and her former Allies wanted to cultivate Germany as an ally. This wrought a change in their war crimes policy and resulted in the early release from custody of many of those convicted *inter alia* at the Belsen trials.

Academic interest in the British Government's war crimes policy was stimulated by the opening of Foreign and War Office files, which had been closed for thirty years, in the late 1970s. This was the beginning of fierce

8 See chapter 1 *infra*.

academic debate about whether the Allies had done enough to save Jews from mass murder during the course of the War.

While not directly relevant to the subject of this thesis, this literature provides an insight into the minds of those who were involved in forming British war crimes trials policy. (9)

Having considered briefly the origins of the Government's policy on war crimes trials, the focus of this dissertation turns to the trials themselves. The first Belsen trial, which took place between 17th September and 17th November 1945, was the first of a series of three British trials of concentration camp personnel connected with Bergen-Belsen.

While the literature on the actual liberation of Bergen-Belsen is substantial and still growing, and includes eyewitness accounts by the liberators and

9 London, Louise. *Whitehall and the Jews 1933-1948: British Immigration Policy, Refugees and the Holocaust*. Cambridge: Cambridge University Press, 2000; Wasserstein, Bernard. *Britain and the Jews of Europe 1939-45*. London: Leicester University Press, 1999; Kushner, Tony. *The Persistence of Prejudice- Anti-semitism in British Society during the Second World War*. Manchester: Manchester University Press, 1989; see also Kochavi, Arieh. *Prelude to Nuremberg*, op. cit.; Fox, John. 'Review of Britain and the Jews of Europe'. *International Affairs*, 56 (1) (January 1980), pp.143-44. See also Fox, John. 'The Jewish Factor in British War Crimes Policy'. *English Historical Review*, (1977), p86; Gilbert, Martin. *Auschwitz and the Allies*. London: Michael Joseph Ltd., 1991; Morse, Arthur D. *While Six Million Died*. London: Secker & Warburg, 1968; Wyman, David S. *The Abandonment of the Jews*. New York: New York Press, 1998; Penkower, M.N. *The Jews were Expendable*. Urbana: University of Illinois Press, 1983; See also Penkower, M.N. 'Great Britain and the Holocaust'. In Saul S. Friedman, *Holocaust Literature, A Handbook of Critical, Historical and Literary Writings*. Westport, Conn.: Greenwood Press, 1993; Laqueur, Walter. *The Terrible Secret*. London: Weidenfeld & Nicholson, 1980; Breitman, Richard. 'The Allied War Effort and the Jews 1942-43'. *Journal of Contemporary History*, (1985), Vol. 20, pp.135-155; see also Breitman, Richard. *Official Secrets: What the Nazis Planned, What the British and Americans Knew*. New York: Hill and Wang, 1998; Rubinstein, William. *The Myth of Rescue*. London: Routledge, 1997.

victims, diaries and scholarly works, literature on the trials is limited. (10)

The only published account of the first trial is *The Belsen Trial* by Raymond Phillips, who was, in fact, one of the defence counsel at the trial. This work, published in 1949, is a condensed version of the official record of the trial but also contains other information such as photographs of scenes from the liberation of Belsen, photographs of the accused and useful appendices, containing the Royal Warrant and Regulations, list of exhibits (productions), a map of German concentration camps and details of the many affidavits that were produced. (11) A.P.V. Rogers provides further information on the use of the Royal Warrant procedure for the prosecution of war criminals. (12)

Donald Bloxham has produced a number of books and articles relating to war crimes trials. (13) Commenting on the first Belsen trial and the International Military Tribunal at Nuremberg, he states that the purpose of the war crimes trials was twofold: to punish the offenders and to educate the public, especially the German public. He concludes that the trials failed to achieve

10 See, for example, Shephard, Ben. *After Daybreak: The Liberation of Belsen, 1945*. London: Pimlico, 2006; Reilly, Joanne, *The Liberation of a Concentration Camp*, op. cit.; Kolb, Eberhard. *Bergen-Belsen: From Detention Camp to Concentration Camp 1943-45*. Göttingen: Vandenhoeck and Ruprecht, 2002; Levy, Ernest. *The Single Light*. London: Vallentine Mitchell, 2007; Levy-Hass, Hanna. *Inside Belsen*. Brighton: The Harvester Press Ltd., 1982; Verholme, Kitty. *The Children's House of Belsen*. London: Portico's Publishing, 2005; Sington, Derrick. *Belsen Uncovered*. London: Duckworth, 1946; Dimpleby, Jonathan. *Richard Dimpleby - A Biography*. London: Hodder and Stoughton, 1975.

11 Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Company Ltd., 1949.

12 Rogers, A.P.V. 'War Crimes Trials under the Royal Warrant, British Practice, 1945-49'. *International and Comparative Law Quarterly*, 39 (1990), p780.

13 Bloxham, Donald. 'The Holocaust on Trial: The War Crimes Trials in the Formation of History and Memory'. Unpublished PhD Thesis, University of Southampton, 1998; Bloxham, Donald. 'The Genocidal Past in Western Germany', *European History Quarterly*, 34(3) (2004); Bloxham, Donald, *Genocide on Trial – War Crimes Trials and the Formation of Holocaust History and Memory*, op. cit.

either of these ends. (14) Bloxham shows that, with the passage of time, the German public, as well as the British public, lost interest in war crimes trials. Even in relation to the IMT and the prosecution of the Nazi leaders, “The one constant unearthed by all the polls of the period was the dissipation of attention as the trial progressed.” (15) This dissipation of interest is probably the reason why there is some literature on the first trial and very little on the later trials.

The first Belsen trial has been the subject of recent academic interest in Germany. The thesis of John Cramer, at the University of Tübingen, is awaited. (16) Cramer has also written an article about the first Belsen trial, “*Farce oder Vorbild*” (farce or model) in which he agrees with Holocaust survivor Anita Lasker-Wallfisch that the trial was “a huge farce” and that “law” in the conventional sense should not have been applied to crimes so far removed from the law. (17).

There is published work providing biographical information on some of the accused at the Belsen trials. The Israeli historian, Tom Segev, interviewed the wife and son of Josef Kramer, the last commandant of Auschwitz Birkenau and Bergen-Belsen and produced an interesting account. (18) Daniel Patrick Brown’s book on Irma Grese, a female guard at both of the above camps, is in the form of a popular work and reveals little information not already available from the archives or trial transcript. (19) Claudia Taake carried out a comparative study of four SS women, including Irma Grese, who was accused at the first trial, and Anneliese Kohlmann, who was accused at

14 *ibid.*

15 *ibid.* pp.145-46.

16 The title of this work is presently unknown.

17 Cramer, John. ‘*Farce oder Vorbild? Der erste Belsen-Prozess in Lüneburg 1945*’. In U. Fritz *et al*, *Tatort KZ: Neue Beiträge zur Geschichte der Konzentrationslager*. Ulm, 2003, pp.201-219; Lasker-Wallfisch, Anita. *Inherit the Truth*. London: Giles de la Mare, 1996, p127.

18 Segev, Tom. *Soldiers of Evil: the Commandants of the Nazi Concentration Camps*. London: Grafton Books, 1990.

19 Brown, Daniel, *The Beautiful Beast*. Ventura, California: Golden West Historical Publications, 1996.

the second trial. She analysed the trials in which these accused featured, asking whether they were treated fairly by the court and the press compared to the male accused. In the case of Grese, Taake argues that she had been made a scapegoat by the press as a result of her attractive appearance. She concludes that the trial was a farce, certainly in relation to Grese, the result having been decided in advance. (20) Martina Ehlert has also commented on the obsession with Grese in a discussion of how the first trial was reported in the German press. (21)

For the second Belsen trial, which was, in fact, a series of individual trials, sources are sparse. There appears to have been little interest in Germany in Allied war crimes trials and, more surprisingly, it seems that the British had no interest in reporting or writing about this trial either, the novelty of the first trial clearly having worn off. There is no published material on this set of trials, which concerned atrocities not only at Bergen-Belsen but also at Auschwitz and satellite camps of Belsen and Neuengamme.

There is no published literature on the trial of Kasimierz Cegielski, nor on the trials of Kliem and Rex, which are referred to in this dissertation. There appears to be no published literature relating to the third Belsen trial, the trial of Curt Meyer, which took place at Hamburg in April 1948. It is, therefore, the aim of this dissertation to examine the three sets of trials together to establish what took place, and, through a review and consolidation of the available sources, to analyse and evaluate what contribution these trials made to punishing war crimes committed at Bergen-Belsen, Auschwitz and other camps.

To provide some background information for the trials, it is necessary to consider the literature on the camps themselves. A useful book on the command structure within the camps is *The Order of Terror*, by Wolfgang

20 Taake, Claudia. *Angeklagt: SS Frauen vor Gericht*. Oldenburg, 1998.

21 Ehlert, Martina. 'Umerziehung zur Demokratie'. In Claus Füllberg-Stolberg. *Frauen in KZ Bergen-Belsen, Ravensbrück*. Bremen: Temmen, 1994.

Sofsky. (22) Sofsky describes how the Germans exploited certain prisoners and turned them into accomplices. These persons were prosecuted as such, along with members of the SS, for committing war crimes at Bergen-Belsen and other camps. Anita Lasker-Wallfisch, a former prisoner of both Bergen-Belsen and Auschwitz, disagreed with this policy, "I thought it entirely wrong that they should be tried alongside the people whose system had turned them into the animals they had become. The *kapos* should have had their own separate trial." (23) Dealing with the individual camps, there is extensive literature on both Bergen-Belsen and Auschwitz. (24)

Pro Memoria, a publication of the Auschwitz Museum, has been a useful source, containing much valuable material on the history and functioning of that camp, in the form of essays written by Polish historians. (25)

A number of more obscure camps featured in the second set of trials. At Waldeslust, female prisoners were employed in the munitions industry and in

22 Sofsky, Wolfgang, *The Order of Terror: the Concentration Camp*. Princeton: Princeton University Press, 1997.

23 Lasker-Wallfisch, Anita, op. cit. pp.124-127.

24 There is a vast amount of survivor literature, for example, Rosensaft, Hadassah. *Yesterday, My Story*. Washington: The United States Holocaust Memorial Museum, 2004; Verholme, Kitty op. cit.; Müller, Filip. *Eyewitness Auschwitz: Three Years in the Gas Chambers*. Chicago: Ivan R. Dee, 1979; Fenelon, Fania. *The Musicians of Auschwitz*. London: Michael Joseph, 1977; Lengyel, Olga. *Five Chimneys*. London: Mayflower Books, 1972; Czech, Danuta. *The Auschwitz Chronicle*. London: I.B. Tauris & Co. Ltd., 1990; Rees, Laurence. *Auschwitz: The Nazis and the Final Solution* London: BBC Books, 2005; Feig, Konnilyn. *Hitler's Death Camps*. New York; London: Holmes and Meier Publishers, 1991; Steinbacher, Sybille. *Auschwitz - A History*. London: Penguin, 2005; Kogon, Eugen et al. *Nazi Mass Murder: A Documentary History of the use of Poison Gas*. New Haven; London: Yale University Press, 1993.

25 see Piper, Franciszek. *The Sonderkommando Revolt. Pro Memoria* vol.3-4 p47; Piper, Franciszek. *Birkenau: Symbol of Nazi Genocide. Pro Memoria* vol.5-6, pp. 7-10; Strzelecka, Irena. *The Women's Camp in Auschwitz. Pro Memoria* vol. 5-6 pp.14-16; Strzelecka, Irena. *The Men's Camp in Auschwitz. Pro Memoria* vol.5-6, pp.17-19; Swiebocka, Teresa. *Birkenau: The Ground where the most present are the Dead. Pro Memoria* vol. 5-6 pp. 3-5; Swiebocki, Henryk. *Why the bombs did not fall on KL Auschwitz? Pro Memoria* vol.3-4 pp. 23-26; Swiebocki, Henryk. *Five Escapees from Birkenau. Pro Memoria* vol.5-6, pp.20-23. Available at Glasgow University Library.

the excavation of salt mines. Annette Wienecke has written about Waldeslust in the context of forced labour at Hambühren-Ovelgönne, basing this work on archival sources and survivor accounts. (26) Rolf Keller has written about Hannover-Mühlenberg (Hanomag), another camp featured at the second set of trials, giving a full historical account, tracing its origins back to Laurahütte, a sub-camp of Auschwitz, and providing a short biography of its leader, Walter Quakernack. (27) In 1981, Rolf Keller was also involved in a project undertaken by various organisations in Hanover with the assistance of Gerhard Grande, a survivor of Auschwitz and Hannover-Mühlenberg. Grande knew Quakernack personally, gave evidence at his trial and also gave evidence at the trial in Hanover in 1980-81 of Friedrich Wilhelm Rex and Alfred Grams, who were both prosecuted for committing murder on the death march to Belsen. (28)

Herbert Obenaus has written about the evacuation of the seven satellite camps of Neuengamme in the Hanover area, of which Mühlenberg was one, again discussing the death march from Hanover to Belsen. (29) Karl Heinz Schulz has written about the Hamburg camps Neugraben and Tiefstak and explains that female prisoners were working in full view of the German population, being marched through towns wearing their trademark striped clothing and working alongside German civilians in the factories. His detailed

26 Wienecke, Annette. *Besondere Vorkommnisse nicht bekannt- Zwangsarbeit in unterirdischen Rüstungsbetrieben- wie ein Heidedorf kriegswichtig wurde. Aussenkommando Hambühren Ovelgönne.* Bonn, 1996, pp.154-164.

27 Keller, Rolf. 'Das KZ Mühlenberg: Auschwitz in Hannover.' In Rainer Fröbe *et al.*, *Konzentrationslager in Hannover: KZ-Arbeit und Rüstungsindustrie in der Spätphase des Zweiten Weltkriegs.* Hildesheim: A. Lax, 1985, pp.407-491.

28 Keller, Rolf. *Das KZ- Aussenlager Hannover - Mühlenberg, Vernichtung durch Arbeit. Freizeit und Bildungszentrum Weisse Rose.* O.O.o.J.: Hanover, 1981. The so-called death march to Belsen also featured in the first Belsen trial. See chapters 4 and 5 *infra*.

29 Obenaus, Herbert. 'Die Räumung der Aussenlager des KZ Neuengamme im Raum Hannover.' In Detlef Garbe and Carmen Lange, *Häftlinge zwischen Vernichtung und Befreiung: Die Auflösung des KZ Neuengamme und seiner Aussenlager durch die SS im Frühjahr 1945.* Bremen: Edition Temmen, 2005.

account discusses all aspects of camp life and reveals that the prisoners' "work" was, in fact, hard labour (*schwerster körperlicher Arbeit*). (30) These works help provide a fuller understanding of the activities at these camps and the actions of the personnel employed there. It is difficult to achieve this reading only the trial notes, as, in the second set of trials, each of the accused was tried separately and there are no trial transcripts for these trials, nor for the third trial.

Having investigated the conduct of the trials, the dissertation then turns to the running down of the trial programme and the early release from custody of those war criminals sentenced a short time previously. Priscilla Dale Jones' thesis, *British Policy towards Minor Nazi War Criminals*, describes *inter alia* how the British began to run down their trials programme just as the extent of Nazi atrocities was becoming known. (31)

She commented on the fact that, in the early 1950s, as Germany had to be re-armed in the face of deteriorating western relations with the Soviet Union, much was done to placate German public opinion concerning convicted war criminals, who had their sentences repeatedly cut by "review boards". (32) This work is supplemented by Norbert Frei's important work, *Adenauer's Germany and the Nazi Past* which contains a detailed account of the Federal

30 Schulz, Karl Heinz. 'Das KZ-Aussenlager Neugraben.' In Jürgen Ellermeyer, Klaus Richter, Dirk Stegman. *Hamburg von der Burg zur Industriestadt*. Hamburg: Hans Christians Verlag, 1988, pp.493-502.

31 Dale Jones, Priscilla, Thesis, op. cit.; Bower, Tom. *A Blind Eye to Murder*. London: Warner Books, 1997.

32 For a full discussion, see Dale Jones, Priscilla, Thesis, op. cit. Bloxham, Donald. 'British War Crimes Trial Policy in Germany 1945-57'. *Journal of British Studies*, 42 (2003), p113. The War Crimes Review of Sentences Board was set up in January 1949 to review all sentences passed in Royal Warrant cases, to ensure parity. Further reviews were carried out in 1953 and 1955 by similar bodies set up for the same purpose.

Republic's persistent attempts to secure amnesty for convicted Nazi war criminals. He shows that this was an aim supported by all political parties in the new state and was completely in tune with German public opinion. He argues that it was widely accepted that convicted war criminals were mostly *Wehrmacht* soldiers who had simply done their duty and were distinct from a minority of "real criminals" when, in fact, the number of *Wehrmacht* soldiers in custody was proportionately quite small. (33)

The archival sources, especially the files of the War Office and Foreign Office at the National Archives in London, have played an important role in this dissertation. The National Archives, which holds the original trial files, correspondence between government departments and individuals relating to war crimes, the investigation of war crimes, and, in some cases, trial transcripts has been the chief resource for this dissertation. Files in the series WO235 (War Office, Judge Advocate General's Office), WO309 (War Office BAOR War Crimes Group), WO311 (Judge Advocate General's Office, Military Deputy's Department) and FO371 (Foreign Office, Political and General Correspondence) have been most often consulted. Although a few files are missing, material is duplicated in other files and so this has not caused much difficulty. The War Office files have been particularly important for the study of the second and third Belsen trials and the trial of Friedrich Kliem referred to in chapter eight. (34)

The Foreign Office files contain information on British policy on war crimes and also some insight into public opinion on the outcome of the trials, both in Britain and in Germany. Further information on this can be found in the War Office files that contain petitions for the pardon and release of those convicted of war crimes and these petitions themselves raise questions about what was actually known in Germany about German war crimes. These files were particularly useful for chapters eight and nine.

33 Frei, Norbert. *Adenauer's Germany and the Nazi Past*. New York: Columbia University Press, 2002. This book was published in Germany as *Vergangenheitspolitik*.

34 WO235/149; WO235/109; WO235/108; WO235/348.

There are limitations in using these sources. Regarding the first Belsen trial, a transcript of the evidence is available in the War Office files at the National Archives in London. (35) Raymond Phillips' book, mentioned above, is only an edited version of the evidence given in court. This dissertation is, therefore, important, as it fills out the bare bones of the archives with contemporary and survivor accounts. The first trial was widely reported in the press and made a substantial impact on the British public. *The Times Digital Archive* and other newspaper reports have been helpful, providing day by day accounts of the proceedings. Press reports, however, often brief and containing little analysis, failed to present an accurate picture of the Nazi camp system.

In the case of the later trials, archival sources are limited and even newspaper reports are few. At the British Library Newspaper Archive at Colindale, North London, a number of German newspapers were viewed for press reports on the later trials with little success in relation to the second set of trials and no success in relation to the third. (36) As no shorthand writers were employed in the later trials, there are no transcripts at the National Archives, only hand written notes. This is unfortunate as these are necessarily brief and not always legible and therefore much greater use has been made of correspondence files. It is clear that the information contained in the notes is what the writer considered to be the salient points of a witness's evidence and not the whole evidence given.

A great deal of background information for the trials was provided by both the Bergen-Belsen Memorial (*Gedenkstätte*) and the Lower Saxony Memorial Foundation (*Stiftung niedersächsisches Gedenkstätte*) at Celle and this has been acknowledged where appropriate.

35 WO235/12-24.

36 *Niedersächsisches Kurier*; *Hamburger Allgemeine Zeitung*; *Hamburger Echo*; *Neue Hamburger Presse*; *Neuer Hannoverscher Kurier*.

The Imperial War Museum in London holds the notes of Major Thomas Winwood, who was the leading defence lawyer at the first Belsen trial. These notes, together with documents relating to one of his clients, Josef Kramer, have been most useful. (37) SS files were consulted at the *Bundesarchiv* in Berlin for information on certain of the accused. (38)

The Belsen trials were conducted by a Military Tribunal and the legal basis for the trials was a Royal Warrant of 14th June 1945. (39) The Law Reports of the Trials reproduce the warrant and provide a commentary upon it and the Regulations, which set down practical rules for its operation. (40)

The Royal Warrant was concerned only with war crimes as traditionally defined by international law and hence only applied to crimes committed against “Allied nationals”. It therefore did not apply to atrocities perpetrated against German Jews or Jews from states previously allied to Germany. (41) By contrast, the IMT proceeded on the basis of a Charter, which was, in turn, based on the London Agreement of August 1945. This Charter created a new category of war crimes, namely, “crimes against humanity” and was to deal with those perpetrators described as “major” war criminals. (42)

There is a great deal of primary and secondary literature on Bergen-Belsen and Auschwitz, including survivor and eyewitness accounts. However, contemporary accounts of the trials, especially the second and third, are few.

37 Winwood, T.C.M., ‘Over their Shoulder: Recollections of a British War Crimes Trial in Europe’, Imperial War Museum, London.

38 see, in particular, *Bundesarchiv* File 117A Fritz Klein.

39 see Phillips, Raymond, op. cit. Appendix 1 pp.647-651; see chapter 2 infra.

40 Lauterpacht, H. (Ed). *The United Nations War Crimes Commission Law Reports of Trials of War Criminals*. Vols. 1-15. London: HMSO, 1947.

41 Dale Jones, Priscilla, ‘British Policy towards German Crimes against German Jews 1939-1945’, op. cit. p347.

42 Taylor, Telford. *The Anatomy of the Nuremberg Trials*: London: Bloomsbury, 1993; Tusa, Ann and Tusa, John. *The Nuremberg Trial*. London: BBC Books; 1995; Smith, Bradley F. *The Road to Nuremberg*. London: André Deutsch Limited, 1981.

Emphasis has been placed on the accounts of survivors and witnesses who actually gave evidence at the trials, for instance, Anita Lasker-Wallfisch and Hadassah Rosensaft, formerly known as Ada Bimko, who both gave evidence at the first trial, and Gerhard Grande, who gave evidence at the second trial and at the trial of Friedrich Wilhelm Rex. (43) There is also survivor literature relating to Hamburg labour camps Neugraben and Tiefstak, which provides useful background information. (44)

This dissertation is set out chronologically. Chapters one to three will deal with policy, the law and the camp system. Thereafter, the three trials will be examined in detail in chapters four to seven and there will be discussion and analysis of *inter alia* the charges, legal issues and sentences.

In chapter eight, the opinions of the German public will be investigated through a study of the cases of three convicted war criminals. Chapter nine deals with the gradual withdrawal of the British from the war crimes trial programme and the release of convicted war criminals. It provides a link back to the first chapter, which deals with the formation of war crimes trial policy, when the reluctance of the British to conduct these trials is demonstrated.

The trial of Friedrich Rex, referred to briefly in chapter five, was not conducted by the British but by the Germans, some thirty-five years after the end of the War and is included for its obvious connection to the earlier cases. In a sense, it could be viewed as a fourth Belsen trial. This became a token prosecution of “old men”, where strict adherence to legal rules left the whole process open to criticism. Information on this case was obtained, *inter alia*, from the Archive of the *Hannoversche Allgemeine Zeitung*. The trial papers are in the *Niedersächsisches Landesarchiv*, Hanover and are subject to data protection

43 Lasker-Wallfisch, Anita *Inherit the Truth*, op. cit.; Rosensaft, Hadassah, *Yesterday, My Story*, op. cit.; re Gerhard Grande, see chapters 5 and 8 *infra*.

44 For example, Eichengreen, Lucille. *Erinnerungen: von Asche zum Leben*. Hamburg, Donat Verlag, 2001; Herrmann, Margit. *Hamburger Intermezzo*. In *Sonderdruck aus Harburger Jahrbuch* 18, 1993.

laws, therefore they have not been consulted. (45) These papers extend through the period 1947-1991 and run to 89 volumes. Study of these papers would make an interesting future research project.

45 Nds.721 Hannover Acc. 97/99 Nr.29/1-29/84 open from 2012; Nds.721 Hannover Acc. 90/99 Nr.217/1-217/4 open from 2016; Nds.721 Hannover Acc. 90/99 Nr. 204/1 open from 2015
Niedersächsisches Landesarchiv- Hauptstaatsarchiv Hannover.

Chapter 1

War Crimes Policy

This chapter will examine briefly the evolution of the British Government's policy on war crimes. This policy was not finally settled until after the end of the War and the reasons why the process took so long will be considered in this chapter.

Complaints about the behaviour of German troops in the occupied territories reached Britain soon after the outbreak of war. These reports increased after the German invasion of the Soviet Union in June 1941, when details emerged of mass shootings and barbarism towards the civilian populations, especially towards Jews. However, there was a degree of anti-Semitism inherent in British Government departments and, because many of the reports came from Jewish sources, they were either not believed or thought to be exaggerated. (1) For example, reports of the murder of over 33,000 Jews at Babi Yar in September 1941, gave Victor Cavendish Bentinck, Chairman of the Joint Intelligence Committee, "A feeling that many of these (reports) are the product of Slav imaginations". (2) Reports of German use of gas chambers were so shocking that government officials found them hard to believe. For instance, the Government would not include any reference to murder in gas chambers in an official statement concerning the fate of the Jews, made in the summer of 1943 and published in the press on 29th August, as officials were still doubtful of the truth of these reports. (3) A Foreign Office lawyer, Roger Allen, had minuted to Cavendish Bentinck,

1 See, for example, FO371/34551 c9705; Dale Jones, Priscilla. 'British Policy towards German Crimes against German Jews 1939-1945'. *Leo Baeck Institute Yearbook*, 36 (1991), p340; FO371/24472; See also Kushner, Tony. *The Persistence of Prejudice*. Manchester: Manchester University Press, 1989, pp.158-9.

2 *ibid*.

3 FO371/34551 C9705.

It is true that there have been references to the use of gas chambers.... Personally, I have never really understood the advantage of the gas chamber over the simpler machine gun or the equally simple starvation method. (4)

On 27th August 1943, Cavendish Bentinck recorded his own view, that, "Poles and, especially Jews, tend to exaggerate German atrocities in order to stoke us up." (5)

Apart from latent anti-Semitism in Government departments, officialdom just was not interested in war crimes. Lord Wright, writing the Foreword to the Law Reports of Trials of War Criminals, remembered,

How difficult it was.... to interest people in war crimes. When people were told of the doings in the occupied countries, the slaughters, tortures, massacres and so forth, they were generally uninterested and sceptical. Some wag had invented the term *atrocitly tale* and that was often enough to dispose of it. (6)

Moreover, politicians and government officials could remember the failure of the Leipzig trials in the early 1920s when the Germans had been allowed to prosecute their own war criminals, with embarrassing results. (7) So, although the British Government, at various times, issued warnings that those committing war crimes would be severely dealt with at the end of the War, it wanted to avoid committing itself to conducting war crimes trials and

4 *ibid.*

5 *ibid.*

6 United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. 2, Foreword, (x)

7 Bower, Tom. *Blind Eye to Murder*. London: Warner Books, 1997, pp.18-19. The resultant Leipzig trials were a failure and turned the Allies against the idea of allowing Germans to prosecute their own war criminals in future. Of 901 Germans prosecuted, only thirteen were convicted.

procrastinated over the issue as long as possible. (8) It was only after the Inter-Allied Declaration, signed at London on 13th January 1942, that the Government's Law Officers started formulating a war crimes policy. This Declaration, signed by nine governments-in-exile in London, stated that the punishment of those guilty of committing war crimes would be a principal war aim. There was no specific mention of the crimes against the Jews. It was feared that this would have played into the hands of those Jews who were campaigning for a Jewish state in Palestine, over which the British held a mandate. (9) The British insisted that Nazi victims were described only as nationals of a particular state. As will be seen later, this policy was carried through to the charges in future war crimes trial indictments.

According to Ariele Kochavi, in order to create an impression that something was actually being done about war crimes (when the contrary was true), on 7th October 1942, during a House of Lords debate, the Lord Chancellor announced the intention of Britain and the United States to set up a United Nations Commission for the Investigation of War Crimes. (10) The UNWCC was to investigate Axis war crimes against "Allied nationals" by collecting evidence, making up lists of war criminals and reporting to the relevant governments. (11) This organisation did not actually meet for a further year and was not a success, as its powers were limited and it was not given the full support of the governments that had set it up. Kochavi says the time taken to set it up reflected the low priority that the Allies gave to the war crimes issue. (12).

8 Dale Jones, Priscilla. 'British Policy towards Minor Nazi War Criminals 1939-58'. Unpublished PhD thesis, University of Cambridge, 1990; Kochavi, Ariele. *Prelude to Nuremberg*. Chapel Hill, N.C. 1998; London: University of North Carolina Press; Bower, Tom, op. cit.

9 Leitch, David. 'Explosion at the King David Hotel'. In Michael Sissons and Philip French. *Age of Austerity*. London: Hodder & Stoughton, 1963; Fox, John. 'The Jewish Factor in British War Crimes Policy in 1942'. *English Historical Review*, 92 (1977), p87.

10 Kochavi, Ariele, op. cit., p233.

11 *ibid.*; *History of the UNWCC and the Development of the Law of War*. HMSO, 1948.

12 Kochavi, Ariele, op. cit., p27.

Jewish organisations were concerned about the emphasis placed on the phrase “Allied nationals” and wondered what was to be done about crimes committed against stateless persons who had had their citizenship revoked by the Nazis i.e. the Jews, and those Jews who had resided in Axis countries. (13) Already this issue appeared to be creating difficulties. Some Foreign Office advisers, such as Sir William Malkin and Roger Allen, were of the view that offences against German Jews were not war crimes. War crimes in the strictest sense, *stricto sensu*, could only be committed against Allied nationals. (14) Others, such as Denis Allen, felt pressure should be exerted on post-war German governments to deal with atrocities against German and other non-Allied victims. (15) Others said that this was not what had been promised by the Government in the many statements and declarations that had been made. (16) In fact, the Declarations had been drafted by Foreign Office lawyers to be deliberately vague. (17)

The Government took a positive step in the direction of assuming responsibility for prosecuting war crimes at the Moscow Conference in October 1943, resulting in a Declaration on 1st November. It was this Moscow Declaration that was to form the basis of the Allied war crimes trials programme. The Declaration was stated to be without prejudice to the case of “major” war criminals whose offences had no particular geographical location and who were to be punished by a joint decision of the Allied Governments. In contrast,

13 Fox, John, op. cit., p96.

14 FO371/34369 c8796/31/62.

15 FO371/38992 c3567/14/62.

16 *ibid.*, John Troutbeck.

17 Kochavi, Arieh, op. cit., p153; Dale Jones, Priscilla. ‘British Policy towards German Crimes against German Jews’, op. cit. pp.350-358.

Those...who have been responsible for or have taken a consenting part in...atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of those liberated countries.

It was also stated that, "The three Allied powers will pursue (war criminals)...to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done". (18)

This statement of policy applied to those perpetrators who would become known as "minor" war criminals, as distinct from the "major" war criminals who had formed part of Hitler's ruling elite. In particular, it applied to concentration camp guards, and soldiers and civilians who had participated in the murder of Allied airmen. The word "minor" should not be misinterpreted: some of those tried and sentenced by British Military Tribunals were high ranking officers charged with serious offences, for example, Field Marshals Kesselring and von Manstein.

At a meeting of the War Cabinet on 3rd May 1945, it was agreed, following the Moscow Declaration, that the ordinary war criminal whose offence was committed in the territory of an Allied government would be handed over to that government for trial. War crimes committed in enemy territory should be tried by military courts in the area in which the offender was held or in which the offence was committed. Such courts should be composed of members of a single nation, "to avoid great practical difficulties". (19) It had been decided that the British would prosecute only crimes against British and Allied nationals. Crimes against German and other non-Allied Jews would be defined as "crimes of violence other than war crimes", to be dealt with by a post-war German government. (20)

18 The terms of the Moscow Declaration can be found in FO371/34378 C13682/31/62.

19 War Cabinet Minutes 3/5/45, LC02/2981.

20 Kochavi, Arieih, op. cit. pp.152-165.

The Judge Advocate General, Sir Henry MacGeagh, had expressed a preference for trial of war criminals by military court, utilising Royal Warrant procedure. Although he had started drafting the warrant in July 1944, it was not actually produced until June 1945. (21) The Attorney General was able to report to the Cabinet on 30th May 1945 that charges against over 150 minor war criminals had been prepared. (22) The Judge Advocate General's Department was to be responsible for preparing the trials of the so-called "minor" war criminals and for prosecution of these, under the direction of the War Office.

Sir Henry MacGeagh, who was based in London, insisted on keeping control of every step in the trial process. His refusal to delegate decision-making to the JAG's department in Germany was to result in long delays as papers were sent back and forth and instructions were awaited. Meanwhile, witnesses were leaving the Displaced Persons camps and often could not be traced. There was so much evidence to be collated that the department was overwhelmed and the shortage of investigators, prosecutors and judges in the face of demobilisation hampered the whole trial process. (23) War crimes work was not popular in the Army, nor in legal circles. (24) There were difficulties in attracting lawyers from the English Bar to prosecute or act as Judge Advocates, partly because the remuneration was low. (25) This did not bode well for a successful outcome.

It was not until 17th September 1945 that the British were in a position to start the first trial for concentration camp atrocities, the first Belsen trial. This trial

21 LC02/2981.

22 War Cabinet Minutes 30/5/45, LC02/2981.

23 Gerald Draper, quoted in Bower, *Blind Eye to Murder*, op. cit., p129; Dale Jones, Priscilla, Thesis, op. cit., p204.

24 Brigadier R.C. Halse, quoted Bower, Tom, op. cit., pp.129-30.

25 WO235/489; WO258/95: 'The Army Council Secretariat says five guineas *per* day is insufficient to attract successful barristers.' Treasury approval was sought to pay ten guineas as of 17/6/47.

will be discussed in chapter four. The next chapter will examine the legal rules governing the trial process.

Chapter 2

The Legal Framework

This chapter explains how the British assumed legal authority to conduct war crimes trials in the British Zone of Occupation and in the Bizone in Germany. It will also investigate the substantive and procedural legal rules governing the conduct of the Belsen war crimes trials and will differentiate those proceedings from other proceedings conducted by the Allies in Germany after the Second World War. The defence of “superior orders” (*Befehlsnotstand*) will also be examined.

The Historical Legal Background

By the start of the First World War, a considerable body of international law had been established which placed limits on the conduct of land warfare. The First International Peace Conference at The Hague in 1899 produced a Convention and Regulations on Land Warfare which were revised at a second Peace Conference at The Hague in 1907. These two Conventions were regarded as stating customary international law, and, as such, were binding even on non-signatories. The Geneva Conventions of 1864 and 1906 had also declared the rights of prisoners of war and the duties of belligerents towards the wounded and sick, and these provisions were extended by the Geneva Convention of 1929. (1) Many of these provisions were incorporated into the military law of the major powers.

