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KURT MEYER ON TRIAL

[A Documentary Record]

In late 1945, a Canadian military court sitting in occupied Germany convicted Waffen-SS General Kurt Meyer on charges related to the murder of Canadian prisoners of war in Normandy. It was Canada's first entry into the war crimes field and the trial raised several important operational and legal issues, particularly with regard to command responsibility. Although sentenced to death by firing squad, Meyer was saved by the controversial decision of Canadian military authorities to commute the sentence and was released after less than a decade of imprisonment in New Brunswick and West Germany. Meyer's war crimes trial and the final result caused consternation and outrage among the Canadian public at the time. It remains among the most contentious episodes in Canadian military history.

This collection brings together previously unpublished documents related to Canada's prosecution of Kurt Meyer, including the original trial transcript and selected materials to situate the trial in its political, military, diplomatic and legal context. Augmented by an extensive introduction and bibliography of related works, these documents allow readers to understand the factors that led Canadian authorities to try Meyer for war crimes and to determine for themselves his relative guilt or innocence. Canada's involvement with the prosecution of war crimes in the former Yugoslavia and establishment of the International Criminal Court makes the Meyer case especially relevant, and the concept of command responsibility is now embodied in domestic legislation like *The Crimes Against Humanity and War Crimes Act*.

Kurt Meyer on Trial: A Documentary Record will interest members of the military profession, legal practitioners and political decision-makers, as well as students of Canada's participation in the Second World War.

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CANADIAN DEFENCE ACADEMY PRESS

Edited and introduced by
P. Whitney Lackenbauer
and
Chris M.V. Madsen

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Kurt Meyer on Trial

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Kurt Meyer on Trial

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Cover photo: Kurt Meyer in Greece, 1941, where he gained a reputation for speed and audaciousness. This photograph, which appeared on the cover of *Illustrierter Beobachter* (Illustrated Observer) with the heading of “Heavy Artillery to the Front”, is one of the most famous images of the Waffen-SS.

Credit: J.J. Fedorowicz Publishing / Jost Schneider

Kurt Meyer on Trial: A Documentary Record

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P. Whitney Lackenbauer &
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Foreword

On the 6th of June 1944, the 3rd Canadian Infantry Division together with the 2nd Canadian Armoured Brigade landed on the Calvados coast of France as part of the Allied liberation armies. Their task was to break through the Atlantic Wall in the Juno sector and advance inland, taking up defensive positions along the Caen-Bayeux railroad. They had been told to expect strong counterattacks from one or more German Panzer divisions. Casualties on D-Day included 359 fatalities.

During the week-long battle for the bridgehead, a further 675 young Canadians lost their lives, including more than 150 who were executed after becoming prisoners of war. Elements of the 12th SS Hitler Youth Panzer Division were responsible for the murders in as many as thirty separate incidents. Investigations into these war crimes began in July 1944 and continued until the end of the war, but it proved difficult to identify or apprehend those who might have been responsible for the executions. Attention increasingly focused on Kurt Meyer, who had commanded the 25th Panzer Grenadier Regiment during the initial Normandy battles.

Meyer's case was among the first to apply the concept of command responsibility, involving the extent of an individual commander's culpability for allegedly illegal actions of subordinates. The introduction to this book frames several core issues at the heart of the trial: command responsibility as a legal concept; establishing when and where actions took place; the nature and intent of Meyer's orders as a commanding officer; and the credibility of the testimony given by the various witnesses. The decision to commute Meyer's sentence to life imprisonment, and the firestorm of public outcry that it provoked, are placed in the context of Major-General Chris Vokes' hesitation to carry out a death sentence for "vicarious" command responsibility. Once Meyer was in prison, sympathetic Germans, Canadian lawyers, and journalists lobbied for his release. His transfer to Germany and eventual release are situated in discussions over the future of the Western Alliance. In September 1954, less than a decade after his conviction for war crimes, Meyer was a free man. Many Canadians were bitter at the time, and many historical commentators remain bitter today.

This collection of documents provides scholars, students and military practitioners with an opportunity to reflect upon the issue of command responsibility. The trial transcript shows how the prosecution tried to prove command responsibility as well as the defence arguments against such charges. Post-trial appeals for clemency questioned the legality of the case and the evidence presented therein. By amassing such a wealth of primary documentation in one volume, this book allows readers to weigh the conflicting evidence and perspectives in historical context. You will read Jan Jesionek's damning testimony against Meyer during the trial, the defendant's hostile exchanges with prosecutor Lt-Col B.J.S. Macdonald, and Maj-Gen Vokes' justification for commuting Meyer's death sentence to life imprisonment. The post-trial documents also reveal much about the politics of war crimes and the mounting pressure on Canada to release Meyer.

As with all primary sources, the documents reprinted in this book must be critically analyzed to determine the veracity of the evidence provided by the participants and contemporary commentators. I have argued elsewhere that Canadian historians have tended to become mesmerized by Meyer's self-serving accounts claiming that his under-strength battle groups outfought the Canadians virtually without assistance. During his war crimes trial, Meyer matched his propensity to self-aggrandize with a proclivity to deny any responsibility for the wrongdoings committed by his subordinates. Meyer becomes less sympathetic when the full details of the outrages against Canadian soldiers are disclosed through witness testimony and reconstruction of events before the court. Justification from an operational perspective remained important and certainly tempered the court's eventual verdict, though the killing of prisoners of war after acceptance of surrender and interrogation definitely contravened the laws of war.

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The editors' introduction also provides an analytical overview of how historians, journalists and documentary filmmakers have characterized the Meyer trial since 1946. Readers can draw their own conclusions based upon this valuable resource. *Kurt Meyer on Trial: A Documentary Record* reveals much about the story of Brigadeführer Meyer, but it is also a fitting tribute to the Canadian soldiers killed by the 12th SS Panzer Division during the Battle of Normandy.

Terry Copp
August 2006

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Preface

The Canadian Forces Leadership Institute (CFLI) is proud to release another publication in its Strategic Leadership Writing Project under the auspices of the Canadian Defence Academy (CDA) Press. Our intention has always been to create a distinct Canadian body of operational leadership knowledge so that professional development centres, military professionals, civilian members of defence, scholars and the public at large could study Canadian examples of military leadership and leadership related concepts and subjects instead of the traditional reliance on foreign allied examples. After all, our military history is rich with examples and, moreover, they are more pertinent and relevant to our own military culture, temperament and character.

Significantly, our goal is being achieved through the collaborative efforts of CFLI, Canadian Forces personnel, academic institutions and individual researchers and scholars. Together the body of Canadian specific military literature is growing and it is providing the necessary examples and reference sources for military and civilian institutions across the country, as well as internationally.

This book, *Kurt Meyer on Trial* is a significant addition to the project. Although focusing on a notorious German Waffen SS officer in the Second World War, it has a very distinct Canadian connection. It examines the trial of "Panzer Meyer" and his responsibility, as the Commander of the 12th SS Hitler Jugend Division, for the murder of Canadian prisoners during the battle of Normandy in June 1944. As such, this volume provides a great case study of command responsibility. The authors, Drs. Whitney Lackenbauer and Chris Madsen, provide the quintessential compendium of the case in question.

They begin with an excellent introduction that provides a detailed synopsis of the case, as well as background to Kurt Meyer himself. Although the incident itself has been well covered in other books, the editors in question provide, for the first time, the actual proceedings of the trial. In addition, this book provides varied documentation (e.g. media accounts, correspondence, Cabinet minutes and Parliamentary Debates) that situates the trial and underlying issues of command responsibility in a historical context. In the end, the trial, the commutation of Meyer's death sentence to life imprisonment and then his subsequent release less than 10 years later all stirred strong reactions in Canada. This volume now allows readers to conduct their own analysis by providing them the background, context and documentary evidence, all in a single source.

I believe you will find this book of great interest and value whether you are a military professional, scholar or simply interested in the study of command and leadership. Importantly, it provides an in-depth reference source for further reflection, study and debate on the Kurt Meyer case study specifically, or of command responsibility in more general terms. As always, we at CFLI invite your comment and discussion.

Colonel Bernd Horn
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Introduction

P. Whitney Lackenbauer and Chris Madsen

"Probably no single event of World War II aroused more widespread and continued interest in Canada than the trial and subsequent treatment of S.S. Major-General Kurt Meyer." So penned Lieutenant-Colonel Bruce Macdonald, QC, the prosecuting attorney who framed the case against Meyer and the Canadian war crimes regulations under which the Nazi general was tried. Macdonald's assertion was an overstatement – there were many aspects of the Second World War that captured the Canadian imagination – but there is no doubt that the legal proceedings and sensational aftermath of the Meyer trial generated significant political, media and public discussion. If reports of Nazi atrocities committed against other peoples seemed "unreal and unbelievable in this land so far removed from the turmoil of battle," the murder of Canadian prisoners at the hands of the Waffen-SS brought the matter home to Canadians with unequivocal force. Macdonald observed that "angry Canadians in all walks of life demanded the apprehension and punishment of those responsible."[1] As the public followed the trial of Meyer and his subsequent fate in the press and in Parliament, Meyer came to personify for many Canadians the image of the aggressive and ruthless Nazi superman fighter, the quintessential example of Nazi brutality and culpability for atrocities committed against Canadians on the battlefields of Northwest Europe. His became a household name loathed throughout Canada.

The murder of Canadian prisoners of war in Normandy, and the subsequent trial of Kurt Meyer for responsibility, continues to intrigue Canadians and provoke discussion. At the heart of the debate is the trial, the proceedings of which are published here for the first time. But the story does not end with the court's verdict – the commutation of Meyer's death sentence to life imprisonment, and his release within a decade, all precipitated strong reactions in Canada. The documents in this volume (media accounts, correspondence, Cabinet minutes, and House of Commons debates) help to situate the trial and underlying issues of command responsibility in historical context. *Kurt Meyer on Trial* makes the contemporary documentation regarding the trial of Kurt Meyer more accessible than ever before. It will facilitate continued debate on the basis of evidence, and allow generations of Canadians to reflect upon our first foray into the world of war crimes.

Military Law and War Crimes

Armed forces are subject to a myriad of legal rules, regulations, and orders on and off the battlefield. These rules set out minimum standards of conduct between combatants and ensure predictable behaviour on opposing sides. They are established in national codes of service discipline applicable to soldiers, and international norms which encompass accepted custom and codified law. It was not until the early 20th century that international instruments, such as the Hague and Geneva Conventions, were signed and ratified by countries who agreed to adhere to their provisions.[2] Since this time, armed forces possess a positive obligation under international law to make known expected standards of conduct through training, publications and doctrine, as well as to incorporate sanctions in applicable military law at the national level. Alleged transgressions or violations of the law warrant thorough investigation as soon as they become known, with a view toward possible prosecution before legally-constituted courts. An officer or soldier so charged may face trial by court martial or special military court in one's armed forces or that of a victor power. In certain circumstances, ad hoc tribunals formed for the purpose of judging heinous war crimes, as in the former Yugoslavia and Rwanda, or even the permanent standing International Criminal Court, could assert jurisdiction.[3] Military members who choose to violate the laws governing war for whatever reason should know they could be held legally responsible for their actions. Although the application of the law is tied to the vicissitudes of politics, ideology, and public sentiment – with all the concomitant difficulties – legal standards and vigilance are important. The number of commanders actually tried before military and civilian

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courts on charges of war crimes has been small, but the effort remains worthwhile if the dictates of humanity and fairness are to be upheld in the world of conflict between nations and peoples. Canada's first experience with the prosecution of war crimes against Canadians arose from the trial of Kurt Meyer in accordance with existing international and national law.

At the time of the Second World War, both Canada and Germany adhered to international conventions in force. By virtue of its ties to the British Empire, the Dominion of Canada treated treaties and conventions signed and ratified by Great Britain as those concluded by Canadian representatives.[4] Regulations annexed to the Hague Convention, dating back to 1907, set out the criteria to be applied for recognition as a legitimate combatant and thus deserving of the protections offered under the laws of war **[A1]**. In particular, troops had to carry arms openly, wear distinguishable uniform, and fall under a clear chain of command from which orders and authority derived. To operate alongside armed forces from Great Britain and the other self-governing dominions, Canada organized and equipped its fighting forces to meet these requirements in full. Furthermore, the Geneva Convention signed in 1929 detailed standards of treatment for prisoners of war from surrender to captivity and the obligations of the respective parties involved **[A2]**. Captured combatants were to be removed from the scene of battle as quickly as circumstances allowed, and put into camps under guard for the duration of hostilities. While required to give basic information to confirm identity, they were under no compulsion to divulge knowledge relevant to the immediate operational or tactical situation, even under interrogation. Moreover, the sick and wounded were to be accorded the same level of care as pertained in the capturing armed forces. Prisoners of war, whether injured or not, were to be protected from outrage and arbitrary treatment in dissonance with the Geneva Convention. Surrendered combatants were the wards of the opposing nation rather than the individuals or fighting units who captured them.

Military manuals incorporated the expectations of conduct set out in international law. The provisions of the 1929 Geneva Convention as well as further interpretation and explanation of the laws of war on land were found in a 1936 amendment to the 1929 *Manual of Military Law*, applicable to British and Canadian forces. Sections 441 through 451 defined war crimes, described the various types of misconduct, allowed for trial by military court, and prescribed appropriate sanctions and punishments **[A3]**. The *Manual* was used in training, officers were tested on its contents at various stages of promotion to higher rank, and legal officers and court members consulted it when required. It had official standing as the most authoritative compendium available to the soldier in the field. Likewise, the German armed forces promulgated the text of the 1929 Geneva Convention in manual form and in pamphlets detailing the care and administration of prisoners of war in 1939-40.[5] Unlike Japan, Germany at least made the pretence of respecting ratified treaties pertaining to combatants – more so in the Western European theatre than the East.[6] Thus, Canadian and German fighting forces recognized common legal standards of conduct in the field stipulated in the Hague and Geneva Conventions, and disseminated these through official manuals and regulations to officers and other ranks.