Allegations that Germany had committed war crimes during the First World War were considered at the Paris Peace Conference in 1919, when a Commission recommended charging Germany and her allies with numerous violations of the laws or customs of war. The Commission stated that international law recognised the right of every belligerent to try war crimes pursuant to its own laws. The Treaty of Versailles of 1919 contained a

1 <http://www.icrc.org/ihl>; Taylor, Telford. *Anatomy of the Nuremberg Trials: A Personal Memoir*. London: Bloomsbury, 1993; Tusa, Ann, and Tusa, John. *The Nuremberg Trial*. London: BBC Books, 1995.

provision requiring Germany to hand over Germans accused of having committed war crimes for trial before tribunals constituted by her former enemies. (2)

War Crimes have been defined as violations of recognised rules of warfare committed by members of the armed forces and include hostilities in arms committed by individuals who are not members of the armed forces. (3) By the terms of the Royal Warrant, British Military Courts were restricted to trying only those acts which were traditionally recognised as constituting “war crimes”. (4)

The importance of the (first) Belsen trial lies in the fact that it was probably the first trial ever to take place in which international law was applied to offences of this kind. (5) Colonel Backhouse, the Prosecutor, argued that all the victims of the crimes featuring in the first Belsen trial were protected by the provisions of conventional international law and a civilian internee in a concentration camp was entitled to exactly the same treatment as a prisoner of war. He argued that Article 46 of the Hague Regulations 1907, which stated that family honour and rights, the lives of persons and private property as well as religious convictions and practice were to be respected and private property not to be confiscated, protected the inhabitants of the occupied countries. He

2 Treaty of Versailles, Article 238: see Marwick, Arthur and Simpson, Wendy (Eds). *Total War and Social Change: Europe 1914-55, Primary Sources I*. Milton Keynes: The Open University, 2000, p49; Harris, Whitney. *Tyranny on Trial*. Dallas: Southern Methodist University Press, 1999, p571.

3 Hence German civilians killing allied airmen (so called *Terrorflieger*) could be prosecuted for war crimes. See Lauterpacht, H. (Ed). *Oppenheim, International Law, A Treatise*, Vol.2, pp.566-7. The IMT Charter defined war crimes as “violations of the laws or customs of war including the murder, ill-treatment, or deportation to slave labour of civilian populations of occupied territories, the murder or ill-treatment of prisoners of war or persons on the seas, the killing of hostages, the plunder of public or private property and the wanton destruction of cities, towns or villages not justified by military necessity.”

4 Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Company Ltd., 1949, p647.

5 Phillips, Raymond, op. cit., Introduction, xxxi.

also argued that the accused, who were either members of the SS or prisoners who had authority delegated to them by the SS, were members of the German armed forces. (6)

War crimes, as traditionally defined, could only be committed against “Allied nationals”. This meant that the nationality of the victim had to be established and this was not always possible in the circumstances of a concentration camp. In the first Belsen trial, it was conceded that a German could not commit a war crime against another German. (7) Nor could a German commit a war crime against, for example, a Hungarian, as Hungary had been allied to Germany. At the first Belsen trial, allegations that the accused had committed war crimes against Hungarian nationals were deleted from the indictment by the Court. (8)

The Royal Warrant and Regulations

Authority for the prosecution of war crimes by British Military Tribunals derived from a Royal Warrant of 14th June 1945, Army Order 81/45, as amended. (9) The reason why the Government decided to deal with war crimes trials under Royal Warrant procedure rather than introduce specific legislation is unknown, although it seems to have been the preference of the Judge Advocate General, Sir Henry MacGeagh. (10)

The legal basis for the Royal Warrant was the Royal Prerogative, defined as, “The residue of arbitrary authority which at any given time is legally left in the hands of the Crown.” (11) The Royal Warrant stated that His Majesty, “Deems

6 *ibid.* pp.14-30.

7 *ibid.* p15.

8 *ibid.* p643.

9 *ibid.* p647; p15.

10 Rogers, A.P.V. ‘War Crimes Trials under the Royal Warrant’. *International and Comparative Law Quarterly* , 39 (1990), p780.

11 United Nations War Crimes Commission. *Law Reports of the Trials of War Criminals*. London: HMSO, 1947, vol.2 p126.

it expedient to make provision for the trial and punishment of violations of the laws and usages of war,” committed during any war, “In which he has been or may be engaged at any time after 2nd September 1939.” (12)

While jurisdiction for prosecuting the accused was based on international law, the procedural law that was to be applied to the trials conducted by the British Military Tribunals was English law, by virtue of section 128 of the Army Act 1881. This was the same as would apply to British Army Courts Martial, subject to some modifications. (13) English law excluded certain kinds of evidence, for example, affidavit evidence. However, Regulation 8 of the Royal Warrant modified the rules of evidence in order to deal with the special nature of the war crimes trials. Therefore, under Regulation 8(i), a Military Court could take into consideration “any oral statement or any document appearing on the face of it to be authentic, provided the statement or document appears to the Court to be of assistance in proving or disproving the charge”. (14) It was under this provision that the Prosecution in the Belsen trials was allowed to use affidavit evidence, that is, written statements made under oath, instead of having witnesses actually attend court in person. In many cases, witnesses had left the Displaced Persons Camp that Belsen had become and simply disappeared. Some undoubtedly had died or were too ill to attend. Without the existence of the provision in 8(i), their evidence would have been lost to the Court.

The extensive use of affidavit evidence, in some cases the only evidence produced against certain accused, deprived defence counsel of the usual opportunity to cross-examine witnesses. This was particularly important where almost all the evidence was disputed by the accused or questions of mistaken identity were raised.

12 Phillips, Raymond, op. cit. p647.

13 *Law Reports*, op. cit. vol. 2 p130.

14 Phillips, Raymond, Appendix 1, p649.

Regulation 8(ii) dealt with the situation where crimes had been committed by units or groups of men and stated,

Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as *prima facie* evidence of the responsibility of each member of that unit or group for that crime. (15)

An amendment was made to this provision on 4th August 1945 to state that all or any members of such units could be charged and tried jointly and no application by any of them to be tried separately would be allowed by the court. This provision was challenged by the Defence at the first Belsen trial. (16)

Regulation 2 of the Royal Warrant authorised the convening of Military Tribunals to try persons accused of War Crimes. (17) The composition of the Tribunal was governed by Regulation 5, which stated that it should consist of not less than two officers, in addition to the President. If the accused were an officer, the Convening Officer should appoint as many officers as possible of equal or superior rank to the accused. This Regulation permitted the appointment to the Court as a member, but not as President, of one or more officers of an Allied force under his command or at his disposal, provided the number of such officers did not comprise more than half the members of the Court, excluding the President. This occurred in some cases tried by British Military Tribunals, but in cases where the number of Allied nations involved was too great, such as the first Belsen Trial, no Allied officers were appointed. (18)

15 *ibid.* p650.

16 *ibid.* pp.7-14.

17 *ibid.* p648.

18 Greek and Dutch officers took part in the Peleus and Almelo trials: *Law Reports*, *op.cit.* vol. 1 pp. 1-21, pp. 35-45.

At least one of the appointees to the court should have a legal qualification, but if no such officer were appointed, a Judge Advocate should be appointed. A Judge Advocate could be appointed by the Judge Advocate General of the British Army of the Rhine or the Convening Officer. The duties of the Judge Advocate were to advise the Court on legal matters and sum up the evidence at the conclusion of the case. He was to remain impartial, although it was the office of the Judge Advocate General who prepared the cases for prosecution. From February 1946, cases could proceed without a JAG but, in these cases, the Convening Officer had to appoint at least one legally qualified officer as President or member unless he deemed it unnecessary. (19) This legally qualified member was responsible for keeping notes of the proceedings when no shorthand writer was appointed. Later, when Permanent Presidents were introduced, the legally qualified member became redundant. (20) It is not known whether any or all of these Permanent Presidents had a legal qualification. At the first Belsen trial, the members of the Court were judges of both fact and law and so the legal advice of the Judge Advocate could be rejected.

Regulation 7 allowed counsel to appear on behalf of the Prosecutor or accused. In the first Belsen trial all prosecution and defence counsel were British or Polish officers and also legally qualified. As a result of demobilisation, there were insufficient personnel to continue this system and the Regulations were amended to allow German lawyers to represent the accused. (21)

In terms of Regulation 9, a person found guilty of a war crime could face the death penalty, either by hanging or shooting, at the discretion of the Commander-in-Chief. Those sentenced to death in the Belsen trials

19 WO309/1.

20 WO235/489.

21 Amendment no.3 to the Regulations, dated 28/2/46, was to overcome the lack of suitable army officers as their numbers had dropped from 500 to 19: Dale Jones, Priscilla. 'British Policy towards

were all hanged. Life imprisonment was also an option, or some lesser term. A fine could be imposed and property could be confiscated or restitution ordered. (22)

Regulation 10 stated that within forty-eight hours of the conclusion of the case, the convicted person could give notice of intention to submit a petition to the Confirming Officer, against finding or sentence or both. Thereafter the petition had to be submitted within fourteen days. If the petition was against the finding, it had to be referred to the Department of the Judge Advocate General. (23) Almost all accused submitted Petitions against the finding and sentence. None were successful against the finding, but in the second set of trials, it often resulted in a lower sentence being imposed. (24)

Any finding of guilt and the resulting sentence had to be confirmed by the General Officer Commanding-in-Chief. (25) If confirmed, the finding would be valid despite any deviation from the rules of procedure or objection unless there had been a substantial miscarriage of justice, in terms of Regulation 11. (26) However, this might be difficult to ascertain, as the Courts were not required to give reasons for their decisions. Hence, in the first Belsen trial, the only one of the trials in which a full transcript of proceedings was made, it is impossible to ascertain exactly why some accused were convicted and some acquitted and why certain punishments were inflicted over others. If a sentence were confirmed, it was still possible under Regulation 12 for the Secretary of State or an officer of the rank of Major-General or above to mitigate or remit the punishment. (27)

Minor Nazi War Criminals 1939-58'. Unpublished PhD thesis, University of Cambridge, 1990, p213;
Bower, Tom, *Blind Eye to Murder*. London: Warner Books, 1997, p217.

22Phillips, Raymond, op. cit. p651.

23 ibid.

24 for example, in the cases of Heise, Linke and Schmidt.

25Phillips, Raymond, op. cit. p651.

26 ibid.

27 ibid.

These are the main provisions governing the conduct of the trials. Some of these provisions will be discussed again in chapters four to seven.

The IMT, Military Courts and *Spruchgerichte*

The International Military Tribunal, which sat at Nuremberg between November 20th 1945 and 1st October 1946, was established by the Four Power Agreement of 8th August 1945, (the London Agreement). (28) The IMT Charter at Article 6 gave it jurisdiction not only over violations of the laws and customs of war, “war crimes”, but also over “crimes against peace” and “crimes against humanity.” This body was responsible for trying the “major” war criminals, whose crimes had been defined in the Moscow Declaration as having no geographical location, and who were members of the ruling Nazi hierarchy. The proceedings conducted by the British and other Allied tribunals were completely separate from the IMT.

Within the British Zone of Occupation, Military Government courts operated to enforce the occupation laws and these too were completely separate from the tribunals trying war crimes. (29) On 20th December 1945, the Allied Control Council passed Law No. 10, which was intended to provide a common basis for trials to be conducted in the four Zones of Occupation. This was intended to give the Allies and, later, the German courts, authority to conduct trials on charges of crimes against humanity and membership of criminal organisations, as well as war crimes, where the victims were German nationals or stateless persons. The British made no use of this provision and continued to try war crimes cases under the authority of the Royal Warrant. (30)

28 see note 1 supra; also Marrus, Michael. *The Nuremberg War Crimes Trial 1945-46*. Boston: Bedford Books, 1997.

29 Dale Jones, Priscilla. ‘British Policy towards German Crimes against German Jews 1939-1945’. *Leo Baeck Institute Yearbook*, 36 (1991), pp.362-363; Kochavi, Arie. *Prelude to Nuremberg*: Chapel Hill, N.C.; London: University of North Carolina Press, 1998.

30 Kochavi, Arie, op. cit. p168. German courts in the British Zone used it after 30/8/46.

The twelve subsequent Nuremberg cases tried by the Americans were carried out under the authority of Law No. 10. (31)

Of more relevance to crimes committed at Belsen were the special German run denazification courts (*Spruchgerichte*) established by the British in 1947. These courts were separate from the denazification courts (*Spruchkammern*) which were operated by the Americans. (32) Members of organisations declared criminal by the IMT, such as the SS, were tried in these courts. Approximately 24,000 trials took place between 1947 and 1949, two thirds of these resulting in guilty verdicts. The sentences were very lenient, considering the nature of the crimes, and time spent in internment was taken into consideration. Some of those who had been guards at Bergen-Belsen, who were not tried by Military Tribunals, were tried by the *Spruchgerichte*. (33) One example is the case of a guard known as Fritz K. The judgement of the *Spruchgericht* stated,

The defendant denies...that he knew anything of the inhuman treatment of concentration camp prisoners during his time of service. This purported lack of knowledge is not credible. It is impossible that the defendant, who served as a guard in the camps for three years did not know that the concentration camp inmates received the harshest physical punishment for the slightest transgressions.

This guard was sentenced to six months' imprisonment but, as he had spent twenty-two months in internment, he was released. (34)

31The French also conducted one case under this provision.

32 Frei, Norbert. *Adenauer's Germany and the Nazi Past*. New York: Columbia University Press, 2002, p9; see generally, Biddiscombe, Perry. *The Denazification of Germany 1945-50*. Stroud: Tempus, 2007.

33 Information obtained from the Bergen-Belsen *Gedenkstätte*; records survive in only forty-six cases.

34 Bergen-Belsen *Gedenkstätte*; *Bundesarchiv Koblenz*, file Z42 11/1107.

The Superior Orders Defence

One of the main defences advanced on behalf of those accused of war crimes was the “superior orders” defence. This was raised in the first and second Belsen trials and it will be necessary to know something of its legal history before moving on to discuss how it applied in the trials themselves.

Until April 1944, pleading “superior orders” before a British military court may have provided an absolute defence to a charge of having committed a war crime. The “superior orders” defence was, in fact, written in to the British Manual of Military Law, which had been issued in 1940. (35) This, however, was not the law in Germany. It had been decided in one of the Leipzig war crimes trials that pleading “superior orders” (*Befehlsnotstand*) was not a defence to a war crimes charge. (36) In 1944, Goebbels had confirmed this in an article published in the *Deutsche Allgemeine Zeitung*,

No international law of warfare is in existence which provides that a soldier who has committed a mean crime can escape punishment by pleading as his defence that he followed the commands of his superiors. This holds particularly true if those commands are contrary to all human ethics and opposed to the well-established international usage of warfare. (37)

The *Volkischer Beobachter* carried a similar quote, referring directly to Allied airmen. (38)

35 Phillips, Raymond, op. cit., Colonel Smith, pp.490; pxxxii Introduction.

36 Llandovery Castle (Annual Digest of Public International Law Cases 1923-24); Phillips, Raymond, op. cit. pxxxiii ; Lauterpacht, H., *Oppenheim*, op. cit. p569. The German Supreme Court decided that the plea of superior orders would afford no justification where the act was manifestly and indisputably contrary to International Law.

37 *Deutsche Allgemeine Zeitung* 28/5/44, erroneously reported as 28/5/47 in several works including *History of the UNWCC and the Development of the Law of War* HMSO 1948. This was to justify the German practice of executing RAF pilots who were captured instead of treating them as prisoners of war. See Solis, Gary. ‘Obedience to Orders and the Law of War: Judicial Application in American Forums’, *American University of International Law Review*, 15 (1999-2000), pp.481-526 accessible at <http://www.wcl.american.edu/journal/ilr/15/solis.pdf> .

38 *ibid*.

However, the German Military Penal Code of 1871 (*Militärstrafgesetzbuch*), Article 47 of which was still in force in 1945, stated that a subordinate is liable to be punished (only) as an accomplice, if, when obeying an order, he knows that the order involves the commission of a crime. (39)

British politicians began to consider the legal position during the course of 1943 and it was realised that the British Manual of Military Law (and also the American Manual) would have to be altered if the Allies were successfully to undertake war crimes trials. It was claimed that the entry in the 1940 British Manual of Military Law was erroneous, and based on ignorance of the latest edition of *Oppenheim*, the standard text on International Law. The regulation, as amended in the spring of 1944, read,

Members of the armed forces are bound to obey lawful orders only and they therefore cannot escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity. (40)

The Charter of the IMT rejected the defence of “superior orders” as an absolute defence but left it open as a mitigating factor in certain circumstances, particularly to lower ranking officers. The IMT, in its judgement in 1946, stated that “superior orders” could not even be considered in mitigation when, “Crimes as shocking and extensive have been committed consciously, ruthlessly and without military excuse or justification”. (41)

39 Wittman, Rebecca. *Beyond Justice: The Auschwitz Trial*. Cambridge, Mass.: Harvard University Press, 2005. At the trial of Robert Kulka and others at Frankfurt am Main between 1963-65, an Auschwitz trial conducted by a German court, only those who were proved to have exceeded orders, the *Excesstäter*, were convicted of murder; those who had merely followed orders were convicted as accomplices, if convicted at all. According to Wittman, “The killing of millions in the gas chambers became a lesser crime, calling for a lighter sentence, than the murder of one person carried out without orders from superiors.” Phillips, Raymond, op. cit., Introduction, xxxiii: see also IMT Charter, Article 8 at Law Reports, vol.2 p152.

40 Lauterpacht, H., *Oppenheim*, op. cit. p569.

41 *ibid.* p570.

The plea of acting under superior orders was raised in almost all the war crimes trials but was rejected as a complete defence. Whether the courts were inclined to take it into consideration as mitigation of punishment, however, is unknown, as no reasons were given by the Military Tribunals for their decisions.

This chapter has investigated the legal provisions applying to the Belsen trials. It has established that the Belsen trials were conducted under the authority of a Royal Warrant and this permitted only trial of war crimes as traditionally defined. Only Allied nationals could be victims of war crimes, so this excluded charges of criminal conduct towards other Germans, notably German Jews, former German Allies and stateless persons. This chapter has also served to distinguish these trials from those carried out by the IMT, which conducted one trial only under different legal authority and procedures, and from other contemporaneous criminal proceedings.

Chapter 3

The Camp System: Bergen-Belsen and Auschwitz

This chapter discusses the two main camps that featured in the Belsen trials and explains the command structure, including the part played by prisoner functionaries in running the camps. This chapter does not provide a detailed account of these camps but simply offers sufficient background information to allow the reader to understand the evidence given at the trials.

The concentration and extermination camps were organised and run by the SS. The most senior camp administrator was the commandant. In the last months of the operation of Auschwitz Birkenau and Bergen-Belsen, this role was occupied by Josef Kramer. Ranking under the commandant were the camp leaders (*Lagerführer*) and the block leaders (*Blockführer*). They appointed prisoner functionaries (*Funktionshäftlinge*) called camp seniors (*Lagerältester*) and block seniors (*Blockältester*) to assist them. Female supervisors (*Aufseherinnen*), who guarded the female prisoners in the camps, either joined the SS voluntarily, were conscripted by the labour offices or were recruited in the factories. (1)

It was not only members of the SS who faced prosecution for war crimes at the Belsen trials, but also the prisoner functionaries or *kapos* who carried out the orders of the SS. Twelve were prosecuted at the first trial, and one at the second set of trials. (2) The SS delegated power to the prisoner functionaries, who carried out their orders in return for extra food and other privileges. Many accepted such appointments as a way of saving themselves. Demonstrating that the prisoners were breaking the rules, or working too slowly, justified their

1 Sofsky, Wolfgang. *The Order of Terror*. Princeton: Princeton University Press, 1997, generally, and p109. Women were followers, rather than members, of the SS: *Gefolge der Waffen SS*; see also Höss, Rudolf. *Commandant of Auschwitz*. London: Phoenix, 2000, p107 and pp.115-117.

2 *Kapos* involved in the first Belsen trial were Ostrowski, Schlomoivicz, Starostka, Kopper, Lothe, Lohbauer, Roth, Burgraf, Schmitz, Zoddell, Polanski and Aurdziej; in the second trial, Cegielski.

own existence. (3) As Wolfgang Sofsky has pointed out, “Without the supervisors, sentries, administrative officials, the accomplices and accessories from the ranks of the inmates, camp terror would have been impossible.” (4)

In practice, administrative or supervisory roles were given to Aryan Germans, who were usually political prisoners, for example, communists, or convicted criminals, *Befristete Vorbeugehäftlinge*. (5) Only when there was a personnel shortage did they use other nationalities. Many Poles were appointed to these duties, as Poles often formed the largest national group in the camps. (6) Sometimes Jews were set to watch over other Jews and many proved to be brutal *kapos*. Examples are Ignatz Schlomoivicz, an Austrian Jew, who was acquitted of war crimes at the first Belsen trial and Vladimir Ostrowski, a Polish Jew, who was convicted. When Josef Kramer became commandant of Belsen, he immediately imposed a stricter regime on the camp, introducing the *kapo* system and roll calls, which had operated at Auschwitz. (7)

Concentration camps were established soon after the Nazis came to power in 1933, to house political opponents and others that they marginalised. These were supplemented by the creation of the extermination camps, *Vernichtungslager*, of which Auschwitz Birkenau was to become the most prolific. (8) However, as the need for manpower and armaments increased

3 Sofsky, Wolfgang, op. cit. generally and p19.

4 op. Cit. pp.278-279.

5 Arendt, Hannah. *Eichmann in Jerusalem*. London: Faber and Faber, 1963, p283; see Sofsky, Wolfgang, op. cit. pp.120-125 for an account of camp structure and organisation; see also Höss, Rudolf, *Commandant of Auschwitz*, op. cit.

6 For example, Kasimierz Cegielski in the second trial and Stanislaw Starostka in the first trial.

7 See, for example, Levy-Hass, Hanna. *Inside Belsen*. Brighton: The Harvester Press, 1982.

8 See Sofsky, Wolfgang, op. cit. Generally, for a history of the camps. Feig, Konnilyn. *Hitler's Death Camps*. New York; London: Holmes and Meier Publishers, 1991; Krausnick, Helmut, Buchheim, Hans, Langbein, Hermann. *Anatomy of the SS State*. London: Collins, 1968

throughout the war, it was decided that those who were fit to work should be made to do so. Many were worked to death instead of being killed outright, a policy known as “extermination through work” (*Vernichtung durch Arbeit*). (9) In 1944, approximately 100,000 Jews were moved from the ghettos or the camps they were in, “in batches of 500”, to an assembly point, which was often Auschwitz, and from there, to work camps throughout the German Reich. (10) Many of these work camps were placed under the control of the nearest concentration camp. (11) For example, Neuengamme Concentration camp, near Hamburg, became responsible for over eighty satellite camps, of which more than twenty were women’s camps. (12) In the last months and days of the war, these camps were evacuated and thousands of prisoners were sent to Bergen-Belsen.

Bergen-Belsen

The former Bergen-Belsen camp is situated in Lower Saxony, some fifteen miles north of Celle and approximately half-way between Hamburg and Hanover. The camp was established in 1943 as an Exchange Camp for Jews who were to be exchanged for German nationals in Allied countries. Few were ever exchanged. (13) There were a number of sub camps within Belsen, the largest of which in the summer of 1944 was the Jewish camp, the *Sternlager*. This was also known as the Schneebaum or Albala camp, named after the

9 Ferencz, Benjamin. *Less than Slaves. Jewish Forced Labour and the Quest for Compensation* Bloomington, Ind.: Indiana University Press, 2002; Speer, Albert. *Inside the Third Reich*. London: Phoenix, 2003.

10 Sofsky, Wolfgang, op. cit., p39.

11 Ferencz, Benjamin, op. cit., pp.29-30.

12 Suchowiak, Bogdan. *Mai 1945: Die Tragödie derHäftlinge von Neuengamme*. Hamburg: Rowohlt Taschenbuch Verlag GmbH, 1985, p95.

13 On 23rd October 1943, a transport of 1700 Jews was sent to Auschwitz from Belsen. They had been told they were going to Switzerland in exchange for German prisoners of war. They attacked the SS as they were sent to the gas chambers. In July 1944 222 Jews were sent to Palestine; in August and December 1944, the Kasztner transport of Hungarian Jews was sent to Switzerland and in January 1945, 136 Jews with South American passports were also sent to Switzerland:

<http://www1.yadvashem.org>

Elders who headed a Jewish council there, which operated until the arrival of Kramer. (14) In March 1944, a recuperation camp (*Erholungslager*) was formed at Belsen to accept sick prisoners from other camps that were closing down. Of the first 1000 prisoners from Dora-Mittelbau who arrived suffering from tuberculosis, very few survived, through lack of medical care. (15)

Initially, the conditions at Belsen were not as bad as in other camps. However, this began to change during the course of 1944, as Germany's defeat grew closer. Conditions deteriorated and it became a conventional concentration camp. When Josef Kramer became commandant of Belsen in December 1944, there were 15257 prisoners. By the end of March 1945, there were more than 44,000 and it was thought that 18,000 had died that month. (16)

On 15th April 1945, Bergen-Belsen became the only concentration camp to be liberated by the British. It was handed over intact by the Germans under the terms of a truce, to prevent the spread of typhus. In the first camp, the British found 28,000 women and 12,000 men, many of whom were barely alive, and 13,000 dead bodies. In the second camp, there were over 15,000, who were in a slightly better condition, having only recently arrived there, and there was no typhus in this camp. (17) It was believed that 40,000 people had been cremated since February, after the first outbreak of typhus and 13,000 more were to die shortly after liberation. (18) Those who sought to describe the conditions at Bergen-Belsen could not find adequate words. Brigadier Hugh

14 Reilly, Joanne. *Belsen, The Liberation of a Concentration Camp*. London: Routledge, 1998, pp. 15-17. Other subcamps included the Hungarian camp, a camp for prisoners from neutral countries and a women's camp.

15 *ibid.*

16 *ibid.* p17.

17 Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Company Ltd., 1949, the evidence of Hugh Llewelyn Glyn Hughes, pp.30-44.

18 See generally, Shephard, Ben. *After Daybreak*. London: Pimlico, 2006; Reilly, Joanne, *op. cit.*; www.bergenbelsen.de

Llewellyn Glyn Hughes, Deputy Director of Medical Services, BAOR, stated at the first trial,

The conditions in the camp were really indescribable; no description or photo could really bring home the horrors that were there outside the huts and the frightful scenes inside were much worse. There were various sizes of piles of corpses lying all over the camp. (19)

Richard Dimbleby made a famous radio broadcast from Belsen on 15th April. The BBC would not let the broadcast go out until it had been verified, such was the disbelief that a place like Belsen could exist. Dimbleby threatened that he would never make another broadcast unless it was transmitted immediately. He stated, "I passed through the barrier and found myself in the world of a nightmare." Dimbleby, however, like the other foreign reporters, failed to highlight the fact that most of the prisoners had been Jews. (20) A former prisoner at Belsen said,

Belsen was in the beginning bearable....many people talk about Auschwitz, it was a horrible camp, but Belsen, no words can describe it...we were just put there with no food, no water, no anything, eaten by the lice. From my experience and my suffering, Belsen was the worst. (21)

19 Phillips, Raymond, op. cit., quoting Glyn Hughes, p31.

20 Dimbleby, Jonathan. *Richard Dimbleby - A Biography*. London: Hodder and Stoughton, 1975; The text of the broadcast is also produced in Hawkins, Desmond. *War Reports from D Day to VE Day: Radio Reports from the Western Front 1944-45*. London: Oxford University Press, 1946. The report refers to mass murder by burning alive. The source of this information is unknown and no evidence of this is to be found in any witness statements viewed, nor was it raised at any of the Belsen trials. Other foreign journalists sending reports from concentration camps were Chester Wilmot, Rob Reid and Ian Wilson. Alex Werth, a British journalist with the Red Army, reporting from Majdanek in July 1944, was told by the BBC that his broadcast was a propaganda stunt and would not be used: Wyman, David. *The World Reacts to the Holocaust*. Baltimore; London: Johns Hopkins University Press, 1996, p609; Bloxham, Donald. 'The Genocidal Past in Western Germany', *European History Quarterly*, (34)3 2004, p33.

21 Gilbert, Martin. *The Holocaust*. London: Collins, 1986, p785, quoting Violette Fintz.

Captain Derrick Sington was one of the first British officers who entered the camp and he recalled that it reminded him of a zoo and likened the prevailing smell to that of a monkey house. (22) Josef Kramer, the commandant, was at the camp gate waiting to meet the liberators. He told Sington that his prisoners were habitual criminals, felons and homosexuals. (23) In response to a direct question about the presence of “political prisoners”, he admitted that there were indeed *Häftlinge*. In fact, most of the prisoners were Jews. (24)

Attempts by the British to obtain the camp records were frustrated, as all the records had been destroyed. A search of the camp revealed the commandant’s private stable, which had housed twenty-five pigs, and a room full of Red Cross boxes of food, sent by Jewish organisations for Jews, which had not been distributed. (25) A deserted army barracks a mile away had a storehouse full of breakfast cereals and a bakery in working order, apparently capable of producing 60,000 loaves a day. (26) This contrasts with the evidence given by the accused at the trial that they were powerless to feed the prisoners in the camps as a result of shortages caused by wartime conditions and Allied bombing raids.

Conditions within the camp were appalling. There was no sanitation, no supply of running water and typhus and other diseases were rampant. Seventy per cent of those in the camp required hospital treatment and

22 Sington, Derrick. *Belsen Uncovered*. London: Duckworth, 1946.

23 Philips, Raymond, op. cit. p47.

24 Sington was referring not just to those who wore the “red triangle”, i.e. political opponents of the Nazis, such as communists, but to the wider range of people who fell foul of the Nazi regime, such as Jews and Gypsies; see also Reilly, Joanne, op. cit.

25 Sington, Derrick. *Belsen Uncovered*, op. cit.; Phillips, Raymond, op. cit., p212: there had been fifty-two pigs originally, according to Juana Bormann, an accused at the first trial, but she thought some had been slaughtered by the inmates on the night of 14/15 April.

26 Reilly, Joanne, op. cit., p27; Lt. Col. (formerly Major) Leonard Berney at <http://www.bbc.co.uk/ww2peopleswar>; Bower, Tom. *Blind Eye to Murder*. London: Warner Books, 1997, p128.

thousands would die before they could get it. Many prisoners had resorted to cannibalism and many corpses were found with body parts missing. (27)

In Britain, there was great public interest in the discovery of Bergen-Belsen and many people of the wartime generation remember the broadcasts and newspaper coverage given to it. *The Times* of 25th April 1945 carried a report that a group of Germans, including the local mayor, had been shown around Belsen, just as the Americans had forced the locals to tour Buchenwald and Dachau. They were allegedly surprised and horrified at what they saw. Belsen was presented as the worst of the Nazi camps, at a time when little was known about the death camps of the East. The reporter spoke to a farmer who lived opposite the camp. He told the reporter that nobody outside the camp had any idea what went on there.

Auschwitz

This camp was originally established in 1940 to house Polish political prisoners. By November 1943, Auschwitz consisted of three camps; Auschwitz main camp, Auschwitz-Birkenau and Auschwitz-Monowitz. By 1945, the Auschwitz complex consisted of forty camps and satellite camps scattered in an area covering thousands of square kilometres. Each of the three main camps was autonomous but the commandant of the main camp was senior to the other two and was the garrison commander. (28)

27 See Phillips, Raymond, op. cit., testimony of Dr Leo, p123 and Harold le Druillenec, p61.

28 See generally, Hilberg, Raul. *The Destruction of the European Jews*. New Haven, Conn.; London, 2003; Rees, Laurence. *Auschwitz: the Nazis and the Final Solution*. London: Routledge, 2005; Steinbacher, Sybill. *Auschwitz - A History*. London: Penguin Books, 2005; Piper, Franciszek. *Birkenau, A Symbol of Nazi Genocide*. *Pro Memoria* vol. 5-6; Strzelecka, Irena. *The Women's Camp in Auschwitz Birkenau*. *Pro Memoria* vol.5-6; Strzelecka, Irena. *The Men's Camp in Auschwitz Birkenau*. *Pro Memoria* vol.5-6; Swiebocka, Teresa. *The Ground where those most present are the Dead*. *Pro Memoria* vol 5-6; Swiebocki, Henryk. *Why the bombs did not fall on KL Auschwitz*. *Pro Memoria* vol. 3-4; Swiebocki, Henryk. *Five Escapees from Birkenau*. *Pro Memoria* vol. 5-6; Fenelon, Fania. *The Musicians of Auschwitz*. London: Michael Joseph, 1977; Höss, Rudolf. *Commandant of Auschwitz*. London: Phoenix, 2000; Kielar, Wieslaw. *Anus Mundi*. London: Allen Lane, 1981; Kraus, O. and Kulka, E. *The Death Factory*. Oxford: Pergamon Press, 1996; Lengyel, Olga. *Five Chimneys*.

The largest part of the Auschwitz complex was Birkenau and this became the largest centre for the extermination of Europe's Jews. By the autumn of 1942 up to 700 people were being gassed in one day. (29) Between March and June 1943, four huge gas chambers and crematoria were put into operation. According to a document cited by Franciszek Piper, they could burn 4,416 corpses a day. (30)

By May 1944, trains were able to run directly inside Auschwitz-Birkenau to within a short walking distance of the gas chambers and crematoria (previously prisoners had been unloaded at a specially assigned ramp at the freight depot in Auschwitz and marched some distance to the gas chambers or taken on trucks). In July and August 1944, while Josef Kramer was commandant, the murder rate was increased. In May 1944, there were 217 male prisoners working in the *Sonderkommando*; by August, this had increased to 874, working in two shifts. (31) Over 400,000 Hungarian Jews were murdered, a "family camp" of 7,000 Jews from Theresienstadt was liquidated in July and the Gypsy camp consisting of 3,000 Gypsies, in August. (32) Jews from the Ghetto at Lodz were murdered in August, and in September and October, transports of Jews arrived from Theresienstadt and Slovakia to be gassed. The situation from 16th May onwards was described by SS man Pery Broad, "There was never a break. Hardly had the last corpse been dragged out of the chamber to the cremation ditch in the corpse covered yard behind the crematorium, than the next batch was already undressing". (33)

London: Mayflower Books Limited, 1972; Müller, Filip. *Eyewitness Auschwitz*. Chicago: Ivan R. Dee, 1979.