How the respective armed forces interpreted general laws of war varied widely upon operational circumstance. At the higher headquarters level, staffs of specialized officers with training in the law and often with direct military experience handled legal matters affecting policy and strategy. The Judge Advocate General in Canada from 1920-50 was Brigadier Reginald Orde, a long-serving uniformed lawyer with direction over a large wartime staff of legal officers, mostly recruited from the civilian legal profession.[7] Delegated legal officers advised the senior leadership of the armed services and consulted Cabinet and other arms of government through inter-departmental working committees in Ottawa. In the European theatre of operations, Orde's representative at the Canadian Military Headquarters in London was Major-General Percival Montague, a provincial judge from Manitoba who after December 1943 officially became the Judge Advocate General for the Canadian Army Overseas; he was assisted by another prominent New Brunswick lawyer recruited for wartime service, Colonel William Anglin. In addition to ordinary discipline of Canadian troops and review of legal proceedings such as courts martial, these experienced lawyers kept in close touch with counterparts in the War Office, conferred with senior officers in other allied headquarters, and worked with Canada's High Commissioner in London, Vincent Massey, to define Canadian interests in specific alleged war crimes. It was left to the armed forces to report suspected irregularities or improprieties by the enemy near the battlefield. The German armed forces likewise had an operating war crimes investigation bureau staffed by judges and legal officers to investigate and verify alleged outrages against German service personnel by Allied forces. Like the Canadians, most cases were referred from operational units or witnesses to the actual events. In general, the Germans were especially interested in Allied aircraft attacking clearly marked hospitals and ambulances as well as mutilation of corpses during or after combat.[8]

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Though similar in form, Canadian and German military justice differed in focus and application. The Canadian Army and Waffen-SS were much alike in that both military institutions expanded dramatically from almost nothing and took in large numbers of personnel unfamiliar with military conventions and regulations. This created a host of problems with enforcement of discipline and proper execution of responsibilities under military law by those in positions of command and authority. Informal methods of punishment were acknowledged and officially discouraged. The Canadian armed forces handled offences related to military duty according to a scale of detention and imprisonment, whereas certain military crimes in the German armed forces, such as desertion and subversion, took on political connotations with the corresponding penalty of death.[9] Canadian military authorities proved extremely reticent about passing death sentences on soldiers, and were even more hesitant about actually carrying them out. The Canadian Army executed only one soldier in the European theatre of operations during the entire Second World War.[10] In contrast, the German armed forces, and in particular the Waffen-SS, executed tens of thousands of soldiers after conviction before courts martial and summary trials. Judicial terror held together the fighting organization behind the Nazi cause as the Allies reclaimed the conquered territories and the prospect of defeat neared. German commanders regularly punished soldiers for the slightest questioning of the political leadership or for actions deemed intolerable from a military perspective. During the public execution of a convicted deserter on 6 June 1944, Kurt Meyer purportedly proclaimed in front of collected troops: "German mothers bore their sons to fight, not to betray the Fatherland."[11]

The military court used for war crimes prosecutions after the war roughly followed the procedures of a field general court martial. This type of court martial was reserved for serious military offences committed abroad, and was composed of not less than three military members sitting as judges. They adopted relaxed rules of evidence for practical reasons that, while less than Canadian civil court standards at the time,[12] would have been generally familiar to any senior German officer like Meyer with command over troops. In the German case, the outcome of such courts martial during the war usually meant death for the accused, unless extenuating circumstances intervened to reduce the sentence. In the end, Canadian military justice gave Kurt Meyer the same or greater chance to prove his innocence through legal means than German soldiers facing their own military codes of service discipline.[13]

Who was Kurt Meyer?

Divergent opinions on the personality, character, and actions of Kurt Meyer will always exist. He was a person of many dimensions and contradictions. The private Meyer was a devoted husband and father to his wife and family. Self-discipline and loyalty to the point of fanaticism were his most prominent traits. In his political views, Meyer believed in the strong leader as well as the prominence of his nation and the German people, which in his mind were almost interchangeable. Indeed, he seemed to embrace the values of Nazism, which had been so seductive and appealing in his youth, even after Hitler took his own life. The public Meyer was an efficient frontline soldier and a decorated war hero. His rise to high rank within the upstart Waffen-SS showed ability and commitment, but without the benefit of staff training and the maturity of more extensive command experience, the youthful general displayed the characteristic impertinence of someone who has tasted early success. Meyer preferred to lead from the front, and his reputation for achieving results against impossible odds and complete personal disregard for danger followed him throughout his active military service. Although he seemed to invite a heroic death in battle, Meyer repeatedly survived when his division was smashed to pieces and many of his comrades were dead or missing. Whether loyal comrade or despicable war criminal, Meyer lived an exciting life in unusual times which left an indelible imprint on those around him.

From a young age, Meyer felt drawn to the profession of arms and believed that he was destined to become a soldier. He was born on 23 December 1910 into a proletarian family at Jerxheim in Lower Saxony.[14] His father Otto supported Kurt, his mother Alma, and his sister Melanie on a factory wage until he entered military service before the First World War. Otto Meyer, who became a non-commissioned officer, later died from the lingering effects of battle wounds sustained on the Western Front, compounded by tuberculosis. As a young impressionable child, Kurt Meyer remembered and honoured his father's sacrifice with a determination to be just like him when he grew up. He showed a fascination for weapons and the trappings of soldierly life during his childhood and teenage years. In elementary school, Meyer was an average student more inclined to physical and practical activities. His mother pushed him to enter the business trade, but Meyer secretly possessed other plans.[15] Upon finishing a commercial apprenticeship, he found em-

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ployment on the assembly floor of a factory, worked underground in a mine for a short time, and then applied for entry into the paramilitary state police force, since the Weimar Republic's small armed forces was still restricted by the Treaty of Versailles. Meyer was determined to become an officer. During a period of unemployment, he belonged to the *Freikorps* and joined the *Sturmabteilung* (SA) from April 1928 until October 1929. The Mecklenburg police accepted Meyer for admission on 1 October 1929. He gained the nickname "Schnelle [speedy] Meyer" after an accident during basic training at the academy in Schwerin. The instructors noticed that the young man was always impatient, in a rush, and brave to the point of recklessness, breaking several bones in one incident with another cadet. Meyer served in the police force until 1 April 1934, reaching the grade of *Oberwachmeister*.[16]

Stagnant in his chosen career and wanting to marry, Meyer possessed few prospects in a country gripped by inflation and economic depression. Salvation and comradeship came in the form of the National Socialist party, which he formally joined on 1 September 1930 as party member 316714.[17] Meyer proved his talents training street fighters for the struggles with Communists and other political opponents of the Nazis, and he was first exposed to the virulent speeches of the Nazi leader. Hitler, like Meyer's father, had been a frontline soldier and presented a simple set of reasons for Germany's ills, so that even the humble son of a factory worker could understand. Given his police training and aptitude for fighting hard on behalf of Nazism, Meyer was singled out for further employment. On 1 October 1931, he was invited into Heinrich Himmler's *Schutzstaffel* (SS), a security force recruited to rigorous racial and physical standards to perform special duties. Meyer once again embarked on a military career.

Kurt Meyer's Military Career

	Ranks		*Awards*
15 October 1931	SS-Antwärter	*20 September 1939*	Iron Cross second class
10 July 1932	SS-Untersturmführer	*8 June 1940*	Iron Cross first class
30 January 1935	SS-Obersturmführer	*3 October 1940*	Infantry Assault Badge bronze
1 October 1936	SS-Hauptsturmführer	*18 May 1941*	Knight's Cross
7 September 1940	SS-Sturmbannführer	*8 February 1942*	German Cross in gold
9 November 1942	SS-Obersturmbannführer	*6 July 1942*	Bulgarian Bravery Medal
21 June 1943	SS-Standartenführer	*1 September 1942*	East Medal
1 August 1944	SS-Oberführer	*24 February 1943*	Oak Leaves to the Knight's Cross (195th soldier)
1 September 1944	SS-Brigadeführer	*27 August 1943*	Oak Leaves with Swords to the Knight's Cross (91st soldier)

Service in the ranks of the SS through peacetime and war became the focal point of Meyer's life. It fulfilled the longing to belong to a military-like group, rewarded hard work, and most importantly, gave him a sense of importance in positions of control and authority over men of similar inclination. Meyer joined the 22nd *SS-Standarte* in Schwerin as an officer candidate on 15 October 1931 and was commissioned on 10 July the following year. On 15 May 1934, he transferred into the *Leibstandarte SS Adolf Hitler*, the nascent military organization forming around the Chancellor's personal body guards in Berlin.[18] During the infamous "Night of the Long Knives" late on 30 June 1934, Hitler consolidated his power and ordered Himmler and the SS to purge the leadership of the rival SA. The *Leibstandarte SS Adolf Hitler* took an ancillary part in this bloody task.[19] In appreciation, Hitler permitted expansion and recruitment of SS units, in particular the combat arms of the *Leibstandarte SS Adolf Hitler*. Meyer was a platoon leader in its 14th anti-tank company and upon promotion to *SS-Obersturmführer* on 30 January 1935 became company commanding officer. Whereas the more traditional German army still paid some attention to birth and social standing, the SS was an expanding military institution with a high proportion of ambitious and relatively young officers looking for adventure and purpose.

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Meyer fell into the category of former police officers, rather than the Death's Head concentration camp guards who moved over from the other side of the SS apparatus. Nonetheless, the distinction between these backgrounds lessened over time as the two groups trained and fought together. In September 1939, Meyer led his anti-tank company during the invasion of Poland. He received a slight shoulder wound repelling a Polish counterattack at Pabianice and was awarded the Iron Cross second class for his actions and initiative under fire.[20] On 1 October 1939, Meyer assumed command of the 15th motorcycle company, which fought in the Low Countries and France at the head of the German advance in 1940. Meyer received the Iron Cross first class for attempting to cut off British forces near Dunkirk and was promoted to *SS-Sturmbannführer* as of 7 September 1940 with command over the *Leibstandarte SS Adolf Hitler*'s newly-formed reconnaissance detachment. In assessing Meyer afterwards, the notorious *SS-Obergruppenführer* Sepp Dietrich wrote:

> *SS-Sturmbannführer Meyer possesses an unusual level of maturity in relation to his age. Hard upon himself, he puts personal well-being behind concern for his subordinates.*
>
> *Particularly during deployment in the West Meyer showed unheard of dash and considerable bravery. He was an example to his men in personal conduct and contributed substantially to the successes of the Leibstandarte as leader of the advance company.*
>
> *As commander of the reconnaissance detachment Meyer executed the tasks imposed upon him regarding selection and training with considerable organizational ability, much circumspection and persistence. Meyer fulfilled his position as commander of the reconnaissance detachment very well.*[21]

Further descriptive words used in the performance review included "passionate soldier," "fast and sure," as well as "comradely and helpful." With considerable daring and speed in the spring 1941 Balkan campaign, Meyer and his detachment blocked the retreating Greeks by capturing amidst high mountain peaks the town of Kastoria, taking over a thousand prisoners.[22] Meyer was awarded the Knight's Cross on 18 May 1941, before taking part in the general advance into Greece. He found command in combat to be personally gratifying, and his performance marked him as an ascending star in the now designated Waffen-SS, but the strains were heavy, especially for an officer like Meyer who pushed himself and his subordinate troops to the limits of maximum effort. Meyer and his reconnaissance detachment spearheaded the German invasion of the Soviet Union and fought many successful engagements. By October 1941, Meyer took seriously ill with dysentery and relinquished command for a period of forced convalescence. He had literally worn himself out in the execution of his military duties.

During the war, Meyer consistently put duty and commitment to the profession of arms before self and family. Military life was hard on spouses and children of military members, especially in times of war. The 1934 marriage between Kurt and Käte Bohlmann was founded on love and devotion. She remembered him as the dashing officer in uniform eager to excel and provide. It is difficult to say whether Meyer subscribed to the idealized Germanic family extolled by the National Socialists, though SS members faced considerable pressure to preserve racial purity and to propagate. Käte came from a higher social background, though she was not a Nazi party member,[23] and they had four daughters and later a son. Meyer's wife and children were accustomed to his long absences from home and stoically faced the uncertainty that he might die or be seriously disabled on the battlefield. Lists of dead and missing from Waffen-SS units were posted regularly. Wives of officers from the division and close friends provided some comfort in time of need, but the main support network rested with immediate family. Meyer's mother and sister Melanie were particularly interested in helping Käte and the girls. German women at home were magnificent bolsters of fighting men in the Third Reich, and Meyer could rest assured that his family was in good hands.

Despite his many decorations and accolades, Meyer supported his family on a modest service salary, which barely covered bare essentials when food and goods were scarce in wartime Germany. Friends and returned comrades from Meyer's unit also periodically checked on Käte and reported the condition of the family. Meyer was a sporadic letter writer mainly due to operational exigencies; at the front, a German shepherd dog was his constant companion. Leave periods and recovery times from other wounds and concussions re-established some normalcy in the Meyer compact. He was almost a stranger to his own children and to his wife, a man somehow changed by war. Though happy to have Kurt return home, the wounds and battle scars were constant reminders

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of the nearness of death or permanent disfigurement. Whenever faced with the daily routine of domesticity, Meyer grew increasingly restless to hear news from the battlefront and rejoin his division. Käte and the girls dreaded the day when it came and hoped always for his safe return. Selfishly, Meyer likely accepted that impending death in battle should be expected and perhaps embraced as a soldier, particularly given the extreme risks he chose to take in combat. Fighting on the Eastern front gave Meyer ample opportunity to chase a hero's death in the titanic struggle between National Socialism and Communist Russia.