29 Reitlinger, Gerald. *The Final Solution*. New York, Barnes, 1961, p.149; Krausnick, Helmut, Buchheim, Hans, Langbein, Hermann. *Anatomy of the SS State*, op. cit.

30 Piper, Franciszek, op. cit. p9.

31 Hilberg, Raul, *The Destruction of the European Jews*, op. cit. p1044.

32 Swiebocka, Teresa, op. cit. p5.

33 Kogon, Eugen, Langbein, Hermann, Rückerl, Adalbert (Eds.). *Nazi Mass Murder: A Documentary History of the use of Poison Gas*. New Haven; London: Yale University Press, 1993, p163.

Evacuation of Auschwitz began from mid August 1944 onwards, when those fit for work were transported to slave labour camps in Germany, including Bergen-Belsen. It was almost completely evacuated in January 1945, when only those too sick to march were left behind. Approximately 60,000 people were taken on “death marches”, when those who could not keep up the pace were shot. This aspect of war crimes featured in the first and second Belsen trials and will be discussed in chapters four and five.

Auschwitz was liberated on 27th January 1945 by the 60th Army of the First Ukrainian Front. It has been said that the soldiers knew very little about the camp until it was liberated. Vassily Yakovlevich Petrenko argues that had the army known of its existence, the camp could have been liberated earlier. (34) Nor did the Russians give much publicity to Auschwitz after its liberation. A Russian film of the liberation of Auschwitz was shown to the court during the first Belsen trial. (35)

Historians estimate that between one and one and a half million people were murdered in Auschwitz in the five years that it operated. (36) About ninety percent of them died in Birkenau and the majority of them were Jews.

The next chapter investigates and analyses the first Belsen trial, which was in fact also the first Auschwitz trial.

34 Petrenko, Vasili Yakovlevich. *Could Freedom have come Earlier? Pro Memoria* vol. 3-4 p20-21.

35 Phillips, Raymond, op. cit., p.231; see also *The Liberation of Auschwitz* DVD.

36 Dawidowicz, Lucy. *The War against the Jews*. London: Weidenfeld and Nicholson, 1975, p148.

Chapter 4

The First Belsen Trial

This chapter will consider in some detail the first Belsen trial, discussing in particular the legal issues that were raised, including the charges and the defences. There was much legal argument in this case, unlike in the later cases, as the defence counsel tried to persuade the Court that the accused were only following municipal law and superior orders. Finally, the aftermath of the trial, including the sentences, the criticisms of the trial, and how the British reacted to these criticisms will be considered.

The Trial of Josef Kramer and forty-four others, (the first Belsen trial), began on 17th September 1945 in Lüneburg. (1) The twenty-four male and twenty - one female accused were to stand trial on an indictment containing two charges, one relating to war crimes committed at Bergen-Belsen and the other to war crimes committed at Auschwitz. All accused, except Stanislaw Starostka, a Polish prisoner-functionary, featured in the Belsen charge, while only thirteen accused featured in the Auschwitz charge. Not all of the accused were German and members of the SS. Twelve of the accused were prisoner-functionaries or *kapos*. As the victims in this case came from ten different countries, Britain accepted sole responsibility for conducting the trial. Also, Bergen-Belsen camp fell within the British Zone of Occupation and the British had custody of the accused. The two charges were in identical terms, the first dealing with Belsen, the second with Auschwitz, and stated,

Between 1st October 1942 and 30th April 1945, when members of the concentration camp staff responsible for the well-being of the persons interned there in violation of the laws and usages of war were together concerned as parties to the ill-treatment of certain persons causing the death of (named persons) and physical suffering to (named persons) interned there, these persons being Allied nationals. (2)

1 WO235/12-24; Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Son. 1949; United Nations War Crimes Commission. *Law Reports of Trials of War Criminals*, London: HMSO, 1947 vol.

2. Three accused were dropped from the indictment at the start: Nikolas Jenner, Paul Steinmetz and

Only three British nationals were specifically mentioned in the Belsen charge, and of those, only Harold Osmond le Druillenec, from the Channel Islands, would give evidence at the trial. No British nationals were named in the Auschwitz charge. The charges made no mention of gas chambers or mass murder, nor was it made explicit that the vast majority of the Allied nationals who had been murdered and ill-treated at both of these camps were, in fact, Jews. (3) Those drafting the charges seem to have accepted the camps as part of a legitimate system of punishment and not to have realised that neither Belsen nor Auschwitz, in particular, had been established with the "wellbeing" of their inmates in mind. (4)

The Court consisted of a President, Major-General Horatio Berney-Ficklin and four members, all British soldiers. Neither the President nor the members were legally qualified and a Judge Advocate, Carl Stirling, was appointed as a legal adviser. The Prosecutor was Colonel Thomas Backhouse of the Legal staff, BAOR, assisted by three other army officers. (5) All accused were represented by British army officers who were legally qualified, except for the Polish accused, who were represented by a Polish army officer. Altogether there were twelve British officers representing between two and six accused each. (6)

Walter Melcher, as they were unable to be present, probably as a result of illness. Ladislaw Gura was dropped from the indictment during the trial as a result of illness. The fact that 17th September 1945 was the Jewish Day of Atonement, *Yom Kippur*, the most solemn day in the Jewish calendar, was mentioned by Colonel Backhouse. The central themes of *Yom Kippur* are atonement and repentance.

3 Bloxham, Donald. *Genocide on Trial. War Crimes Trials and the Formation of Holocaust History and Memory*. Oxford; New York; Oxford University Press, 2003, p97.

4 See JAG's summing up, "The Prosecution do not ask you...." Phillips, Raymond, op. cit. p630; See p56 infra; Bower, Tom. *Blind Eye to Murder*. London: Warner Books, 1997, p207.

5 He was assisted by Major Hugh Murton Neale, Captain Saville Stewart and Lt. Col. Leo Genn, all lawyers: Phillips, Raymond, op. cit. p1.

6 WO235/12-24.

Preliminary Legal Issues

Before entering pleas, the accused, through their defence counsel, objected to the charges on the basis that no offences were disclosed and they also applied for assistance from an expert in International Law. They were allowed to reserve their right to argue the first point at a later date, when the assistance of a legal expert would be available. The services of Colonel Herbert Smith, Professor of International Law at London University, were finally obtained. Further applications were made, firstly, that the two charges be separated, as it was argued that those appearing only on the charge relating to Belsen (where there were no gas chambers) would be prejudiced by the fact that half of the case related to Auschwitz, where there were gas chambers. It was also argued that there was no connection between Belsen and Auschwitz, only “that they were both concentration camps administered by Germans”. (7) The Prosecutor opposed this, arguing that the charges were identical, the only difference being the identity of the victims, and sometimes even this was the same. (8) The second application was that the accused be tried separately on the basis that there was no evidence that the accused had acted in concert. A joint trial would prevent them calling other accused as witnesses. These two applications were opposed by the Prosecutor and refused by the Court. (9) Thereafter, all accused pled not guilty and a trial lasting fifty-four days followed.

Colonel Backhouse, for the Prosecution, began by outlining his case. (10) He explained that the Prosecution was claiming jurisdiction to try the accused for war crimes under International Law. He referred to the laws and usages of war authorising trials by Military Court and explained the procedure by which the Royal Warrant had convened the Court. Backhouse argued that the crimes alleged were undoubtedly war crimes because the victims were Allied

7 Phillips, Raymond, *op. cit.*, pp.7-14; WO235/13.

8 *ibid.*

9 *ibid.*

10 Phillips, Raymond, *op. cit.*, p14; WO235/13.

nationals who were either prisoners of war, deportees or internees. All were entitled to the protection of the Hague Convention and, if prisoners of war, also to the protection of the Geneva Conventions. The treatment that Allied nationals had received in the camps amounted to the commission of a war crime. (11)

The conditions at Belsen and Auschwitz, argued Colonel Backhouse, had been brought about not only by criminal neglect but, “By deliberate starvation and ill-treatment with the malicious knowledge that they must cause death and lasting physical injury.” (12) He said he would lead evidence of personal acts of deliberate cruelty and many cases of murder.

However, whether as a planned strategy instructed by higher authority or because of a strict legal interpretation of the term “Allied national”, the fate of the Jews was played down. Referring to the deliberate extermination of millions at Auschwitz, Backhouse only once used the word “Jew”, referring instead to “Allied nationals” from “ten different countries”, “people” and “persons”. (13) The experience of Belsen that he chose to describe for the Court in his opening speech was that of Harold Le Druillenec, who was not Jewish and had only been in the camp for ten days before liberation. (14) The Jewish witnesses who had survived the ghettos and the gas chambers of Auschwitz were placed further down the witness list, by which time, public interest had fallen away. (15) Even evidence from the liberating British soldiers was given priority over the Jewish witnesses. Although Backhouse

11 *ibid.*

12 *ibid.* p17; WO235/13.

13 Phillips, Raymond, *op. cit.*, see generally, pp.14-30; WO235/13.

14 Phillips, Raymond, *op. cit.*, p23; WO235/13.

15 *ibid.*; See Bloxham, Donald, *Genocide on Trial*, *op. cit.* p101. This was also to occur at Nuremberg when the French presented the case for war crimes and crimes against humanity. Only six concentration camp survivors gave evidence and they were all gentiles. Even the Auschwitz witness was not a Jew but a member of the French Resistance.

did refer briefly to the 45,000 Greek Jews who had been taken to Auschwitz and the fact that only sixty of them were left alive at evacuation, the fate of the Hungarian Jews was not mentioned. The restrictive nature of the Royal Warrant and its insistence on prosecuting only war crimes committed against Allied nationals excluded consideration of the murder of more than 400,000 Hungarian Jews at Auschwitz during the summer of 1944, when Kramer was commandant at Birkenau and a number of co-accused were on the staff there. (16) Hungarians were not Allied nationals.

The Prosecution case

The first witness for the Prosecution was Brigadier Hugh Llewelyn Glyn Hughes, Vice Director of Medical Services, BAOR. He had entered Bergen-Belsen camp following the truce and described the conditions he found there. He said the principal causes of death in the camp were starvation and typhus, spread through lice. The medical report, which he prepared for this trial, was used again as evidence in the second set of trials. Glyn Hughes described the first accused, the commandant, Josef Kramer, as “Quite callous and indifferent”. (17)

In cross-examination of Glyn Hughes, Major Cranfield, Counsel for Irma Grese and others, wanted to know if prolonged starvation could affect the mental capacity of a witness, and if starvation could produce hallucinations or mental fixations. The witness answered in the affirmative. (18)

Lieutenant Colonel James Johnston, Senior Medical Officer at Belsen immediately after the Liberation, did not give evidence in person, but his affidavit was lodged. In Johnston’s opinion, “A very large number of survivors

16 Phillips, Raymond, op cit; WO235/13. SS men Alois Gotz, Josef Hamer, Oskar Helbig and Nikolas Jenner were never prosecuted as the authorities could not prove the nationality of their victims. Jenner was to be prosecuted at the first trial but was ill; by the time he was fit, this decision had been taken.

17 Phillips, Raymond, op. cit. p35; *Law Reports*, op. cit. p9; WO235/13.

18 *ibid.* p38; WO235/13.

will be, to a greater or lesser degree, impaired in their mental faculties as the result of having been in this horror camp”. (19)

This theme was pursued by Lieutenant Jedrzejowicz, counsel for the Polish accused, who, in a question to Captain Derrick Sington, wanted to know if the prisoners would need a “hospital cure” before being able to remember anything against an accused. Captain Sington agreed that this would be so in many cases, “As there were many prisoners who went mad after typhus, and there was a block set aside for those who had become mentally deranged.” (20) This line of enquiry, posed on the second and third day of the trial, was just the beginning of a defence strategy of trying to discredit the prosecution witnesses.

British witness Harold Osmond Le Druillenec had been arrested by the Germans in June 1944 and had been in Neuengamme Concentration Camp and various prisons before ending up in Bergen-Belsen around 5th April 1945. His evidence described in some detail the horror of Belsen, the starvation, the beatings, whippings and shootings, and, although he was cross-examined, the truthfulness of his account was not challenged. It seems that the Defence had already decided who were to be considered the credible witnesses and who were not. In general, the Jews fell into the latter category, as will be seen below. (21)

Doctor Ada Bimko, later to become known as Hadassah Rosensaft, a Polish Jew whose entire family was gassed at Auschwitz, knew a great deal about

19 *ibid.*; Phillips, Raymond, *op. cit.* p47.

20 *ibid.* p53; WO235/13.

21 Phillips, Raymond, *op. cit.* pp.57-66. Axel Eggebrecht, the German journalist who reported on the trial for Radio Hamburg, in his essay, *Nazi Verbrecher vor Gericht* states that the defending officers had fascist sympathies but he cites no authority for this proposition. In Jorg Wallenberg. (Ed). *Von der Hoffnung aller Deutschen*. Cologne: PapyRossaVerlag, 1991, p129.

the activities of many of the accused at both Auschwitz and Belsen. Doctor Bimko, who had been interned in Auschwitz in August 1943 and in Belsen in November 1944, had been selected to work as a doctor in both camps. She was accused by the Defence of “imagining” an incident in which she alleged that accused Karl Francioh had shot a prisoner. (22) This was in spite of the fact that several British officers, as well as Harold le Druillenec, had spoken about random shootings in the camp, although they had been unable to name names as Bimko had done. They were not accused of lying. Later in the case, the Defence told the Court that Bimko was in a category of witnesses who were not credible. (23) This also applied to Dora Szafran, also a Polish Jew, who was accused of imagining shootings at Belsen and creating “a tissue of lies”. (24)

Allegations made in court by prosecution witnesses often had not been mentioned in earlier statements they had made. This created a bad impression and the Defence lawyers made the most of it, even though Major Geoffrey Smallwood, who had led an investigation team at Belsen, explained how the difficulties might have arisen. He said that rough notes were taken and later an affidavit was made up from the rough notes. Only salient points were noted, as, “If we had taken down everything we were told it would have taken a very long time indeed.” (25)

In many cases, witnesses had been shown photographs of potential accused at the time of making their statements. The use of photographs for identification could lead to mistakes, an issue raised by the Defence during

22 Phillips, Raymond, op. cit. p76; WO235/13.

23 Phillips, Raymond, op. cit. See, for example, Major Munro p521 and Captain Phillips pp.563-64; WO235/17; WO235/18. Phillips actually asked the Court to “accept the evidence of those who spoke of general conditions and contrast their evidence with those who spoke against individual accused; the former were usually reliable, the latter were almost universally unreliable.”

24 Phillips, Raymond, op. cit. pp.544-5 and p89. Szafran and Bimko were also questioned about having made inconsistent statements.

25 *ibid.*, Major Smallwood pp.94-99.

the trial. Lieutenant-Colonel Geoffrey Champion, also of the War Crimes Investigation Team, told the court of a mix up in the key to the photographs, when Martha Linke, an accused in the second Belsen trial, was mixed up with Herta Bothe, an accused in the first trial. He also told of an occasion when photographs of suspects had been pinned on a wall. One of the photographs so included was of Field Marshal Montgomery who was, in fact, identified by one person as a potential accused. (26) Clearly, there was plenty of scope for the Defence to challenge the way evidence had been collected.

Doctor Fritz Leo was a German doctor who had been arrested by the Nazis in 1935 and imprisoned until the liberation of Belsen. Doctor Leo was one of the prosecution witnesses that the Defence were prepared to consider as credible, again probably because he did not make specific allegations against any of the accused. Doctor Leo's evidence made an impact on the public gallery precisely because he was a German and not a foreigner. *The Times* reported,

This ...was a German speaking of crimes perpetrated by Germans, even the prisoners lost some of their impassivity as Leo... .recalled the Belsen scene...and the public galleries filled with German civilians followed his testimony far more attentively than that of any of the previous witnesses. (27)

Describing the general conditions in Belsen, Doctor Leo spoke of the prisoners having been driven to cannibalism because they were starving, and stated that he had seen 200 or 300 such cases himself. He also said that the SS would hang or beat to death those practising cannibalism if they were caught. (28) Doctor Leo testified about the murder of Keith Meyer, one of the British nationals named in the indictment. Leo also told the court that he

26 *ibid.* p108

27 *The Times* 29/9/45.

28 Phillips, Raymond, *op. cit.* p123; WO235/13.

believed that a gas chamber was going to be built at Belsen. (29) Josef Kramer later gave evidence to the contrary. (30) However, in his memoirs, his counsel, Major Thomas Winwood, recalled a conversation with Kramer before his execution, which tended to confirm Leo's evidence that a gas chamber was to be constructed. (31) This is one instance of the lies Kramer told while on oath and also indicates that prisoners were being collected at Belsen for extermination, not convalescence, as had been claimed. Kitty Hart, a Jewish prisoner who was interned at both Belsen and Auschwitz, remembered when she saw Kramer's "familiar face" at Belsen, "We had no illusions as to what to expect if Kramer was chief. He had gained his experience in Auschwitz and had been transferred to Belsen to organise extermination." (32)

Another witness who was considered credible by the defence was Doctor Charles Bendel, a Romanian Jew, who had been sent to Auschwitz in December 1943. Although he placed Kramer at the scene of the murder, in October 1944, of 500 men of the *Sonderkommando*, who had staged a revolt and blown up one of the crematoria, and named the accused Franz Hoessler as responsible for the order to hang women from the Union factory, who had supplied the explosives, he made no specific allegations against any of the other accused. Bendel gave a full account of the operation of the gas chambers at Auschwitz and also spoke of the gassing of victims from the Lodz ghetto in August 1944. (33)

The Prosecution case came to an end on 6th October 1945. Before closing his case, Colonel Backhouse asked the Court to allow the lodging of a number of affidavits in terms of Regulation 8(i) of the Royal Warrant. The Defence

29 Phillips, Raymond, op. cit. p124; WO235/13.

30 Phillips, Raymond, op. cit. p167; WO235/14.

31 Papers of Major T.C.M. Winwood, Imperial War Museum, London.

32 Hart, Kitty. *I am Alive*. London: Abelard Schuman Ltd., 1961, pp.143-144.

33 For Bendel's account of the gas chambers, see Phillips, Raymond, op. cit., pp.132-33; WO235/14.

objected to this as they claimed the evidence was “completely unreliable”. (34) The Judge Advocate advised the Court that the affidavits were admissible if lodged but cautioned the judges that it was up to them what weight should attach to them. The judges decided that the affidavits should be lodged and the Prosecution then proceeded to read out the contents of the many affidavits. Even whilst the affidavits were read, the Defence continued to object to certain parts of them, resulting in deletions where their objections were sustained. It is worth noting that the prosecution evidence against certain accused consisted solely of affidavit evidence. (35)

By this time, there was growing concern as to the length of time the trial was taking, “The wheels of the law are grinding exceedingly small in the Belsen trial,” reported the Times on 1st October, somewhat prophetically.

International observers, and certainly the Germans themselves, are no doubt impressed by the pains taken by the Court to extend all the privileges of British justice to the accused, who in other circumstances might have been dealt with more summarily; but with a whole series of war criminal trials now pendingthe Belsen case is probably also being watched for the possibility of reducing procedure to a less redundant form.

A member of the Judge Advocate’s department attended at Lüneburg to discuss what could be done to speed up the proceedings. (36)

34 Phillips, Raymond, op. cit. p140.

35 Josef Klippel, Ilse Lothe, Fritz Mathes, Eric Barsch, Charlotte Klein, Hilde Lisiewitz, Frieda Walter and Herta Bothe.

36 WienerLibrary, Kahn Freund papers 18/10/45. The Court was sitting six days a week throughout the trial.

The Defence Case

The Defence case opened on 8th October. Major Winwood, Counsel for Josef Kramer and three other SS men, began by telling the Court that he was honoured to represent his clients. He said,

The type of internee who came to these concentration camps was a very low type....the vast majority of the inhabitants of the concentration camps were the dregs of the Ghettos of middle Europe ...(they) had very little idea about how to behave in their ordinary daily life... they had very little idea of doing what they were told...the control of these internees was a great problem. (37)

He proceeded to explain away Kramer's conduct in the camps, saying that he, personally, had done nothing wrong, that nothing was his responsibility and that he had tried to avoid his second term of duty at Auschwitz in 1944 (he already had ten years' service in concentration camps by then). He even tried to explain away the lies that Kramer had admitted telling investigators, that the gas chambers did not exist, and ended by describing him as the "Scapegoat of Belsen". (38) He later stated in his memoirs that he was not expressing his own views but those of his clients. (39)

After the speech, Josef Kramer gave evidence. Born in Munich on 10th November 1906, and brought up in Augsburg, Kramer joined the Nazi Party in 1931 and the SS in June 1932. He was generally unemployed until 1934, when he started to receive a salary from the SS. (40) According to his wife, Rosina Kramer, "The Party promised solutions to all his problems. From the day he understood this, he gave himself over to Nazism with all his heart....

37 WO235/14; Phillips, Raymond, op. cit. pp.145-156.

38 ibid. p156; WO235/17.

39 Major T.C.M. Winwood papers, op. cit.

40 Segev, Tom. *Soldiers of Evil*, London: Grafton Books, 1990, p67. Kramer had been a trainee in a department store, then had temporary jobs such as a door-to-door salesman.

without the Party and the SS, he would have remained a failure for the rest of his life". (41)

Kramer, described by Otto Friedrich as, a "brutal professional" and by Hanna Levy-Hass as a "rabid, anti-Semitic monster", reached the rank of *Hauptsturmführer* (Captain) in 1942, receiving the *Kriegsverdienstkreuz* (war service medal) first and second class in 1942 and 1945 respectively, for services rendered. (42) He served in several concentration camps from 1934, and in May 1940, he was transferred to Auschwitz for the first time, to serve as Adjutant to the commandant, *Obersturmbannführer* (Lieutenant-Colonel) Rudolf Höss. Kramer went on to serve at Dachau, and then at Natzweiler from 1942-44, as commandant, when he was transferred back to Auschwitz in May to become commandant of Birkenau. At the beginning of December 1944, he was sent to Bergen-Belsen as commandant, where he remained until the camp was liberated. (43)

Kramer, his face white and strained, but still a powerful figure, left the dock with alacrity to take the oath. For more than four hours he spoke with growing confidence and complete composure, even on such subjects as the gas chambers of Auschwitz. (44)

Kramer maintained that the operation of the gas chambers at Birkenau was nothing to do with him and was the responsibility of the commandant of Auschwitz main camp. (45) Richard Baer, who held this position at the same time as Kramer was at Auschwitz Birkenau, stated on 22nd December 1960, during the hearings that preceded the Frankfurt Auschwitz trial,

41 Segev, Tom, *Soldiers of Evil*, op. cit., p118.

42 Friedrich, Otto. *The Kingdom of Auschwitz*. London: Penguin Books, 1996, p.94; Levy-Hass, Hanna. *Inside Belsen*. Brighton: The Harvester Press, 1982, p48; Phillips, Raymond, op. cit., p182.

43 *ibid.* pp.721-739.

44 *The Times* 9/10/45.

45 Phillips, Raymond, op. cit. p157; WO235/14.

I commanded only Camp one at Auschwitz. I had nothing to do with the camps where the gassings took place. I had no influence over them. It was in Camp two at Birkenau that the gassings took place. That camp was not under my authority. (46)

Asked for his own opinion of the gas chambers, Kramer replied, "I asked myself, is it really right about these persons who go to the gas chambers.... I did not know what the purpose of the gas chamber was." (47)

He spoke of his transfer to Belsen and described his efforts to obtain food supplies. He said that food supplies in the *Wehrmacht* barracks nearby were reserved for the *Wehrmacht*, "I was not entitled to apply to the *Wehrmacht* for reserves and they were not forced to give them to me." He admitted later that he had never actually asked for them. (48) He told the Court that he had become so concerned about the general situation at Belsen that he had written to his superior, *SS Gruppenführer* (Lieutenant-General) Richard Glücks in Berlin, however, the Prosecution did not accept that any such letter had been sent. (49)

The first day of Kramer's testimony was reported in *The Times* on 9th October and the reporter seems to have found his evidence convincing,

46 Kogon, Eugen, Langbein, Hermann. Rückerl, Adalbert. *Nazi Mass Murder*, New Haven; London: Yale University Press, 1993, p142; Richard Baer went underground after the War and was not arrested until 1960. He died while awaiting trial in 1963: Czech, Danuta. *The Auschwitz Chronicle*. London: I.B. Tauris & Co. Ltd. 1990, p808; see also Wittmann, Rebecca. *Beyond Justice*. Cambridge, Mass.: Harvard University Press, 2005.

47 Phillips, Raymond, op. cit., p158.

48 ibid. p178; WO235/14.

49 Phillips, Raymond, op. cit. pp.163-166.

From Kramer's evidence it seems that in the end many prisoners were crowding into trucks more or less uncontrolled and themselves coming to the camp in search of food.

It seems unlikely that this reporter had listened to any of the prosecution evidence or knew very much about the concentration camps, if he could form such a view of Kramer's evidence.

Cross-examination by Colonel Backhouse subjected Kramer to a more robust type of questioning. Accused of being a liar, he was asked about his time at Natzweiler-Struthof in Alsace. He faced no charges relating to Natzweiler and, according to Winwood's memoirs of the trial, charges relating to Natzweiler were what he feared. (50) Arguably, it was relevant for the Prosecution to pursue this line in the face of Kramer's denial of every wrongdoing, to show what his camp service had really entailed. No objection seems to have been taken to this. Kramer admitted, during the course of his evidence, that he had personally gassed eighty prisoners at Natzweiler camp in August 1943, when he was commandant there. (51) At the same time he denied taking part in selections for the gas chambers at Auschwitz. Asked how many people had been killed in the gas chambers of Birkenau when he was commandant, Kramer said he did not know as he did not know how many people were in the transports. Asked if anyone was entitled to give or execute orders for the mass murder of innocent people, he replied, "Probably there must have been somebody who issued these orders. I myself never saw them and have nothing to do with it." (52) An affidavit by Herta Ehlert, an accused, had already been lodged by the Prosecution. In this affidavit, she stated that she had often seen prisoners beaten at Belsen.

50 Major T.C.M. Winwood papers, op. cit.

51 Phillips, Raymond, op. cit. p174; see Kogon, Eugen, Langbein, Hermann, Rückerl, Adalbert. *Nazi Mass Murder, a Documentary History* op. cit. for further information on this and Kramer's part in it. The bodies were to be sent to Dr. August Hirt at the Anatomical Institute in Strasbourg, who wanted to assemble a collection of Jewish skeletons.

52 Phillips, Raymond op. cit. p175.

Kramer denied that beatings had taken place either at Belsen or at Auschwitz and said he was, “astonished that she had not reported this” to him. (53) He denied that he said to her, regarding the increasing death rate in the camp, “Let them die, why should you care?” (54)

Asked why he had not tried to pump water from the river (as there was no water in the Belsen camp), he replied, “I had no apparatus or material”. In fact, British soldiers had pumped in water using material found in the camp, and this was the water that had been used for the camp since liberation.

Kramer was subjected to hours of cross-examination by Colonel Backhouse, but according to *The Times*, “(He) never succeeded in shaking Kramer’s quick-witted composure. He answered questions about the deaths of thousands of people without faltering or change of tone”. (55) Kramer denied every allegation of culpability and criminality, a position he would maintain until the end.

Kramer’s wife, Rosina, had been with him at both Birkenau and Belsen. The absurdity of her evidence provoked spontaneous laughter from several of the accused who had served with him at Birkenau, when she described how her husband, the former commandant of an extermination camp, allegedly paced up and down, worried about the destruction of supplies in a bombing raid and the lack of bandages and dressings for his prisoners. (56)

The second accused on the indictment, Doctor Fritz Klein, sat next to Kramer in the dock and never spoke to him. Described by *The Times* as, “The oldest and most cultured of the prisoners”, he was born on 24th November 1888 at Zeiden, Romania, was of German extraction, and qualified as a doctor in

53 *ibid.* p177.

54 *ibid.*

55 *The Times*, 10/10/45.

56 Phillips, Raymond, *op. cit.* pp.182-83; WO235/14.

Budapest. (57) He served in the Romanian army until 1943, when he transferred to the SS, his rank being *Obersturmführer* (lieutenant).

Sent to Auschwitz in December 1943, Klein was one SS man who was described by some survivors as “not so bad”. There were no allegations of brutality levelled at Klein. (58) In fact, he was described by SS *Hauptsturmführer* Eduard Wirths, the Garrison Doctor at Auschwitz, as, “Fair, hardworking, conscientious and correct in his dealings with his superiors, but too soft in his dealings with the prisoners and those members of staff who were junior to him”. (59) For this reason, Wirths said, Klein could not be recommended for concentration camp service and should be transferred elsewhere to look after soldiers.

Klein admitted in his evidence that he took part in selections for the gas chambers but stated that his job as a doctor was simply to decide who was fit for work and who was not, and what happened to them afterwards was nothing to do with him. He was simply following superior orders. Asked what his personal opinion of the gas chambers was, he said he did not approve but did not protest, “Because that was no use at all”. (60)

His position perhaps could be contrasted with that of Doctor Hans Münch, an SS research pathologist at the Rajsko Institute near Auschwitz. He had refused to take part in selections at the ramp at Auschwitz in the summer of 1944, and stated later, “Nothing was going to make me do it”. He also stated,

57 *The Times*, 11/10 /45; Phillips, Raymond, op. cit. pp.183-186; WO235/14. Colonel Backhouse said Klein was an educated man who had been educated at a non-German university, the suggestion being that he should have been less susceptible to Nazi propaganda.

58 Lengyel, Olga. *Five Chimneys*. London: Mayflower Books, 1972. Klein was said to be “Less sadistic” than his colleagues, “The only SS butcher from whom I saw any humane reaction towards the deportees”, p102. However, she thought “His benevolence was calculation, readying witnesses for the trials to come”, pp.157-60.

59 Fritz Klein, *FührerPersonal Akten* 117A, *Bundesarchiv*: Wirth’s report dated January 1944.

60 Phillips, Raymond, op. cit. p184; WO235/14.

“I do not think anyone in the SS was forced to do what they did against their will. “(61)

Klein said he knew about experiments at Auschwitz but took no part in them himself. (62) Although he said that he had never seen anyone beaten by the SS, he had received hospital admissions of those who had been beaten, but most were beaten by *kapos* and other prisoners. Turning to Belsen, he told the court that he had advised Kramer of the need to supply water and clear up the corpses and Kramer’s response had been that he could not give him orders. His final opinion of Belsen was that, “It was not a camp for sick people, it was a death camp, a torture camp”. (63)

Another accused who features in several survivor accounts of Auschwitz and Belsen was Franz Hoessler, a former photographer, who was represented by Major Munro. (64) Born in February 1906 in Oberdorf, in the Allgau, he was unemployed in 1931 and, on the day when Hitler came to power, he volunteered for the SS. He served at both Dachau and Auschwitz and in July 1943, he became the leader of the women’s camp at Birkenau, reaching the rank of *Obersturmführer* (sergeant) by 1944. In 1944, he had a further spell at

61 Sereny, Gitta. *The German Trauma*. London: Penguin, 2001, p262. Münch was tried as a war criminal at the Krakow Auschwitz trial in 1947. He was acquitted after nineteen former prisoners gave evidence in his favour.

62 Astor, Gerald. *The Last Nazi*. London: Sphere, 1996. Astor accuses Klein of participating in pointless medical experiments in Block 28 at Auschwitz after which all victims were sent to the gas chambers. Thirty healthy Jewish boys were administered subcutaneous injections of benzine and naptha. The results were already known. The boys developed large abscesses; also *Death Books from Auschwitz* record that Klein experimented with pharmacological agents for the treatment of typhus and psychotropic agents intended to treat shirking in the army. See also Baumschlag, Naomi. *Murderous Medicine: Nazi Doctors, Human Experimentation and Typhus*. Westport, Conn.; London: Praeger Publishers, 2005. Klein’s involvement is discussed in WO311/198.

63 Phillips, Raymond, op. cit. p188.

64 *ibid.* p195.

Dachau before returning to Auschwitz, where he remained until January 1945. He then went to Dora-Mittelbau, ending up at Bergen-Belsen in April. (65)

Adopting the superior orders defence, Hoessler admitted that he had to attend selections for the gas chambers but said he took no part in them except for guarding the prisoners: it was the doctors who made the selections. He asserted that he had saved “several hundreds” from the gas chambers by writing chits to release people from Block 25, the death block, on being asked by friends or relatives of the condemned person. He said that these actions demonstrated that he did not agree with the policy of liquidation of the Jews and that he had risked his life to save people. He went to Belsen on 5th or 6th April and claimed that he had gone to the *Wehrmacht* barracks and asked for food. He was given food from the stores and also a water cart. (66)

The female accused who received most publicity was Irma Grese, who was born in Wreken in October 1923. Grese always took pride in her appearance and the Press took particular interest in her for this reason. (67) After working in the SS Sanatorium at Hohenlychen, for two years, she was sent to Ravensbrück Concentration Camp in July 1942, where she trained as a supervisor (*Aufseherin*). In March 1943, she was sent to Birkenau, where she was promoted to the position of *Oberaufseherin*, the second highest rank that female concentration camp staff could reach. She remained there until

65 *ibid.* At the Nuremberg trial, but not at the earlier Belsen Trial, Marie Claude Vaillant le Couturier described how condemned women were taken to the gas chambers from Block 25 at Auschwitz, “The famous Hoessler ran after the truck and with his bludgeon repeatedly struck the naked women going to their death”. Quoted in Gilbert, Martin. *Holocaust Journey*. London: Phoenix, 1997, p150. Also see Müller, Filip. *Eyewitness Auschwitz, Three Years in the Gas Chambers*. Chicago: Ivan R. Dee, 1979.

66 Phillips, Raymond, *op. cit.* pp.195-206.

67 see generally, Ehlert, Martina. ‘*Umerziehung zur Demokratie.*’ In Claus Füllberg-Stolberg. *Frauen in KZ Bergen-Belsen, Ravensbrück*. Bremen: Temmen, 1994; Taake, Claudia. *SS Frauen vor Gericht*: Oldenburg, 1998.