The involvement of Meyer and the *Leibstandarte SS Adolf Hitler* division in operations against the Soviet Union in early 1943 reflected the best and the worst of the Waffen-SS. Meyer's motorized infantry battalion was stationed around Caen in France awaiting possible Allied landings when the Soviets launched the massive counter-offensive leading to the encirclement of the German 6th Army at Stalingrad. In the midst of a very cold winter, the Germans managed to stabilize the front-line and committed an SS Panzer corps, composed of the *Das Reich* and *Leibstandarte SS Adolf Hitler* divisions, to the Kharkov area.[24] While the original intent was to hold against Soviet advances, the SS divisions adopted an elastic defence and counterattacked against the unsuspecting Soviet forces. As part of the attack, Meyer and his motorized infantry battalion launched a series of fast strikes catching the enemy on the flanks and causing chaos in the Soviet rear. The achievement, the first concrete news of German success in many months, attracted notice at the highest levels. Meyer was summoned to the German headquarters at Vinitsa on 23 February 1943 to receive from Hitler the Oak Leaves to the Knight's Cross and discuss the general tactical situation in a personal interview.[25] Shortly thereafter Meyer was back at the front and renewed the aggressive tactics that worked so well for him, conducting reconnaissance in force with battle groups and remnants of still-fighting units. The desperate battle culminated in the Germans retaking Kharkov in mid-March 1943, an event in which Meyer fully participated by seizing and holding vital crossroads leading into the town.[26] Thousands of Soviet soldiers fell into the hands of the *Leibstandarte SS Adolf Hitler* division. When the Soviets later liberated Kharkov, their bodies were discovered, revealing that they had been either shot out of hand or after capture. Meyer observed, failed to stop, or instigated the killing of defenceless prisoners of war.[27]

Racial and ideological considerations overrode respect for the Geneva Convention and international law by the German armed forces against the Soviets.[28] Moreover, in reprisal to partisan activities, prominent Waffen-SS officers resorted to killing the populace of entire villages, including all ages and sexes. Meyer, one Canadian historian suggests, boasted about wiping out Jefremovka near Kharkov.[29] The SS leadership saw nothing wrong with this state of affairs; on the contrary, such acts were encouraged and rewarded. Typically, a 1943 performance review from his superior Waffen-SS general, Sepp Dietrich, read:

> *SS-Ostubaf. Meyer is an outstanding, unusually mature and conscientious personality. In terms of military leadership, he combines highest personal bravery with outstanding tactical ability. The tremendous success obtained by his combat groups, particularly in the fight against Bolshevism, is owed largely to his fanatical combat spirit and circumspect leadership. I am pleased to recommend Meyer without consideration for life, rank, and length of service and in appreciation of his unusual military and human qualities to SS-Standartenführer.*[30]

Selected officers and non-commissioned officers from the *Leibstandarte SS Adolf Hitler* were withdrawn to create a new Waffen-SS division. *SS-Standartenführer* Kurt Meyer became role model, teacher, and leader of teenage boys wanting to become men.

12th SS Panzer "Hitler Jugend" Division

For people now concerned with present-day campaigns against child soldiers, the idea of giving adolescents guns and uniforms may seem foolhardy and troublesome. However, the vigour of youth and the embracing of violence toward state ends were central National Socialist ideals. Hitler lent his own name to the youth movement for boys between the ages of ten and eighteen, the so-called Hitler Youth. Although technically compulsory since 1936, the reasons why individuals belonged to the Hitler Youth varied: parents in the Nazi party, peer pressure, references by trusted teachers or counsellors, accessibility to sports and outdoor activities, and the club atmosphere with distinguishing ranks and rewards. Regardless of their motivation to participate, members

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of the Hitler Youth absorbed a steady stream of exaggerated nationalism, racial differentiation, and leader cult, in preparation for the promised glory of the thousand-year Reich. As losses on the war fronts mounted and Germany reached the limits of its available manpower resources, Nazi leadership regarded the higher age cohorts in the Hitler Youth as a ready source of dependable fighters willing to volunteer for active military service. In 1943, Hitler authorized the Waffen-SS to form a new division from Hitler Youth members born in the year 1926. On 1 May, the first 8,000 17-18 year old recruits started basic training with seniors taken from the *Leibstandarte SS Adolf Hitler* and other units. The 12th SS "Hitler Jugend" division was only the second German division to bear the Nazi leader's name, a matter of pride instilled into the new recruits by the veteran SS officers and non-commissioned officers. The 12th SS was soon up-graded from two initial *Panzer Grenadier* (mechanized infantry) regiments to a full-fledged Panzer or armour division, notwithstanding the short supply of suitable tanks. For many impressionable teens, this military machine became a thing of awe and beauty, the corps serving as a surrogate social grouping for the family and friends they left behind. Their ideological indoctrination turned the young men into enthusiastic and aggressive killers.[31]

From the start, members of the 12th SS comprised a self-proclaimed elite. German propaganda hailed them as the cream of German masculinity. They were among the first boys to grow up and be schooled entirely under National Socialism. Moreover, each volunteered and met demanding racial and physical standards common to the SS. The Waffen-SS, through its own self-promotion and publicized battlefield successes, cultivated the image of an elite military formation, which the young men were privileged to join.[32] In short, they were the next generation that would build upon a short, though spectacular, record of combat and warrior prowess. Even though the reality was often different, the inculcated message was powerful, especially for young minds.

After six weeks of physical training, the 12th SS concentrated at Beverloo in Belgium for advanced instruction. Meyer was designated the lead officer for all local matters related to troop training for subordinate units of the division.[33] The 17-18 year olds listened to and, moreover, believed every word from the dynamic and battle-experienced seniors, who still looked remarkably youthful themselves. Fritz Witt, the divisional commander, and Meyer, commander of the 25th SS Panzer Grenadier regiment, were only in their mid-30s. Both former *Leibstandarte SS Adolf Hitler* officers wore the coveted Oak Leaves to the Knight's Cross. Related experience from the Eastern front and stories of other wartime adventures gave the SS officers instant credibility with teenagers eager to become real soldiers. Indeed, Meyer encouraged an almost parental relationship between himself and the young recruits, who looked upon him as a father or older brother figure. As a group, they were destined for great glory in life or death, according to Witt and Meyer. The highest premium went to duty, combined with personal bravery and self-sacrifice. Neither Meyer nor the young men he eventually led into battle possessed fear of consequences; instead, they lived for the moment and fulfillment of the mission. Meyer bristled at Allied propaganda leaflets showing the 12th SS as a bunch of babies sucking on bottles,[34] knowing that an elite status ultimately had to be earned and the division had to prove its mettle in actual combat.

Witt, Meyer, and other officers under his command adopted somewhat unorthodox methods of training and discipline to prepare the 12th SS for battle. There was not enough time for the routine of drills and marches associated with the regular infantry training practiced in the German armed forces. Furthermore, the Waffen-SS eschewed the standard manuals and pamphlets of instruction. Instead, Witt and Meyer set out to prove that a trained SS trooper could be ready for combat in less than eight months. They placed heavy emphasis on sports and athletics to appeal to the boys' competitive nature and to increase levels of physical fitness. This foundation allowed a gruelling pace of focused instruction to develop close-combat skills.[35] Realistic live-fire exercises simulated the sounds and confusion of the battlefield. Troops were forced to make quick decisions under extreme conditions; accident rates were high, but casualties were considered part of the business.[36] Officers and non-commissioned officers imparted special knowledge from their battlefield experiences, including how to set up ambushes and work independently in small teams. They always emphasized the attack, which corresponded with the Waffen-SS style of fighting.[37]

Meyer, the ex-reconnaissance commander, was known to collect personal advice from his scouting units, and commander's intent was conveyed in a very direct manner. Reflecting the familial ethos that underlay the unique divisional culture, the relationship between troops and superiors in the 12th SS was very informal. Though discipline was strict, infractions were generally handled within the unit rather than through more formal means; so much so that Witt eventually had to prohibit the "*Heiliger Geist*" (Holy Ghost), a form of punishment involving beating offenders in the middle of the night.[38] On another occasion, a service

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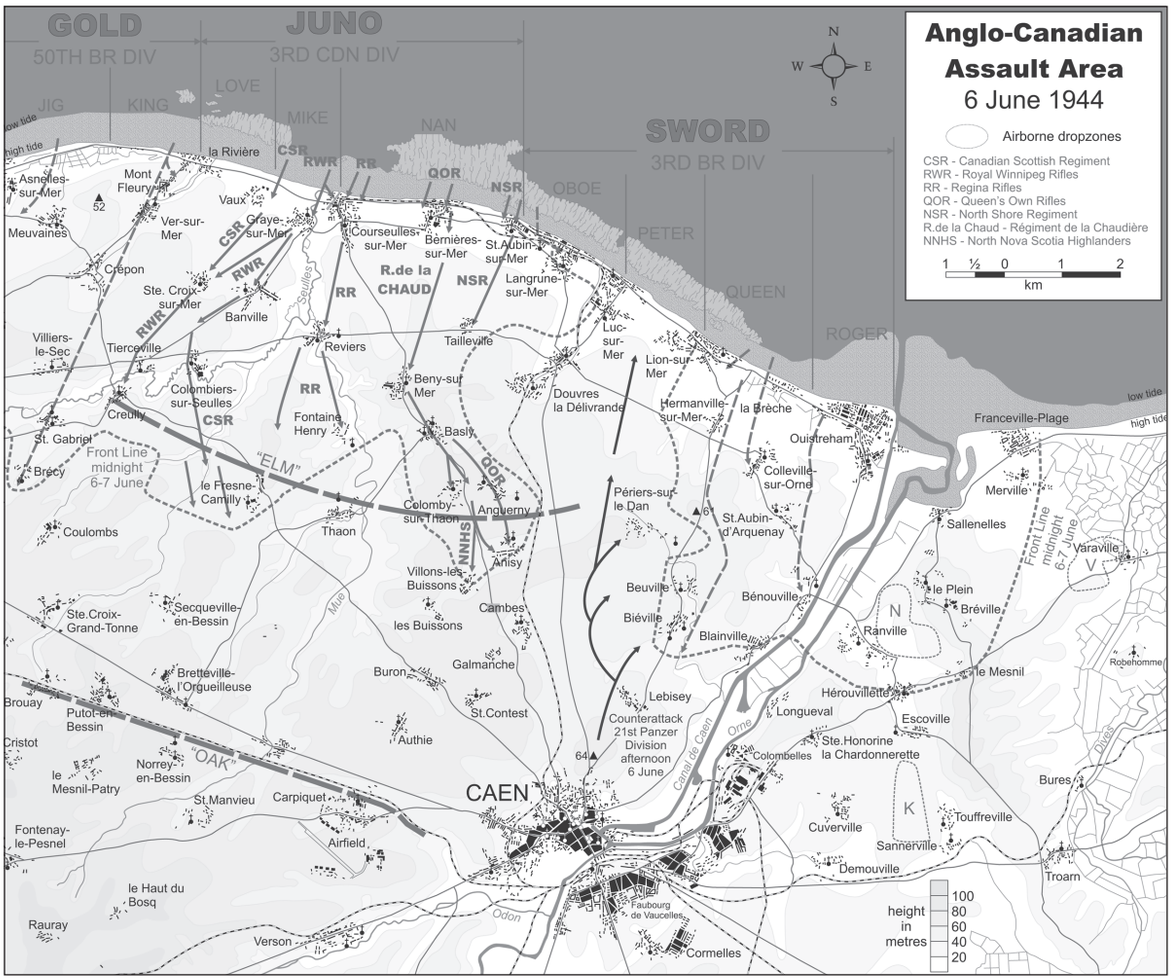
member accused of raping a Belgian girl was given a pistol and encouraged to commit suicide rather than bring shame on the division. Available records show that suicides among the young troops were commonplace in certain battalions. Troops were given a great deal of license. Superiors condoned or ignored behaviour usually considered aberrant, explaining it away as youthful enthusiasm. The division's chief judge felt compelled to demarcate the authority of field courts in accounting for cessation of punishments and the release of offenders.[39] At best, the training created only a partial soldier, one semi-skilled in the arts of fighting but devoid of understanding the responsibilities and limits to the application of violence. Unfortunately, the Waffen-SS deemed this type of amoral soldier ideal for operations. General Leo Freiherr Geyr von Schweppenburg, Panzer Group West, whose command oversaw training of Waffen-SS units, assessed leadership within the 12th SS: "This commander [Witt] was also good in training and possessed a will and a passion for advanced methods. The quality of the conscripts was high, but that of the subordinate officers and NCO's was poor."[40] Regardless, the division was declared ready for deployment in spring 1944. Instead of serving as fodder for the Eastern front, Meyer and the teenagers of the Hitler Youth were sent to France. Training exercises were conducted around Caen, and the 21,000 troops of the 12th SS division pronounced combat ready on 1 June 1944. The division was withdrawn to form part of Field Marshal Gerd von Rundstedt's strategic armour reserve and attached to the 1st SS Panzer corps under the German 7th Army.[41]

By quirk of fortune, the 12th SS division found itself front and centre in the defence when the British and Canadian forces landed on the eastern sector of Normandy. Dissenting opinions in the German high command over whether to meet the Allies on the beaches forward, or concentrate forces back outside the range of supporting naval fire to deliver a powerful blow once the beachhead was established, led to a blend of both strategies that met with predictable results.[42] When news of Allied landings reached divisional headquarters south of the Seine River on 6 June, Meyer readied the 25th SS Panzer Grenadier regiment to move without delay. However, conflicting orders and Hitler's initial reluctance to release armour forces meant that he did not receive operational authorization until mid-afternoon. Allied air attacks interfered with movement during daylight hours, and Meyer's troops did not arrive in the assembly area at Evrecy until late into the evening.[43] The 21st Panzer division and 716th Infantry division, the resident German fighting formations in the area, had borne the brunt of initial Allied attacks. They, along with the 12th SS division, came under the subordinate control of 1st SS Panzer corps mid-afternoon on 6 June.[44] Meyer established a command post in the ancient Abbaye d'Ardenne outside Caen, where he possessed an excellent vantage point to the sea. Witt ordered him to defend Caen and the nearby airfield at Carpiquet, which later changed to include a coordinated drive, in Meyer's words, to "throw back the little fish into the sea." The next morning, on 7 June, as the Germans continued preparations for the planned attack, Canadian tanks and infantry were seen advancing through the village of Buron toward Authie and Carpiquet airfield.[45] Seeing an opportunity, Meyer adjusted his dispositions and launched the 25th SS Panzer Grenadier regiment and a battalion from *SS-Obersturmbannführer* Max Wünsche's 12th SS Panzer regiment into a counterattack. From a tower at the Abbaye d'Ardenne, Meyer watched the entire battle and communicated enemy movements by telephone and radio. The Germans destroyed over two dozen Sherman tanks and overran the Canadian positions before the attack lost momentum. On that day, the German 7th army recorded:

> *1st SS Panzer corps with 21st Panzer division and 12th SS division mutually supporting each other still determinedly defended West/North in the coastal front of the 716th Infantry division to stop the advancing enemy. The counterattack of 1st SS Panzer corps set for 1600 hours from Caen northward to eliminate the bridgehead could not be begun at the determined time because, as a result of heavy losses during the march and rolling air attack, the concentration of divisions belonging to 1st SS Panzer corps in the intended marshalling area was not possible in time. The counterattack was shifted to early on 8 June.*[46]

Meyer's bold decision to engage the Canadians, and to provide his untested "Hitler Jugend" troops with their first real experience of combat and taste of tactical victory, must be situated in the context of Meyer being commanded to defend Caen against Canadian advances until sufficient German forces arrived to undertake the planned counterattack.[47]

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THE CANADIANS IN NORMANDY

The performance of Canadian military forces during the landings and battles in the Normandy campaign has been the subject of considerable debate among military historians. For a country with limited population and a small permanent military establishment, Canada fielded a large army proportionate to its size and level of involvement in European affairs.[48] Canadian troops had trained for years in Great Britain and on 19 August 1942 had taken part in the catastrophic amphibious raid at the French sea town of Dieppe. Even though most officers and soldiers lacked first-hand combat experience, the Canadian units were considered equally or better prepared than comparable American and British formations.[49] Consequently, planners at General Dwight Eisenhower's Supreme Headquarters Allied Expeditionary Force (SHAEF) allotted to the Canadians a stretch of beach between Courseulles-sur-Mer and St. Aubin-sur-Mer, designated JUNO. The 3rd Canadian Infantry division would make a forced entry: two infantry brigades, the 7th and 8th, would undertake the amphibious beach assault and, according to planning, the 9th Canadian Infantry brigade and regiments of the 2nd Canadian Armoured brigade would pass through the broken coastal defences and move inland to selected geographical objectives on high ground west of Caen.[50] Adjacent British forces were expected to capture Caen within a few days of the invasion, and the Canadians would provide flank protection and fend off any attempted German counterattacks. In war in general, and in Normandy in particular, actual execution often departed from pre-laid plans. Mistakes

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were made, and the German reaction proved less predictable than anticipated. Indeed, Meyer's impromptu attack on the second day caught the advancing Canadians in a vulnerable state and blocked their attainment of immediate tactical objectives.[51] More than six additional weeks of bitter fighting, desperate engagements with heavy losses, and substantially more Canadian military forces were required before Caen fell and the Germans retreated.

The first encounters with elements of the 12th SS Panzer division proved especially hard for the Canadians. On the afternoon of 7 June, the 9th brigade's forward units outran the range of supporting artillery and blindly moved from Buron to Authie straight into Meyer's hands.[52] Panzer Mark IV and Panther tanks, with superior armour and longer-range guns, knocked out the Sherman tanks of the 27th Armoured regiment (Sherbrooke Fusiliers) one after the other. Deprived of armour support, the infantry of the North Nova Scotia Highlanders regiment fought a lop-sided battle against the 25th SS Panzer Grenadier regiment, losing Authie and barely holding on to Buron before being forced to retire.[53] Hundreds of Canadian soldiers were killed, wounded, or surrendered to Meyer's troops. The next day, the planned German counterattack proceeded with some confusing orders from above: "Attack of 1st SS Panzer corps as result of air situation possible first hours of morning. Attack direction north and north-west of Caen toward the coast. Field Marshal Rommel reversed himself and ordered that 1st SS Panzer corps as quickly as possible with all three divisions had to form up left of centre."[54] The actual offensive action proved much more scaled down and lacked close coordination due to the last minute changes in focus and disposition. The 7th brigade's Royal Winnipeg Rifles and Regina Rifles regiments with supporting units faced a localized attack from *SS-Obersturmbannführer* Wilhelm Mohnke's 26th SS Panzer Grenadier regiment adjacent to Meyer in the direction of Brouay, Putot-en-Bessin, and Norrey-en-Bessin.[55] Despite offering heavy resistance, Canadian-held positions were seized and hundreds of Canadian soldiers captured. Later, through the night of 8-9 June, infantry of the Regina Rifles regiment with supporting artillery repelled a German attack at Bretteville-l'Orgueileuse. On 11 June, the Queen's Own Rifle regiment and 1st Hussars tanks pushed forward as far as Le Mesnil-Patry, suffering extremely heavy losses. The Canadians were stopped. The operation was a complete failure, and the wounded were left behind to fall into German hands. A message from German 7th Army described the situation of 1st SS Panzer corps and its subordinate units the morning after: "Currently still quiet, on the other hand on account of reported armour-concentration, the beginning of large attacks toward Caen are to be reckoned with at noon or later in the afternoon."[56] By now, success on the American and British fronts enabled the Allies to consolidate the Normandy beachhead and to bring in badly-needed supplies. Canadian strength was built-up for the final advance planned on Caen, while the 12th SS division husbanded remaining equipment and personnel for the coming battle.[57] Canadians and Germans alike emerged from the baptism of fire with a grudging respect for their adversary's fighting abilities. The fate of Canadian soldiers captured in battles with the 12th SS division, however, demonstrated that the Germans had far less respect when it came to upholding the laws of war.

Behind the front-lines, members of the 12th SS division, acting either under orders or on their own initiative, committed numerous acts of outrage and atrocity against surrendered Canadian prisoners of war. These acts were predominantly committed away from the battlefield, hours or even days after capture. German officers and troops randomly killed disarmed Canadian soldiers being marched back in lines and dragged their bodies onto the road to be run over by vehicles.[58] On several occasions, non-commissioned officers lined Canadian prisoners up against walls or alongside roads to be shot down. In Mohnke's sector, a group of nearly forty injured and uninjured Canadian prisoners of war was taken into a field at gun-point and sprayed with machine-gun and rifle fire; some Canadians, realizing what was about to happen, managed to run and hide under the cover of foliage and survived to tell the story. Elsewhere, wounded prisoners of war were refused treatment and water, handled extremely roughly, and even killed at dressing stations and field hospitals. Other prisoners of war were murdered after refusing to answer questions under interrogation.[59] At the Abbaye d'Ardenne late on 7 June, eleven Canadian soldiers were separated from a larger group of prisoners of war for questioning. After refusing to volunteer further information, each was led into the inner garden and killed **[A9]**. The last Canadians reportedly shook hands and embraced each other before meeting death. Meyer was present at the Abbaye d'Ardenne and later admitted to talking to these men when they were still alive. Eyewitnesses claimed that he ordered the executions. In all, war crimes researcher Howard Margolian estimates individual members of the 12th SS division killed at least 156 captured Canadian soldiers in the days after the initial battles. To put this in perspective, one in six Canadians killed in Normandy died after capture:[60] a ratio far higher than the Allies experienced in their encounters with any other German formation in Normandy. As a

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result, many front-line Canadian troops casually referred to the 12th SS as the "murder division." The blatant killing of unarmed prisoners of war after accepting surrender was certainly different than refusing quarter in the heat of battle.

The Canadians continued to confront the 12th SS division in the weeks of hard fighting before the Allies achieved victory in Normandy. In July and August 1944, the Canadians gradually gained the upper hand. By 9 July, most of Caen was in Canadian and British hands. Meyer, who assumed command of the 12th SS division on 14 June after Witt's death, committed the 25th SS Panzer Grenadier regiment to its defence with heavy losses.[61] On 18 July, the 2nd Canadian Corps, under General Guy Simonds, crossed the Orne River under the cover of a well-prepared artillery barrage and established a bridgehead falling short of the commanding heights at Verrières Ridge. The subsequent Operation "Spring" engaged the German forces facing the Canadians and furnished some deception about Allied intentions for major operations elsewhere leading to an American breakthrough. General Heinz Eberbach, who succeeded Schweppenburg in the post of Panzer Group West and later appeared as a character witness at Meyer's war crimes trial, was left with a high opinion of the division's defensive performance during this time: "The 12 SS Pz Div 'Hitlerjugend' which, judged by the quality of the troops, their combat morale, equipment and training, was the best division in the West. Its divisional commander was SS Standf Meyer. The division fought in the Authie-Carpiquet-Verson sector. It was reinforced by elements from 1 SS Pz Div 'Leibstandarte.' High losses had resulted in greatly diminishing the combat strength of the 12th SS Pz Div."[62] The ambition now was to catch German military forces in an emerging salient by closing off the rear with thrusts from the north and south. Simonds was given the critical task of making a link-up and countering any German attempts to break-out. The Canadians launched Operation "Totalize" late on 7 August and then Operation "Tractable" on 14 August, driving armour columns accompanied by mechanized infantry.[63] Meyer reorganized the 12th SS, reduced to less than 500 effective combat troops and a handful of tanks, into smaller battle groups to defend the Falaise area **[A7]**.[64] Like other German formations, the 12th SS division remnants faced imminent encirclement and only belatedly realized escape was a worthwhile enterprise. Meyer, as he had done so many times on the Eastern front, led a small band of Hitler Youth stalwarts to safety in order to fight another day. The capture and holding of Falaise signalled an end to the Canadian part in the Normandy campaign.

Investigation of Atrocities against Canadians

Armed forces have a significant role in the serious and timely investigation of suspected war crimes. If the laws and customs of war are flaunted, combatants can no longer rely on the predictability and protections taken for granted in general observance. Foremost, soldiers are agents of the state in the application of violence in accordance with sanctioned policy and legal frameworks. The amount of allowed force is subject to state permission at the national and international levels. In Moscow in November 1943, Allied political leaders and diplomats agreed upon a formal declaration to the effect that individual members of the German armed forces would be sought out and held responsible for atrocities and similar acts of outrage committed in violation of the laws of war. At the initiative of the British, a United Nations War Crimes Commission was established (minus the Soviets) in London to collect, document, and coordinate information for the framing of specific legal charges.[65] It was left to individual countries to forward relevant cases involving nationals from their militaries and to supply national armed forces to perform most of the leg work. Among the sources of evidence were physical remains, documentary records, witness testimony, and interrogation of likely culprits. On the organizational side, dedicated military war crimes investigation teams were formed to chase down leads and prepare cases for trial. In the Canadian context, the effort was spearheaded by Lieutenant-Colonel Bruce Macdonald. For the Canadian armed forces, someone from the 12th SS division had to be held responsible for the murder of Canadian prisoners of war in Normandy. The question was who?

The first disclosure of exceptional occurrences in Normandy and attempts to understand them happened at the operational-level on an inter-Allied basis. As fighting passed over the battlefields, military support units moved in and discovered the traces of crimes. Individual and mass graves were located with assistance from French civilians. Many Canadian bodies were found in unusual positions and the causes of death either blatantly obvious or inexplicable. In some cases, witnesses came forward to tell what had happened. On 9 July 1944, a court of inquiry assembled on the order of the general commanding 21st Army Group to gather information and evidence into incidents involving murdered Canadian prisoners of war at the Château d'Audrieu, which had

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served as a German reconnaissance command post.[66] The Canadian Army was represented in these proceedings by designated officers, under the chair of an American major general. The first interim report was forwarded to the Combined Chiefs of Staff in Washington at the end of the month: "Canadian and to a lesser extent British press have published garbled accounts of this outrage and Canadian public [is] greatly exercised. General CRERAR, fearing acts of vengeance by Canadian troops, wishes to issue exhortation based on disclosure of true facts."[67] By mid-August 1944, mounting evidence of atrocities was so widespread that General Eisenhower approved a standing SHAEF court of inquiry with three permanent members. Lieutenant-Colonel Bruce Macdonald, a former regimental commander with combat experience in Normandy and in civil life a lawyer from Windsor, was the chosen Canadian.[68] The standing court investigated and reported on cases related to the 12th SS division from Canadian bodies uncovered at Authie/Buron, Château d'Audrieu, and Mouen. At this stage, the purpose was to identify the individuals killed, to establish the facts behind the events, and if possible to identify the individuals who were likely responsible.

In each of the three cases being investigated, Macdonald and the other members of the standing court determined that Canadian prisoners had indeed been killed under unusual circumstances. In mid-December, General Eisenhower received the bulky package of documents covering suspected atrocities that occurred during the second week of June.[69] Further investigation of the 12th SS division seemed warranted. In April 1945, the standing court sent to SHAEF a supplementary report on the "pattern of brutality and ruthlessness" shown by the 12th SS division against over one hundred Canadians during a two-week period in Normandy, as known and documented to that time.[70] That the number of alleged crimes was so much greater than any other comparable German formation, and the frequency of these crimes within a confined area by the same troops, suggested a degree of complicity by higher authority within the division. Nonetheless, the standing court's report presented little hard evidence and much conjecture about the responsibility of certain commanders or officers. Meyer, who had been captured by partisans during the German retreat in early September 1944 and subsequently tried to hide his identity by wearing a German Army uniform in American custody, was one of the few commanding officers still alive and accessible. In late March 1945, Macdonald personally questioned Meyer during interrogations in London, to little avail.[71] The German categorically denied any knowledge of murdered Canadian prisoners of war. Nevertheless, Canadian Lieutenant-Colonel John Page forwarded a long list of 12th SS officers to be detained for trial after the end of hostilities with Meyer at the top.[72] Once SHAEF closed down the standing court of inquiry, Meyer became the object of renewed Canadian military investigations into the Normandy war crimes.