January 1945 and was sent to Bergen-Belsen in March. (68)

Grese was notorious for her brutal treatment of inmates. Allegations against her included beatings, whippings, shootings, setting dogs on prisoners, deliberately setting prisoners up to be shot at the perimeter fence, cruel punishments, such as “making sport”, and prolonged roll calls. Extra parades and drills were a recognised form of punishment in the German service, she said. She admitted ordering the roll calls for counting purposes and admitted beating people, including those who tried to evade selections for the gas chambers, but denied shooting anyone and denied ever setting a dog on anyone. Unlike many other accused who claimed to be following superior orders, Grese said she had acted against orders when she beat people. (69) She had also ordered other *Aufseherinnen* to beat prisoners. (70) Giving evidence on her own behalf, Grese admitted beating people but only to maintain order. Use of a reasonable amount of force was, in her view, justified. At the age of twenty, she found herself in charge of 30,000 prisoners in C Camp at Auschwitz-Birkenau, mostly Hungarian women, who “behaved like animals” when food was scarce and created latrines everywhere. (71) She admitted carrying a walking stick at Auschwitz and also a whip made from cellophane. Despite Kramer prohibiting the use of whips, she said, all guards continued to use them. She denied ever carrying a rubber truncheon and denied carrying any weapons at Belsen. At Belsen she only struck people with her hands. Grese stated, “The condition of the prisoners was so bad that one

68 In the charge of Dr. Karl Gebhardt, who was responsible for experimenting on female prisoners at Ravensbrück and was hanged for committing war crimes in 1946; WO235/15; Phillips, Raymond, op. cit. p256.

69 *Gruppenführer* Glücks had decreed to all commandants on 8/12/43, “It is forbidden to beat, strike or even touch the prisoners”, Sofsky, Wolfgang. *The Order of Terror*. Princeton: Princeton University Press, 1997, p332.

70 Phillips, Raymond, op. cit., p248; WO235/15.

71 Phillips, Raymond, op. cit., p249.

had almost a horror of them”. (72).

Juana Bormann, the oldest female accused at fifty-two, joined the SS as a civilian employee at Lichtenburg in 1938 to earn more money. (73) She then worked for three years at Ravensbrück, and acquired a dog when she was supervising a squad of prisoners working on *Obergruppenführer* (General) Oswald Pohl’s estate.

Featuring in both the Belsen and Auschwitz charges, she was accused *inter alia* of taking part in gas chamber selections and setting her dog on prisoners at Birkenau. Colonel Backhouse suggested that she had trained the dog at Ravensbrück to attack prisoners. This was denied. She stated that she arrived at Auschwitz in May 1943 and, from January 1944, she was a supervisor attached to an outside work squad named Budy. (74)

Bormann insisted that she had only briefly had a dog at Auschwitz, despite evidence to the contrary, even from her fellow accused. She stated that, shortly after she had arrived at Auschwitz, she had given the dog to the then commandant of Birkenau, *Sturmbannführer* (major) Hartjenstein, so that he could use it for hunting. Also accused of beating women with a rubber

72 *ibid.* p250; see also *The Times* 17/10/45: “I had a horror of the prisoners because they were so dirty and diseased”; *Law Reports* *op. cit.*, vol. 2; WO235/15; Katherine Neiger, a witness, said Grese put on gloves before beating people, Phillips, Raymond, *op. cit.* p680.

73 Phillips, Raymond, *op. cit.* pp.207-213. Her salary increased from 15-20 Marks per month when she worked in a lunatic asylum to 150-190 Marks per month in the SS.

74 Budy was a village five miles from Auschwitz where a punishment company of prisoners was based and worked at clearing and dredging fish ponds. Rudolf Höss, the former commandant, wrote about Budy and female dog handlers in his autobiography. He recalled that although they had pistols, Himmler believed a greater “terror effect” was produced by the use of dogs: Höss, Rudolf. *Commandant of Auschwitz*. London: Phoenix, 2000, p135-141; on Budy, see also Strzelecka, Irena. *The Women’s Camp in Auschwitz Birkenau. Pro Memoria* vol.5-6, pp.14-16.

truncheon, Bormann said she did not know what a rubber truncheon was until she saw one in the hands of a British soldier in Celle Prison. (75)

Also tried as members of the Belsen staff were SS men who had just transported to Belsen thousands of prisoners from other camps which were closing down in the face of advancing Allied troops. One such was Otto Kulesa who appeared only in the Belsen charge. (76) He had travelled with 4600 prisoners from Dora-Mittelbau on a five-day train journey ending at Belsen on 10th April. He had been accused of murder and brutality towards prisoners. Asked by Colonel Backhouse how many prisoners they had crammed into each wagon, he replied, "They sat quite nicely and comfortably about 100 in each wagon". (77)

Questioned about the supply of water for the prisoners on the journey, he admitted that there had been a water shortage but the prisoners had been allowed to take water from ditches. He said he had provided water to prisoners from the train's engine. Asked why he did not procure water for the prisoners from the very many rivers and streams they had passed, he said he could not stop the train, "Because the engine driver had his own timetable and it was impossible for somebody to interfere with that and tell him to stop." (78) He was also accused of shooting at (and killing one) starving prisoners who had rushed towards a heap of carrots lying beside the railway line. He denied this.

Told that prisoners had died during the five-day journey to Belsen, the Judge Advocate asked Kulesa, "You did not think that to lose forty-two people on a journey of that kind extraordinary at all?" (79) Stirling continued,

75 Phillips, Raymond, *op. cit.* pp. 207-213; WO235/15.

76 Phillips, Raymond, *op. cit.* pp312-316; WO235/16.

77 Phillips, Raymond, *op. cit.*, p313. These were wagons designed to carry livestock.

78 *ibid.* p314.

79 *ibid.* p316.

Did you ever feel worried as to whether, when you got to Belsen, somebody might ask why so many as forty-two people had died on this journey; or did you feel that nobody would bother at all, that it really did not matter, and that you had no responsibility whatsoever?" (80)

Kulesa replied, "That was the duty of the man in charge of the transport, Hartwig..." (81)

Wilhelm Dorr and Franz Stofel were two SS men in charge of evacuating prisoners from a camp named Klein Bodungen to Belsen in April 1945. They were accused of shooting weak prisoners during the march and at Gross Hehlen, where they had stopped to rest. They both appeared only on the Belsen charge. They denied having killed any prisoners and blamed the killings on an SS unit that was in the area. (82) This aspect of war crimes will be encountered also in the second trial, in the case of Quakernack. (83)

Legal Argument

Colonel Herbert Smith conducted legal argument on International Law on behalf of the accused on 7th November, acknowledging that, "What we say at this bar, and to whatever decision the court will come, will be subject for a long time to most minute scrutiny by historians and by lawyers and many others." (84)

Colonel Smith's submissions are important and must be considered in some detail. He based his argument on the British Manual of Military Law, which he said was a restatement of the provisions of the Hague Convention of 1907.

80 *ibid.* p316.

81 *ibid.* p316.

82 *ibid.* pp.325-333; pp.339-355; WO235/16.

83 See chapter 5 *infra re* Quakernack

84 Phillips, Raymond, *op. cit.* pp.486-511; WO235/17.

He argued firstly, that the Court was trying the accused for acts that were not crimes at the time of commission of the acts and that this was a violation of a “fundamental principle of all criminal law in civilised countries”. (85) Arguing that concentration camps were legal in Germany, Colonel Smith said they had no connection to the furtherance of the war effort, having been set up before the War. He tried to persuade the Court that killing a Prisoner of War in a POW camp was clearly a war crime, while in a concentration camp, it was not. He said domestic law was superior to International Law and the accused had to obey German Law before International Law. War crimes, being violations of the recognised rules of warfare, could only be committed by members of the armed forces. The victims of war crimes had to be Allied nationals and, in this case, it was alleged that crimes had been committed against Hungarians and Italians, who were not Allied nationals. He also argued that Poles and Czechs had in fact become Germans as a result of German annexation of their territory and, if so, Germans could not commit war crimes against other Germans. He argued that, in any event, the state and not the individual was responsible for breaches of International Law as made explicit by Article 3 of the Hague Convention. Finally, regarding the defence of superior orders, he argued that the original pre-April 1944 text of the Manual of Military Law was the correct statement of the law. (86) Colonel Backhouse’s opposing arguments were not made until 13th November, after the defence closing speeches, and these will be considered later.

Defence Closing Speeches

The Defence closing speeches began on 8th November. In these speeches, the Defence made a number of well-founded criticisms of the investigative methods used to obtain evidence and the amendments to the ordinary rules of evidence. These issues alone, leaving aside all matters of International Law, were sufficient to amount to a potential miscarriage of justice and to deny the accused a fair trial. Much of what is said here applies equally to the later trials.

85 Phillips, Raymond, *ibid.*

86 *ibid.*

The use of affidavit evidence and hearsay evidence, disallowed in English civil courts, denied the Defence counsel the opportunity to cross-examine witnesses and properly test the evidence. The use of affidavit evidence, uncorroborated by any other piece of evidence was particularly unreliable, and several accused were prosecuted on that basis alone. All of those who faced the possibility of conviction on the basis of one affidavit were, in fact, acquitted.

The investigation was criticised by Major Munro and Captain Phillips in particular, who suggested many possibilities for error and misunderstandings to occur. Identifying the accused from photographs alone, in the case of the deponents, was subject to error. At least one accused had been identified initially from a photograph but could not be identified in the flesh in the courtroom (87). The photographs used for this purpose were almost exclusively confined to those who had been officials at Belsen, argued Captain Phillips, “Consequently, a deponent...would inevitably pick a winner every time” (88). Captain Phillips also pointed out that great care had not been taken to ensure the key of names for the photographs was correct, resulting in one definite error. (89) However, as the procedural rules allowed both affidavit and hearsay evidence to be admitted, these points were unlikely to succeed and did not succeed. Defence counsel also reviewed the evidence against their clients and, pointing out discrepancies between earlier statements and oral evidence and claiming bias against the accused, they followed through their strategy, adopted at the outset of the trial, of trying to discredit the Prosecution witnesses.

Major Winwood (for Kramer and others) explained to the Court that at Auschwitz, the chain of command for the gas chambers had been the main camp commandant, the Political Department and the *Sonderkommando*

87ibid. p521.

88 ibid. p564.

89 ibid.

(prisoners) who, he claimed, actually did the gassing. (90) Kramer did not appear in this chain of command and had nothing to do with it. At Belsen, “a certain amount of force was necessary to restrain the internees when food became insufficient... the language of a concentration camp is blows.” (91)

He asked the Court to consider “the story” given by witnesses Bimko and Hammermasch, “as a pure invention...for the sole purpose of having a go at Kramer, their former commandant”. (92) He cautioned the Court against accepting any of the prosecution evidence: affidavit evidence should be considered “with the very greatest care”. Oral evidence came from people who hated the SS, and who were prejudiced. The Court should be careful not to “confuse fact with fantasy”. (93)

Major Munro (for Hoessler and others) said he accepted the evidence of the British officers, Le Druillenec, Doctor Leo and Doctor Bendel but, “With regard to the evidence of Doctor Bimko and the other Jewish girls...it was not surprising she should come into the Court revengeful, possibly vindictive.” (94)

Major Cranfield (for Grese and others) thought that Auschwitz was, “A normally organised and competently run camp”. (95) In his opening speech, he had already placed the prosecution witnesses into three categories: firstly, the British officers, secondly, witnesses Bendel, Leo and le Druillenec, who were “honest and good”, and thirdly, “the procession of young women and the occasional Polish youth who might be vindictive or vengeful, on whom one could place no reliance”. (96) Now he was also concerned that, “Few of (the witnesses) had any intellectual attainments” and thought there was temptation

90 *ibid.* p512.

91 *ibid.* p518.

92 *ibid.*

93 *ibid.* p520.

94 *ibid.* p521-522.

95 *ibid.* p540.

96 *ibid.* p244.

for these young, ill-educated girls to identify a man.” (97) He also took up the point made by Major Winwood about the *Sonderkommando* stating, “The principals in the first degree, those who actually committed the crime, were the *Sonderkommando*...their only defence could be coercion and lack of intention but if that applied to them, it applied to the accused”. (98) Captain Phillips, later Lord Justice Phillips and the editor of *The Belsen Trial*, accepted the evidence of witnesses who spoke of general conditions, but rejected the evidence of those witnesses who could speak to specifics and, of course, identify the accused. (99) One of the witnesses who had accused his client, Herta Bothe, of shooting two prisoners, “was only aged seventeen” and this was, “relevant in assessing his worth”. (100) Clearly, women, Poles, Jews and the young made poor witnesses in the view of the defending officers, especially if they had made specific allegations against their clients. Captain Neave, defending Ignatz Schlomoiwicz, stated that evidence given by deponents of alleged beatings was nothing more than, “Figments of the deponents’ over-taxed mental capabilities, due to privation and physical and mental suffering”. (101)

Prosecution Closing Speech

Finally the defence case was closed and Colonel Backhouse, the Prosecutor, rose from his sick bed to make his closing speech, which lasted seven hours and answered the legal points raised by Colonel Smith. (102) He stated that Allied nationals could only come into the hands of the accused either as Prisoners of War, internees or deportees. Prisoners of War were protected by the Geneva Convention, which banned all forms of corporal punishment and set out certain minimum standards of treatment. All civilians, he argued were entitled to exactly the same treatment. He quoted Article 46 of the Hague

97 *ibid.* p535, 537; WO235/17.

98 *ibid.* p539.

99 *ibid.* pp.563-564.

100 *ibid.* p565.

101 *ibid.* p559; WO235/18.

102 *The Times*, 14/11/45.

Convention, which guaranteed respect for the lives of the inhabitants of occupied countries. He said civilians had come into the hands of the SS through the operation of war, placing persons in concentration camps was a German war aim, was facilitated by the War and was for the benefit of the war effort. He said that members of the SS considered themselves to be members of the armed forces and the problem created by the use of the words “armed forces” was that when the Hague Convention was written, no-one had anticipated a force such as the SS. He stated that the Germans had not annexed the countries they had invaded and that under International Law this could not be done until hostilities had ceased. Referring to the Treaty of Versailles, which was still in existence, he said that the German Government had recognised the right of Allied nations to try individuals for war crimes rather than simply hold the belligerent state responsible. (103)

With regard to the defence of superior orders, he said that the onus was on the defence to establish this. Many accused had said it was forbidden to ill-treat prisoners and they had acted against orders, while with regard to the gas chambers, they claimed they were acting on superior orders. Of course, they had to prove that they did not know that gassing people was wrong but they all knew that it was. Colonel Smith had been unable to produce any evidence that suggested the gas chambers were legal under German law.

Colonel Backhouse then proceeded to review the Prosecution evidence. (104) He made up for his earlier omissions and pointed out that, “Literally millions of people were gassed for no other reason than that they were Jews.” (105) He continued, “ I submit that every person who took part in these parades...took part in a deliberately, carefully organised murder, of a whole race, an attempt to destroy the whole Jewish race”. (106) “The martyrdom of

103 *ibid.* pp.585-629.

104 *ibid.*

105 *ibid.* p596.

106 *ibid.* p599.

the Jews”, he said, “was a war crime which has never been equalled.” (107)

Doctor Leo had testified that he believed a gas chamber was to be constructed at Belsen. This was denied by Kramer at the trial but admitted to Major Winwood after the trial. Colonel Backhouse referred to this again, stating that Belsen was intended to replace Auschwitz. He said that while there was insufficient evidence that gas chambers were under construction at Belsen, he had no doubt they would have been. Pointing out that the gas chambers at Auschwitz were being taken down, “stone by stone”, he wondered where they were going. It was logical that they would be taken to Belsen and it was “inconsistent that, in the one place, they would collect the sick and kill them and, in the other, where there would be precisely the same people, they should care for them in a convalescent camp.” (108)

The Judge Advocate

The next stage in the case was for the Judge Advocate to sum up impartially the evidence and the applicable law for the judges. Stirling’s summing up lasted fourteen and a half hours and was spread over three days. (109) Reading his speech, there is a suggestion that he does not understand what deportation to Auschwitz really meant, for example,

The Prosecution... do not complain or ask you to consider whether the taking of Allied nationals to Auschwitz was right or wrong. What they do say is that when they were there they had no right to be ill-treated or maltreated to an extent that they should die... (110)

Discussing the affidavits, which had been lodged in terms of Rule 8, he said they were “dangerous material”, and pointed to the lack of opportunity

107 *ibid.*

108 *ibid.* p602.

109 *The Times*, 17/11/45.

110 Phillips, Raymond, *op. cit.* p630; WO235/18.

available to the defence to cross-examine those witnesses. He pointed out that the law prefers credible witnesses, those who have no personal interest in a case, who are calm and collected and free from any sort of bias. (111) He was rather restating the point made by Captain Roberts, who quoted passages from an English legal textbook, that witnesses to be credible “must not be in the slightest degree biased”. (112) Obviously, the victims of Auschwitz and Belsen would be biased. It raises the question of who the Judge Advocate would have considered independent and free from bias. He went even further, informing the court, “You are not here to punish any man or woman for beating people if you are satisfied that although it was irregular the conditions were such that they justified it”. (113)

Sentencing

The public galleries, which had been half-empty for weeks, were now full. (114) After the summing-up, the Court adjourned to consider its verdicts. Some five hours later, the verdicts were announced. (115) This may seem rather hasty, given that the trial had lasted fifty-four days, involved forty-five accused and had dealt with complex legal issues. However, the Court had been aware from the start that time was of the essence. The IMT was due to start at Nuremberg the following Monday and there was a desire to have these proceedings completed before then.

The President stated that the findings of guilty were subject to confirmation by superior military authority. Findings of not guilty were final. Fourteen accused, whose prosecution had been based almost exclusively on affidavit evidence, were found not guilty. (116)

111 Phillips, Raymond, *ibid.* p634.

112 *ibid.* p543.

113 *ibid.* p635.

114 *The Manchester Guardian* reported on 6/11/45, “No one in the gallery as trial enters its eighth week”: See also, Wiener Library, Kahn Freund archive 1427/13.

115 *ibid.*; WO235/18;

116 See Phillips, Raymond, *op. cit.* for lists of convictions and sentences pp.641-644; See also this Appendix; WO235/18.

On Saturday, 17th November 1945, the Court heard pleas in mitigation on behalf of those found guilty and sentences were passed. Eight men and three women were sentenced to death, including Kramer, Klein, Hoessler, Grese, Bormann, Stofel and Dorr. Nineteen were sentenced to terms of imprisonment, varying from life to one year. (117) Four of the fourteen acquitted were *kapos* and this aspect of the case will be discussed further at chapter 6.

Before the court rose, the President thanked the defence counsel for their efforts. His words seem a little ironic, given the court's rejection of the superior orders defence, "There is no need for me to remind you that it is the basis of all discipline that an officer not only accepts orders unquestionably but carries them out to the very best of his ability..." (118)

The reasoning behind the Court's decisions will never be known as the judgement was not accompanied by an opinion detailing the reasons for convictions, acquittals and sentences. Raymond Phillips states that we should assume all those acquitted were found not guilty of personal brutality and not guilty of indirect responsibility for the general conditions at the relevant camp(s). Regarding those who were convicted, but not sentenced to death, it should be assumed that the Court acquitted them of personal killing and the length of the sentences may indicate their measure of responsibility. (119)

All those sentenced to death petitioned the convening officer, Field Marshal Montgomery, for clemency. According to the Winwood papers, Klein and Weingartner refused to do so, Klein saying that his part in the crimes was such that he was not fit to live. (120) Kramer, in fact, wrote a letter to Montgomery, seeking a pardon and its terms make it plain that he had no

117 WO235/605; Erich Zoddell, a German *kapo* was sentenced to death by a British Military Court for murder committed after the liberation and was hanged on 30th November: Sington, Derrick. *Belsen Uncovered*. London: Duckworth, 1946, p74.

118 WO235/18; Phillips, Raymond, op. cit. p644.

119 *ibid.*, xlv.

120 Major T.C.M. Winwood papers, op. cit.

insight into his crimes. He maintained that he had only followed superior orders, had nothing to do with the gas chambers at Auschwitz-Birkenau and never took part in selections; if witnesses said he did, it was out of feelings of hate. He said there had been no point in protesting, since this would only be to risk one's own life. He was not a war criminal and had nothing to do with the war, his many requests to see action at the front having been refused.
(121)

All appeals were rejected. On 13th December 1945, at Hamelin jail, those who had been sentenced to death were hanged, the women one at a time and the men in batches of two.

Finally, Colonel Backhouse, the Prosecutor, was quoted on the front page of the Daily Mail on 22nd February 1946, as follows,

Kramer was an extremely nice fellow. It never occurred to him that he was doing wrong in obeying his orders. He knew he was going to hang and never thought the trial was anything but a show but he was only too pleased to help in any way he could. He was about the only one of the forty-three prisoners against whom no individual act of cruelty was proved.

This was an astonishing claim and it is not even correct, whether as a result of error on the part of Colonel Backhouse or erroneous reporting by the newspaper. There were finally forty-four accused (after Gura's departure as a result of illness) and Kramer was proved to have committed many acts of cruelty, including beatings, shootings and taking an active part in selections for the gas chambers. This report came to the attention of Backhouse's superiors. He was able to reassure them that what he had meant was that ordinarily Kramer was a "decent sort of fellow", who had just been following

121 Winwood papers, *ibid*: Letter from Josef Kramer to Field Marshal Montgomery, November 1945, WO235/22.

his orders “willy nilly.” That appears to have brought the matter to a conclusion. (122)

The Aftermath

The first Belsen trial attracted almost universal criticism, abroad and in Britain. (123) Adverse reports about the trial had started to appear in the press soon after the trial began and these reports were even commented on by the defence counsel during the trial. (124) Winwood’s opening speech, in particular, was criticised, provoking protests from the British Ambassador in Washington, a Parliamentary question by Eleanor Rathbone M.P. to the Secretary of State for War, and a speech in the Czech Parliament. Sir Thomas Brimelow of the Foreign Office took the view that the publicity the trial had been given in the USSR had been “most damaging”, following adverse reports in *Izvestia* and the *Red Star*. (125)

The British public began writing in to the Foreign Office as soon as the trial ended, protesting against the leniency of the sentences. (126) It was difficult to understand how a person found guilty of murder could receive a mild sentence of imprisonment, at a time when death was the punishment for murder in Britain. However, given that the Judge Advocate General had refused to provide any guidance to the Tribunals on sentencing, even though he was specifically asked by BAOR in August and September 1945 to do so, this is unsurprising. (127) The case was compared unfavourably with the recently ended Dachau trial, conducted by the Americans. It had lasted a month, all forty accused were convicted and twenty-six sentenced

122 WO311/198. Letter dated 8/3/46 from Brigadier Shapcott to Lt. Col. R. Wheatley of AG3, War Office; Colonel Backhouse also remembered the number of accused incorrectly. In his summing-up speech, especially at p607, Phillips, Raymond, op. cit., Colonel Backhouse highlights all the evidence of brutality against Kramer and says that he was “not squeamish”.

123 Reitlinger, Gerald. *The Final Solution*. New York: Barnes, 1961, p469.

124 Phillips, Raymond, op. cit. p145.

125 Bower, Tom, *Blind Eye to Murder*, op. cit. p208; Dale Jones, Priscilla, Thesis, op. cit. pp.239-40.

126 FO371/50997.

127 Bower, Tom, op. cit. p223.

to death. (128) Sir Richard Beaumont at the Foreign Office commented, “US courts do manage to award more drastic sentences”, and said he did not understand how a person found guilty of murder could be awarded a sentence of imprisonment rather than death. (129)

The trial was described as a “travesty of justice”. Some protesters asked if this was justice and, if so, to whom. “Is the Hun, ever arrogant in victory and whining in defeat, to get away with it yet again?” Others suggested the trial should have been conducted by the United Nations or, better still, the Russians, on the basis that the Russians would have dealt more harshly with the Nazis. (130) In December, 1945 the trial was described as a “farce” in the House of Commons after a Government spokesman advised that none of the Belsen accused had been specifically charged with murder. (131)

The remarks that some defence counsel had made during the course of the trial provoked shock and disgust, both in Europe and the United States. An American organisation called “The Society for the Prevention of World War Three” wrote to criticise Major Winwood’s “ghettos” speech and stated, “He merits the rebuke of his countrymen”. (132) Defence counsel had been expected to put on a reasonable show of defending the accused, if only to impress the Germans with the force of British justice, but it could be argued that they went far beyond their duty to their clients. According to historian Andrew Scharf, “Defence counsel had to do their job, though perhaps not as thoroughly as Kramer had done his.” (133)

128 *ibid.* p210; Dale Jones, Priscilla, Thesis, *op. cit.* p323.

129 FO371/57671; Bower, Tom, *op. cit.* p227.

130 FO371/50997: Letters from E.M.K. Green “Absurd sentences”; A.D.W Duxbury “Ridiculously inadequate sentences”; M.Barker “Travesty of justice”.

131 Dale Jones, Priscilla, Thesis, *op. cit.* pp.321-322, Vernon Bartlett M.P.

132 FO371/50997. Letter dated 24/10/45 from Miriam Stuart: “(Winwood) insulted the memory of six million starved and beaten and tortured people...”

133 Scharf, Andrew. *The British Press and the Jews under Nazi Rule*, London: Oxford University Press, 1964, p148; Kramer received a Christmas bonus of RM500 in December 1943, the equivalent of a month’s salary, “für treue Mitarbeit”, (effort), Yad Vashem file 0.68/256.

The length of the trial was also criticised. Before the trial had even come to an end, there were complaints about how long it was taking. Defence counsel Major Winwood recalled that the Defence lawyers had been called in to see the President of the court, Major-General Berney-Ficklin, at the start of the trial. He told them that he did not wish to interrupt them in any way but progress had to be made. He reminded them that they were still under military discipline and he expected them to comply. (134) However, those who had expected swift justice were to be disappointed.

Raymond Phillips recalled that there were many at the time who believed the trial to have been a farce and an insult to the dead, and such an outcry, he said, was not surprising. Because the trial had lasted for weeks and there was little room in the newspapers to report it, it was hard for ordinary people to know what it was about. (135)

The Prime Minister, Clement Attlee, and the Attorney General, Sir Hartley Shawcross, were unhappy about the delays that had occurred and Attlee sent a letter of complaint to the Secretary of State for War, John Lawson. Lawson asked his department for an explanation and was told, “teething troubles”. Lawson told Attlee there had been, “An excessive number of defendants and the language barrier.” (136)

But it was not only Government officials and members of the public who were disappointed by the trials. Neither Anita Lasker-Wallfisch nor Hadassah Rosensaft, who had been victims of both camps and witnesses at the trial, were impressed by the operation of British justice as displayed at the first trial. Anita Lasker-Wallfisch commented, “The trial struck me as a huge farce”. (137) Asked questions about when certain events had occurred, she said she was made to feel that she was not telling the truth when she could not

134 Major T.C.M. Winwood papers, op. cit.

135 Phillips, Raymond, op. cit. Introduction.

136 Bower, Tom, op. cit. p211; WO32/12197.

137 Lasker-Wallfisch, Anita. *Inherit the Truth*. London: Giles de la Mare, 1996, pp.124-126.

answer. “In the camp you had neither a watch nor a calendar, nor would you have been the slightest bit interested whether it was Monday or Tuesday.” (138) Arne Moi, a Norwegian survivor of Belsen was similarly unhappy, “When we read the reports of the proceedings, the whole thing seems pretty unreal. What on earth do we care whether or not some *kapo* actually beat this particular prisoner on this or that particular occasion”. (139) Hadassah Rosensaft later stated,

My personal feelings were a mixture of pain, anger and satisfaction...satisfied that some of us had survived to see them brought to justice and that for the first time, the world learned about the crimes and atrocities they had committed. (140)

However, she felt glad the trial was over and refused to testify at the IMT at Nuremberg and at the Eichmann trial in Israel in 1961, stating that she, “Just couldn’t take part in any more ‘fair play’ for the Nazis”. (141)

Even former Allies were unhappy. Members of the *Fédération Nationale des Internés et Déportés Patriotes* in France criticised the verdicts. They complained about the, “*Incompréhensibles décisions d’acquittment rendues par le Tribunal de Lüneburg au profit des monstres de Bergen Belsen.*” (142) A member of the *Séours Populaire de France*, Paulette Fischer wrote to the British Ambassador on 2nd December 1945, “*S’eleve avec energie contre le scandaleux verdict d’indulgence de Lüneburg envers les bourreaux des camps du Struthof, d’Auschwitz et Bergen Belsen.*” (143)

138 *ibid.*

139 Moi, Arne. *Ein Norweger in Belsen*. Göttingen, 2002.

140 Rosensaft, Hadassah. *Yesterday, My Story*. Washington: USHMM, 2004, p.91.

141 *ibid.*

142 FO371/57560: “Incomprehensible decisions to acquit returned by the Lüneburg tribunal to the benefit of the beasts of Belsen”.

143 FO371/57560 “...strongly protest against the scandalous, lenient verdicts of Lüneburg for the executioners of the camps of Struthof, Auschwitz and Bergen-Belsen.”

Protest meetings were organised, such as that on 6th December, when there were catcalls (*à bas le Major Winwood*), and letters sent to the British Embassy in Paris complaining about the “derisory sentences”. (144) Letters of protest were forwarded by the British Embassy to London on 29th December. The Foreign Office instructed that there should be no reply to the letters, “For fear of stirring things up”. (145) At the meeting on 6th December, held under the auspices of several newspapers and a range of political parties, various speakers condemned the verdicts. A resolution passed at the meeting was to the effect that the verdicts were, “Une insulte à la mémoire des millions de déportés martyrisés”. (146) A British official noted, “The degree of publicity which the proceedings received has had an effect which is exactly the reverse of that which it was presumably intended to produce.” (147)

The view of the meeting was that a concentration camp guard is a war criminal until proven innocent. The British Embassy official noted that since this assumption was diametrically opposed to a fundamental principle of British jurisprudence, it seemed doubtful whether trials of war criminals under British procedure would ever be a matter of much satisfaction to the people of the occupied countries.

It was also noted, with some relief, that no-one had referred to an assurance that had been given to a national body representing former camp inmates, that the military prosecutor was satisfied with the weight of the evidence in his possession and that it was not proposed to call any further witnesses. The official felt, “In view of the acquittals, very mischievous use might have been made of His Majesty’s Government’s decision not to call French evidence.” (148)

144 *ibid.*

145 “Down with Major Winwood”. FO371/57560; WO311/198: R.A. Beaumont to H.M. Ambassador Duff Cooper, 25/1/46.

146 FO371/57560: “An insult to the memory of millions of deported martyrs”.

147 *ibid.*

148 *ibid.*

The French Government wanted to put on trial the Belsen staff who had been accused of crimes against French nationals and who had not been sentenced to death. (149) The British responded that there would have to be new charges based on new evidence. The French asked for a transcript of the trial and the War Office refused. The French then said they had found new evidence. The British revealed that they had released the fourteen acquitted soon after the verdict. It was perhaps lucky for the British that attention was diverted away from the trial by political problems in France and the IMT at Nuremberg.

A further criticism of the trial was the quality of the interpreters. They were so bad, even at the German/English translation, that Kramer himself was reported as correcting them. (150) That this was still a problem some six months later, is evidenced by another complaint made by a Brigadier Hennessy, one of the Presidents of the Tribunals, who claimed that some interpreters were, "Quite inadequate ...and not of the mental calibre necessary to comprehend the gist of the remarks of the prosecuting and defending counsel and then to interpret them intelligibly". (151)

Generally, the judges found the interpreting frustrating and showed impatience if the evidence were not given in English. Anita Lasker-Wallfisch recalled that giving her evidence in English, "Made a great impression", but felt that the physical appearance of the witnesses interested the judges more than their evidence. (152)The necessity of interpretation had also destroyed

149 The French tried 2,107 people for war crimes, sentenced 104 to death, acquitted 404 and gave the remainder sentences of imprisonment: Kochavi, Arieh. *Prelude to Nuremberg*. Chapel Hill, N.C.; London: University of North Carolina Press, 1998, p243; Maugham, Viscount. *U.N.O and War Crimes*, London: John Murray, 1951, p23.

150 *The Times*, 9/10/45.

151 Brigadier Hennessy, quoted at p226, Bower, Tom, op. cit.; WO309/1646; He had been President of the Court trying the *La Grande Fosse* case.

152 Lasker-Wallfisch, Anita, op. cit p128. The witnesses from the D.P. camps were malnourished and badly dressed and made a bad physical impression, compared to the former SS members. See also Harry Schweiger, quoted in Bower, Tom, op. cit. p226, that the judges were swayed by the poor physical appearance of the concentration camp inmates.

Colonel Backhouse's cross-examination, as by the time it had been translated into German and Polish, it had lost some of its thrust, and if the witnesses had any knowledge of English, gave them time to think up a suitable answer. Many of his questions were not answered at all. (153)

Not all comments, however, were negative: there were some foreign observers who thought that, in contrast to the victors' justice that might have been expected, *Siegerjustiz*, the British court had been very fair. Axel Eggebrecht was one of only a handful of German journalists who covered the first trial, reporting for Radio Hamburg. In eleven out of twenty-one of his broadcasts, he praised the fairness and objectivity of the British military court. Ernst Riggert of the *Lüneburger Post* was of the same opinion, "*Das Gericht habe dennoch ein faires und sorgfältiges Verfahren durch geführt.*" (154) In January 1946, Guy Lambert at the War Office wrote to the Under Secretary of State at the Foreign Office, "The Army Council is satisfied that the trials at Lüneburg were carried out in conformity with the best traditions of British justice and the sentences awarded by the court were proper in view of the evidence before it". (155)

This chapter has provided a detailed examination of the main issues involved in the first Belsen trial and the convictions, sentencing and criticisms have been discussed. In the absence of any guidance on sentencing by the JAG, and given that none of the judges were lawyers and had no precedents to guide them, the Court was bound to make mistakes. No reasons were given for their judgements so their reasoning will never be known. It seems from the criticisms of the trial, that the perceived criteria for success were speedy

153 Alaric Jacob reporting for the *Daily Express* 25/10/45. At the IMT, which began in November 1945, simultaneous translation was provided.

154 Berndt, Thomas. *Nur das Wort kann die Welt verändern. Der politische Journalist Axel Eggebrecht*. Herzberg: Verlag Traugott Bautz, 1998, quote from p119: "The court conducted fair and careful proceedings." See also Axel Eggebrecht. '*Nazi Verbrecher vor Gericht*'. In Jörg, Wollenberg, *Von der Hoffnung aller Deutschen*, op. cit. Eggebrecht was one of only six German journalists at the trial out of a total of 113 nominated journalists.

155 FO371/57560, letter dated 8/1/46.

trials, a high conviction rate and a large number of capital sentences. This clearly did not happen in the first Belsen trial. In the next chapter, the second trial will be examined to ascertain whether the changes in procedure that were implemented to meet some of the criticisms improved the trial process. There will be an examination of some of the convictions and sentences in these cases to find out how they compared to those in the first trial and how one accused fared in comparison to an SS man who was prosecuted many years later by a German court.

Chapter 5

The Second Belsen Trial

The first Belsen trial had only just ended when the second trial was being discussed and ways of speeding up procedure considered. It was accepted that mistakes had been made in trying too many accused at the same time and having too many defending officers. (1) This chapter will outline some of the changes the British made to the trial process to meet some of the criticisms that were made.

Since the second Belsen trial was, in fact, a series of trials that took place at the *Oberlandesgericht, Celle*, between 16th and 30th May 1946, the individual trials will be examined to find out the nature of the crimes, the legal issues that were raised and the sentences that were imposed. (2) In this set of trials, three labour camps featured in the charges in addition to Belsen and Auschwitz, as did the “death march” to Belsen. There will be a comparison between one of these trials and a related case prosecuted years later, to demonstrate some disparities in sentencing. It will be shown that petitioning against conviction and sentence did not bring about acquittal but brought a reduction in sentence (excepting the three death sentences), unlike at the first trial. One conviction was not confirmed, despite overwhelming evidence of guilt. This may be explained by the fact that the witnesses were Jewish youths, whose evidence may have lacked credibility and/or reliability in the eyes of the authorities. It has been shown already how they viewed Jewish evidence and a further example of it will appear in chapter seven. Finally, there will be a discussion of the ongoing criticisms of the trial process in the summer of 1946.

In order to streamline the trial process, it was decided that, in future, there would be a maximum of ten to twelve accused in any one trial, the number of

1 see WO309/1570; WO311/274: letter JAG to DJAG, 27/11/45.

2 WO235/274: Somerhaugh’s letter dated 26/11/45; A proposal that the cases be heard at Belsen for the sake of convenience was vetoed, as it was feared that there would be disorder caused by former inmates, many of whom were still living in the Displaced Persons camp there, now renamed Hohne.

defence counsel would be restricted and all accused would speak the same language. (3) In an attempt to speed up proceedings, each of the eight accused in the second trial was to be tried separately by the same court, sitting from day to day, until the cases were concluded. All accused had been members of the SS. A potential ninth accused, Isaak Judelewsky, a Polish Jew who had been a *kapo* in Belsen, escaped prosecution as a result of illness. (4) The JAG instructed that no prosecution was to proceed unless at least one live witness or two corroborative affidavits were available, "In view of the recent decisions of Military Courts". (5)

Not all of the accused had committed war crimes at Belsen, although all, ultimately, had a connection with Belsen. The charge against Walter Quakernack related primarily to Hanomag; Karl Reddehasse to Waldeslust; Anneliese Kohlmann to the Hamburg labour camps and Gertrud Heise to Auschwitz. The charges libelled in the indictments had changed slightly from those in the first trial, but still did not reflect the extent of the crimes. They did not give any more insight into the crimes perpetrated against the Jews than the charges in the first trial. Still the victims were described only as "Allied nationals", as they had to be for war crimes charges to proceed, but there was still no hint of deportation, enslavement or mass murder. Since each accused was to be tried separately, each had a separate indictment. They did not even face the same charge, as they had at the first trial: only five, the males, were accused of murder. This seems rather to defeat the aim of Regulation 8(ii) of the Royal Warrant. (6)

The fact that the accused were tried separately in the second batch of trials really is quite extraordinary. Instead of one trial with a group accused of "being together concerned as parties" as in the first trial, each accused faced allegations that he or she alone had committed a crime. The fact that,

3 WO309/1.

4 WO309/486.

5 WO309/1.

6 Phillips, Raymond, *The Belsen Trial*. London, William Hodge and Son, 1949, p650, Regulation 8(i).

ultimately, each accused had little more than a day for their whole trial shows that this procedure certainly saved time, but at a cost. The individual charges seem to have minimised, even trivialised, the crimes. There were only eight accused, which surely was a manageable number for one case. All spoke fluent German, with the possible exception of Theodor Wagner, so the language difficulties were not insurmountable.

As a result of a shortage of legal personnel in the British Army, the accused were represented by three German lawyers, the Royal Warrant Regulations having been changed to allow this. Dr. von Kienitz, represented Reddehase, Wagner and Schmidt, Dr. Dahlgrün represented Heidemann and Kohlmann, and Herr Sander represented Quakernack, Heise and Linke. There was to be no JAG, but one member of the court was to be legally qualified, as was the prosecutor. (7) The trials were to be conducted with only the minimum of formality: there was no shorthand writer and the legal member was to maintain a record of the proceedings. (8) For this set of trials, the President of the Court was Major J.A. Glendinning and there were four other members, including Lieutenant W. Szwedzicki of the Polish Forces. Interpreters were required for German, Rumanian, Hungarian and Czech witnesses. Having seen from the first Belsen trial and other war crimes trials that had already been completed, that the “superior orders” defence was not going to be accepted, the main thrust of the defence in these cases was mistaken identity and/or alibi, and the unreliability of prosecution witnesses. The “superior orders” defence was only invoked in the case of Quakernack. (9)

The main difficulty was that the prosecution witnesses were often imprecise about the dates of events. (10) The accused invariably claimed that they had

7 See, generally, WO309/1570. The legal member was Major P.B. Clarke and the Prosecutor was Captain C.G. Butcher. The Regulations for the trial of war criminals were amended in February 1946 to allow cases to proceed in the absence of a JAG (Army Order 24/1946).

8 WO309/1.

9 See chapter two regarding superior orders.

10 See, for example, the affidavit of Fransiska Horwath; Anita Lasker, *op. cit.*

either not been working in that part of the camp at the time or were not in that camp at all and there was usually no way of confirming where they had been. Alibi witnesses tended to be former SS colleagues, many of whom were themselves serving sentences for war crimes.

The procedure in all the cases was the same: the Prosecutor took the oath and produced Affidavits and statements from Brigadier Glyn Hughes and Harold le Druillenec, who had both given evidence at the first trial as to the state of Belsen camp at Liberation. (11) There was also lodged a certified copy of a medical report prepared by Glyn Hughes around 20th April 1945 regarding the medical issues at the camp. Any affidavits that the Prosecutor was relying on in terms of Regulation 8(i) were lodged and other formal evidence was also produced at this stage, such as photographs of the accused (important where the Prosecution case consisted solely of affidavit evidence) and photographs of Bergen-Belsen camp. There were to be no long-winded arguments on International Law in these trials. The first Belsen trial and subsequent war crimes trials had settled these issues and it was now simply a case of proving or disproving the facts of the cases.

The Trials

Anneliese Kohlmann

Anneliese Kohlmann, a tram conductor in Hamburg, joined the SS in November 1944. Until her arrival at Belsen in April 1945, she had supervised prisoners at two labour camps for women on the outskirts of Hamburg, named Neugraben and Tiefstak. (12) *Aussenlager* Neugraben had been established in September 1944. When it was closed in mid February 1945, the women were moved to *Aussenlager* Diago/Tiefstak, one of the last satellite camps to be established. When this latter camp was destroyed in an Allied bombing raid

11 This seemed to be an essential fact of the case that had to be proved by the prosecution; this was not the case at the next trial when the conditions seem to have been deemed to be within judicial knowledge.

12 WO235/120: Deposition of Anneliese Kohlmann, 9/6/45; See also WO309/430; WO235/654; see also Claudia Taake. *SS Frauen vor Gericht: Die Angeklagte Anneliese Kohlmann*: Oldenburg, 1998.

in March, the survivors were sent to Belsen. Kohlmann had accompanied the prisoners and was there when the camp was liberated. (13)

Kohlmann's trial took place between 16th and 18th May 1946. She was charged with war crimes, having been concerned in the ill-treatment of Allied nationals "at Hamburg and other places" between June 1944 and March 1945. (14)

The Prosecution case

The main prosecution evidence consisted solely of affidavits from three witnesses, in terms of Regulation 8(i) of the Royal Warrant, these witnesses being unable to attend court. Marianne Braun and Margit Rosenthal were Jewish women who identified Kohlmann as an SS supervisor (*Aufseherin*) in the Hamburg camps. Braun related an incident in which the accused struck her about thirty times with a piece of wood. She also saw the accused beating an inmate named Eva Lang. (15) Margit Rosenthal remembered Kohlmann from Neugraben where she was in charge of work squads. She stated in her affidavit, "Her general behaviour led me to suspect she had perverted sexual tendencies." (16) Kohlmann was said to carry a stick and did not permit anyone to rest. Rosenthal recalled that she had beaten an elderly Czech woman until she lost consciousness. Kohlmann accompanied her group from Hamburg to Belsen at the end of March. The witness saw her a few days

13 Neugraben accommodated some 500 female Jews who were to build prefabricated houses on the Falkenberg housing estate (*Behelfsheime*), clear bomb damaged sites, dig anti-tank ditches and work in essential war industries, including the Harburg oil industry. The Tiefstak camp was located within the grounds of the Diago company, where the women were employed in the manufacture of concrete panels and bricks. For a study of these 2 camps see Schulz, Karl Heinz. 'Das KZ-Aussenlager Neugraben.' In Jurgen Ellermeyer, Klaus Richter, Dirk Stegmann. *Harburg von der Burg zur Industriestadt*. Hamburg, 1988, pp.493-502; Hermann, Margit. *Hamburger Intermezzo. Sonderdruck aus Harburger Jahrbuch 18*, Neuengamme Gedenkstätte, 1993; Maassen, Jan. *Eine Ruckkehr ins Leben* Bertini Preis, 2000; www1.uni-hamburg.de

14 WO235/120; WO309/430.

15 WO235/120: Deposition of Marianne Braun, 2/6/45.

16 WO235/120: Deposition of Margit Rosenthal, 15/12/45.

later in Belsen wearing prisoners' clothes and stating that she was going to be a prisoner herself. (17) Franziska Horwath, an Austrian Gypsy, said that she had first seen Kohlmann about three weeks before liberation, wearing an SS uniform. On that occasion she had beaten an inmate because she had picked up a turnip. (18)

The Defence Case

The accused gave evidence and admitted that she had conducted affairs with female prisoners. The girls in her work squad liked her, although she beat them occasionally if they did anything wrong. At the end of March 1945, she had accompanied eighty prisoners in a wagon to Belsen and allowed four girls to escape. She returned to Belsen on 8th April to help an inmate named Winter to escape. This prisoner had been in her work squad in Hamburg. (19)

Several witnesses gave evidence in her defence. Her mother, Margaret Kohlmann, said that Anneliese was quiet and depressed when she came home on leave and expressed a desire to leave the SS. She told her mother about the terrible conditions in the camps and begged food and clothes from her for the prisoners. Eva Borowski, an SS *Aufseherin* at Neugraben and Tiefstak, who was then detained in Hamburg Prison, accused of having committed war crimes, confirmed the accused's story that the inmates of these camps liked her. Of course, sometimes they had to be beaten, indeed it could not be avoided, as they were often disobedient. The guards used their hands to chastise prisoners but sometimes they carried twigs or thin hollow branches. (20)

17 *ibid.*

18 Deposition of Franciska Horwath, 27/12/45.

19 Deposition of Anneliese Kohlmann, *ibid.*

20 Eva Borowski was tried for war crimes as part of the Neugraben/Tiefstak set of trials which took place at Hamburg between 11th June and 3rd July 1946, and was acquitted: WO235/108.

Another witness said that the accused had a bad name with the SS as she carried letters for prisoners and was slack in her guard duties. (21) Martha Linke, who will feature later in this account, was in Celle Prison awaiting her own trial a few days later and was given a warning by the President of the Court about incriminating herself. She said a similar woman to the accused was employed in the laundry at Belsen. Yet another witness said he had given the accused food, letters and ration cards to carry to prisoners, as he had heard that she was to be trusted. He had accompanied her to Belsen where he met three people who told him that the accused had helped them escape. (22)

Further Procedure

In his closing speech, the Prosecutor, Captain Butcher, pointed out that it was not disputed that Kohlmann was a member of the concentration camp staff. Evidence had been led to show that the accused was responsible for ill treatment in violation of the laws and usages of war and the accused had admitted beating prisoners with her hands, and with various implements because, "They would not keep order" or because they fought amongst themselves at food distribution. The defence witness Borowski admitted beating prisoners herself. If accused gave prisoners extra food, it was in return for favours. Commenting on statements she had made in her defence, he said it was not a defence to a charge of ill treatment to say that prisoners preferred to be beaten by her than be reported to the commandant when their punishment would have been more severe. He reminded the Court that affidavits were admissible as evidence in terms of the Royal Warrant. He said the laws and usages of war demand that internees of prison camps be given humane treatment and the beatings carried out by the accused were criminal offences. They exceeded what would be a reasonable exercise of discipline and were such as to constitute a war crime. (23)

21 WO235/120: the evidence of August Wels.

22 *ibid.*: the evidence of Willi Brachmann.

23 WO235/120. There is no verbatim record of his speech, only brief, handwritten notes.

In his closing address, Dr Dahlgrün pointed out that the accused had been in custody since 17th April 1945 and he had only seen her for the first time ten days previously to prepare her defence. (24) He reminded the court that, unlike a witness appearing in court, an affidavit cannot be subjected to cross examination, nor were photographs a substitute for dock identification. The accused was only at Belsen for a few hours on 8th April, although she was there as an “internee” later. There was a similar German woman in the kitchen at Belsen and the photographs were taken after the accused had suffered an illness, which altered her appearance. In any event, the Prosecution evidence was denied. The accused was a conscript, not a volunteer; she was popular with the inmates and helped them by smuggling. She let a few prisoners escape and only hit prisoners if there was no alternative and to save them from worse punishment by her superiors. (25)

On 21st May, the accused was found guilty. Dr Dahlgrün made his plea in mitigation on 28th May, repeating many of the same points that he had made in his closing address, criticising the witnesses and stressing that his client had been a conscript. He hoped that the Defence evidence had shown the accused in a good light and that the Court would consider the defence witnesses, “With their long concentration camp experience”, as “particularly reliable”. (26)

Kohlmann was sentenced to two years’ imprisonment, which was later confirmed by the relevant authority. She did not petition against the finding. (27)

24 WO309/1. The time to be allowed between service of the indictment and start of the trial was limited to 14 days. At the IMT the period given was a month. Article 16 of the IMT Charter had stated that a copy of the indictment ...translated into a language he understands shall be furnished to the Defendant at a reasonable time before the trial. The indictment was served on 19th October and the trial began on 20th November: Neave, Airey. *Nuremberg*. London: Coronet, 1980, chapter 5.

25 WO235/120.

26 *ibid.*

27 *ibid.*

Martha Linke

Martha Linke was born in Silesia on 27th January 1922. Having been employed as a factory worker, she joined the SS in August 1944. After four weeks' training at Langenbilau (a satellite camp of Buchenwald), where she learned that it was forbidden to beat prisoners, she was sent to Röhrsdorf, where she led a prisoners' work squad. This camp was evacuated and she said she arrived at Belsen with a group of prisoners on 28th February 1945. Linke took over a labour squad of 150 Russian women building a sewer system. She said she never carried arms or weapons, never performed any duties in the camp itself and, in particular, had nothing to do with roll calls and never visited barracks. She remained at Belsen until the liberation and was arrested by the British on 17th April. (28) Linke was charged with committing war crimes at Belsen, having been concerned in the ill-treatment of Allied nationals there, between December 1944 and April 1945. Her trial took place on 20th May 1946. (29)

The Prosecution Case

The formal documents were lodged, including the accused's deposition, and thereafter, the only live witness was Tauba Dreinudel, a Pole, who had arrived at Belsen in December 1944. The remainder of the Prosecution case consisted of affidavits. Dreinudel recognised Linke as an SS guard who beat prisoners often. She said the guards beat everyone with rubber truncheons or sticks. She had seen women beaten to death and she herself had suffered up to fifty lashes with a rubber truncheon. Cross-examination was brief: she commented that Linke's appearance had altered but insisted she was not mistaken. She said that the accused had been in the camp the whole time she was there and that she wore jackboots and carried a rubber truncheon. The accused had beaten a girl and kicked her with her jackboots and the girl eventually died of her injuries. This latter incident was corroborated by an affidavit from Regina Borenstein, who confirmed that the victim had been a

28 WO235/143B: Deposition of Martha Linke 25/1/46; see also WO309/431.

29 *ibid* WO235/143B.

Pole and hence an Allied national. (30) The reason for this assault was that the woman had hidden a turnip in her clothing. There was also a deposition from Renate Lasker, sister of Anita, who gave evidence at the first Belsen trial, that Linke had beaten both men and women in Belsen. (31)

Franciska Horwath stated in her affidavits that the accused was, “One of the worst SS women” in Ravensbrück, beating prisoners at roll call, especially small children. (32) There are certain inconsistencies with regard to dates in her Depositions. This was a common problem throughout the trial process, as witnesses had often no accurate way of gauging the passage of time. However, the dates are wrong even on the face of the documents, suggesting typographical error. (33)

The Defence Case

The Defence counsel made his opening address in which he highlighted the parts of the accused’s deposition he considered important. (34) He emphasised that the accused had not arrived in Belsen until February 1945, that she was engaged in leading outdoor work squads and did not carry out duties in the camp. It was a case of mistaken identity.

The accused gave evidence and denied the allegations. Several witnesses were led for the Defence, five of whom were former SS guards, of whom four had been convicted of war crimes in the first Belsen trial. (35) All gave exculpatory evidence and claimed that the accused had only arrived at

30 *ibid.* Deposition of Regina Borenstein.

31 Deposition of Renate Lasker, 18/5/45. She had actually identified Herta Bothe and had been given the wrong name by the British investigation team. See Phillips, Raymond, *op. cit.* p109.

32 Depositions of Franciska Horwath 27/12/45 and 1/6/45.

33 She stated that she had been arrested in April 1943 and sent to Auschwitz, and in September 1944 to Ravensbrück. She then refers to having been in Ravensbrück in 1943.

34 *ibid.* Deposition of Martha Linke.

35 Charlotte Klein was acquitted at the first trial; Herta Ehlert was sentenced to 15 years; Irene Haschke was sentenced to 10 years; Gertrud Sauer was sentenced to 10 years; Gertrud Fiest was sentenced to 5 years.

Belsen at the end of February or beginning of March and worked as the supervisor of a sewer squad. The accused did not work with the turnip squad, although the female who was in charge of this resembled the accused. Linke never carried a rubber truncheon and only obtained her first pair of jackboots on 12th April. The prisoners who worked with Linke liked her. It was camp policy that those who stole food would be punished by beating. (36)

Further Procedure

The closing address took place on 21st May. Herr Sander said that the accused was a “decent” German, she had never been at Ravensbrück and it was a case of mistaken identity. He also referred to the identification of the accused from photographs shown to witnesses, especially Lasker, who had, in fact, identified another person but had been told by an investigator it was Linke. (37) He concluded by saying that the accused thought the proceedings had been conducted very fairly.

The Prosecutor referred to the Depositions of Glyn Hughes and Le Druillenec, that every guard carried a stick and continually beat prisoners and that everyone must have known what conditions were like in the camp. He pointed out that only SS personnel had been called as defence witnesses and no victims.

The accused was found guilty. She was sentenced with the others on 29th May, at which time pleas in mitigation were made by the lawyers. In Linke’s case, Herr Sander drew attention to the fact that he could not trace any witnesses (apart from the concentration camp staff he had called) due to wartime conditions and the fact the accused came from a part of Germany that had since been ceded to Poland. He raised the question of whether the accused had been identified beyond doubt. The prisoners preferred to be hit

36 The supervisor of the turnip squad was Hilde Lisiewitz, for a period of 2 weeks from 7th March 1945. She was sentenced to 1 year’s imprisonment at the first trial.

37 See note 31 above and chapter four re Ehlert.

by supervisors than reported to the commandant. In spite of the fact that it was forbidden to punish prisoners, supervisors were compelled to punish, "In consequence of the way they were treated by their supervisors." (38)

It would have been easier for the accused to beat disordered prisoners than report them as, "Drawing up a report was a somewhat difficult affair for a supervisor who used to come (sic) of the lower classes." (39)

He said the accused was very young and had been set a bad example. She had had a difficult job and her feelings and opinions had been formed by war, hunger and propaganda. She had never been a member of the Nazi Party, had been drafted into the SS and had been on good terms with her work squad.

Martha Linke was sentenced to twelve years' imprisonment. A petition was lodged on the ground of mistaken identity, all the Prosecution witnesses having been mistaken, as it was Hilde Lisiewitz who was in charge of the *Rübenkommando* (turnip work squad). (40) The conviction was upheld but Linke's sentence was reduced to seven years. As usual, the Court did not issue reasons for its decision, nor do the records show why the sentence was reduced.

Gertrud Heise

Gertrud Elli Heise was born in Berlin on 23rd July 1921. According to her Deposition, she joined the SS in 1942 as a supervisor (*Aufseherin*) and served at Ravensbrück, Majdanek, Plaszow and Auschwitz. In November 1944, she was promoted to *Oberaufseherin* (the second highest rank achievable) and sent to Oberheide, a subcamp of Neuengamme near Bremen. In April 1945, she was evacuated to Belsen with a convoy of prisoners. She left shortly afterwards and was arrested by the British

38 WO235/143B.

39 *ibid.*

40 *ibid.*

in Hamburg in June. (41) It is noteworthy that this accused is very similar in profile to Irma Grese, dealt with in the previous chapter, in terms of age, rank and years of service. To be promoted to the rank of *Oberaufseherin* at the age of twenty-three, whilst employed at Auschwitz, is suggestive of having displayed a certain amount of zeal for the job. However, she was to be treated differently from Grese.

The War Crimes Investigation team collected evidence that Heise had ill-treated Allied nationals, at Auschwitz, in particular. Her trial took place on 21st and 22nd May and the charge against her was that she had committed war crimes “at Auschwitz and other places”, between July 1943 and December 1944, having been concerned in the ill-treatment of Allied nationals. She was not charged with killing anyone. As in the cases of Kohlmann, discussed earlier, and Schmidt and Wagner, which are discussed later, all Prosecution evidence was by affidavit. (42)

The Prosecution Case

Sabina Pottorak, a Polish Jew, stated that Heise beat her and others with a rubber truncheon in Auschwitz. (43) Livia Krause, a Hungarian Jew who had also been in Auschwitz and Oberheide with Heise, said that the accused had beaten her with a belt. (44) Regina Karlinska had seen accused at Auschwitz and remembered her beating people with a whip, taking part in selections for the gas chambers, denying prisoners food, dealing out harsh punishments, and making them stand to attention for hours at roll call. On one occasion, the accused had beaten a Polish Jew, Oksenberg, with a whip so badly that she was rendered unconscious. This person was sent to the Death Block to await gassing, but died there. (45) Nadja Sandomir stated that Heise had beaten her and others at Majdanek. (46)

41 WO235/136, Deposition of Gertrud Heise, 29/1/46; see also WO309/429.

42 *ibid.*

43 Deposition of Sabina Pottorak, 4/12/45.

44 Deposition of Livia Krause, 5/12/45.

45 Deposition of Regina Karlinska, 22/1/46.

46 Deposition of Nadja Sandomir, 3/1/46.

The Defence Case

The accused gave evidence. She said she had nothing to do with selections for the gas chambers in Auschwitz. She only beat prisoners when she had cause, such as at food distribution, to keep order and only used her hands. She insisted she had not beaten anyone at Ravensbrück during the six months she was there, nor did she see anyone else beating prisoners. She admitted that she had “boxed prisoners’ ears at Lublin” (Majdanek), but she did not seriously hurt anyone. (47) Further defence evidence was led from an SS witness, Luise Lubka, who confirmed having been at Auschwitz with Heise. She stated that “we” had not been allowed to be present at gas chamber selections. Herr Sander produced an affidavit from Mitzi Friedmann and a medical certificate from Dr. Kuhlmann, confirming, he said, that Heise had been in hospital at the date of one of the accusations against her. The doctor confirmed in his affidavit that she was in hospital from 3rd January until 10th February 1945. (48)

Further Procedure

The Court adjourned after the defence case finished on 21st May and pressed on with the next case against Theodor Wagner. The closing speeches for both of these cases were heard together on 22nd May (no reason is given for the Court proceeding this way). Herr Sander concluded, saying the witnesses were either mistaken or lying. Heise was found guilty and a plea in mitigation was made on 29th May. She was sentenced to ten years’ imprisonment. This was a lenient sentence compared to those handed out in the first trial. But even though one affidavit accused her of murder, she was not actually charged with murder and accordingly was convicted only of ill-treatment.

The accused petitioned against her conviction and sentence on the basis of mistaken identity: she had been identified only by photograph and the witnesses had made a mistake. She could not be blamed for the death of

47 WO235/136.

48 *ibid.*

the prisoner, Oksenberg, in Auschwitz, as she was not there at the time. The proceedings had been unfair, as she had not been able to cross-examine the Prosecution witnesses and the witnesses she herself wanted to call had not been brought. (49)

The Deputy Judge Advocate General, Lord Russell of Liverpool, stated in his report to the confirming authority that this was not a very satisfactory case, as all the evidence for the Prosecution had been by affidavit. This also meant that the identification of the accused came only from photographs. There were several contradictions within the affidavits, he said. In one instance, a deponent swore that the accused was present at gas chamber selections in Ravensbrück when she was officially on the staff at Neuengamme and was in fact in hospital in Bremen at the time. The “heavy” sentence of ten years that she received indicated that the Court accepted evidence that the accused had killed a prisoner in Auschwitz in July or August 1944, when accused insisted she did not arrive at Auschwitz until September 1944. Another deponent had stated that the accused was seen in Auschwitz “frequently” between August 1943 and January 1945. Nevertheless, the finding should be confirmed on the basis that accused, on more than one occasion, had admitted beating prisoners. (50) This report was sent to the wrong department in error, resulting in a further report being done by Major General Brownjohn. He seems to have had a certain sympathy for the accused, believing her to have been frank when interrogated and considered that the dates she had given for her whereabouts were “reliable”. He thought that her frankness in admitting that she had beaten prisoners, meant that she should have been believed when she denied causing the death of a prisoner. He felt that she should have been given the benefit of the doubt, “Which must always exist in evidence taken from long-term inmates of these camps.”(51)

49 *ibid.*

50 see WO235/656, Lord Russell of Liverpool letter dated 3/7/46.

51 *ibid.*: Major General Brownjohn letter dated August 1946.

However, he recommended that the finding be confirmed, but the sentence reduced to seven years. The standard of proof in these trials was the same as applied in criminal trials in England, that is, “beyond a reasonable doubt”. Therefore, if Heise were to be given the benefit of the doubt, the conviction should have been quashed. On 22nd August 1946, Brownjohn’s recommendation was followed and the sentence was reduced to seven years. (52)

Theodor Wagner

Theodor Wagner was born in Romania of German parentage. In his deposition, he said he was conscripted into the SS in 1943 and sent to Oranienburg where he joined the Death’s Head unit as a *Sturmmann* (lance-corporal). (53) In November 1943, he was sent to Dora-Mittelbau as an SS driver/motor mechanic and was based there until April 1945. He claimed that he never did guard duties and only worked on cars or travelled around collecting spare parts. He was never inside the camps, had nothing to do with prisoners and never beat anyone. He mentioned the order that existed that SS personnel must not beat prisoners, they were only to be beaten by *kapos* or foremen. He only saw one beating take place and that was at Dora. Wagner claimed, paving the way for his later defence of mistaken identity, that there were other SS men named Wagner, in particular, an *Oberscharführer* Wagner at Dora and Belsen. (54)

The Prosecution Case

Wagner’s trial took place on 21st and 22nd May. He was accused of having committed war crimes at Belsen and elsewhere, between January and April 1945 by ill-treating and killing Allied nationals. The usual formal documents were lodged, including the accused’s deposition, and thereafter the whole Prosecution case consisted of affidavit evidence. David Rubinstein, Leiser

52 *ibid.*

53 WO235/198: Deposition of Theodor Wagner, 25/1/46.

54 *ibid.*

Koperwas and Jankel Rappaport, all teenage Polish Jews described an incident that occurred when they had been queuing for food in Belsen. Wagner had picked up a spade and, lashing out wildly, struck a man on the head. The man fell to the ground and the witnesses saw a large gash on his head. Kramer, the commandant, approached and spoke to Wagner. Wagner was said to have grinned and told Kramer that he had just killed a man. Two prisoners carried the man away to a pile of corpses. (55) Koperwas dated the incident to approximately 7th April. He added that he thought Wagner was a Romanian, as he recognised the language he spoke. Wagner had been screaming wild curses against the Jews and hitting out at anyone within reach. He knew the victim to be a Polish Jew and therefore, an Allied national. Wagner had continued to hit the man until he was dead. This witness was able to add that he had seen Wagner beating prisoners on many occasions with whatever he happened to be carrying, sometimes a whip, sometimes a stick or piece of wood and his victims were often severely bruised or bleeding afterwards. Rappaport had seen Wagner again, two or three days after liberation. He (Wagner) was working under the supervision of the British at the time and the witness had a conversation with him in German, during which the accused told him he was a Romanian and the witness saw him talking to Romanian prisoners in a language he did not understand. Martin Hollander, a twenty-two year old Czech, identified Wagner not from Belsen, but from Dora. He accused him of carrying out beatings there using a rubber truncheon. He himself had been beaten so badly by Wagner that he had been deaf in his right ear for three weeks. (56)

The Defence Case

Wagner gave evidence on his own behalf, stating that he was never inside either Dora or Belsen and had only been a driver. Then he said he had been inside Belsen once, repairing a car near the kitchens. He had not hit anyone

55 *ibid.* Deposition of David Rubinstein, 13/12/45; Deposition of Leiser Koperwas; Deposition of Jankel Rappaport, 22/12/45.

56 Deposition of Martin Hollander.

with a spade and indeed it would have been against his religion (Greek Orthodox) to murder anyone. When cross-examined, he agreed that he was the man in the photograph that had been identified by the witnesses but the witnesses were wrong when they said he had hit anyone with a shovel. He saw no atrocities or beatings at Belsen, only at Dora. (57) The Prosecution had already lodged the affidavits he had made in which he denied responsibility for the charges.

Further Procedure

In his closing speech, the Defence counsel, von Kienitz, said that the accused did not look like a brute. He went on,

If the murder did happen and was not the result of the boys' imagination, in the over excited minds of the boys in the age of puberty through long imprisonment and privations, it was committed by another perpetrator and not by Wagner. (58)

The thrust of his speech was that the boys had suffered greatly in the camps and, in the mood for revenge, had falsely accused his client, "This natural desire in revenge (can) intoxicate their senses and lead them to make a statement which a grown up, mature man would not have made". (59)

He also suggested that the four boys were together when the photographs were shown to them, so that they might have influenced one another and he commented on the similarity of their statements, hinting at foul play. The witnesses could not be produced in person and so could not be cross-examined. If the Defence had been able to call two witnesses on accused's behalf, they would have confirmed that accused had only been inside Belsen on two occasions and could not have carried out the murder, as he had always been under their supervision. The accused was only a driver and

57 WO235/198.

58 *ibid.*

59 *ibid.*

never a guard, he had said on oath that he did not do it, all four witnesses were mistaken. Wagner was duly convicted and on 29th May, sentenced to twenty years' imprisonment. He petitioned against the finding on exactly the same basis as his lawyer's closing speech.

Wagner's sentence had to be confirmed and Lord Russell, the DJAG who reported the case, stated,

While I cannot say that I am happy about the conviction of an accused who stoutly maintains his innocence solely upon evidence contained in depositions which could not be tested at the trial, it was in accordance with the Regulations. (60)

He went on to say that there were no legal grounds for interfering with the conviction and, if the Prosecution evidence was accepted, twenty years' imprisonment was justified. In the event, Wagner's sentence was not confirmed and his release was ordered. No reasons are given for this decision. It is not known exactly when he was released.

This is an unusual case in that it is the only Belsen case where the sentence was not confirmed. There are two possible reasons for this. Firstly, the Prosecution presented only affidavit evidence and, secondly, the witnesses were Jewish youths. The Defence had accused the youths of collusion and error. It will be recalled from the first chapter that there was both an element of anti-Semitism and distrust of Jewish evidence prevalent in Government departments. (61)

The Prosecution evidence was, in fact, particularly strong in this case and there were several factors present which tend to eliminate any suggestion of mistaken identity: three witnesses spoke about the same incident, the fact that

60 Letter of Lord Russell of Liverpool, July 1946: WO235/657.

61 On distrust of Jewish sources, see the Introduction, chapter 1 and Phillips, Raymond, *op. cit.* especially p545.

the accused was known to be a Romanian, the fact that the Czech witness knew him from Dora-Mittelbau, a camp that he had actually worked in, and the fact that one of the witnesses had spoken to Wagner after the Liberation. In addition, the accused was charged with “killing”, not just ill-treatment. It was an unsatisfactory decision and the reasons behind it will never be known.

Heinz Heidemann

In his deposition to war crimes investigators, Heinz Luder Heidemann said he was born on 23rd April 1908 at Marien Drebbler, Kreis Diepholz and joined the SS in May 1933. (62) In July 1940, he was promoted to the rank of *Rottenführer* (corporal) and was deployed at various camps as a guard, ending up at Belsen in May 1943. In January 1945, he was appointed a block leader (*Blockführer*). One month later, however, he was sent to the Front, where he was wounded and then hospitalised. He was arrested on 24th April 1945. (63)

In this deposition, he denied all allegations of having committed war crimes. He told investigators, “Prisoners from Auschwitz told me repeatedly, ‘We are moved by the humane treatment afforded us here’”, and, “At the *Revier* Hut (hospital) I was often told by prisoners, ‘*Herr Blockführer* you are far too good’”. (64) Heidemann was charged with committing war crimes by ill-treating and killing Allied nationals at Belsen between November 1944 and April 1945. His trial took place between 22nd and 24th May 1946.

The Prosecution Case

The prosecution case consisted of evidence from two eyewitnesses and four affidavits. The two live witnesses were both Polish Jews. The first witness, Franka Raczowska, stated that the accused had assaulted her with a piece

62 WO235/148 Deposition of Heinz Heidemann 25/1/46; WO309/428.

63 *ibid.*

64 *ibid.*

of wood and had beaten to death a female internee named Etengold. The second witness, Helena Wrubel, confirmed that the accused had assaulted prisoners, including herself, and had chased them naked to roll call in the mornings.