The No. 1 Canadian War Crimes Investigation Unit, under the leadership of Lieutenant-Colonel Macdonald, carried on the effort to find those responsible in the 12th SS division for the murder of Canadian prisoners of war. Established on 4 June 1945, the war crimes investigation unit possessed a staff of investigators and legal officers with jurisdiction to pursue and document all possible cases against Canadian service personnel in the European theatre of operations. The work extended to occupied Germany and liberated France. The Normandy killings were the most high-profile in a variety of alleged war crimes investigated, including murders of downed Royal Canadian Air Force air crew.[73] Macdonald became convinced that Meyer was somehow responsible for the events of June 1944, but he still lacked much in the way of corroborative evidence. On 20 June 1945, SHAEF transferred all records related to the case at the request of Canadian Military Headquarters in London.[74] War crimes investigators sought out former members of the 12th SS division in Canadian and Allied captivity, although few seemed willing to talk and almost no one wanted to say bad things about Meyer. Macdonald's visits to prisoner of war camps in Canada and the United States yielded a small number of semi-credible witnesses.[75] The biggest break came when a former SS soldier named Jan Jesionek, Polish by birth and conscripted into the 12th SS division, was located and told Macdonald that he had actually observed Meyer play a part in the murder of Canadian prisoners at the Abbaye d'Ardenne. Captured documentary records from the 12th SS division lent credence to the theory that Meyer had actually counselled his troops not to take prisoners.

On 28 October 1945, Macdonald again questioned Meyer at the latter's request.[76] Meyer recanted his previous story and told the Canadian prosecutor that he had been informed about some eighteen Canadian bodies found in the inner courtyard of the Abbaye d'Ardenne. He said that he had immediately ordered a full investigation, which identified a junior officer who had subsequently died in battle as being responsible. Macdonald considered the whole supposition fanciful and a last minute attempt by Meyer to obscure the real culprit. Though other witness testimony conflicted with this version of events, Meyer at least now admitted that

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Canadian prisoners of war had been murdered at his headquarters. Macdonald and the No. 1 Canadian War Crimes Investigation Unit wrapped up the investigation efforts and prepared for the trial of Meyer.

Bringing Meyer to Trial

The decision to prosecute Kurt Meyer on charges of war crimes related to the murder of Canadian prisoners of war in Normandy required public and government commitment, new regulations, and administrative arrangements prior to trial. The case was the first wholly Canadian ingress into the war crimes field. Though a minor war criminal compared to the military leaders tried before the International Military Tribunal at Nuremberg, Meyer stood out as Canada's star offender by virtue of his rank and the extent of the alleged crimes. Meyer was in a different class than the SS officers who ran wartime concentration camps and killed thousands of innocent civilians on the grounds of race. The charges against him were traditional violations of the established laws of war governing armies on or near the battlefield. In London, the British Attorney General offered to prosecute Meyer under a royal warrant, issued under the prerogative of the crown, with Canadian court members present.[77] Nonetheless, in June 1945, the government in Ottawa remained non-committal. Debate concerning whether the Waffen-SS general should be tried, and by whom, dragged on into the summer.

At the political level, the issue of war crimes prosecutions gradually coalesced into a firmer commitment. The Meyer case fell within the limited mandate of the inter-departmental Canadian War Crimes Advisory Committee, which had met sporadically in Ottawa since late 1943. Canadian newspaper coverage of outrages against Canadian soldiers in the months following the Normandy invasion, which specifically connected the 12th SS division with the killings, put increasing pressure on the government to act.[78] Prime Minister William Lyon Mackenzie King, responding to a question about Canadian officers shot after escaping from Stalag Luft III, previously told the House of Commons that alleged war crimes against Canadian service personnel would be thoroughly investigated and the responsible persons punished. Atrocities against Canadian soldiers in the field fell into this category. Members of the advisory committee traveled to London to consult with Vincent Massey, Canada's High Commissioner and Canadian representative on the United Nations War Crimes Commission from April 1945. Massey was keen to press ahead with war crimes prosecutions for reasons of international prestige, and he urged the government in Ottawa to make a decision. He met with Anglin, Macdonald, and Hopkins on 24 April 1945 **[A5]**. Massey wrote afterwards in his diary: "Later in the morning I had a meeting between service representatives and myself and Andrew Bell on the subject of War Crimes against Canadian personnel to (a) find out what the services were doing and (b) to co-ordinate their activities. The army has shown a tendency to self-sufficiency which requires tactful handling."[79] The collected evidence against Meyer, though far from conclusive, appeared strong enough to establish some level of personal complicity; or so thought the British and the Canadians on the spot. On 8 June 1945, Massey told the British Attorney General that the Canadians "were ready to prosecute SS Divisional Commander Kurt Meyer and discussed procedure with him very satisfactorily. He would like us to get underway."[80] Through further meetings with Macdonald, Massey stayed abreast of additional work being done by No. 1 Canadian War Crimes Investigation Unit. The High Commissioner eventually received delegated authority on 20 June to submit the case against Meyer to the United Nations War Crimes Commission.[81] Since proposed application of the royal warrant raised delicate legal and constitutional questions, the Canadian War Crimes Advisory Committee asked Brigadier Orde, the Judge Advocate General, to draw up comparable Canadian regulations for the War Cabinet's consideration.

Canada's war crimes regulations went beyond the British equivalent in several key areas, and Canadian officials drafted them with the prosecution of Meyer and other members of the 12th SS division specifically in mind **[A6]**. Although military courts for war crimes followed the same form and procedures as the field general court martial as set out in the *Army Act*, special allowances were made for the admissibility and consideration of evidence, especially in respect to witnesses who were dead, repatriated, or otherwise unavailable. Previous affidavits or written statements could be read into the record with limited or no cross-examination, and hearsay could be treated with equal weight to other evidence – a discretion left to the court members to decide. The Canadian war crimes regulations were unique in another aspect. One of the articles considered evidence of war crimes committed by subordinates in a formation or unit, either under the leadership or in the presence of a single commander, as evidence of that commander's re-

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sponsibility. In other words, the commanding officer was responsible whether or not he personally participated in the alleged crimes. Until that time, no armed forces had gone so far in introducing this contention in legal form. Indeed, the German armed forces asserted a more limited interpretation of command responsibility; concrete proof would be needed to show that Meyer took some direct part in the commission of the atrocities. These controversial regulations were largely the handiwork of Macdonald, who exerted some measure of influence during the various drafting stages and the final wording. Since Parliament needed time to pass related legislation, an Order-in-Council formally brought the war crimes regulations into effect from 30 August 1945.

By the time Meyer was transferred to Germany and formally charged, the prosecution had many months head-start on the appointed defence, which received little over a month to read into the case, find witnesses, and prepare arguments. As stipulated in the war crimes regulations, Brigadier Orde reviewed the abstract of evidence and gave Macdonald consent to proceed with Meyer's prosecution. Mackenzie King made a brief announcement about war crimes arrangements in the House of Commons on 13 September 1945.[82] Macdonald, who had actively lobbied Orde for the job, was named lead prosecutor based on his long involvement and familiarity with the murders in Normandy and the search for evidence against Meyer. Other members of the prosecution team and supporting staff were assembled in short order. When Macdonald told Meyer of the intention to bring him to trial during an interrogation on 15 October 1945, the German responded through an interpreter: "Tell the Lt-Col that I never before the invasion or during the invasion either said or made an order or let it be understood not to take prisoners and tell the Lt-Col moreover, that I do not seek to avoid the responsibility, and if you regard it as necessary to convict me as the responsible one, so that pains me for my family but for myself it does not pain me."[83] Although Meyer preferred representation by a British or German civilian lawyer, a Canadian officer with legal ability, Lieutenant-Colonel Maurice Andrew, was detailed to act as defending counsel. Andrew was commanding officer of the Perth regiment with combat experience against the Germans in Italy and Holland. He practiced law in civil life in Stratford, Ontario.[84]

On 31 October 1945, Canadian parliamentarians learned about the case against Meyer **[A11]**. The same day, Meyer flew under armed escort by military aircraft to Jever airfield in the Canadian occupation zone of North-West Germany and was driven by special convoy to the nearby town of Aurich; once there, he was arraigned on five charges related to alleged war crimes committed by the 12th SS division in Normandy during June 1944.[85] The court room was housed in a converted naval barracks. After a delay at Andrew's request to bring in more witnesses, the trial formally started on 10 December 1945.

The Trial

Over the next two and half weeks, the open and closed sessions of the war crimes trial against Kurt Meyer took place. The edited proceedings reproduced in this book **[B1-6]** give an idea of the length and complexity of the trial. The basic structure followed the standard forms of a Canadian criminal or military court. Meyer appeared before five senior military officers acting as judges. They heard arguments and considered written and oral testimony in order to arrive at a verdict on the guilt of the accused on each charge and to pass sentence. Though conducted in English, the trial was translated into German for the accused and non-Canadian witnesses. An appointed legal officer serving as Judge Advocate, Lieutenant-Colonel W.B. Bredin, advised on points of law and summed up the legal dimensions of the case in relation to the war crimes regulations and military and international law for the benefit of the court. The prosecutor, Lieutenant-Colonel Macdonald, and his assisting officers set out the prosecution's case against Meyer in an opening address and then called witnesses or introduced written testimony and documentary evidence. The defending officer, Lieutenant-Colonel Andrew, and his assistant Captain Frank Plourde received the opportunity to cross-examine the prosecution witnesses, make an opening address, and call witnesses for the defence. Macdonald chose to cross-examine defence witnesses and called additional witnesses at the rebuttal stage. The military court members also directed questions to the Canadian and German witnesses throughout the proceedings. Andrew and Macdonald then made closing remarks for the defence and prosecution respectively. After hearing Bredin's summation on points of law, the court members retired to arrive at a finding on the individual charges. The president of the court delivered the verdict and then Andrew called witnesses to attest to Meyer's character before the court members decided upon an appropriate sentence. Due to the gravity of the alleged crimes, death, or any lesser sentence, was an available punishment under Canadian military law.

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The military court that tried Meyer on charges of war crimes was legally constituted and followed accepted norms within the Canadian armed forces at the time, as modified by the Canadian war crimes regulations. Despite intense media coverage and considerable public interest from the outside, the decorum of the military court remained above reproach. In terms of justice within the military context, Meyer's trial met the required minimum criteria of both form and procedure.

Each legal trial, Meyer's included, features dynamics hard to capture in the dispassionate words of a typed transcript. Bringing an enemy commander before a foreign court in a different language accentuated the natural tension between prosecution and defence in the adversarial-type legal system. For his part, Macdonald had turned the trial of Meyer into a personal and professional crusade; Meyer was the key protagonist in a litany of crimes committed by the 12th SS division and the German nation under Nazism as a whole. Macdonald's periodic melodramatics and tendency to over-state the significance of the facts in the case comes out in the frequent exchanges with the judge advocate and the court's president. Meyer was an equally dominant personality, and was used to being the centre of attention. In his book on the trial, Macdonald described the piercing stare that the former Waffen-SS general gave the prosecution witnesses and attempted to use on the prosecutor as a means of intimidation.[86] In Meyer's presence, some former Waffen-SS witnesses changed their testimony and went back on previous statements. Jesionek, however, dressed in German naval uniform to give a psychological separation, kept his composure and gave compelling testimony in front of Meyer for an entire day. During his own time on the witness stand and under cross-examination, Meyer was extremely selective in his recollection of events and adamant that if Canadian soldiers were killed in an untoward manner, it was exceptional and the circumstances probed by him as far as the operational situation permitted. Meyer obviously tried to appeal to the sensibilities of those officers in the room with combat experience. Finally, the differences in demeanour and style of the two Canadian lawyers, Macdonald and Andrew, warrant mention. The former was aggressive and at times condescending, while the latter put aside emotions and personal opinions to represent his client in the most competent manner possible. Arguably, it was the biggest trial of their respective careers – Macdonald would be the small city prosecutor and Andrew the big town solicitor (later county sheriff). The personalities behind the trial were important and must be acknowledged.

The intent here is to help readers understand some significant aspects of the war crimes trial rather than trying to retry Meyer to prove either guilt or innocence. In December 1945, a Canadian military court arrived at a certain verdict with respect to the specific charges and Meyer's assumed complicity in them. Thus, from a historian's perspective, how and why the verdict of guilty came to pass are far more relevant questions. When going through the trial proceedings, the reader should remain cognizant of the following:

Command Responsibility as a Legal Concept

Command responsibility was a relatively new contention at the time of Meyer's trial. Though commanders were certainly responsible for good order and discipline among troops in the military sphere, the extension of that accountability in personal terms for the actions of subordinates in violating the laws of war was controversial. The contemporary American war crimes trial of Japanese general Tomoyuki Yamashita, for failure to take appropriate measures to prevent massacres in the Philippines and for inculcating among his troops knowledge of what or what not to do, was the first to argue command responsibility.[87] Thus, the statement of command responsibility introduced by Macdonald at the outset of the opening address and assumed throughout the proceedings falls into a broader definition than accepted up to that time. As a commander, Meyer condoned the killing of Canadian prisoners by his presence at the Abbaye d'Ardenne and through loose statements about what to do with prisoners of war. Meyer did not assume command over the 12th SS division until later after Witt's death, however, and therefore was the responsible commander for alleged killings that fell within the purview of the 25th SS Panzer Grenadier regiment.