In her affidavit, Blanka Treibitsch said she had often witnessed *Rottenführer* Heidemann hitting women with a heavy piece of wood. He would enter the block, and hit people if they were too slow to move. He would punish the whole block by forcing them to stand outside for hours, regardless of the weather. On one occasion, he stopped their food for a day. In December 1944, Heidemann beat her with a piece of wood until she lost consciousness and her arm was badly injured. (65) Hilda Löffler, a Czechoslovakian Jew, who had also been a witness at the first trial, stated Heidemann entered her block on numerous occasions and beat the sick and dying who could not get up for roll call. (66) Peri Jacobovitz said Heidemann was very brutal and beat women with a spiked iron bar and sometimes a belt. She said that he woke them every morning at 5am and would beat anyone he thought too slow to move. On several occasions, he had pushed people into a large water tank. (67) Renate Lasker's deposition was in the same terms. (68)

The Defence case

Heidemann admitted beating mostly Polish, Hungarian and Greek women, who were very difficult to handle, he claimed. He stated that Kramer brought in female guards to run the women's camp in Belsen and that his duties there ended around 20th December, therefore it must be a case of mistaken identity. The camp was overcrowded and someone had to keep order. He had to slap people because they did not use the lavatory. In cross-examination, he stated that there was only one lavatory for 4000 people. (69)

65 Deposition of Blanka Treibitsch, 20/12/45.

66 Deposition of Hilde Löffler.

67 Deposition of Peri Jacobowicz, 7/12/45.

68 Deposition of Renate Lasker, 18/5/45.

69 WO235/148.

Several witnesses gave evidence on behalf of the accused. His wife confirmed that he volunteered for the Eastern Front to get away from Belsen, which he thought was “horrible”. (70) Other Defence witnesses were former guards, such as Herta Ehlert, convicted of war crimes at the first Belsen trial, and Karl Schmidt, a fellow accused in this set of trials, who had to be warned against incriminating himself. They said he did not work in the women’s camp at the time the offences were alleged to have been committed. Another guard, Zietelmann, said she had been in charge of the women’s camp along with two other women, but the Prosecution witnesses said they had never seen her before. An affidavit from Rosa Guttman, a Polish Jew who had been interned in Belsen, was lodged. She claimed never to have seen Heidemann beat anyone and had never heard that he beat anyone. (71) A character reference in the form of a letter from the mayor of Jacobi Drebber, his home-town, was produced. This stated that Heidemann had been a farmer, “was a calm and decent character in his dealings with his neighbours and enjoyed a fine reputation in the community”. (72)

Further Procedure

In his closing speech, Herr Dahlgrün, Heidemann’s lawyer, stressed the defence of mistaken identity. Also, because Heidemann had always lived in the country, “He was rather primitive and did not fully realise the activities of the SS.” (73) He had never been promoted from the rank of *Rottenführer* because he was not very good and he volunteered for the Front because he found guard duties “too boring”. He was at the Front from 15th February 1945 onwards and so the culprit must have been another man with “identical features”. Heidemann was convicted. A plea in mitigation was made on 29th May, when he was sentenced to death. (74)

70 *ibid.*

71 *ibid.*

72 WO235/148.

73 *ibid.*

74 *ibid.*

A petition against finding and sentence was duly lodged, based on mistaken identity and alibi: he had been at the Eastern Front at the time some of the incidents were alleged to have taken place. Another ground of appeal was that he had had insufficient time to prepare his defence, having been given the indictment only three weeks before the trial, met his lawyer for the first time on the 8th or 9th May and had no chance to trace witnesses. (75) He had never approved of Kramer's methods and he volunteered for the Front rather than serve with him. There were a number of pleas for clemency for Heidemann, which will be discussed in chapter eight. The petition and pleas were unsuccessful and the sentence was carried out on 11th October 1946.

Karl Schmidt

Karl Schmidt was born in Bavaria on 9th August 1889. On 1st May 1942, he was drafted into the *Waffen SS* with the rank of *Rottenführer* (corporal) and was sent to Mauthausen to train guards. In the autumn of 1944 he was sent to Belsen. He left shortly before Liberation and was arrested later. (76)

Schmidt was charged with having committed war crimes at Belsen between January and April 1945, by ill-treating and killing Allied nationals. His trial took place on 24th and 27th May 1946.

The Prosecution Case

All substantive Prosecution evidence was by affidavit. Samuel Kurt, a Polish Jew, identified Schmidt from a photograph and said that he had worked at Block 15, which was for sick prisoners. Schmidt was one of the SS men who took the roll calls. He forced as many sick people as possible to attend, using violence, if necessary. He behaved like a "ferocious savage" and his appearance in the Block was enough to make people run. (77) The witness Kurt stated that about a month before the arrival of the British, Schmidt beat him with a stick.

75 See note 24 supra.

76 WO235/170, Deposition of Karl Schmidt, 26/1/46; WO235/395; WO309/658; WO235/719; WO309/434; WO235/23.

77 *ibid* Deposition of Samuel Kurt.

Some of this evidence was confirmed by Wladislav Byrski, a Pole, who was an orderly in Block 15. Schmidt was the block leader there and instructed the orderlies to clear out the huts and line up the prisoners for roll call, instructing them to use violence, if necessary, and issuing them with thick wooden clubs to use. Byrski said that he never used violence, but others did, and he had seen them finishing off many prisoners. He had seen Schmidt beat sick prisoners with a shovel. (78) Jesia Silberberg said Schmidt was one of the worst guards at Belsen. She witnessed him carrying out beatings on many occasions, using a thick wooden stick and thought he enjoyed it. She said she had seen Schmidt beat a woman until she was unconscious and she never saw this woman again. (79)

The Defence Case

In his opening speech, Schmidt's lawyer, Dr von Kienitz, intimated that his client had been in the German Colonial forces and only the best and most decent men were selected for this service. He considered his client to be,

A kind and soft hearted man, a man who simply cannot have been able to treat his fellow man roughly or brutally and who has never been able to commit the offences he is being charged with today...it is my conviction, deeply rooted in my mind that Schmidt is innocent and the witnesses are wrong. (80)

Schmidt gave evidence on his own behalf and denied ever having carried a stick or having beaten anyone. He said there were four or five other Schmidts in the camp, one Karl Schmidt in particular, an Austrian, who was about fifty years old and resembled him. It must be a case of mistaken identity. (81) He said he did not go into blocks and had no contact with prisoners. He only did telephone duties and led outside work squads several times a week.

78 Deposition of Wladislav Byrski, 4/10/45.

79 Deposition of Jesia Silberberg.

80 WO235/170.

81 Before the trial began, the British had, in fact, transferred the wrong Karl Schmidt to Celle for trial and were hastily trying to locate the correct man WO309/486.

However, he admitted being a block leader from September 1944 to February 1945 and carrying out roll calls until January 1945 in the Hungarian camp (*Urngarnlager*) and “Schneebaum camp” (the Jewish camp, also known as the Star camp or *Sternlager*). He never beat prisoners on such occasions, as it was forbidden. Some supervisors did beat people but he, Schmidt, had never seen it. The allegations against him were untrue. He conceded that he may have pushed inmates with his hand but not in the face or with a stick.

Schmidt called Heinz Heidemann (see above) as a defence witness.

Heidemann said that he knew the accused from Belsen and that he was on telephone duty. The accused carried out no duties at Block fifteen as this was a hospital and there were only medical staff there. He said there was a similar man to the accused on medical duties and it might be a case of mistaken identity. Wilhelm Otte, another SS man, said Schmidt had nothing to do with the hospital and was not a medical orderly. No one else in the camp resembled the accused, he said. He never saw accused with a stick or club and never heard that accused had beaten people. (82)

Further Procedure

In his closing speech, Dr von Kienitz denied that the accused was a medical orderly, although, in fact, the witnesses had described him as a block leader. He pointed to the evidence of Heidemann and Otte, who said it had been a case of mistaken identity. His pay book was produced to show that he had been in hospital for most of February and then on leave. From 3rd March he worked at the camp entrance. It was stated that the witness Silberberg was lying in the description of the stick she claimed accused used, as it would have been too heavy and unwieldy. Dr von Kienitz complained that as affidavit evidence had been used, he had not had the chance to cross-examine Prosecution witnesses. (83)

82 WO235/170.

83 *ibid.*

Schmidt was found guilty under deletion of the words “and killing”, presumably because none of the affidavits actually accused him personally of having committed murder. A plea in mitigation was made on 29th May, stressing his age, that he was an “Old African”, (had been in the German Colonial Service), that he was very religious and had been forced into the SS. He was sentenced to 15 years’ imprisonment. Schmidt lodged a petition against the finding and sentence but nothing new was disclosed. His lawyer, Dr von Kienitz, stated that he was, “Definitely and truly convinced that Schmidt is not guilty ..I consider him to be a kind hearted man who would do no harm, not even to animals, the less to men...” (84)

Lord Russell, the DJAG, in recommending that his sentence be confirmed, pointed out that all the evidence for the prosecution had been by affidavit, while the Defence had produced live witnesses. He also pointed out that, “The evidence of the Prosecution witnesses was full of inconsistencies and it can have been no easy task for the court to come to a decision.” However, the evidence from the Defence witness Otte tended to disprove the defence of mistaken identity. (85) The finding of guilt was confirmed but the sentence was reduced to ten years. No reasons were given but it may have been because all the Prosecution evidence was by affidavit. On 21st December 1951, Schmidt was released in an act of clemency. (86) This procedure will be discussed further in chapter eight. This case provides yet another example of a petition against finding and sentence resulting not in an acquittal, but in a reduction of the sentence.

Walter Quakernack

In a Deposition made to war crimes investigators, Walter Quakernack stated that he was born in Senne, Kreis Bielefeld on 9th July 1907. (87) He joined the

84 *ibid.*

85 *ibid.*: Lord Russell of Liverpool Report to Commander-in-Chief BAOR 12/9/46

86 *ibid.*

87 WO309/486; see also WO309/432, Deposition of Walter Quakernack; WO235/152 is missing at the National Archives.

Nazi Party in 1931 and the SS in May 1933. In 1939, he sustained an injury to his leg, which resulted in his being called up in January 1940 to the *Waffen* SS as a concentration camp guard. He began as a corporal (*Unterscharführer*) in the Political Department at Auschwitz, which was the main administrative body in the camp, tasked with interrogating prisoners. (88) By February 1943, he had been promoted to *Oberscharführer* (sergeant). In February or March 1944, he was appointed commandant of Laurahütte. (89)

A thousand prisoners were evacuated from Laurahütte in January 1945. Five hundred were selected to go to Hannover-Mühlenberg (Hanomag), a sub-camp of Neuengamme, *via* Mauthausen and Gusen. When Hanomag was, in turn, evacuated in April 1945, Quakernack accompanied the prisoners on a march to Belsen. On this march, twenty-four prisoners were shot, as Quakernack claimed that his superior, *Hauptsturmführer* (captain) Klebeck,

88 He was involved in the first gassing experiments at Auschwitz main camp, took part in selections for the gas chambers and participated in executions at the Black Wall, according to Arthur Lehmann, see Keller, Rolf. 'Das KZ Mühlenberg: Auschwitz in Hannover.' In Rainer Fröbe *et al.* *Konzentrationslager in Hannover*. Hildesheim: Verlag August Lax, 1985, p446; see generally also pp.426-429; see also Filip Müller for mention of Quakernack at Auschwitz: Müller, Filip. *Eyewitness Auschwitz, Three Years in the Gas Chambers*. Chicago: Ivan R. Dee, 1979. Evidence concerning the Political Department at Auschwitz was given at the Frankfurt Auschwitz trial in 1963, as five members of that department were then on trial. Twenty pages of the historical document produced for the trial dealt specifically with the methods used there to torture and murder prisoners.

89 WO309/486. Laurahütte was a sub camp of Auschwitz-Monowitz situated near Siemianowitz, about forty kilometres from Auschwitz. It was established in 1943 by *Rheinmetall Borsig AG* to manufacture flak (*Flugabwehrkanone*). It began operations in April 1944 with 1000 concentration camp inmates from Auschwitz, mostly Jews and 400 civilians. See Keller, Rolf in Fröbe, op. cit. p414; Fischler, Ze'ev. *Im Schatten der Einsamkeit und der Trauer*. Tel Aviv: the Organisation of the Survivors of the Nazi Camps in the British Zone in Western Germany-Bergen-Belsen in Israel, 2000; Ignatz Schloimovitz who was an accused *kapo* at the first Belsen trial was also a prisoner at Laurahütte and Hannover-Mühlenberg: Wiener Library, Kahn Freund Archive, 1427/8; for discussion of *Rheinmetall* see Ferencz, Benjamin. *Less than Slaves: Jewish Forced Labour and the Quest for Compensation*, 2002, p130 and Keller, Rolf, op. cit. p408; *Rheinmetall* also used concentration camp labour at Unterlüss, a subcamp of Belsen.

had instructed that prisoners who were unfit to walk were to be shot, “as an act of mercy”, (*Gnadenschuss*). He had passed this order on to the guards. The luggage of the SS and the rations were loaded onto a wagon, which was pulled by prisoners. He claimed he had only shot one prisoner by mistake. *Rottenführer* (corporal) Rex had shot most people. He said, “I did not want to leave these people in a ditch like so much cattle but had them put out of their misery.....by shooting them.” (90) He said he had not ordered the killing of those left behind in Hanomag but heard later that, “The unfit tried to escape and fifty were shot by the SS.” (91) After delivering the prisoners to Belsen, Quakernack left for Hamburg and was drafted into a combat unit. This was disbanded at Holstein at the end of May. On 5th July, he was arrested at Lipperreihe.

When they arrived at Hanomag on 5th February, the inmates were “half crazy, apathetic, starving and in a very bad state”, as a result of their long and traumatic journey. (92) They were to perform the same work as at Laurahütte, the manufacture of flak, for *Hannoversche Maschinenbau-AG*, also known as Hanomag. (93) The SS and *kapos* employed the same methods of control as at Auschwitz, utilising corporal punishment and lengthy roll calls. Among the SS guards, were *Rottenführer* Friedrich Wilhelm Rex and Alfred Grams, who also had been guards in Laurahütte.

On 5th April 1945, work was stopped at *Hanomag* as a result of a heavy Allied bombing raid and evacuation took place on 7th April. As the Americans closed in, camp records were destroyed, and approximately three hundred and fifty prisoners, those fit to walk, were taken on a death march to Belsen. Fifty

90 WO309/486: Deposition of Quakernack, 5/2/46.

91 *ibid.*

92 Keller, Rolf, *op. cit.* pp. 441-446, statement of Arthur Lehmann. He described Quakernack as “a dreadful thug” and “a cowardly crawler and bootlicker”, (*ein furchtbarer Schlager, ein feiger Kriecher und Speichelkecker*), Keller, p429.

93 For information on Hanomag see Rolf Keller, *op. cit.* p408.

prisoners who were unfit to march were shot and buried in the camp grounds. On the march, those who could not keep pace, approximately twenty-four prisoners, were killed by the SS. These events featured in Quakernack's trial and also in the much later trial of Friedrich Wilhelm Rex and Alfred Grams, discussed below. Quakernack's trial on 27th and 28th May 1946 concerned the commission of war crimes "at Hanomag and elsewhere", between August 1944 and April 1945, by the ill-treatment and killing of Allied nationals. (94)

The Prosecution Case

The usual formal evidence was lodged, including the accused's deposition. Evidence was led from three live witnesses and two affidavits were produced from absent witnesses. Quakernack's time at the Political Department in Auschwitz did not feature at all. (95)

Daniel Blitzblau, a Polish Jew, had been Quakernack's barber at Laurahütte and subsequent camps. There could be no question of mistaken identity as this witness had shaved Quakernack every day. Blitzblau described the hanging of a Russian who had attempted to escape and also described other brutalities. At Hanover, Quakernack sold the prisoners' food on the black market, he said, resulting in inmates dying of hunger. Before setting off on the death march, Quakernack had ordered a ditch to be dug in the grounds of the camp and the prisoners became frightened, fearing that they were about to be killed. Those incapable of walking were left behind in the camp. Those who set out on the march were forced to pull carts loaded with baggage belonging to the SS. Quakernack walked at the back of the line and gave orders to the SS in general and to *Rottenführer* Rex in particular, to take unfit prisoners into the woods and shoot them. Later, the witness remembered Rex shooting anyone who could not keep up the pace. On arrival at Belsen, twenty -five men were missing. He heard an SS man report that those left behind in

94 WO309/486; WO309/432.

95 The activities of the Political Department featured at the Frankfurt Auschwitz trial in 1963. See, for example, Wittman, Rebecca, *Beyond Justice*. Cambridge, Mass: Harvard University Press, 2005.

Hanover had been shot. He heard the accused tell the clerk, Grande, to cross certain names off the list. After the war, this witness had been present in the Hanomag camp when bodies were exhumed. (96)

Gerhard Grande, was a German and had been imprisoned at both Laurahütte and Hanover because he was half Jewish. There were no issues of identification, as he worked for the accused every day. He gave a full account of Quakernack's activities, including an assault on himself. He spoke of the digging of a ditch at Hanomag, where the sick were to be interred after execution; he saw the accused shoot a Jew at roll call; he heard an SS man report to the accused that forty-eight prisoners had been buried and he, Grande, was ordered to cross names off his list. Grande had seen Quakernack shoot people at the side of the road and had seen him order the shooting of those who could not keep up the pace. He also refused to allow German civilians to give the prisoners water during the march. Further evidence of the same conduct, including murder carried out by Quakernack himself, was given by another witness, Joseph Hess, and affidavits produced of Berek Goldstein and Abraham Rajs, Polish Jews who had been in Laurahütte, Hanomag and Belsen (97). Abraham Rajs also told of a practice at Hanomag where the sick or weak were ordered to go to the "ablution room" where they were beaten to death; he saw thirty such corpses. (98)

96 In December 1945, bodies were exhumed at Mühlenberg and reburied on the *Seelhorster Friedhof*. On 7th April 1946, there was a memorial service there, which was attended by only 300 people. One of the speakers at the service asked, "*Hannoveraner wo seid ihr? Habt ihr die 12 Millionen Opfer schon vergessen?*" (Citizens of Hanover, where are you? Have you already forgotten the twelve million victims?) Reported in *Hannoversche Stadtteil Zeitung* 20/2/1986.

97 Deposition of Berek Goldstein 11/12/45 WO309/486; Deposition of Abraham Rajs 4/6/45 WO309/486.

98 *ibid.* Deposition of Abraham Rajs.

The Defence Case

Quakernack gave evidence on his own behalf and confirmed much of what the witnesses had said, although he had explanations for everything. With regard to the hanging of the Russian, he was only following superior orders. Referring to the truth of the earlier statements he had made to investigators, he admitted shooting a prisoner, but by mistake, as he was only trying to fire a warning shot. Regarding the death march, he said, "My orders were to finish off those incapable of marching by mercy shooting....I did not kill anyone myself on the march...I told the guard the direct order as received by me". (99)

A ditch had been dug at Hanomag because he had no mortuary and no transport was available. Under cross-examination, he explained that the accidental shooting of the prisoner had occurred because the prisoners were greedy for food and he had only defended himself with his pistol. He said that, on the march, it would have been wrong to leave a man (dying) in a ditch. He explained further that on the march some people had escaped, some had died and the others had been shot. He said that there was a wagon of food, a wagon of SS kit and a wagon of arms and ammunition, all of which were dragged by prisoners. There would have been room for the sick in the wagons if they had dumped the SS kit. The Court asked how the unfit prisoners left behind at Hanomag had tried to escape. He said he did not know. They also asked, "Did you consider it more humane to carry SS kit than leaving human beings to die?" He replied that SS kit was essential. (100) Quakernack was convicted and sentenced to death by hanging.

Further Procedure

Quakernack appealed against the finding and sentence on the basis that he had known nothing of the killing of the sick left behind at Hanomag and that, apart from the accidental shooting of a prisoner, he had only followed orders.

99 WO309/486.

100 WO309/486; WO309/432.

He asked for an act of clemency to avoid execution. His wife, Edith Quakernack, also submitted a Petition for Pardon, as she felt that he had only been following orders,

All those who have known my husband do not believe him able to do such enormities and cruelties of his own accord..... Myself with two children were totally bombed out in December 1944.... we are, our small savings excepted, almost without means of living. (101)

Lord Russell of Liverpool, the DJAG, recommending that the finding and sentence be confirmed, said that Quakernack's deposition and evidence displayed arrogance. (102) This arrogance was also remarked on by one of the judges, David Tabaschnik, many years later. (103) His plea for clemency was unsuccessful, the finding and sentence were confirmed, and Quakernack was hanged on 11th October 1946.

Further evidence of Quakernack's actions emerged during later war crimes investigations. Quakernack was said to have been so pro-active in carrying out his orders, that when his column came upon prisoners sitting at the side of the road, who had dropped out of previous marches through exhaustion, he also had those people taken into the woods and shot. (104)

Quakernack claimed that he had been following the orders of his superior *Hauptsturmführer* (captain) Kurt Klebeck. That was not accepted as a defence and the fact that the death penalty was imposed suggests that it did not even mitigate his sentence. His candour in his deposition and at the trial clearly did him no favours, nor did his arrogant manner.

101 Edith Quakernack Petition, 17/6/46: WO309/486; Her father, Fritz Fingberg, also appealed for clemency for Quakernack.

102 Letter, Lord Russell of Liverpool WO309/486.

103 David Tabaschnik's interview with Rolf Keller, 17/11/89, Hanover. Text available from Rolf Keller at *Stiftung niedersächsisches Gedenkstätte*.

104 Statement of Mosche Blasbalg 24/2/74 Yad Vashem 04/398.

The Trial of Rex and Grams: a Comparison

The trial of Friedrich Wilhelm Rex and Alfred Grams took place in the *Landgericht* in Hanover between 2nd June 1980 and August 1981. (105) Pre-trial proceedings against them had lasted almost ten years. (106) The charges against them related to their conduct on the *Evakuierungsmarsch*, the so-called Death March (*Todesmarsch*) from Hanomag to Belsen at the beginning of April 1945. In the event, Rex, who had been given the nickname, "the dog" by the inmates on account of his name, was convicted of two murders and sentenced to six years' imprisonment and Grams was acquitted.

Rex was born in Berlin and had served in the *Wehrmacht* before an injury ended his service. He entered the *Waffen SS* in June 1944 and was sent to Auschwitz, then Laurahütte, where he was a block leader (*Blockführer*). Grams was born in Poland but was of German extraction and, at the beginning of the war, went to Germany as an unskilled worker (*Hilfsarbeiter*). He was employed as a guard at Neuengamme and Sachsenhausen before being sent to Auschwitz and Laurahütte.

Rex and Grams, two of eleven SS men, who, along with forty marine gunners, guarded the inmates, were charged with shooting prisoners who were too weak to keep up the pace of the march. (107) These victims were shot in the nape of the neck (*Genickschuss*) and some were forced to dig their own graves before they were executed. Rex and Grams were additionally accused of having committed three murders in the washrooms at Hanomag.

The death march lasted two to three days and 359 prisoners started out. Approximately twenty-four were missing by the time the column reached

105 *Hannoversche Allgemeine Zeitung Archiv* 13/2/81 22/7/81, 1/8/81; Keller, Rolf, op. cit. p572; Keller, Rolf. *Das KZ Hannover-Mühlenberg*. Freizeit & Bildungszentrum Weisse Rose. O.O.o.J. Hanover, 1981.

106 Keller, Rolf, op. cit., pp.572-573.

107 Yad Vashem file 04/398 .

Belsen. In 1980, Gerhard Grande was still alive, living in Germany and able to give evidence against Rex and Grams, as he had done against Quakernack in 1946. (108) Statements were obtained from surviving witnesses, now living all over the world. One, Jona Livne from Israel, deponed,

Whenever Rex appeared, we gathered up all our forces in order not to attract his attention. We all really were especially afraid of him. Already in the camp, Rex was an especially dangerous man...We prisoners had the impression that he was searching for occasions to shoot. (109)

At the time of the trial, Rex was sixty-eight years of age and Grams was seventy-five. Both were said to be in ill-health. For that reason, they were unfit to be detained. The court sat only two days *per* week for three hours at a time and for a total of ninety-eight days in all. A doctor was on standby in court in case they took ill. Both were taking pills, for high blood pressure and circulatory problems.

The case was reported occasionally by the *Hannoversche Allgemeine Zeitung*, whose reporter took a rather biased stance against the proceedings. Little was reported about the charges, the victims, the death march or the murders, but by repetition of phrases such as “the old men” and “grey haired pensioners”, sympathy was shown for the accused and none for the victims. Nothing was reported about why it had taken so long to bring them to justice although it was mentioned that the witnesses were often confused and unable to remember after the passage of some thirty-six years. More than one article mentioned the cost of the proceedings and the fact that the court undertook

108 Gerhard Grande assisted Rolf Keller in preparing the work referred to at note 105 supra. Grande, aged 69, was assaulted and abused in front of his home in Hanover after having given evidence in this trial and during the course of anti-fascist week: reported in the *Neue Presse* 27/10/81. He had previously received several threats and, during the attack, he had been called a “Jew pig” (*Judensau*), reported in HAZ 28/10/81.

109 Statement of Jona Livne, Yad Vashem file 04/398.

fairly extensive foreign travel in order to examine witnesses now scattered throughout the world. The reporter clearly thought that the trial was a waste of time and money, merely a token trial. (110) The reporter believed that the judge, Hans Ulrich Schacht, had been swayed by the accused pleading the “superior orders” defence, in terms of Paragraph 47 of the Military Code. He commented that the court believed that Rex took his obedience to orders seriously, as when other SS men were sparing the prisoners, Rex carried on shooting them. (111) Indeed, Walter Quakernack had told the Military Court in 1946 that Rex had, according to his estimate, “Shot most prisoners, of all the guards”. (112)

Rex appealed to the *Bundesgerichtshof*, the federal court of appeal. The final outcome of the case is unknown to the writer. Rex was considered unfit to serve any sentence, even if the conviction were upheld. (113)

The case of Rex and Grams illustrates how a trial by a German court under German law some thirty-five years after the events resulted in a very different outcome for these SS men. That both had managed to escape justice for so long undoubtedly worked in their favour. Had they been tried along with Quakernack in 1946, it is likely that both would have been found guilty and sentenced to death.

Karl Reddehase

Karl Heinrich Reddehase was born in Essen on 3rd May 1893. (114) A member of the Nazi Party, he was drafted into the Waffen SS as

110 HAZ Archive *ibid*.

111 see HAZ 1/8/81; see also statements within Yad Vashem 04. see Fröbe, Rainer, pp.572-573.

112 WO311/274.

113 Papers closed until 2012, 2015 and 2016; see note 11 in chapter two.

114 WO235/154: Deposition of Reddehase 30/1/46; See also WO309/433, WO309/1697 and WO/3091698. In this Deposition, Redehasse admitted a limited amount of beating of prisoners and commented, “*Weitere besondere Vorkommnisse in meinem Lager sind mir nicht bekannt*”, (I am unaware of any further special occurrences in my camp). These words were used by Annette Wienecke as the title for her work on *Waldeslust*.

Oberscharführer (sergeant) in 1939 and was deployed at Mauthausen as a concentration camp guard. In 1944, he was sent to Waldeslust, an *Aussenkommando* of Belsen at Hambühren Ovelgönne near Celle, where 400 Jewish women worked *inter alia* in a salt mine. (115) His trial was the last of this set and took place between 28th and 29th May. The charges against him were the commission of war crimes by the ill-treatment and killing of Allied nationals at Waldeslust, where he was camp leader (*Lagerführer*).

In a Deposition made to war crimes investigators, the accused claimed that he was only an instructor (*Zugführer*), involved in the training of recruits, and had nothing to do with prisoners. (116) He was at Mauthausen for three and a half years but claimed that he knew nothing about the camp and could give no information about it. He did know that sometimes leaders of work squads and *kapos* beat prisoners but he did not. He said he did the same job at several other camps, including Belsen, before going to Hambühren-Waldeslust as a work squad leader in the summer of 1944. He claimed, “The prisoners were treated very humanely and had a good life with me.”(117)

He admitted assaulting prisoners at Waldeslust, by kicking them and using sticks and rubber tubing on them but claimed that no one ever suffered any injury, although they may have bled a little. He gave a few examples of this behaviour, including an occasion when he threw a brick at a prisoner, “when (he was) excited”, but did not cause any harm to her. This prisoner had fits of hysteria (it is unclear if this was before or after she had been struck with the brick) and had to be taken to hospital, not because of her injuries, but as a

115 WO 309/1697; see also Annette Wienecke, especially p154; Belsen was responsible for three satellite camps: Unterlüss (Tannenberg), Bomlitz and Hambühren. The Luftwaffe also had a vast munitions factory at Hambühren where concentration camp inmates were employed; see also Yad Vashem statement of the Grünbergers who spent two months at Waldeslust when their initial group of 400 women was reduced to sixty after two weeks, as conditions were so bad.

116 WO235/154 Deposition of Karl Reddehase; WO235/433.

117 *ibid.*

result of hysteria. She had been “insubordinate.” In February 1945, he delivered prisoners to Belsen and remained there until April, when he transferred to an SS company and served with that unit until capitulation. (118)

The Prosecution Case

The usual formal evidence was produced, including the accused’s Deposition. There were four live prosecution witnesses, all Polish Jews who had been at Waldeslust in 1944 and Belsen from February 1945 and three affidavits were lodged.

Genia Kalichmann said that Reddehase had beaten and kicked her and she had seen him throw a brick at an inmate Zepkowica, who collapsed and died later of her injuries. At Belsen, she had seen the accused beat male prisoners and chase them into a water tank during very cold weather. Zepkowica had not died of typhus, as there was no typhus in the camp at the time. Another witness, Ida Glyzin, identified the accused as camp leader at Waldeslust and corroborated Kalichmann’s account of her beating at the hands of the accused. Reddehase had also beaten Glyzin’s mother with a spade. She had to carry on working but died a few weeks later. Dora Friedmann had worked as a nurse and remembered Kalichmann being hospitalised after being assaulted by the accused. She had been unconscious for three days. Glyzin’s mother was sent to Belsen, where she had died in the presence of the witness, but not of typhus, as accused was suggesting. Josia Lichtmann had seen the accused shoot a man dead at Belsen for trying to pick up a turnip. This was corroborated by Miriam Jacobowitz, who also said she had seen the accused throw a brick at Zepkowicz, a Pole, who was left badly injured and died weeks later. (119) Josia Gomplewicz had also seen the accused beat women. In particular, he beat and kicked Marysia Kiropatva until she was unconscious. Kiropatva complained of internal injuries caused by the beating

118 *ibid.*

119 Deposition of Miriam Jacobowicz October 1945. She said that two men were killed.

and died days later. In Belsen in February, Gomplewicz saw the accused shoot a man dead near the kitchens when he picked up a turnip. (120) Esta Schreibmann confirmed Gomplewicz's evidence relating to Kiropatva. (121)

The Defence Case

The accused gave evidence and admitted that he had been camp leader at Waldeslust in 1944 and then stationed at Belsen from January to April 1945. He admitted hitting a woman with a brick. He did not dispute that he had ill-treated this woman but he had not intended to draw blood and did not know that she had died. (122) SS man Wilhelm Otte gave evidence for the accused. He said he had been a clerk at Belsen and would have been notified if an SS man had shot a prisoner. He did remember someone being shot in an escape attempt but he did not receive a report that the accused had shot a prisoner. He disputed that anyone could have been left in the water tank for any length of time without drowning, as it was too deep. The typhoid started in December, he said, and the death rate had doubled by February. Five hundred people were dying daily but very few people were shot in February. (123)

Further Procedure

In his closing speech, Reddehase's lawyer said it was impossible to deny that the accused had ill-treated members of Allied nations in concentration camps, indeed the accused had admitted it. However, he claimed that the prosecution evidence was exaggerated and some prisoners had deserved their treatment, as they had behaved badly. Regarding the lady who had been struck by the brick, only if the court found that he had intended to kill her, could he be convicted of murder. It had not been proved that any of the alleged victims died as a result of accused's actions. Otte had spoken of a typhus epidemic in

120 Deposition of Josia Gomplewicz 27/10/45.

121 Deposition of Esta Schreibmann 27/10/45.

122 WO235/154.

123 *ibid.*

Belsen in February 1945 when 500 people were dying daily. The victims could have died of typhus. Only a *post mortem* examination could have established the cause of death and none had been held. The Prosecution witnesses had given conflicting evidence in places while the SS man Otte's evidence was "trustworthy". (124) He highlighted the "sworn evidence" of the accused, who described the accusations as "an invention". He described Otte as a careful witness who, "Guards himself to say anything that does not correspond to the truth". (125) His evidence should be preferred to that of all the Prosecution witnesses. The Prosecution witnesses were simply wrong and their evidence was tainted by a desire for revenge. Kalichmann's evidence of the driving of the prisoners to the tank was wrong, as the prisoners would have drowned had they been forced into the tank. The witness must have made this incident up, as Otte did not know anything about it. The witnesses were also lying about the shooting of the prisoner(s).

Captain Butcher, in his final speech, pointed out that the accused had been identified by seven witnesses as committing various acts of ill-treatment. Commenting on the accused's excuse for assaulting Kalichmann, that she had been "obstinate", he questioned how this could be a defence, as what was required was some definite and gross provocation. He had knocked a woman to the ground when he threw a brick at her, therefore one could infer that he intended to hit her, and the case of Glizyn's mother was the same. There was no typhus in the camp when these people died and the victims were not ill before the accused assaulted them. Shooting a man in Belsen was a clear case of murder and compelling men to remain in a water tank for his own satisfaction in cold weather was clearly ill-treatment. The Prosecutor described the evidence in this case as "overwhelmingly strong". Otte claimed there were 500 deaths a day in February 1945: how could he remember specific deaths in these circumstances? This was a clear case of "unprovoked and brutal murder". The accused was found guilty. (126)

124 *ibid.*

125 *ibid.*

126 *ibid.*

On 29th May, the Defence made a plea in mitigation: the accused had been forced to join the SS and was a nervous and irritable/unstable type of person. He was incited by the bad behaviour of some of the prisoners and ill-treated them. However, he was “soft and good hearted” at home. (127) A son, Heinz Reddehase, said the accused was a good father and had never ill-treated him. His father could not kill a chicken and he forbade his son to join the Hitler Youth and the SS. His father had been “mentally ruined” by the SS. (128)

Reddehase was sentenced to death. He petitioned against the finding and sentence but the grounds did not raise anything new and it was unsuccessful. Reddehase was executed at Hamelin jail on 11th October 1946. This case had been comparatively strong in that the Prosecutor was able to produce four live witnesses against the accused and instances of ill-treatment tended to be corroborated. This, combined with the serious nature of the charges, undoubtedly resulted in the death penalty being applied in this case.