Lawyers and scholars today have the benefit of subsequent legal developments. Command responsibility was clarified quite clearly in the 1977 Additional Protocol I to the 1949 Geneva Conventions, although no reference was made to the related issue of superior orders. The Supreme Court of Canada's ruling in *R. v. Finta* (1994) held that superior orders no longer represented a justified defence for war crimes, but would be taken into account as mitigating circumstances in terms of punishment.[88] In the Canadian context, Kurt Meyer's trial was one of the few precursors to specific articles on the extent of command responsibility in the *Crimes Against Humanity and War Crimes Act*:

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The military commander:

a) fails to exercise control properly over a person under their effective command and control or effective authority and control and as a result the person commits an offence…

b) the military commander knows, or is criminally negligent in failing to know the person is about to commit or is committing such an offence; and

The military commander subsequently:

c) (i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences…

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.[89]

This national legislation meets obligations under the Rome Statute bringing into force the International Criminal Court, which Canada ratified on 9 July 2000.

Reconstructing a Plausible Version of Events

Once command responsibility was established or assumed, the military court's next task was to determine, as far as possible, exactly what happened and where in time and space. In a courtroom setting, the picture of events will necessarily be either imperfect or incomplete to some measure. Add the confusion and realities of combat in battle, and the reconstruction of events becomes much more difficult. As the proceedings disclose, available information was often contradictory or subject to conflicting interpretation. Observers remembered the same event in different ways and from separate perspectives. In the Meyer case, many of the main participants who could have corroborated the statements made were dead or missing. The challenge of the military court was to decide the most likely scenario and chain of events from a collection of disparate and at times conflicting evidence. Thus, the reliability of the proceedings on matters of fact should always be kept in mind. Whether individual details were wrong or subject to interpretation, the military court reconstructed what appeared to them a plausible sequence of events given the information and persons available. Significance was then attached to the whole or parts of the represented version of the true events, approximating reality.

The Question of Orders

The manner in which a commanding officer conveys intent to subordinate troops is usually encompassed in the issuance of direct or indirect orders. For the purposes of law, the most exact order is written down and passed through the accepted chain of command. However, in matters of war crimes, documented orders rarely exist because officers contemplating or sanctioning violations of the laws of war are not stupid enough to issue one in the first place or make every effort to hide criminal acts after the fact. Despite Macdonald's conscientious efforts, no written order to kill prisoners of war under Meyer's signature was ever found; indeed, Meyer and other Waffen-SS members vehemently denied the existence of any such order. In any case, orders and instructions communicated verbally are far more commonplace. It was the prosecution's contention that Meyer told some of his troops during training that no prisoners were to be taken and he personally directed the killing of Canadian prisoners of war at the Abbaye d'Ardenne. Again, Meyer denied giving such verbal orders in either situation and if captured Canadian soldiers were killed, subordinates had clearly misinterpreted the actual meaning of his words. Verbal orders and instructions were typically more prone to ambiguousness than formal written orders. Soldiers read into the orders what they wanted to hear or what they thought the commander meant. The non-commissioned officers in control of Canadian prisoners at the Abbaye d'Ardenne therefore exceeded their vested authority. Lastly, Meyer and other Waffen-SS officers may have fostered a dangerous climate with the implicit understanding that prisoners were to be maltreated and killed, without explicit verbal orders. The mere absence of direct written or-

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ders, therefore, did not absolve Meyer totally from guilt, but complicated the burden of proof required to determine the degree of personal accountability. As the military court learned, orders and intent came in many forms.

Credibility of Witness Testimony

During trial, the relative weight or believability given to evidence from witnesses testifying relies in large part upon their credibility. At worst, persons under oath might lie or make misleading statements. The ability of a foreign military court sitting in an occupied country to compel the truth from former service personnel was an acknowledged problem. Witness testimony was subject to vigorous cross-examination to check reliability, ensure internal consistency, and elicit further clarification. When warranted, Macdonald treated some witnesses as hostile. In barest essentials, the trial really came down to the competing words of Jan Jesionek and Kurt Meyer. Of all the witnesses, Jesionek alone put Meyer at the scene just before the murders, giving subordinates loose instructions about what to do with Canadian prisoners of war. Andrew did his best to call into question the details of Jesionek's recollections, raise possible ulterior motives, and query his character and background. Meyer's performance on the witness stand, on the other hand, was carefully orchestrated and highly selective. Meyer demonstrated a remarkable memory for the smallest tactical details, but proved less forthcoming when asked about the killings of Canadian soldiers after capture. Macdonald tried to delve into Meyer's experience with prisoners on the Eastern front against the Soviets but was cut short by the military court president; the prosecutor spent the rest of the time undermining the story put forward by Meyer that zealous subordinates were really to blame for the Abbaye d'Ardenne incidents. Doctors Eric Gatternig and Eric Sift, whom Meyer purportedly told to investigate the presence of bodies, denied under oath any such conversation with their commander. In the end, the military court members had to judge the relative credibility of individuals during the trial. The military court discounted Jesionek's testimony in favour of Meyer in its final verdict, leading to acquittal on two out of the five charges.

The View from the Bench

The thoughts and feelings of the Canadian officers who judged Kurt Meyer remain among the least understood parts of the war crimes trial. The proceedings provide only occasional glimpses through questions and comments from the court president and members. Meyer appeared before five judges: the president Major-General Harry Foster, the commanding officer of the 4th Canadian Armoured division and a senior Canadian officer of the same rank as the accused, and four members: Brigadier Ian Johnston commanding the 11th Canadian Infantry brigade in the 5th Canadian Armoured division, Brigadier H.A. Sparling of the Royal Canadian Artillery, previously with the same division, Brigadier Henry Bell-Irving, commanding the 10th Canadian Infantry brigade under Foster, and Brigadier J.A. Roberts, commanding the 8th Canadian Infantry brigade in the 3rd Canadian Infantry division. All of these officers possessed recent combat experience in the field as commanders at the division and brigade levels, some directly against the 12th SS division in Normandy. Tony Foster, in his book *Meeting of Generals*, suggests that at least two of the Canadian officers, including his father, held reservations about holding Meyer legally accountable for behaviour Canadian troops similarly countenanced on occasion.[90] This supposition, however, fails to understand fully the exceptional nature of the crimes committed by 12th SS division troops and contradicts statements made by Harry Foster and others immediately after the trial. The amount of empathy for Meyer among the Canadian military court members was limited. Legal historian Patrick Brode contends that Johnston and Sparling, former acquaintances of Maurice Andrew in the 5th Canadian Armoured division, wanted Meyer convicted on all charges; the remainder were willing to find guilt on the first, fourth, and fifth charges.[91] Although deliberations in chambers were not recorded, Harry Foster cast the deciding vote in respect to the charges. In some measure, the military court accepted the prosecution's contention that Meyer was responsible as commander for counselling troops to deny quarter and the killing of Canadian prisoners of war at the Abbaye d'Ardenne. This considered judgment was the product of more than two weeks of presented evidence and testimony.

For Canadian officers, the murder of Canadian prisoners of war in Normandy was a serious matter that contravened the laws and customs of war. On the morning of 28 December 1945, the military court awarded a sentence of death by shooting, the highest penalty available. Whatever the qualms of the individuals involved, the Canadian military delivered a very clear, institutional message that war crimes had been committed and that, by Canadian standards, Meyer was in some part responsible as a commanding

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officer. The contention that some unnamed Canadian soldiers might have denied quarter in the heat of battle in no way excuses the flagrant and legally proven violations committed by the 12th SS division in the days following the Normandy invasion.

The Decision to Commute Meyer's Sentence

"It had been a trying ordeal for all of us," Lieutenant-Colonel Macdonald later reflected, "and there was a profound sense of relief that it was all over. We had come to admire this German general for his qualities and proficiencies as a soldier; we respected his courage and his dignity throughout the trial, but we had a solemn duty to perform which was not made easier by these considerations." Opinion was divided between those who regretted the death penalty, and those who believed "it was a proper exercise of justice and he should pay the supreme penalty, and nothing less." Had the eighteen Canadians murdered at the Abbaye been given a fair trial and impartial judgment before their execution? Why should Meyer, convicted of responsibility, be given a lesser penalty?[92] Macdonald, in his report on the trial, left no doubt that he considered the trial fair in all respects and that "only one penalty was adequate either as punishment for the offence or deterrent for the future" **[B7]**.

The Commander of the Canadian Army Occupation Force (CAOF), a part of the British Army of the Rhine (BAOR) in Germany, was the last line of appeal before Meyer's execution. Major-General Chris Vokes could either confirm or refuse the verdict or findings, order a new trial, or reduce the sentence. He immediately reviewed the trial record, advised in legal matters by the Judge Advocate General, Brigadier Reginald Orde, who concluded that the proceedings had been carried out fairly and in accordance with the law. Even Meyer suggested as much in his closing remarks, and had resigned himself to accept the inevitable. A visit from his wife on 29 December, however, coupled with the insistence of Captains Plourde and Wady Lehmann, convinced Meyer to appeal the sentence to Vokes on 31 December. He maintained his innocence, his soldierly honour, and his duty to his family **[C1]**. Vokes remained unmoved by this plea for clemency, which was "merely an appeal for sympathy from one soldier to another." He confirmed the findings and death sentence on 31 December 1945, stating that he "could not see his way clear to mitigate the punishment awarded by the court." The execution was set for 7 January. A firing party was detailed, the place of execution selected, and Meyer said his final farewell to his family.[93]

The death sentence was never carried out. Regulation 14 gave the senior combatant officer in theatre the right to commute the punishment after it was confirmed. As the execution date approached, Macdonald became concerned that this second review of the sentence had not taken place. Senior officers at the Canadian Military Headquarters in London concurred and advised Vokes to ponder the case further. In the meantime, Meyer's wife retained an Aurich lawyer, Dr. Wilhelm Schapp, who addressed a personal petition to Vokes. The general's response was polite but non-committal; he quietly postponed the execution and reconsidered the death sentence **[C2-3]**. Did Meyer have an adequate "degree of responsibility" in these crimes to warrant the death penalty? A commander was responsible for the actions of his troops, but the court had only proven that Meyer had "vicarious" responsibility.[94] Vokes explained his logic in a 1981 letter:

> *We [Orde and Vokes] discussed the question of responsibility of a commander for the action of men under his command. There was no doubt the murder had been committed by some person under his command, but there was no direct evidence he had ordered that person to commit the murders. On the other hand he did bear responsibility for the actions of all those under his command. For instance if one of his soldiers committed murder was Meyer guilty of murder [?] But there was a vicarious responsibility and consequently Meyer could not go unpunished. It was expedient to make it severe.*[95]

The German officer had been found not guilty on the third charge of ordering the Canadians' death. In Vokes' opinion, the other charges did not warrant the ultimate penalty. He sought further advice from senior Canadian officials at Canada House in London on 9 January 1946. Although the trial was fair, Vokes was reluctant to set a precedent that "a commander in the field could be held responsible with his life for the acts of his subordinates." Vincent Massey recorded in his diary: "in his [Vokes'] place I would commute the sentence and that is the decision I think he will finally make. I strongly recommended, however, that a state-

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ment should be issued explaining the reason putting it on a purely legal basis to offset the charge the action was taken through soft-heartedness."[96] Vokes conscientiously believed that the death sentence was too harsh, and he left the meeting with unanimous support to commute Meyer's punishment to life imprisonment **[C4-5, C8]**. On 13 January, Meyer learned that he would be spared but would spend the rest of his life behind bars. The public learned from a press release three days later **[C7]**.

Vokes' decision to commute the sentence to life imprisonment **[C11-12]** ensured that the Meyer case would be a subject of historical debate and controversy. "From all parts of Canada has come a flood of protests to the Department of National Defence over the commutation of the sentence of death on General Kurt Meyer," a *Montreal Star* reporter noted. "The great majority disapproved most strongly the action of changing the sentence," and "protests came pouring in the capital from private citizens, veterans' organizations, ex-servicemen, and many who are still serving in the forces."[97] Newspapers observed the intense protest against this course of action in Canada, reprinting letters to Ottawa from organizations like the Canadian Legion, publishing letters to the editor that denounced the decision as a miscarriage of justice, and showing the mixed feelings amongst Ottawa officials on the matter. The government drew up twelve different form letters to address the myriad objections **[C9-10, C13-14]**.[98] Unsatisfied, the editor of the *Globe and Mail* demanded all the facts:

> *This newspaper has not said Meyer should have been shot. It has said that if he was proved guilty he should die. If he is not guilty, he should be acquitted of the charges. If there is doubt as to his guilt or conduct of the trial, there should be a new trial. Our quarrel has been with the confusion which prevailed prior to and after commutation of Meyer's sentence, a decision which collides with the principles laid down by the United Nations for the conduct of trials fixing guilt or responsibility for war crimes.*
>
> *No one has yet said Meyer was not guilty. A conspiracy of silence shrouds [the] decision to mitigate the sentence...*[99]

Those involved in the trial also waded into the dispute. Major-General Harry Foster, the president of the military court, fanned the "blaze of public debate" when he told reporters that Meyer should have been shot.[100] "I was just as pleased as any man when the verdict of guilty was returned," Lieutenant-Colonel Maurice Andrew told a reporter when he returned home as commanding officer of the Perth regiment. He stressed that his relations with Meyer had been extremely formal, and that "I have no more use for this Nazi than I had when the war began."[101] Malcolm Macdonald, the British High Commissioner in Ottawa, provided a sober assessment of the public clamour when he concluded that the government mishandled their initial publicity by failing to quash early rumours about the decision-making process and Vokes' personal responsibility and rationale for lessening the penalty **[C15]**.

Although emotions calmed and journalistic coverage lessened in the following weeks, several central issues remained. In fact, Vokes' decision had a direct influence on Canadian war crimes proceedings generally. "That order of commutation was such a surprise and a shock to those responsible for the investigation and prosecution of war crimes against Canadian personnel," Clarence Campbell recalled, "that it resulted in the virtual termination of all such proceedings in the European theatre so far as the Canadians were concerned." He did not believe that Vokes had "done anything to enhance the prestige of the Canadian Army," and insisted that "the less said about it the better."[102]

Transfer to Canada and Imprisonment at Dorchester Penitentiary

Canadian officials faced the question of where Meyer should serve his sentence. He was flown from Germany to England in January, and transferred to No. 4 Canadian Military Prison and Detention Barracks in Reading. When this facility reverted to civilian use in early February, he was moved to No. 3 Barracks at Headley Down, southwest of London. The fact remained that existing laws did not permit prisoners of war to be incarcerated in the United Kingdom. Furthermore, the Canadian government would have no control over a prisoner placed in a German jail in the British zone of occupation. Officials thus opted to bring Meyer to Canada to serve his sentence **[D1-7]**. On the night of 24 April 1946, Meyer was quietly transferred from the Headley Down jail and placed

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aboard the S.S. *Aquitania* for passage across the Atlantic. During the voyage Meyer wandered the decks with oblivious passengers (mostly war brides and children from England) and played cards with the ship's officers; it was only when the ship approached Halifax that he was returned to his cell and warned that the popular reception in Canada would not be welcoming. Major-General Harry Foster met Meyer at the dock and ushered the prisoner, dressed in a Canadian soldier's uniform to conceal his identity, to a waiting car.[103]

Meyer was committed to the federal penitentiary in Dorchester, New Brunswick. Clearly displeased with his plight as "only... a number in an army of nameless men," he demanded to be treated as a prisoner of war. George Goad, the prison warden and former Provost Marshal of the Canadian Army, immediately impressed upon his new inmate that he would not receive any preferential treatment.[104] From that point on, Goad reflected, Meyer accepted the prison regime and got along well with the other prisoners (who asked him to lead them in daily exercises), read voraciously, and studied the English language **[E16]**. He eventually secured the job of cataloguing and charging out books in the prison library. "He did a good job," Classification Officer R.G. Rowcliffe assessed. "His interest never slackened and he gave much thought to improving the system as he found it and also worked hard in carrying out the necessary changes" **[E15]**.

Meyer's son, Kurt Jr., later analyzed his father's letters to the family during these years. The former German general appeared fundamentally unchanged and unrepentant in his beliefs:

> *Your letters from ten years of imprisonment show: thought-structures/thought-processes, terms and that, which one can describe as inner attitude, remained the same down to your vocabulary, which even the most naïve could probably only utter with difficulty after the war: 'destiny', 'greyhounds', 'fast as lightning', 'exterminate'. On either side, those politically and militarily responsible are not even remotely named. The war is portrayed as a 'natural phenomenon', which came upon the nations. […] You did not fight for Hitler and his system, but for 'Europe', not against the Russian people, but against the 'Asians', against the 'red flood.'*[105]

He refused to consider that "the thought, that the actions of Hitler could have been unjust or morally wrong," and upheld "outdated world views" and traditional virtues. Meyer's life philosophy consisted of a series of binaries. "There is no calmness, no trust in the course of things," his son noted. "There is only either/or: healthy or sick, weak or strong. One goes through life 'pitiful' or proudly, with one's head held high. The creation is 'the truthful, sometimes also brutal translator of God' and presents 'the wisdom of life without deceit.'"[106]

The challenges of prison brought these beliefs into sharp relief with Meyer's mental and physical health. As a soldier, he found it degrading to be imprisoned with common "criminals, murderers and perverts." As a sympathetic German, he ate only one meal a day for a month in 1949 to share the deprivation of his people suffering from postwar shortages. He worried about his family, who were unable to visit him in prison **[D16]**. His wife, son and two daughters lived with his mother in the British zone, while his two other children lived elsewhere in Germany. He knew that they relied on meagre welfare allowances to survive **[D21]**, and appreciated the charitable support provided to his family by his German lawyer, Dr. Schapp. Collapsing under these heavy burdens, Meyer pondered suicide, but he reassured his wife on 26 September 1946 that "when despair or impotent hatred creep into my cell, all I have to do is gaze into your eyes and I feel peaceful again."[107] Emasculated, morose and despondent,[108] the convicted war criminal wallowed in self-pity **[D9, D19]**. Letters from his wife and former comrades, who encouraged him to maintain hope and faith in justice, boosted his morale **[D10, D12]**. So too did contact with his German lawyer, Dr. Schapp, who continued to lobby on his behalf and turned to the Catholic Church for support **[D13-15]**. He continued to plead his innocence to Canadian authorities like Lieutenant-General Guy Simonds (the Chief of the General Staff in Ottawa), but Meyer's sentence stood **[D11]**.

Soon after arrival in New Brunswick, Meyer also found local support. Major James Millar, the Protestant Army Chaplain from Eastern Command, began to visit Meyer in 1948. The chaplain's monthly reports revealed sweeping discussions about current political affairs, the dangers of Communism, his military exploits during the Caen-Falaise battles, and his longing for his family

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[D17-18]. Millar sympathized with the prisoner and believed his claim of innocence. These visits eventually expanded to include Fritz Lichtenberg, a sixty-year old German-born building contractor in Moncton. Lichtenberg's RCMP file documented connections to the National Unity Party of Adrien Arcand and the Nazi-sponsored "League for Cultivating Personal Friendships Abroad" in 1939, Canadian demographic data he sent to Berlin during the war, and open criticisms of Great Britain. This track record of "quiet" advocacy of the Nazi cause fed suspicions that he had an ulterior motive, but Lichtenberg explained that he had known the parents of Käte Meyer in his hometown and felt sorry for Kurt. Although prison regulations did not extend visiting privileges beyond a prisoner's close family, Lichtenberg lobbied diligently for an exception. Finally, in May 1949, the Department of Justice granted him monthly visits alongside Millar. This regular visitor became convinced that Meyer's sentence and his imprisonment in Canada were unjust, and he worked to generate support for his release.[109]

With the start of a new decade, sympathetic journalists began to revisit whether justice had been served in Meyer's case. Ralph Allen, a reporter for *Maclean's* magazine, headlined a provocative February 1950 article **[D20]** with the question "Was Kurt Meyer Guilty?" As a journalist who had covered the war crimes trial in late 1945, he asked Canadians:

> *Was he proven guilty according to procedures and according to a body of law that will serve as a practical, workable guide for future generations of Canadians without challenging their heritage of Anglo-Saxon justice? Did he receive a fair trial? Was he tried under impartial rules? Were these rules – impartial or not in themselves – administered impartially by the court that tried him?*
>
> *As a reporter who covered the Meyer trial I say "no."*

Reviewing the trial proceedings, Allen concluded that Meyer's conviction had contradicted several of the "first and most precious principles of Canadian law." The war crimes regulations rested on the assumption of guilt and permitted questionable evidence. The reporter dismissed Jesionek's testimony and intimated excessive bias against Meyer, but provided scant support for his own claims of truth. Meyer was painted as the noble parent over his youthful troops, whose pre-invasion proclamations could hardly be held against him. Despite the ingenuity of Allen's article, historian Patrick Brode observed, "it was remarkably void of substance or objectivity."[110] Regardless, it buoyed Meyer's spirits and seemed to indicate growing support for his claims that his plight was unfair and unjust **[D23]**.

Others fundamentally disagreed with Allen's assessment. Meyer's former defence counsel, Maurice Andrew, dismissed accusations that it was illegitimate to hold the prisoner in a Canadian civilian prison. Former assistant prosecutor Clarence Campbell, who had become the president of the National Hockey League after the war, continued to denounce any further leniency and lamented that the original sentence had not been carried out. "I have no desire to persecute Meyer," he explained in a letter to the Minister of National Defence, "but I think he has already been treated better than he deserves, and any move by personnel in your Department to serve his release is an insult to the memory of those who were Meyer's victims."[111]

Appeals and Meyer's Transfer to Germany

When Lichtenberg's personal appeals for clemency made no political headway, he organized a citizen's group demanding that Meyer's case be re-examined and hired prominent Halifax lawyers H.P. MacKeen and Rolland Ritchie to represent the prisoner. In an initial letter to his lawyers, Meyer suggested that he had tried to "uncover the culprits" in his regiment who had killed disarmed Canadian prisoners – a new disclosure that fit uneasily with his previous testimonies **[E1]**. They did not include this claim in their petition; instead, they passed along his offer, as a professional soldier, to serve the United Nations or Canada.[112] On 12 December 1950, they petitioned the Canadian Department of Justice for clemency on Meyer's behalf **[E3]**. Although Meyer admitted to lying to interrogators, he claimed his innocence and asserted that, while the war was raging, "if I had admitted that prisoners had been killed, such a statement by me would be used for propaganda purposes by the enemy." In the accompanying Memorandum of Counsel, MacKeen asserted that the regulations used to convict Meyer had no foundation outside Canada, had not been passed when Meyer's trial was held, and that the prosecutors had flagrantly abused the law by accepting improper evi-

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dence and hearsay. The doctrine of command responsibility, which was applied to Meyer, had never been applied to Canadian commanders. Where was the notion of equality before the law? To make matters worse, the petition argued, Meyer was unique in that all other war criminals were incarcerated in Germany.[113] In this light, they asked that Meyer be pardoned or the remainder of his sentence be commuted.

Meyer's supporters released this petition to the media, generating renewed debate on the clemency issue **[E4]**. The political context had changed in salient ways, and the fate of the war criminal became intertwined with tenuous negotiations over German rearmament from 1951 to 1954. Canadian military authorities, who had declined postwar occupation duty past fall 1946 and pulled out their last troops, decided in late December 1950 that an air division and army brigade would return to the Rhine to help build up NATO's capacity to meet what some feared would be an imminent Soviet attack. The previous year, Lester Pearson had declared his support for a democratic Federal Republic of Germany which could play a central role in a rehabilitated Western Europe. The issue of German rearmament, however, continued to perplex policy-makers. The outbreak of war in Korea in June 1950 pushed the matter to the fore. Would Germany be next to face Communist aggression? Pearson drew comparisons between the artificial divisions of Korea and Germany, and the Soviet armies massed along their respective frontiers. The Canadian statesman saw West German rearmament as the only answer to European security, despite apprehension in France, the Low Countries, and Scandinavia. Hume Wrong reminded his minister of the dangers of reviving "a German military caste, and a German military spirit, and secondly, the revival of German military potential." Many Canadians, recalling the world war, shared this apprehension, and Cabinet seemed hopelessly divided. Others pushed for action. T.C. Davis, head of the Canadian mission in Bonn, offered a blunt and bleak appraisal in September 1950: the only alternative to a Europe dominated by the Russians was considerable "German domination." The choice of words was unfortunate (as Davis admitted), but German participation seemed imperative.[114]

The forces rallying behind Meyer used the German question to leverage their case for Meyer's release. In early January 1951, Wilhelm Schapp, still acting as Meyer's lawyer in Germany, contacted the Canadian Embassy in Bonn to set up a meeting about "Panzer Meyer" with the Canadian Minister of Justice, who was in Hanover at the time. He pointed out that there had been "a complete change in the Canadian Press," noting in particular the *Maclean's* article about the case. "In agreement with Meyer I wish to prevent a transfer of the passionate debates to the German press and German parliament – for understandable reasons," Schapp explained, and he hoped that "the sense of justice of the Canadian people and its appointed representatives" would motivate them to release Meyer and circumvent debate.[115] The Canadian Cabinet decided not to act. It considered Meyer's petition that February but decided not to grant him clemency, "having regard to the temper of public opinion generally" **[E5]**. Nevertheless, the government asked the British to share information on cases of clemency granted by the UK and the US to war criminals held by their governments.[116]

In mid-February 1951, the *Ottawa Citizen* published a front-page story proclaiming that the federal government was considering Meyer's release and would likely grant it. Individual Canadians and groups again wrote to the federal government protesting his potential release **[E7-8]**. The public reaction showed that, despite some media reversal, the public mood had not mellowed on the case, *Time* magazine suggested on 26 February:

> *Hamilton's United Council of Veterans protested that further clemency "would be a flagrant injustice to the families and comrades of... victims of his inhumanity." In Windsor, Ford Local 200 voted a resolution opposing release of "this butcher of defenseless prisoners." Toronto's Board of Control urged Ottawa not to grant the appeal unless new evidence is found. Liberal M.P. David Croll warned the government to go slowly.*[117]

If defence authorities had softened on Meyer's culpability, many veterans continued to insist that he should have been shot and, in any case, should remain in prison. Any decisive move on the matter would be controversial; as one senior Ottawa official noted, it "would be a long time before any action can be taken on Meyer."[118]

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International political currents suggested otherwise. Dr. Konrad Adenauer, who was chosen to head the new government in Bonn in May 1949, wanted to tie West Germany to the Western community and NATO on favourable terms that would maximize his country's status. Adenauer took advantage of divergent French-American positions about German rearmament, political scientist James Eayrs explained, "skillfully parlaying what one commentator described as 'a contribution of non-existent German troops to a non-existent European army' into a series of implacable demands."[119] The demands included the fate of German war criminals incarcerated in Allied prisons. In fall 1951, the German ambassador-designate, Dr. Werner Dankwort, requested that Canadian authorities release Meyer immediately. He reiterated rumours that the Soviets planned to release thousands of Germans, and that this grand gesture would appeal to the German people. If Meyer was released on humanitarian grounds, he argued, the political benefits to the Western Alliance would offset the predictable public and media outcry in Canada **[E14]**.