Continuing Criticisms of the Trial Process

That the British still thought that the trial process was going well is demonstrated by a letter which appeared in *The Times* on 13th June 1946. Lieutenant Colonel Anthony Marlowe Q.C., M.P., had been the JAG in the Natzweiler/Struthof trial, which had just finished in Wuppertal. (129) He wrote,

The German defence counsel and the German public have been deeply impressed by witnessing an administration of justice which has been unknown in their country for thirteen years and in consequence they quite clearly recognise that Britain is the fount of justice. (130)

127 *ibid.*

128 *ibid.*

129 Trial of Wolfgang Zeuss and others: WO235/336; WO235/337; WO235/338. This was not a conventional concentration camp trial. The alleged war crime was the execution without trial of four female members of the British Special Operations Executive.

130 *The Times* 13/6/46; FO371/57671.

He went on to comment that three men who had been spared the death penalty in that case were sentenced to death the following day for murdering a British airman. Marlowe did not mention the fact that the same bench of judges had heard both cases. Not everyone shared his views. Patrick Dean of the Foreign Office was annoyed by Marlowe's letter. He noted, "Ridiculous sentences imposed after lengthy and over-legalistic hearings merely confirm the view which is held by so many Germans that the British are fools and not that they are the living embodiments of justice." (131) Dean was also highly critical of the JAG's conduct of the cases, as, "They insist on trying to prove that every one of the accused was personally implicated in some particular murder or other abomination....this is an impossible burden to discharge". (132) Indeed Brigadier Henry Shapcott, the Military Deputy JAG, had issued instructions on 23rd January 1946 to this effect,

It is in my opinion essential before the accused can be tried before a Military Court under the Royal Warrant to have evidence to show that he or she was personally responsible for the ill-treatment or killing of an Allied national. (133)

Dean was not alone in his criticisms. Brigadier J.G.B.Hennessy, who had been the presiding judge at the *La Grande Fosse* trial in May 1946, also felt that JAG was issuing erroneous advice to its prosecutors. (134) He complained to the War Office about the calibre of the British officers who were acting as judges in the war crimes trials, saying that they, "Lacked the temperament, experience and intelligence to cope with a murder trial". (135) The criticism that was made by both Patrick Dean and Brigadier Hennessy about the JAG issuing erroneous instructions to the prosecutors does seem well founded as the instructions appear to conflict with the terms of the Regulations made under the Royal Warrant.

131 Patrick Dean FO371/57671; Dale Jones, Priscilla, Thesis, op. cit. p324.

132 *ibid.*

133 WO235/136: Letter from Shapcott to Commanding Officer in Chief, BAOR, 23/1/46.

134 Bower, Tom, op. cit. p226, quoting Brigadier Hennessy; WO309/1646.

135 *ibid.*

In this chapter, through a study of the second trial, it has been shown that certain methods and procedures were implemented to speed up the proceedings and meet some of the criticisms of the first trial. However, different criticisms continued to be made even after the second set of trials. In the next chapter, the last case in the second set of Belsen trials will be examined. This was a different sort of trial as it was the trial of a *kapo*, an Allied national, who was accused of committing war crimes by ill-treating and killing fellow prisoners in Belsen.

Chapter 6

The Trial of Kasimierz Cegielski

Kasimierz Cegielski was a Polish *kapo* in the Jewish Camp (*Sternlager*) at Belsen. He was prosecuted separately from the other accused in the second set of Belsen trials, probably as a result of witness difficulties. Cegielski was an Allied national who was accused of having committed war crimes at Belsen by ill-treating and killing Allied nationals interned there and it provides an interesting comparison as to how the *kapos* fared in the first Belsen trial. (1)

Before turning to the detail of the trial, it is worth considering the role the *kapos* played in Belsen. Hanna Levy-Hass, a former prisoner at Belsen, wrote,

(Kramer) has put a new detachment in charge of us, all Aryans, Germans, Polish and French convicts...well fed young men with the strength of bulls. They strut to and fro, hitting out at us as they please. They vent their fury chiefly on the men, persecuting them mercilessly. (They) beat the women as well, or even worse, force them to become prostitutes. (2)

Against this background, the case of Kasimierz Cegielski will be considered.

After the Liberation of Belsen, the former *kapo* Kasimierz Cegielski was sent to a Polish POW camp and then obtained a permit to travel to Holland. He had been having an affair in Belsen with a Dutch Jew named Henny de Haas and he followed her to Holland with the intention of marrying her. Cegielski was arrested in Amsterdam on 9th August 1945, handed over to BAOR and returned to Belsen on 29th October.

1 WO235/155; See also WO309/436; WO309/1569.

2 Levy-Hass, Hanna. *Inside Belsen*. Brighton: The Harvester Press, 1982, p50.

Cegielski was interrogated by war crimes investigators and, in an affidavit dated 29th November 1945, he stated that he had been born in Warsaw on 28th July 1915 and was the son of an engine manufacturer in Posen. At the outbreak of war in 1939, he was in the Polish Airforce as a Lieutenant and he had flown immediately to England where he served in a separate Polish squadron of the RAF. He said he had taken part in many bombing raids on Germany but had been shot down in December 1941 on a bombing raid between Berlin and Stettin and taken as a prisoner of war. He said he destroyed his papers to conceal his identity as an officer. After imprisonment in many camps, he found himself in Belsen in March 1944. In January 1945, he claimed that he was forced into becoming a *kapo* against his will, when Kramer, the commandant, threatened to shoot him if he refused. He met Henny de Haas, a Dutch prisoner, and began a relationship with her. She was liberated in April 1945 along with her mother, and returned to Holland, her father having died in the camp. (3)

Suspicious of his story, the Polish and British authorities carried out an investigation and confirmed that they could not identify him as having served in the Polish airforce and suggested that he had used a false name. His service number was also false, he had invented the name of the leader of his squadron and claimed that he flew “Douglas” fighter aircraft, which the Poles did not have. (4)

Initially, 30 Corps would not charge Cegielski as they believed there was some dubiety as to his nationality. He is referred to in some war crimes correspondence files as a German national, despite his Polish name and his own statement that he was a Pole. However, by March 1946, it had been decided that he was “a Pole in German employ”. Before the trial was finally sanctioned, photographs were needed to show to the witnesses, so that the authorities could be sure they had the right man. A delay was caused because

3 Affidavit of Kasimierz Cegielski dated 29/11/45, WO235/155.

4 *ibid.*; the day before his execution, the accused told the authorities his real name was Kasimir Alexander Rydzewski.

there were no photographic facilities at Esterwegen, the former concentration camp, where he was being detained.

By 18th March the accused had been positively identified as the *kapo* from the *Sternlager* accused of war crimes. Cegielski could have been tried by the Polish authorities but it was decided that he would be tried by the British. The reasons for this are likely to have been that the British actually had him in custody, that they had, by this stage, completed two Belsen trials and witnesses (there were potentially nineteen Prosecution witnesses) may have been reluctant to travel to Poland to give evidence. In the event, most of the witnesses refused to return even to Germany to give evidence, having already been repatriated, and affidavits had to be used. There were similar difficulties with defence witnesses, who also refused to attend. Defence counsel travelled to Amsterdam the weekend before the trial to take statements from potential defence witnesses and the Prosecutor agreed he would make no objection to any defence statements obtained, so the trial could proceed. (5)

The trial took place at Lüneburg between 13th and 18th June 1946. Cegielski was represented by a Polish officer attached to 30 Corps, Captain A.J. Leszczyński, assisted by Captain S. Choynecki, both of whom had been barristers in Poland. The Prosecution was conducted by Major Saville Stewart, who had assisted the Prosecution in the first Belsen trial and no JAG was appointed. The President of the Court was Lt. Col. C.G. Lipscomb, the legal member of the Court was Captain C.W. Denniss and there were three other members. (6)

The Prosecution case

The charge Cegielski faced was that at Bergen Belsen between January 1944 and April 1945, when a member of the concentration camp staff, in violation of the laws and usages of war, he was concerned in the ill treatment and killing

5 WO309/1569.

6 WO235/155.

of Allied nationals interned there. Cegielski pled “not guilty” and his trial began. The two live witnesses were, firstly, Karl Hess, who gave evidence that the accused had beaten to death a Dutch Jew named Moff. Secondly, Janina Pepper Wurms told the court that when her husband was too ill to attend roll call, the accused had, along with other *kapos*, beaten him so severely that he died four days later. Thereafter, all the Prosecution evidence was by affidavit. (7)

Max Schlacht, an Austrian, but now stateless, Jew, said that the accused was one of five *kapos* in the Jewish camp (*Sternlager*) in Belsen. (8) He accused Cegielski of beating a Dutch Jew named Rodrigues on two occasions, the latter resulting in his death. The accused was well known in the camp because of his affair with Henny de Haas. He further stated that he had seen ten people beaten and eighteen hanged by Cegielski for cannibalism, after they had entered the mortuary and cut open the bodies to eat. Cegielski had been ordered to carry out these acts by the SS, with whom he was on good terms. (9)

The incident involving Rodrigues was corroborated by a German Jew named Hermann Nussbaum, who also spoke of beatings Cegielski administered to women. (10) In describing further beatings and murders, another affidavit said he had, “Committed the most brutal crimes on fellow prisoners” and accused him of sadism and of being, “One of the worst war criminals”. (11) Others, also speaking of beatings and murders, said he was feared throughout the camp for his terrible manner, refusing to allow the sick medical attention, forcing them to work, and denouncing prisoners to the SS because they had stolen food. (12) Harry Simons, a Dutch Jew, stated, “This man made himself very

7 *ibid.*

8 Deposition of Max Schlacht 17/8/45. All Depositions referred to in this chapter are contained within WO235/155.

9 See the testimony of Dr Leo at Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Son, 1949, pp.122-123.

10 Deposition of Hermann Nussbaum 17/8/45.

11 Deposition of Dr Julius Nussbaum 17/8/45.

12 Deposition of Elizabeth van Emden Polk 17/8/45; Deposition of Harry Turfriger 17/8/45.

unpopular...for the terrible way in which he treated his fellow prisoners.” (13) He spoke of prisoners being beaten to death: for example, a dentist named Franken, who was ill with dysentery, was driven out to work in the woods, removing tree trunks and roots, guarded by SS men and bloodhounds. The ill-treatment in this work squad was such that no prisoners survived it and Franken died a few days later. Simons described Cegielski as, “One of the worst war criminals”. (14)

The Defence Case

The earlier statements and affidavits made by the accused were read out to the Court. These contained admissions of sorts. In two sets of admissions to Dutch investigators, he admitted being a supervisor in the Jewish camp but not a *kapo*. He later admitted hitting prisoners with his bare hands for stealing and being forced to do this by the SS. In another statement, he admitted being a supervisor but said the evidence against him was malicious. In his oral evidence to the Court, Cegielski said it was a case of mistaken identity: there were two *kapos* in the Jewish camp, one named Big Kasimierz and the other, Little Kazimierz. He denied having committed the specific acts of which he was accused. (15)

Dr Anthony Menco, a Dutch Jew, in a Deposition taken by defence counsel before the trial, stated that a German, Haneke, was the head *kapo* but, between him and the accused, “It is difficult to say which one of them was the worst.”(16)

13 Deposition of Harry Simons 17/8/45: WO235/155.

14 *ibid.*; Levy-Hass, Hanna, *op.cit.* At p50 she describes the “tree stump party”, “They (our men) are worked to death here, hacking out the roots of trees. When they get back in the evening, not one of them is in a normal condition - they are beaten black and blue, their faces and bodies swollen and covered in blood. Yesterday, two were clubbed to death...”

15 WO235/155.

16 *ibid.*: Deposition of Dr Anthony Menco dated 16/6/46.

Henny or Hendrine de Haas was on both the Prosecution and Defence lists of witnesses. She refused to attend court as she had been repatriated and did not want to see Kasimierz Cegielski again. In her affidavit dated 16th June, she confirmed that Cegielski was known as Big Kasimierz, but said he did not have the reputation of a cruel and brutal *kapo* in the camp. (17) He gave her extra food and cigarettes because he had fallen in love with her, but he gave food to other girls too. She had promised to marry him but when he found her in Amsterdam she refused to marry him, because he had lied to her about his background, not because of anything he had done in the camp. She could not say a word against him. Her mother, Clara de Haas, said Kasimierz was no worse than the other *kapos* and had given her daughter extra food. (18)

The Defence had been searching for a Kasimierz Cubiaske or Czubinski who was also a *kapo* in the Jewish camp, possibly the man known as Little Kasimierz, but he could not be traced, having been released from custody in 1945.

Further Procedure

When the trial concluded on 18th June, the accused was found guilty and condemned to death by hanging. Again, because this was a military court, no detailed judgement was produced. A Petition against the finding was submitted by the Defence. In this Petition, the Prosecution witnesses were attacked on various grounds: that their evidence was too general, that they could not link the death of some of the victims to the beatings administered by the accused, and that the people might have died of other ailments, as disease and starvation were rampant. In the case of Franken, the dentist, dentists were exempt from labour. In any event, it was the SS who ran this work squad. If Franken did not have a medical certificate confirming he was ill, the accused was entitled to ignore his complaints. As Cegielski was only a *kapo*, he should not be treated in the same way as the SS, as he was only,

17 *ibid.*: Deposition of Hendrina de Haas dated 16/6/46.

18 *ibid.*: Deposition of Clara de Haas dated 16/6/46.

“An allied national who became a small executive instrument in the hands of a regime.” (19) However, in identifying with the SS regime that was running the camp, perhaps to secure privileges for himself and his friends, and then behaving in a most savage and brutal way towards his fellow prisoners, the British were arguably entitled to consider him a war criminal. We must assume, in the absence of a detailed judgement, that he was convicted of having committed numerous beatings and murders at Belsen and accordingly, the death sentence was considered appropriate. His assertion that he had been forced to become a *kapo* under duress clearly did not impress the judges. Cegielski’s petition was unsuccessful. His sentence was later confirmed and was carried out on 11th October 1946 at Hamelin Jail, along with those of other convicted war criminals.

This case provides a contrast with the first Belsen trial, where twelve *kapos* were put on trial. Of those twelve, five were women, five were German, one was Austrian, six were Polish and two were Jewish. The most notorious of them was undoubtedly Erich Zoddell, a German criminal who was the only accused in the trial to receive a life sentence. (20) None of the *kapos* in the first trial were sentenced to death. Why should this be so? There is little to differentiate the Cegielski case from that of Ostrowski in the first trial. In that case, the evidence against him was provided by six affidavits, but he was able to lead two live witnesses and an affidavit from another in his defence. He was also accused of murder and the affidavits included allegations of the same conduct at Dora and Ellrich (with which he was not charged). (21)

Although the evidence against Cegielski consisted of a large number of affidavits and two live witnesses, it was unusually strong in terms of the

19 WO235/155.

20 Phillips, Raymond, op. cit., p644; WO235/605: Zoddell was already sentenced to death by a Military Government Court for murdering a female after the liberation. He was executed on 30/11/45.

21 see Phillips, Raymond, op. cit p454, p581 and Appendix 3.

number of witnesses and extent of the brutality attributed to him. He seems to have been a notorious figure, easily identifiable as a consequence of his relationship with the Jewish prisoner, Henny de Haas. Unfortunately for him, the defence statements obtained on his behalf did not help his case: Menco incriminated him and it might have been expected that Henny de Haas would minimise his involvement, given their previous relationship.

In the first trial, the evidence against the *kapos* was almost exclusively by affidavit and the defence counsel had spoken at length about how unreliable this evidence was. Could it be that, firstly, there was some doubt in the minds of the judges at the first trial about the guilt of the *kapos* and instead of acquitting them, they imposed a sentence of imprisonment? Was it the case that the first court was too lenient and/or that they did not really appreciate the role that the *kapos* played in the concentration camp system at that time? Perhaps Tom Bower was right when he said that the judges (in the first trial) failed to appreciate that the *kapos*, “In order to prove their worth, were usually more brutal than the Germans”. (22) Perhaps the judges in the second trial had a better understanding of this. Again, in the absence of written judgements by the judges at both trials, their reasoning will never be known.

In the next chapter, the third Belsen trial will be investigated, that of Captain Curt Meyer, a German soldier who had been transferred from the *Wehrmacht* to the SS in the last year of the War and who became the commander of the guard company (*Wachtruppe*) at Belsen. He was to fare better than Cegielski and a number of others who were convicted of killing concentration camp inmates.

22 Bower, Tom. *Blind Eye to Murder*. London: Warner Books, 1997, p209. Eberhard Kolb describes in some detail the actions of the *kapos* in performing their duties at Belsen, from December 1944 to liberation in *Bergen-Belsen: From Detention Camp to Concentration Camp 1943-45* Gottingen: Vandenhoeck & Ruprecht, 2002.

Chapter 7

The Third Belsen Trial

This chapter discusses the trial of Ernst Julius Max Hans Curt Meyer (Curt Meyer) who was also prosecuted by the British for having committed war crimes at Belsen. This trial took place in the spring of 1948, by which time the British were pursuing a different policy with regard to war crimes. (1) The allegations against Meyer were serious and this, taken with the fact that they had already conducted war crimes trials in respect of Belsen and that he was in their custody, probably accounts for the British proceeding with the case at this late stage. Although the second batch of trials had been concluded in the summer of 1946, investigations continued into the activities of members of the SS at Belsen and, eventually, the war crimes investigators traced three witnesses who could speak to Meyer's conduct within that camp. (2)

Meyer had been interned by the British from 17th May 1945 until 19th September 1947, when he was released from the internment camp in error and allowed to return to his home in Hanover. He was re-arrested at the beginning of 1948 and placed in Altona Prison, Hamburg. On 8th March, the JAG instructed that the evidence justified him being tried for war crimes by a military court under the authority of the Royal Warrant. (3) Meyer's trial began on 14th April in Hamburg and was expected to last a week.

Meyer faced two charges, firstly, that he had committed a war crime at Bergen-Belsen, between 1st July 1944 and 30th April 1945 and was concerned in the ill treatment of Allied nationals interned there; secondly, that between 1st February 1945 and 31st March 1945 he was concerned in the ill-treatment of a female Polish national known as Mira, an internee at Bergen-Belsen, as a result of which she died. (4)

1 See chapter 9 infra.

2 WO311/513.

3 WO309/358: JAG letter 8/3/48.

4 WO235/490. There is a marginal note that this charge is better than the usual "concerned in the killing" although it is still a controversial libel for beating someone to death.

Whilst he was interned, Meyer had been interrogated by war crimes investigators and provided the following information. He said he was born in Hanover on 17th May 1895. (5) He fought in the German army from 1915 until 1918, reaching commissioned rank, then returned to his job in a bank, where he eventually became chief cashier. He was called up in September 1941 and served in the Ukraine, until February 1944. At this time, he was admitted to hospital in Lemberg and on 15th April, he was declared unfit to fight at the Front. In June 1944, he was called up for the *Waffen* SS and sent to Belsen.

Meyer had been a *Hauptmann* (Captain) in the *Wehrmacht* and retained this rank in the SS, becoming a *Hauptsturmführer*, the same rank as Josef Kramer, and entitled to wear the SS uniform. Meyer claimed that when he first went to Belsen he was employed building infantry positions in the vicinity of the camp until October 1944, when he was employed as an air raid officer. It was not until January 1945 that he was given the task of leading a guard company (*Wachtruppe*). The Guard Company consisted of 160 men, sixty to eighty of whom were on guard duty every day; there were twelve watchtowers, each staffed by two men. The task of the guards was to keep watch on the perimeter fence and prevent prisoners escaping. Their orders were to recapture any escaping prisoners, without shooting, if possible. (6)

Meyer claimed that Kramer, the commandant, was really in charge of the guards, not him. He did not report to Kramer on a daily basis, that being the job of a lower ranking officer, an *Oberscharführer* (sergeant). This latter individual did not report to Meyer, even though Meyer was in charge of the company. For these reasons, claimed Meyer, he was unaware of any prisoners being shot at Belsen, nor was he aware of any punishments being carried out. He knew that the prisoners, whom he described as mostly

5 WO235/489: Deposition of Curt Meyer, 5/3/47; see also WO309/1736; WO309/427; WO309/358; WO309/1346; WO309/425.

6 *ibid.*

professional criminals, asocials and homosexuals, just as Kramer had done, had to work under the SS, but he believed, “The prisoners liked to have such jobs as they hoped to have some advantages therefrom”. (7) He knew nothing about executions, and if these had taken place, he would have heard about them. In any event, it was not his job to control the guards. He was in the camp only once, when he thought the prisoners were in “good bodily condition”. (8) He was aware of the presence of some Jewish families in the camp, who were waiting to be exchanged for Germans abroad. He said that Kramer was very reserved and taciturn and trusted only the former SS personnel from Auschwitz who had accompanied him to Belsen. Meyer did not think that either Kramer or Dr Fritz Klein were capable of ill-treating prisoners.

On 11th April 1945, Meyer was instructed to leave Belsen with two hundred SS men for active service at the Front. These orders were changed and instead, he had to take prisoners on a four-day march to Neuengamme Concentration Camp on the outskirts of Hamburg. (9)

Meyer’s case was considered to be straight forward, and, as in the second set of trials, there was no JAG. A Permanent President was appointed, Lieutenant Colonel J.A. Glendinning of the Royal Artillery, the same man who had presided over the second set of trials, and there were four other members of the Court. The Prosecutor was P.E. Cadbury, an English barrister, not a serving soldier, as in the first and second trials. The Defence counsel was a German lawyer, Dr Wolfgang Graener. A medical inspection of the accused was to be carried out every morning to ensure fitness to stand trial. German civilian spectators were to be subjected to the usual search for “concealed weapons”. Their identification was to be checked and steps taken to ensure they did not communicate with the accused or witnesses. (10)

7 *ibid.*

8 *ibid.*

9 *ibid.*

10 WO235/489; WO235/490.

Before the trial began, Jules Gross of the War Crimes Investigation team had prepared a report for the Prosecution, giving his opinion of the accused, whom he had interviewed. He described Meyer as, “The intelligent type and the sort who always obeyed orders. Difficult to handle, he denies any knowledge of the goings on in Belsen. His aim is to convince the investigator that his duties were of an entirely military character”. (11) Maintaining that he had never been inside the camp and had no contact with inmates, Gross’s overall impression of Meyer was, “A cunning but frightened man”. (12)

The Prosecution Case

The Prosecution evidence came from two live witnesses and one affidavit. (13) The first witness was Robert Vercauteren, a Belgian. The instruction from the JAG was that Vercauteren was to be called, “To remove any suspicion of bias in the evidence of the Polish Jewesses, Goldstein and Krause.” (14) This is reminiscent of the attitude of the Foreign Office during the war, as outlined in chapter one. Vercauteren identified Meyer as an SS Captain who would beat any prisoner without reason and who carried a stick resembling a walking stick. He spoke about Meyer’s general conduct in the camp and, in particular, spoke of an incident when Meyer beat naked male prisoners in the area of the genitals, with a stick. As a result of this beating, three prisoners died in his presence, a Dutchman and two Poles, Allied nationals. On this occasion, Vercauteren himself, had been beaten by Meyer. He said that Meyer always bullied the prisoners and was well known in the camp for his brutality. (15)

Mania Goldstein, a Polish Jew, remembered that Meyer often carried a stick. She was an eyewitness when Meyer pursued Mira and beat her with a stick for fifteen to twenty minutes because she had some potatoes hidden under

11 WO235/490: Jules Gross report dated 27/8/47; WO311/513.

12 *ibid.*

13 WO235/489.

14 WO311/513.

15 WO235/489.

her dress. She stated, "Meyer was carried away by sadistic ecstasy". (16) Afterwards, Mira remained lying on the ground and Meyer kicked her on the body. Later, other female prisoners carried her to her hut. Mania Goldstein was later told by Eva Krause, that Mira had died. Goldstein further stated that she had seen Meyer beating people on many occasions, especially within the hospital, where she was a nurse. He had a predilection for beating the sick, who could not escape him; the able bodied ran away. (17)

Affidavits were produced from Eva Krause, who was unable to appear in person as a result of illness following childbirth. (18) Krause confirmed that photographs she had been shown were of the accused and these were placed before the court. The Defence objected to this on the basis that identification only from a photograph was unsound and that Krause should appear in person as her evidence was required to corroborate Goldstein's evidence in relation to the second charge. The Court allowed the affidavits to be lodged on the basis that this situation was covered by the Royal Warrant.

Eva Krause, a Polish Jew, knew Meyer as, "The SS man who rode through the camp on a bicycle and who regularly carried a long stick which he used to beat prisoners". (19) She herself had never been beaten by Meyer, but stated that he had beaten to death her friend Mira, a Pole, suspecting that she had stolen potatoes from the kitchen. She had observed Meyer pursuing Mira and striking her repeatedly on her head and body with a stick, rendering her unconscious. Women had carried Mira back to the barracks and laid her on straw. She received no medical treatment and was dead the next morning.

16 *ibid.*

17 *ibid.*

18 *ibid.* Deposition of Eva Krause 9/10/47 and 15/4/48

19 *ibid.*

Mira was said to be healthy, given the circumstances, and the witness gave her opinion that the beating from Meyer was the direct cause of her death. It must be remembered that in Belsen in March 1945, various diseases such as typhus, spotted fever and tuberculosis were rampant and thousands were to die before and after liberation from these diseases.

The Defence Case

Meyer gave evidence to the effect that this was a case of mistaken identity: there was another SS Captain Meyer at Belsen who resembled him.

Concerning his posting to Belsen, he said that he had tried to avoid it, as he knew that the war was lost, but he had to obey orders. He did not say what steps he had taken to avoid it. He stated that he had never been a member of the Nazi party, "For family and personal reasons". (20) He denied every allegation made against him. Kramer and Klein, he believed to be humane; he did not know them well although they shared a dining room. He was of equal rank to Kramer and would speak to him about official matters (although, as he had previously stated, not about the performance of the guards, of whom he was in charge). He reiterated that he had only been inside the camp on one occasion, in August 1944, and had not seen any dead bodies. He only saw prisoners when they went out to work and they looked in good condition. He recalled an epidemic when 120 out of 180 guards died but he had no idea that hundreds of prisoners were also dying because the inside and outside guards never met. (21)

Henig Tacke, who had been a member of the guard company at Belsen, was not helpful to Meyer's defence: while stating that he did not hear of any ill-treatment or executions within the camp, he himself knew the general conditions there as he could see into the various compounds. Accordingly, the accused must also have known. Tacke said he had no idea of the

20 *ibid.*

21 *ibid.*

numbers of prisoners dying daily, nor did he know that the guards ever shot anyone. (22)

At some stage in the proceedings, the first Prosecution witness was recalled to give evidence as to the state of the Camp at liberation. In the second set of trials, affidavits were lodged to prove this. By the time of the third trial, it may have been assumed that conditions at Belsen were within judicial knowledge (“judicial notice” in English law). Exactly why this witness had to be recalled for this purpose is unclear.

Further Procedure

In his closing speech, the Defence lawyer asked the Court to forget Belsen’s association with atrocities and consider only the evidence led at the trial. Did this prove that the accused had committed the specific acts of violence with which he was charged? Defence counsel criticised the victims’ evidence, saying it was only hearsay. Clearly, it was not, as both prosecution witnesses who gave evidence were eyewitnesses to many acts complained of. His next point was well founded: as a result of Krause not giving evidence in person, he had been unable to cross-examine her. This was important in a case such as this, he claimed, where there were some discrepancies in the evidence. The other criticism he made was that Vercauteren could not supply the names of the victims, nor the date of the beatings he described. (23)

It must have been easy for the Prosecutor to undermine Meyer’s evidence, that a man in charge of SS guards for several months at Belsen did not know what was going on there. Even Meyer’s own witness, Tacke, said he could see the conditions in the camp. The Prosecutor pointed out that Meyer’s

22 WO235/489; see Phillips, Raymond. *The Belsen Trial*. London: William Hodge and Son, 1949, Colonel Backhouse at p.21, “If there is any one of the accused who suggests that he did not know what the conditions were...the Prosecution will ask you to say that it is a hopeless lie for anyone to suggest that he did not know what was happening in that camp”. WO235/13.

23 WO 235/489; WO235/490; see Lasker-Wallfisch, Anita. *Inherit the Truth*. London: Giles de la Mare, 1996 who complained about this approach.

evidence might have been more credible if he had said that he knew what was going on but was powerless to stop it. As for the witness Tacke, as a former concentration camp guard, he should consider himself lucky not to be in the dock beside Meyer. The court found Meyer guilty of both charges. (24)

The Prosecution provided details of a character witness for Meyer, Doctor August Loehdefing, Chief of the Hamburg Savings Bank, who had known Meyer in 1940. He stated that Meyer was a very reliable employee, always a truthful person and his father had been a decent man. Meyer had often discussed the SS with him and was always negative about them. While Loehdefing knew what had gone on in Bergen-Belsen, he could hardly believe that Meyer could be guilty of such atrocities. At the same time, he found it hard to believe that Meyer had been in charge of a guard company at Belsen. (25)

The Defence plea in mitigation highlighted three main points. Firstly, the accused was ordered to go to Belsen, he was a conscript and did not volunteer. Secondly, he was not a member of the SS, and, thirdly, he had spent from 17th April 1945 to 19th September 1947 and from 11th February to date, in custody. (26)

Meyer was sentenced to life imprisonment.

He petitioned against the finding of guilt on the ground of mistaken identity. This was unsuccessful and his conviction and sentence were confirmed on 4th

24 *ibid.*

25 *ibid.*

26 *ibid.* Interestingly, given his protests about never having joined the SS, Meyer had declared himself *Gottgläubig* ie believing in God, in his SS records. This was widely done by SS men who wished to show that they had severed their links with the established churches. See Hilberg, Raul. *Perpetrators, Victims, Bystanders*. London: Harper Collins, 1992, p260. Josef Kramer, who was a Roman Catholic, had done the same.

May 1948. In terms of a general clemency order of 3rd February 1950, Meyer's life sentence was reduced to a term of 21 years. (27) Meyer also received the benefit of remission of one third of his sentence for good behaviour. (28) On Christmas Eve 1954, the Queen approved the recommendation of the Foreign Secretary that Meyer's sentence be suspended forthwith. He was a free man, having served less than seven years of his life sentence.

Although Meyer had been convicted, *inter alia*, of committing one murder, he was sentenced to life imprisonment, rather than the death sentence. It is interesting to note that had the accused been so convicted in a criminal court in England, the death penalty would have applied. In the first Belsen trial, only Zoddell, a *kapo*, had received a life sentence. No detailed judgement was issued by the Court so the reasoning behind this decision is unknown. However, the circumstances in which war crimes trials were being conducted had changed by 1948 and may explain the apparent leniency of the sentence. (29)

This chapter has investigated the details and circumstances of the third Belsen trial. The British seem to have been quite tenacious in pursuing Meyer and determined to bring him to trial, despite the fact that they were running down their trials programme at this time. What makes this case particularly interesting however, are the pleas for clemency and testimonials on his behalf which flowed in to the British authorities, over a period of years. It is submitted that these petitions reflected German public opinion at this time, that of disbelief that people they knew, or knew of, had committed war crimes. These petitions, along with those relating to two other cases, will be examined in the next chapter.

27 FO371/104155.

28 see chapter 9 *infra*.

29 *ibid*.

Chapter 8

Attitudes in Germany to War Crimes Trials

The purpose of this chapter is to investigate how war crimes trials were viewed in Germany, through the study of three individual cases, two from the Belsen trials and one related case. A number of pleas for clemency and testimonials will be examined to reveal that family and friends of the accused and the wider public could not accept their guilt and asked that their cases be reconsidered. This will suggest that the German public had little knowledge of what had occurred at the trials. It was thought that the witnesses must have been mistaken or lying and that the trials had been conducted in a spirit of revenge. The attitude of the German public and politicians and campaigns in the Press put pressure on the British to release convicted war criminals.

The Case of Curt Meyer

While Curt Meyer, the accused in the third Belsen trial, was languishing in Werl Prison, his friends did not desert him. A Petition for Clemency dated 17th February 1949 was received by the BAOR from “twelve citizens of Hanover”. Walter Kasselmann appears to have been the instigator of this Petition and the following quote from the Petition will show that the Petitioners could not have followed the proceedings very closely nor understood the finding of guilt against Meyer,

It appears improbable to us that the lean Meyer has committed the actions with which he has been charged. Is a mistaken identity ruled out? According to our information, this possibility had been discussed several times during the trial. Curt Meyer is a Christian and grew up in a Christian home...(1)

The judges had decided that a mistaken identity was ruled out; the only person raising this point at the trial was Meyer. A further Petition was received from the “Lord Bishop of the Evangelical Lutheran Church of Hanover”. He

1 All petitions mentioned here in relation to Curt Meyer are contained within WO235/490.

seems better acquainted with the facts, or at least with the jargon, but is still unable to accept the court's verdict,

In view of the evidence given, the court could not have passed any judgement other than it did pass.... In view of his...character, his physical and psychological make up and above all his previous blameless record the accused can scarcely be considered capable of committing the acts of ill treatment attributed to him ... there is a certain underlying problem which points to a mistaken identity. (2)

Another friend, Käthe Pommerenke, sent a letter dated 28th June 1949 to "Princess Elisabeth of England" (*sic*). She wrote that she had known Curt Meyer for many years and it was either a case of mistaken identity or the witnesses were lying, "I give your Royal Highness my word that Mr. Meyer has never committed the cruelties of which he was accused". (3) She clearly had not followed the proceedings, as she thought the trial had been in 1949. It is unknown whether the letter reached its intended recipient but Ernest Bevin, then Foreign Secretary, sent it to the War Crimes Review of Sentences Board for consideration. (4) Frau Pommerenke sent another letter to the British Liaison office in Nuremberg in July, saying this time that Curt Meyer had been mistaken for a Wilhelm Meyer and his conviction was the result of false oaths. She said that Meyer had been weakened by starvation and ill-treatment, presumably by his British captors, to such an extent that he was unable to prepare his defence. She wanted him to get parole and she would "go security" for him. (5)

2 *ibid*; The German Evangelical Church played a big part in the call for amnesty and release of war criminals, see Frei, Norbert. *Adenauer's Germany and the Nazi Past*. New York: Columbia University Press, 2002.

3 *ibid*.

4 *ibid*. See chapter 9 *infra* on the War Crimes Review of Sentences Board.

5 *ibid*.

A Petition for Review of the Proceedings and for a retrial came from a Karlsruhe lawyer, Curt Ferdinand, Freiherr von Stackelberg, in July 1951, now acting on behalf of Meyer. He was seeking a review on the basis that the trial procedure was flawed and had not been conducted to the same high standards as it would have been in England. This was an attack on the provisions of the Royal Warrant in so far as it had altered the rules of evidence. The same criticisms as before were made: that some evidence was hearsay, that affidavit evidence had been admitted, giving the defence no chance to cross-examine witnesses on what they said were contradictory statements, and that Vercauteren could not name the victims he spoke about. Enclosed with this Petition were two letters from the Lower Saxony Tennis Club. The writer of these letters had known Meyer for twenty-five years and said he did not recognise him when he returned to Hanover from internment in 1947, as he was physically changed, "Due to emaciation and hardship suffered". The point of this was to suggest that witnesses could have been mistaken in their identification. A second letter, possibly from the same person, stated that in the twenty-five years he had known Meyer, he had never seen him carrying a stick. (6)

The lawyer had read the documents from the trial and had noted that the two witnesses who gave evidence said that Meyer was only slightly changed from when he was in the camp, whereas Meyer was greatly changed. He repeated that Meyer never carried a stick and since Mira, "Had been a portly woman", and Meyer thin, it was, "Hardly possible that he would have been capable of this effort at all." (7)

6 *ibid.*

7 *ibid.* Mira had been described as "one of the strongest people in the barracks", but this was because many of the others were bedridden: "*Eine der stärksten in der Baracke. Viele Frauen in unserer Baracke waren schon so schwach dass sie auf ihren Betten leigen und sich nicht ruhen konnten. Mira aber konnte sich noch ganz frei bewegen.*" (Many women in our barracks were already so weak that they lay on their beds and were unable to move. Mira, however, could move about freely.)

Dr Erwin Kegel, a lawyer, submitted an affidavit stating that he had witnessed a conversation in Werl Prison between Meyer and former SS *Obersturmführer* (Lieutenant) Karl Totzauer, a former Adjutant at Neuengamme, in which they discussed the various rules and regulations governing access to concentration camps. Totzauer certainly should have known the rules, but that his credibility might have been compromised by his own recently handed-down twenty year sentence for war crimes does not seem to have occurred to them. Totzauer said that Meyer could not have entered the “precautionary arrest camp” (*Schutzhaftslager*) as it was against service regulations, which were the same in all camps. Entering the camp would have serious consequences for him and result in severe punishment and transfer. Also, it was generally known that all officers who came to the SS from the *Wehrmacht* were “reactionary or unreliable”. His conclusion was that the Prosecution witnesses had been “intentionally wrong”. (8)

There were also testimonials from former colleagues at the savings bank, describing Meyer as a “thoroughly decent and agreeable colleague, a sensitive, honest and highly cultivated man, an art lover, irreproachable in character and an anti-Nazi”, and all were convinced of his innocence. (9) A former colleague at the Bank, Otto Friedrich, stated,

The sentence imposed on him is generally regretted as having its origin in the psychosis of hate in war. At his expected return to his usual place of work, which we hope will be soon, he will be welcomed by all of the colleagues with the greatest respect....(and) sympathy for the punishment inflicted upon him.(10)

8 *ibid.* Totzauer was sentenced to twenty years’ imprisonment for war crimes at the Neuengamme trial in March 1946; WO235/162; WO309/1702.

9 WO235/490. See for example the letters from Heinrich Sandler, Chief Stage Manager and actor at the Municipal Theatre, and Kurt Schmidt, Deputy Director of the Hanover Savings Bank.

10 *ibid.* Also submitted was a letter from Dr Graener, the trial lawyer, who criticised Vercauteren’s evidence.

These Petitions duly went before the War Crimes Review of Sentences Board and it was decided that there were no grounds for the exercise of clemency. (11) A further letter was received from Freiherr Von Stackelberg dated July 1952 describing Meyer's case as "tragic". Mistaken identity was raised again, also the fact that a healthy person would never have entered the camp, a "centre of contagion". Perhaps he had forgotten that Meyer said in his evidence that he did not know what was going on inside the camp, and the only time he was ever in the camp everyone looked healthy. Again there was a reference to Mira being "portly", a word never used by the witnesses, and the accused's slender build. He asserted, "Irreproachable friends describe him as a sensitive and highly cultured individual who showed an inclination for the fine things in life...he always kept aloof from Nazi ideology and was never under its influence". (12)

Various questions arise from all this correspondence. Did any of the supporters attend the trial or read reports of it in the Press? Did they have any knowledge of the previous Belsen trials and indeed of the other war crimes trials that had by then taken place in Germany, including the IMT? Meyer certainly seems to have had the respect and admiration of his colleagues and many well connected friends, all pointing out his good character. These pleas for clemency did help Meyer, who was released after serving less than seven years of his sentence. However, Meyer's was not an isolated case and having well connected friends was not necessary for a public response to the war crimes issue, as will be demonstrated in the next case.

The Case of Heinz Heidemann

At the second set of trials in May 1946, Heinz Heidemann was convicted of the same charge as Meyer, namely the ill-treatment and killing of Allied

11 *ibid.*

12 *ibid.*

nationals in Belsen. In contrast to Meyer, who was sentenced to life imprisonment, Heidemann was sentenced to death.

Heidemann was a tenant farmer, probably with a limited education and had been unable to rise above the rank of corporal, but his family and community supported him after his conviction. Heidemann's parents submitted a Petition to the authorities, asking for clemency, stating, " He has been sentenced to death on grounds incomprehensible to us... he has always been a good son, a faithful husband and a kind father...All who knew him greatly esteemed his character". (13)

The communities of Jakobi Drebber and Marien Drebber sent in petitions in support of Heidemann: one Petition was signed by 113 individuals, another by 111 individuals. The petitions stated that he had always been, "A decent, industrious and reliable person and ready to help everybody. He never did any harm, neither to men nor to animals." (14) Meta Weber, the widow of the former pastor of Drebber, sent in a testimonial saying that she had to put in a good word for him. He was, "Industrious, assiduous and ever ready to help, and did help, the distressed whenever there was need."(15) There was even a letter from the new pastor of Marien Drebber, Alexander Cohze, who had never met Heidemann, calling for clemency. He stated, "Whatever I got to know about him from talks with my charges was in his favour."(16) Heidemann, however, was one of only two accused in the second set of trials who had joined the SS as a volunteer as early as 1933 and this may have been a factor in the determination of his sentence. The pleas for clemency did not help Heidemann, who was executed in October 1946.

13 WO235/148.

14 *ibid.*

15 *ibid.*

16 *ibid.*

The Case of Friedrich Kliem

The trial of Friedrich Wilhelm Kliem was held at Hamburg in July 1946. Kliem, a carpenter, became the commandant of Neugraben labour camp in Hamburg in October 1944 and then Tiefstak camp when Neugraben was closed down. (17) He was convicted of ill-treating female Jewish prisoners *inter alia* by beating them. At his trial, Kliem freely admitted beating those who had given evidence against him and freely admitted using a rubber hose and a belt as weapons. He said he was acting on superior orders but was convicted of having committed war crimes by ill-treating Allied nationals and sentenced to 15 years' imprisonment. (18)

The following narrative illustrates again the attitude of the German public to the war crimes issue. Kliem's wife and daughter submitted petitions for clemency in 1947 and 1951, as did the "Working Community of Halle/Westphalia" in 1952. Three letters were sent to the authorities from people who had known him, including one from the Evangelical church. His wife's Petition revealed that he had repeatedly tried to get free from his duty, but in vain, "He was a soldier and had to do his duty". A lawyer, Dr Rheingans, also submitted a letter in January 1952. In spite of the evidence that Kliem himself had given at the trial, the lawyer wrote that the trial had taken place in an atmosphere of revenge and hate: the Prosecution witnesses had given exaggerated descriptions and he questioned the translation of Kliem's statements. (19) He sent in a further letter in August, stating that the witness statements were of an extremely subjective nature and appeared to have

17 WO235/149. This was one of a series of trials of those accused of committing war crimes at the Hamburg labour camps Neugraben and Tiefstak. See also chapter 5 re Anneliese Kohlmann.

18 *ibid.* Kliem had refused hospital treatment for two Jewish prisoners who had been fatally injured when a wall collapsed on them. An allegation of "killing" in relation to these women was deleted after a doctor gave evidence that the women would have died anyway.

19 WO235/149. Witness Gertrud Neumann, a former camp inmate, whom Kliem had beaten and who gave evidence against him at the trial, was used by the British as an interpreter at Kliem's interrogation. Kliem's lawyer had questioned the propriety of this at the trial.

been inspired by feelings of hatred and retaliation. Kliem remained in prison until 7th November 1955. (20)

Amnesty

These three trials, which took place between 1946 and 1948, show the level of popular support for these men who had been convicted of war crimes. They also show, in some cases, a lack of knowledge of the charges of which the accused had been convicted and general details of the trials, or a resolute and widespread refusal to believe the evidence. Quite simply, these letters and petitions reflected the wider views of German society, that of denial that those Germans convicted of war crimes by Allied courts were, in fact, war criminals. (21)

From 1946, through the creation of the Federal Republic of Germany in the autumn of 1949, there were growing public demands for a general amnesty and release of all those convicted by Allied military tribunals. The Amnesty Law of 1949 had been one of the first steps taken in this direction by the new *Bundestag*, to be followed by another Amnesty Law in 1954. (22) In the 1950s, Nazi crimes were seldom prosecuted in the Federal Republic and sympathy for National Socialism was widespread, especially within the judiciary. For instance, in 1948, seventy-one per cent of judges and lawyers in Lower Saxony were former Nazis. (23)

In the autumn of 1953, there was a campaign in the German Press against the alleged harsh conditions faced by convicted war criminals in Werl Prison,

20 *ibid.* The Mixed Consultative Board considered F.W. Kliem's sentence on 12/11/54 but made no recommendation: FO371/109727.

21 Dale Jones, Priscilla. 'British Policy towards Minor Nazi War Criminals 1939-58'. Unpublished PhD Thesis, University of Cambridge, 1990, p336, p350; Tom Segev interviewed Kramer's widow and son in the 1970s and wrote that the son, Karl Heinz, said, "It's horrible what they did, but my father was not part of all that": Segev, Tom. *Soldiers of Evil*. London: Grafton Books, 1990, p72.

22 see Frei, Norbert, *Adenauer's Germany* op. cit., p67.

23 Biddiscombe, Perry. *Denazification*. Stroud: Tempus, 2007, p98.

as part of a German drive to win their release. (24) It was noted in the British Foreign Office that the campaign at times “assumed a virulent character” and was directed against the prison governor, who was alleged to have introduced a harsher regime. (25) The British High Commissioner, Sir Frederick Hoyer Miller, inspected the prison and issued a press statement refuting the allegations. He found that the charges were unfounded and were, “Part of an organised campaign by persons favouring a general amnesty for war criminals”. (26)

Over the years, politicians subtly changed their vocabulary when discussing war crimes: *Kriegsverbrecher* became *sogennante Kriegsverbrecher* or *Kriegsverurteilter* (so called war criminal or sentenced because of the war). (27) Konrad Adenauer, the West German Chancellor, and other politicians, drew a distinction between “real war criminals”, who were described as “asocial elements”, and the “condemned soldiers” who had “simply done their duty”. He was similarly, “Convinced that most German war criminals had merely followed orders...and were thus wrongly imprisoned”, (28)

When this was the position adopted by the press and politicians, especially those like Adenauer who had been an opponent of the Nazis, it is possible to see how this misconception took hold in German society and fuelled the campaign for release of convicted war criminals. (29)

24 FO371/104155 CW1661/249.

25 *ibid.*

26 *ibid.*

27 Bloxham, Donald. *Genocide on Trial-War Crimes Trials and the Formation of Holocaust History and Memory*. Oxford; New York: Oxford University Press, 2003, p149; Frei, Norbert, *op. cit.*, chapter 8 generally; Bloxham, Donald. ‘The Genocidal Past in Western Germany.’ *European History Quarterly*, 34 (3) (2004).

28 Frei, Norbert, *op. cit.* p309; Dale Jones, Priscilla, Thesis, *op. cit.*, p337.

29 Bloxham, Donald. ‘The Holocaust on Trial: The War Crimes Trials in the Formation of History and Memory.’ Unpublished PhD Thesis, University of Southampton, 1998, p267; Kochavi, Arieh. *Prelude to Nuremberg*. Chapel Hill, N.C.; London: University of North Carolina Press, 1998.

In 1954, ninety-one war criminals who had been executed, including Josef Kramer and Irma Grese, were exhumed and re-interred in a cemetery in Hamelin by the German authorities in response to pressure from German nationalist elements. In Britain, the House of Commons was of the opinion that, "Such arrogant repudiation of guilt proves Germany to be still unfit to take her place in the community of civilised nations". (30)

This chapter has illustrated the attitude of the German public to the war crimes trials. The next chapter discusses how the British ran down their war crimes programme and the steps they took to bring about the release of those already sentenced. It will consider the extent to which German public opinion influenced this policy.

30 *The Times*, 6/3/54. See also Brown, Daniel Patrick. *The Beautiful Beast*. Ventura, California: Golden West Historical Publications, 1996.

Chapter 9

The End of the Trials and Release of War Criminals

There can be no doubt that the British Government was influenced by the German campaign for amnesty for war criminals. It was noted in the Foreign Office that German demands for amnesty were often made conditions for cooperating with Britain and the United States on defence issues. (1) Sir Kenneth Younger, a member of the Cabinet, stated that Britain had, "A strong interest in mitigating public resentment in Germany". (2) Lord Hankey, who opposed war crimes trials and thought they were insulting and humiliating to the Germans said, "The sting of war crimes trials ought to be removed as soon as possible to promote good comradeship that is essential to the defence of common interest and restoration of peace". (3)

It was not only German attitudes, however, that brought about the end of the trials programme. Britain had always been reluctant to prosecute war criminals and started discussing an end date for the trials in the second half of 1945. (4) This attitude stemmed from a general lack of interest in war crimes by officials in the major Government departments, compounded by personnel shortages, as a result of demobilisation, and a lack of physical resources, such as transport. (5)

In October 1945, the Attorney General, Sir Hartley Shawcross wrote to the Prime Minister, Clement Attlee, pointing out that there were potentially 20,000 suspected war criminals for trial in the British Zone of Occupation. (6) He said

1 Dale Jones, Priscilla. 'British Policy towards Minor Nazi War Criminals 1939-58.' Unpublished PhD Thesis, University of Cambridge, 1990, p336.

2 *ibid.* p337.

3 Maugham, Viscount. *U.N.O. and War Crimes*. London: John Murray, 1951.

4 Bloxham, Donald. 'British War Crimes Trial Policy in Germany, 1945-57.' *Journal of British Studies*, 42 (2003), p107; Dale Jones, Priscilla. 'Nazi Atrocities against Allied Airmen.' *The Historical Journal* 41 (1998), p548; Bower, Tom. *Blind Eye to Murder*. London: Warner Books, 1997.

5 Bloxham, Donald, *op. cit.*, p108.

6 Dale Jones, Priscilla, *op. cit.*, p548.

that at least ten per cent of this number had to be prosecuted as an absolute minimum. Shawcross picked 30th April 1946 as a non-binding target date for the end of war crimes trials, stating that German minor war crimes trials had to be treated as a matter of great urgency. By that date, he said, 500 of the most serious cases should have been prosecuted. (7) In the meantime, Foreign Office officials started asking what number of prosecutions between 2000 and 20000 would be politically acceptable. (8) By April 1946, the target of 500 cases had not been met. Moreover, the emphasis on “cases” had been altered to “individuals”, apparently by the War Office, without comment by the Foreign Office, and even that number had not been achieved. (9) In January 1946, Shawcross had written to Attlee that, “At the present rate the trial of war criminals will go on until the crack of doom... the Commands have completely failed to treat this matter as one of the highest priority or indeed of any urgency at all.” (10)

It was agreed that trials should continue until the end of the year and then a decision made to prosecute only the most serious cases. Additionally, it was decided in October 1946 that no case should be pursued where an accused had been in custody for over six months and whose sentence was unlikely to be more than a year. (11) On 4th November 1946, the Cabinet officially declared that the Government should pursue a policy of cessation of war crimes trials. This was almost exactly two years after it had decided to implement a prosecution policy. However, the feedback was that instead of diminishing, the number of new cases was actually increasing and the trials were unlikely to end before December 1947. (12) It seemed possible that the

7 *ibid.*

8 FO371/50991 U8558/16/73 Sir Basil Newton.

9 Dale Jones, Priscilla, *op. cit.* pp.548-551.

10 *ibid.* p.550; Bower, Tom, *Blind Eye to Murder*, *op. cit.*, chapter 9.

11 *ibid.* p553.

12 *ibid.* p552.

trials could go on for years. (13) As of February 1948, there were five courts sitting almost continuously at Hamburg, which had become the war crimes trials centre. (14)

The Secretary of State for War proposed that as many trials as possible should be concluded by the end of March 1948, thereafter a small staff retained to deal with remaining serious cases. (15) However, the British Military Governor, General Sir Brian Robertson, disagreed and proposed that all trials should end by 30th June 1948. He felt that war crimes were different from ordinary crimes, as most war crimes had been carried out under superior orders in Nazi Germany, where people were motivated by fear. (16) Consultations between Government departments dragged on and it was finally decided that all remaining trials (with certain specified exceptions) had to begin by 1st September 1948. Ernest Bevin, the Foreign Secretary, who initially had been in favour of war crimes trials, now said,

War crimes ...were committed by individuals often under the influence of the body to which they had belonged. Their punishment is more a matter of discouraging future generations than meting out retribution to the guilty. If the German people have not learnt their lesson by now, further trials will not teach it. (17)

By August 1948, it was agreed that active steps would not be taken to pursue persons not already in custody. (18) Winston Churchill, who once had said that retribution should be among the major purposes of the war, had changed his position by October 1948, when he stated in a House of Commons debate,

13 *ibid.*

14 WO309/1646.

15 FO371/70815; Dale Jones, Priscilla, *op. cit.*, p556.

16 *ibid.* Robertson considered the continuation of the trials to be repugnant and wanted the German courts to take over the trials. See also Dale Jones, Priscilla, *Thesis, op. cit.*, p227.

17 Dale Jones, Priscilla, 'Nazi Atrocities against Allied Airmen', *op. cit.*, p561.

18 *ibid.* p563.

“Retributive persecution is of all policies the most pernicious. British policy should henceforth be to draw a sponge over the past... There can be no revival of Europe without the active and loyal aid of all the German tribes.”

(19)

The urge to divest Britain of the responsibility for conducting war crimes trials was given an impetus by the changing political situation in Europe. With the onset of the Cold War, it became imperative to secure German co-operation as a bulwark against communism. Pursuit of this aim sounded the death knell for the continuation of Allied war crimes trials. (20) It also helped bring about the release from custody of those who had already been convicted. Keeping war criminals in jail had become an administrative and financial burden and stood in the way of the new policy of integration (21)

The War Office decided by the end of May 1948 that there should be a review of all war crimes sentences. In January 1949, a War Crimes Review of Sentences Board, the Wade Board, was set up by the Government to review sentences passed in Royal Warrant trials in Europe and to ensure “uniformity of punishment.” (22) This resulted in a substantial reduction of terms of imprisonment, as it was impossible to increase them. The review was said to be final. (23)

19 Parliamentary Debates, House of Commons, 5th Series, Vol. 457, Cols.256-7; Debate, 28/10/1948; Bower, op. cit., p290.

20 see Dale Jones, Priscilla, Thesis, op. cit., pp.336-7; Bloxham, Donald. *Genocide on Trial- War Crimes Trials and the Formation of Holocaust History and Memory*; Oxford; New York: Oxford University Press; 2003; Bloxham, Donald. ‘The Genocidal Past in Western Germany.’ *European History Quarterly*, 34 (3) (2004); Sewell, Mike. *The Cold War*. Cambridge: Cambridge University Press, 2002 .

21 Kochavi, Arieh. *Prelude to Nuremberg*. Chapel Hill, N.C.; London: University of North Carolina Press, 1998, p244.

22 Bloxham, ‘Donald, British War Crimes Trial Policy’, op. cit., p113; Dale Jones, Priscilla, Thesis, op. cit.

23 Bloxham, Donald, op. cit. p114; Dale Jones, Priscilla, Thesis, op. cit.

A number of clemency measures were also introduced. From June 1949, the Commander-in-Chief in Germany was permitted to grant up to a third remission of sentence for good behaviour. (24) From early 1950, this was also to apply to life sentences, which were commuted to twenty-one years. (25) In 1949, clemency powers that had been in the hands of, first, the Secretary of State for War and then the Foreign Secretary, were transferred to the High Commissioner for Germany, General Sir Brian Robertson and then to his successor, Sir Ivone Kirkpatrick. The latter was to prove an enthusiastic supporter of clemency measures, to the extent that, on 31st May, 1951, this power was removed from him by the Cabinet, and in future, clemency was to be exercised by the Queen, on the advice of the Foreign Secretary. (26)

In December 1951, it was decided that pre-trial custody was to be counted towards the sentence. This led to the early release from Werl Prison on 22nd December 1951 (the Christmas Amnesty) of five female guards or *kapos* from Belsen, among others, who had received ten-year sentences. (27) Another clemency measure was introduced in April 1955 to reduce all twenty-one year sentences of imprisonment to twenty years. (28)

Further clemency boards were set up by the Government, such as the Mixed Consultative Board (1953) and the Mixed Board for War Criminals, the latter

24 Dale Jones, Priscilla, Thesis, op. cit. p333; on clemency generally, see Kochavi, Arieh. op. cit. p245.

25 Kochavi, Arieh, *ibid*; FO371/85888.

26 Dale Jones, Priscilla, op. cit. pp.341-342. Kirkpatrick continued to prepare clemency recommendations to the Foreign Office. His decision-making powers had been removed for fear that he was being unduly influenced by German public opinion.

27 Reitlinger, Gerald. *The Final Solution*. New York: Barnes, 1961, p470; *The Times*, 24/12/51; Taake, Claudia. *SS Frauen vor Gericht*: Oldenburg, 1998; those released were Bothe, Haschke, Sauer, Hempel and Ilse Forster. A total of forty-two were released, of whom twenty-one were former concentration camp guards.

28 Dale Jones, Priscilla, Thesis, op. cit., p334. To avoid criticism for the implementation of this measure, the Foreign Secretary ordered that it should not be made public.

of which carried out the fourth review of sentences between 1955 and 1958. (29) By 1957, the British had released all the war criminals held in Werl prison. (30) Before releasing them, the British had instructed that publicity was to be avoided, they were to be released at intervals and, if possible, their release was to be justified on health grounds. (31) Political expediency had triumphed over moral and legal obligations.

This chapter illustrates that the British took gradual but persistent steps to withdraw from involvement in war crimes trials almost from the start. It also highlights the numerous clemency measures implemented by the British from 1949 onwards which facilitated the release from custody of persons who had been convicted of war crimes only a short time previously. This chapter, together with the previous chapter, demonstrates the effect of German public and political opinion on British war crimes policy.

29 The Mixed Consultative Board considered F.W.Kleim's sentence on 12/10/54 but made no recommendation: FO371/109727. These Boards were able to consider elements such as the accused's personal responsibility for the crime and also the superior orders defence as well as other factors; Dale Jones, Priscilla, Thesis, op. cit. p343.

30 Frei, Norbert. Adenauer's Germany and the Nazi Past. New York: Columbia University Press, 2002, p226. When the Mixed Board took over, the British only had twenty-six war criminals left in Werl prison.

31 Dale Jones, Priscilla, Thesis, op. cit. p349.

Chapter10

Conclusion

The aim of this dissertation was to undertake an investigation of the three Belsen trials and find out how successful they were in achieving their aim of punishing war crimes. In the introductory chapters of this dissertation, a number of questions were raised, including the subject matter of the trials, the personnel involved and the sentences imposed. The whole trial process was studied, from the early 1940s, when the British were considering a war crimes policy, until the mid 1950s when, through various measures undertaken by the Allies and the new West German state, war criminals were released from prison and had their convictions quashed by Government amnesty.

During the course of this investigation, it was revealed that the British, having initially disbelieved reports of Nazi atrocities, never seemed to muster much enthusiasm for holding war crimes trials. Their reluctance to prosecute war criminals was only matched by their desire to withdraw from the trials programme as soon as they reasonably could. However, it would be unfair to attribute the lethargic attitude of Whitehall officials to the men who actually prosecuted the cases in court.

The trials attracted criticism but it must be remembered that these Courts were staffed by amateur judges who had to deal with unprecedented crimes using law that was unfamiliar even to the lawyers, and who were given no guidelines on sentencing. Justice demanded that as many offenders as possible be brought to account for their actions in the concentration camps; it was unfortunate that the legal approach adopted by the British failed to accomplish this.

The fact that only “war crimes” against “Allied nationals” were pursued by the British, excluding thereby German Jews, Jews from Axis countries and stateless persons, whose citizenship had been revoked by the Nazis, was a great disappointment to the Jewish organisations and pressure groups who had struggled during the war years to persuade the Allies to take a different approach. Instead of tailoring the law to suit the hitherto unprecedented

crimes, the British proceeded by Royal Warrant, which was too narrow in scope for its purpose.

In the first trial especially, which had the world's attention, the framing of the charges did little to describe the extent of the crimes alleged to have been committed and remained silent about the fate of the Jews. The charges in the second and third trials were no better. According to Peter Haas, because the charges revolved round trying to prove individual criminal wrongdoing, the larger issue of the Holocaust never became explicit. (1) Despite this, it would be unsafe to assert that there was any deliberate attempt to "write out" the collective fate of the Jews; the fact that the crimes against the Jews did not gain the publicity they deserved in the trials is more likely to have been as a result of legal conservatism.

As far as the accused were concerned, there are so many criticisms of the investigation and legal methods employed in the trials, that such a prosecution today would never take place; however, they did at least have the benefit of a trial, albeit one where the usual laws of evidence had been amended. It is undoubtedly true that the use of affidavit evidence, depriving the Defence of the right to cross-examine witnesses, resulted in unfairness to the accused. However, in order to proceed with the trials, there was little alternative. If these cases are seen as unfair to the accused, the case of Rex and Grams illustrates how absurd the trial process had become: by evading justice for thirty-five years and securing trial by a German court instead of a British military tribunal, these two former SS men were able, literally, to get away with murder.

Ultimately, it proved to be immaterial whether the war crimes trials were models of exemplary justice, as anything they achieved was undermined by executive action. In the face of deteriorating relations with the Soviet Union,

1 Haas, Peter. *Morality after Auschwitz*. Philadelphia: Fortress Press, 1992, p204.

the British Government wanted West Germany as an ally. In these changed circumstances, they took greater cognizance of German political and public opinion, which demanded an end to the trials and the release of convicted war criminals. The constant review of sentences and introduction of clemency measures revealed a determination to empty Werl Prison as soon as possible, while trying to avoid criticism at home for taking a soft line on war criminals.

(2)

The Bergen-Belsen *Gedenkstätte* states that there were some 480 SS members at Belsen during its existence, and there were several thousand at Auschwitz. However, only those guards or functionaries who had been caught at the liberation of Belsen, or were subsequently caught, could be prosecuted. Many SS personnel who had worked at both Auschwitz and Belsen were never prosecuted, or successfully evaded prosecution for so long that the chances of punishment were negligible, as the case of Rex and Grams shows.

(3) In these Belsen trials, fifty-five people, of whom forty-two were members of the SS, were prosecuted and forty convicted. Fifteen were executed and the rest served short sentences of imprisonment.

The Reverend Leslie Hardman, the Jewish Army Chaplain who was present at the liberation of Belsen and subsequently worked with the victims, stated,

2 see chapter 9, *supra*.

3 There were other prosecutions in respect of war crimes perpetrated at Auschwitz. In Poland in November and December 1947, forty former Auschwitz personnel were tried. All but one (Dr Hans Münch, see chapter four *supra*) were convicted, twenty-three were sentenced to death and sixteen to various terms of imprisonment. In a separate trial, Rudolf Höss was convicted and hanged within Auschwitz itself. Höss's successor, Richard Baer, died whilst awaiting trial, having been arrested only in 1960. Twenty others were prosecuted at Frankfurt am Main in a two-year trial which began in 1963. Seventeen were convicted and the sentences imposed ranged from life to three years' imprisonment. Pery Broad, quoted in chapter three, was sentenced to four years' imprisonment "for aiding and abetting murder on at least twenty-two separate occasions, two involving the murder of at least 1000 people". Wilhelm Boger, who had been in the Political Department at Auschwitz (see Quakernack, chapter five) was sentenced to life plus five years for "murder on at least 114 separate occasions, for aiding and abetting the murder of 1000 people and for aiding and abetting the murder of at least ten

“Far too many people have got away. They have hardly scratched the surface of the enormity of this evil.” (4) More than 200 SS members deployed at Bergen-Belsen were never tried by a court, although their names are known. (5) Taking the whole experience of the Belsen trials and the Rex case together, perhaps we can conclude that Gideon Hausner, Eichmann’s Israeli Prosecutor, was right when he said that only a Jewish court could render justice to the Jews. (6)

The views of both Anita Lasker Wallfisch and Hadassah Rosensaft are important: both had experienced Auschwitz and Belsen and Rosensaft’s entire family was murdered in the gas chambers at Auschwitz. Both thought the first trial was a farce. How could a trial deal with crimes so shocking and extensive? Lasker asked if it were possible to apply the law in the conventional sense to crimes so far removed from the law as the massacre of millions of people. (7)

Yet, what realistic alternatives were there? Churchill had remarked at the Tehran Conference in 1944 that the British Parliament would never accept mass executions and it is hard to believe that ordinary British soldiers would have been prepared to carry them out. To do nothing would have been unacceptable and realistic alternatives to a trials programme were lacking. (8) As Robert H. Jackson pointed out in his “Report to the President”, “To free (the accused) without a trial would mock the dead and make cynics of the

people”. See Steinbacher, Sybille. *Auschwitz- A History*. London: Penguin Books, 2000; United Nations War Crimes Commission. *Law Reports of Trials of War Criminals*, vol. 7; Wittman, Rebecca. *Beyond Justice*. Cambridge, Mass.: Harvard University Press, 2005.

4 Quote from the obituary of Rev. Leslie Hardman, *The Times* 8/10/08. Zoddell was counted here as a sentence of imprisonment. He was not executed for war crimes.

5 Information supplied by *Bergen Belsen Gedenkstätte*.

6 Arendt, Hannah. *Eichmann in Jerusalem*. London: Faber and Faber, 1963, p4.

7 Lasker-Wallfisch, Anita. *Inherit the Truth*. London: Giles de la Mare, 1996, p127.

8 see Tusa, Ann and Tusa, John. *The Nuremberg Trial*. London: BBC Books, 1995; Taylor, Telford. *The Anatomy of the Nuremberg Trials*. London: Bloomsbury, 1993.

living”. (9). War crimes trials could be seen as a compromise. That they could and should have been done better and that more resources should have been allocated to them is self-evident but it would be too easy to condemn the proceedings as a farce or a waste of time. Although only five per cent of the initial figure of war criminals in the British Zone were prosecuted, the real betrayal of the victims was that those who were convicted were not made to serve the sentences that had been imposed on them by the Courts. The final word should be left to Arne Moi, who wrote, “No tribunal in the world could possibly pass judgement on these crimes in their entirety. To a certain extent, justice has been done, if there can be justice at all in this matter”. (10)

9 Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London 1945. Washington, D.C.: Department of State, 1949, pp.46-50, extract reproduced in Marrus, Michael. *The Nuremberg War Crimes Trial 1945-46, A Documentary History*. Boston: Bedford Books, 1997.

10 Moi, Arne. *Das Lager: Ein Norweger in Belsen*. Göttingen, 2002, p48.

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Appendix

Names of accused and sentences in the first Belsen trial

Kramer, Josef	death, executed
Klein, Fritz	death, executed
Weingartner, Peter	death, executed
Hoessler, Franz	death, executed
Francioh, Karl	death, executed
Pichen, Ansgar	death, executed
Stofel, Franz	death, executed
Dorr, Wilhelm	death, executed
Grese, Irma	death, executed
Volkenrath, Elisabeth	death, executed
Bormann, Juana	death, executed
Zoddel, Erich	life sentence
Ostrowski, Vladislaw	15 years, released 1955
Kopper, Helena	15 years, released 1952
Kulesa, Otto	15 years, released 1955
Schreirer, Heinrich	15 years, released 1950
Ehlert, Herta	15 years, released 1953
Lohbauer, Hilde	10 years, released 1950
Aurdzieg, Antoni	10 years, released 1952
Roth, Johanne	10 years, released 1950
Starostka, Stanislaw	10 years, released 1950
Forster, Ilse	10 years, released 1951
Bothe, Herta	10 years, released 1951
Haschke, Irene	10 years, released 1951
Sauer, Gertrud	10 years, released 1951
Hempel, Anna	10 years, released 1951
Fiest, Gertrud	5 years, released 1949
Burgraf, Medislaw	5 years, released 1949
Walter, Frieda	3 years
Lisiewitz, Hilda	1 year

The undernoted were found Not Guilty

Kraft, George

Klippel, Josef

Mathes, Fritz

Egersdorf, Karl

Lothe, Ilse

Schmitz, Oscar

Schlomowitz, Ignatz

Polanski, Anton

Otto, Walter

Barsch, Erich

Forster, Ida

Opitz, Klara

Klein, Charlotte

Hahnel, Hildegard

Source: Taake, Claudia, *SS Frauen vor Gericht*, p.130; *Niedersächsisches Landeszentrale für politische Bildung*, 1995, S.231 f

Names of accused and sentences in the second Belsen trial

Heidemann, Heinz	death, executed
Quakernack, Walter	death, executed
Reddehase, Karl	death, executed
Wagner, Theodor	20 years, sentence not confirmed*
Heise, Gertrud	15 years, revised August 1946, reduced to 7 years
Linke, Marta	12 years, revised August 1946, reduced to 7 years
Kohlmann, Anneliese	2 years
Kasimierz Cegielski	death, executed

Source: Taake, Claudia, *SS Frauen vor Gericht* p.131; *Niedersächsisches Landeszentrale für politische Bildung*, 1995, S.233

* Wagner's sentence was not confirmed by the military authorities and orders were given for his release. He was still in custody in October 1946.

Name of accused and sentence in the third Belsen trial

Ernst Julius Max Hans Curt Meyer Life imprisonment, released 1954

Source: WO235/489; WO235/490