In this context, the Cabinet Defence Committee in Ottawa deliberated on Meyer's fate in September 1951 **[E9-10]**. The Chief of the General Staff, Lieutenant-General Guy Simonds, believed that Meyer had been convicted on the basis of inconclusive evidence. Given his own familiarity with the Normandy campaign, he asserted that Meyer likely would not have known his men were killing prisoners, nor would he have been in a position to stop them. In conclusion, he suggested that "he had always felt that the basis of Meyer's conviction ran counter to Canadian concepts of justice." This statement was another example of poor military advice to the government.[120] The Canadian government had contemplated Meyer's transfer to Germany the year before **[E2]**. On 21 September, Cabinet decided that he would be transferred to a prison for war criminals in the British zone of Germany. The reason was inherently political: "a change in the relationship between the occupying powers and West Germany was imminent" and Meyer was the only Nazi war criminal imprisoned outside of Germany **[E12]**. The British agreed to facilitate Meyer's custody at the Allied National Prison at Werl, in the British Zone of Occupation, which was designated a Canadian "Service Prison" under Section 178 of the *National Defence Act* of Canada **[E15-17]**.[121]

On 19 October 1951, Meyer was secretly removed from Dorchester in a "tin-type melodrama"[122] and flown to Germany **[E14]**. He was nearly killed at Wunsdorf aerodrome when the aircraft landed in fog and the pilot almost overshot the runway, but emerged unscathed from yet another near-death experience. At 0500 the next morning, Meyer was admitted to Werl Prison and joined all of the other war criminals held by United Kingdom authorities. His conditions of imprisonment would be similar to those of the other inmates **[E23]**, including the regulation that all war criminals in Werl could earn up to three months remission on each year of sentence for good conduct. Meyer found this new environment to be a great improvement. As he was led to his cell, he noted the names on the neighbouring doors: Kesselring, von Falkenhorst, von Mackensen, Gallenkaamp, Simon and von Manstein. "I breathed a sigh of relief to be among soldiers once more," Meyer later recorded.[123]

Predictably, many Canadians did not breathe easier. The news that Meyer would be transferred to Germany precipitated widespread Canadian concerns that the government intended to pardon him because of foreign pressure. Subsequently, the Minister of National Defence Brooke Claxton reassured Parliament that Meyer would remain under Canadian jurisdiction and that there was no plan to remit his sentence. Indeed, the Canadian government had already turned down a request from German authorities to release him, and he could not be released without Canadian approval. Opposition MPs were less than reassured **[E20-23]**.[124] Editorials criticized the federal government for its excessive secrecy and evasiveness, and suggested that the most sensible approach would have been to lay out the reasons for Meyer's transfer to the public. "An entirely false and unnecessary air of mystery about the matter would have been avoided," the *Globe and Mail* suggested on 22 October 1951, "and strong feelings would not have been stirred up."

Passions would be further inflamed later that fall. Almost immediately after Kurt Meyer arrived in Germany, Dr. Schapp petitioned for compassionate leave on behalf of Mrs. Meyer **[E24]**. She had not seen her husband for seven years (except for a short visit at Werl), they had five children aged seven to sixteen, Meyer's mother was ill, and they had to discuss their children's education. His refugee family had lost their property in East Germany and still struggled to survive on their welfare allowance. Colonel Vickers, the prison governor, agreed to ten days compassionate leave so that Meyer could attend to this urgent family business **[E31]**. This concession was not unprecedented: nineteen war criminals had been granted short leaves that year.[125] Nevertheless, Kurt Meyer's dispositions always seemed to produce controversy – and this unescorted leave became front-page news.

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Canadian reporter Douglas How accompanied a group of Canadian officers to Offleben to visit Käte Meyer at her home on 26 November 1951. He discovered Kurt Meyer himself in the parlour, playing with his children **[E25]**. Meyer was candid with the journalist, explaining that he had been a fanatical nationalist but that nationalism was now dead and "a united Europe is the only answer." During their free-flowing conversation, he expressed his hope that Canadian rumours of his release were true, criticized overly cautious Canadian generalship during the war, and noted his pleasure at being surrounded by his comrades at Werl. When asked if he still thought Hitler was right, he answered rather vaguely that "The past is dead. History is its own answer about that. I live for the future."

How's article unleashed a furor in Canada. A British telegram from December 1951 observed:

> *A stir has been caused both in [Canadian] Parliament and the Press by the news that former S.S. general, Kurt Meyer... was released from his prison in Germany to visit his family. The Leader of the Opposition recalled a statement by the Minister of National Defence that Meyer was still under the control and jurisdiction of Canada, and asked whether the Canadian Government had given authority for Meyer to visit his home. The Government spokesman admitted that although Meyer was now in a British prison at Werl he remained under the control of the Canadian Government, but added that the prison regulations were a matter for U.K. jurisdiction, and the Canadian Government had not yet received information as to what those regulations were. Several other speakers from both sides of the House strongly criticised the temporary release of a man found guilty of murder. Most newspaper comment has turned on recent statements by the Chief Prosecutor and one of the prosecution lawyers at Meyer's trial. The former said that, while he had no doubt about the legality of the General's conviction, it would only be realistic to release him if he could contribute to the strength of the Western Armed Forces, while the latter urged the re-examination of the evidence by a panel of judges. Some newspapers have supported this latter suggestion, arguing that the case against Meyer was very slender. Others have called on the Government to insist that this "wholesale killer" should be kept in close confinement in Werl or else returned to Canada."*[126]

Veterans' organizations, particularly the Royal Canadian Legion, were livid. One Hamilton resident observed that the general reaction was one of disgust with the "hypocrisy," "dirty politics (in this case international)," and "farcical justice" in this affair. [127] Why not grant other Canadian prisoners "vacations at home with their families," the *Ottawa Journal* asked on 27 November? "The furtive, backdoor methods of the Canadian Government have seldom been better illustrated than in the case of Kurt Meyer," the *Globe and Mail* editorialized the same day. Political fumbling and delay had intensified public concerns and made this a "burning political issue" in Canada and Germany.[128] In Parliament, the Opposition accused Claxton of misleading Canadians by stressing that Meyer was still under Canadian control when the British authorities could grant him leave without consultation.[129] The media and political attention highlighted that Meyer and the prison authorities would have to exercise better discretion in the future **[E28-32]**.[130]

At the same time, pressure continued to grow to release Meyer. His Canadian lawyers issued a statement declaring that Canada's war crimes regulations were not operative at the time of the trial (this contention was of course spurious), which had mutilated "time honoured rules of evidence."[131] Was Kurt Meyer actually guilty? The Canadian government was not clear about its rationale for transferring their prisoner to Germany, and some commentators interpreted this transfer as evidence that Meyer had been wrongfully convicted and should be released. Brigadier Denis Whitaker suggested that Meyer was a good soldier and could not be held accountable for the mistakes made by men in his division. Dalton Dean, a former JAG colonel with First Canadian Army, said that the trial did not prove Meyer guilty of ordering the murder of Canadian prisoners of war, the evidence and charges had been shaky, and the case should be re-assessed by a panel of judges.[132] By contrast, lawyer Bruce Macdonald, now a hard-nosed crown attorney in Windsor, still harboured no doubts about Meyer's original conviction **[E30, F1]**. He and Clarence Campbell issued a statement dispelling misinformed opinions that questioned the legality of the trial and the veracity of the evidence. Surprisingly, they said that there was nothing wrong if Ottawa decided to release him to lead a NATO army – he might be able to *spare* the lives of young Canadians in the next war.[133] Their point was clear: the government's choice was political, not legal, and Meyer's guilt

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need not be re-visited. Allied diplomats continued to negotiate with Germany about the future custody of war criminals **[E34, E36]**, former comrades at Waffen-SS veterans' meetings heard "hopeful things about our Panzer-Meyer" **[E35]**, and many Canadians waited to see how the government would solve "the Meyer riddle" (see for example **E33**).

The Release of Kurt Meyer

The Canadian Government faced a flood of questions in December 1951 demanding more information on Meyer's future. "If this man were released and assumed command of a German division," Kootenay West MP H.W. Herridge reminded the House of Commons, "under the terms of military law Canadian troops serving in Germany would be required to salute this German war criminal when passing him on the street. I am sure there are a great number of Canadians who do not view that situation with any relish." Government officials maintained that nothing had changed, but the issue had assumed symbolic proportions. "Kurt Meyer is more than simply another nazi general," Opposition leader George Drew observed. "He has become a symbol in the minds of Canadians, who have suffered from nazi brutality, of the sort of thing that would raise doubts as to the clarity of our attitude toward the conduct of that kind. I think that, at a time when other young men are being called upon to fight for their country, the people of Canada want some reassurance as to exactly what is going to be done." **[F1-5]** For their part, Cabinet quietly informed the German ambassador that Meyer could not be released on bail because they had rejected his Canadian lawyers' earlier petition, but that they would consider his German lawyer's petition.[134]

Ray Gardner, a prominent Vancouver newspaperman and free-lance writer, presented a detailed case against Kurt Meyer in his pamphlet "Wanted for Murder" **[F6]**. Compiled using political statements and newspaper articles, Gardner alleged that a secret agenda lay behind efforts to release unrepentant Nazi gangsters like Meyer so that they could assume leadership positions in a re-armed West Germany. The protests of the Canadian people were the only reason this "plot to have him pardoned and sent home" had been foiled since 1949. The government's decision to "smuggle" Meyer out of Canada was an "underhanded" pandering to European demands, and he should be returned to serve out his sentence. After all, his heinous crimes could not be forgotten – and Gardner used his case to call on Canadians to oppose German rearmament in general.

Gardner hoped to stem the growing tide of support in Germany for Meyer's release. German petitioners continued to plead Meyer's case, and Meyer's name appeared on a specific list of war criminals that Adenauer's coalition government requested to be freed in mid-1952. Their cause was helped by news that Canada released convicted war criminal Wilhelm Ossenbach, leaving only Meyer and one other in custody **[F8]**. When Dr. Schapp grew frustrated with the Canadian government's "side-stepping," he contemplated approaching the United Nations or securing citizenship for Meyer in a country like Egypt, Persia or India **[F9]**. Meyer's deteriorating health heightened demands for decisive action **[F11, F22]**. The British Governor at Werl noted in mid-1952 that his prisoner "did not look so well" and "was liable to fits of depression."[135] In fall 1952, Meyer was held at the Mariannen Hospital for medical treatment. Like other war criminals in the hospital he was guarded day and night, and explained to his wife how he found this humiliating:

> *Unfortunately the continuous presence of a German warden in uniform is a depressing psychical [sic] strain. You will understand that under these circumstances I renounce of taking a walk in the hospital garden. If there was the question of British escort I would hardly be interested, but I feel ashamed to be watched by a former German soldier under the eyes of the German patients, so that I can no longer stand this condition. As a matter of course I understand clearly that I have to carry out the instructions of the detaining power, but I do hope that the responsible gentlemen understand and share my viewpoint, and if they are not able to bring about an alteration in the present state of affairs to comply with my request to be re-transferred to the prison. Under these circumstances I may ask you not to come and see me here, but instead to wait and see how things develop.*[136]

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His defence counsel wrote to the Canadian prime minister and to Queen Elizabeth II, claiming that Meyer would be permanently crippled if he was not released for medical treatment at a spa **[F14-17]**. Being able to cite sympathetic Canadian media statements did not hurt his case.

The real push that guided Canadian policy came from West German leaders anxious to resolve the issue of war criminals. In April 1953, Chancellor Adenauer met with John Foster Dulles in Washington and reminded the American that there were still three hundred war criminals in prison at Werl. He stressed that "the war criminal problem was still psychologically a very sensitive one in Germany," and urged that the Allies establish a Mixed Board to re-examine the cases and introduce milder rules for parole and clemency. After all, the Russians seemed to be showing a more accommodating attitude in their sphere of influence.[137] Adenauer visited Ottawa **[F12-13]** and highlighted at a press conference on 18 April that, thus far, Great Britain had been the most magnanimous in releasing war criminals and remitting sentences. Although he refused to comment on Meyer because he did not know the details of the case, he noted that all war crimes cases would be reviewed by a mixed consultative board.[138] A few months later, Adenauer visited Werl Prison and personally reassured Meyer and the other prisoners that he was working diligently to secure their release. He had "very little sympathy for the prisoners who had previous criminal or political backgrounds," a British telegram noted, "but was interested in those with a military history."[139] In the wake of his visit, the Bonn Government recommended that the sentences of the 104 war criminals in British custody should be commuted.

In September 1953, Mixed Consultative Boards were officially announced to resolve the clemency issue. Representatives from the Allied High Commissions in West Germany and "free Germans" would meet to recommend the termination or reduction of sentences for war crimes.[140] The British invited Canada to send an observer to the commission; rather than participating fully in the proceedings, he would not express an opinion but could report back to the Canadian Government **[F10, F18]**. Claxton commissioned Brigadier Sherwood Lett, a man with impressive military and diplomatic credentials, to observe the secret board proceedings in Bonn. A Rhodes scholar, First World War veteran, and rising legal star in British Columbia in the interwar years, Lett had rejoined the army in 1939, was wounded leading the 4th Canadian Infantry brigade at Dieppe, and proceeded to command the brigade in Normandy until he was wounded again. After the war, he became Chancellor of the University of British Columbia, Chief Justice of the Supreme Court of British Columbia, and served on a government mission to Japan.[141] He was an admirable choice. Lett passed along the Board's unanimous recommendation to reduce Meyer's sentence to fourteen years, with additional remittance for good behaviour, and reported to the Minister of National Defence that this consideration was consistent with similar cases. He suggested that clemency would be appropriate **[F24-25, F27-29]**.

The Canadian Cabinet accepted the Mixed Board's recommendation. On 15 January 1954, Order-in-Council P.C. 1954/75 reduced Meyer's sentence from life imprisonment to 14 years, subject to reduction for good conduct in accordance with prison rules **[F31-33]**. Claxton pointed out to Parliament: "In every case, so far as is known to us, the recommendation of the mixed consultative board has been carried out, accepted and acted upon by the government concerned. Are we in this case going to be the only country to make an exception in respect of this case and treat Kurt Meyer separately and differently from every other war criminal?" The Minister suggested that other war criminals had been sentenced to life imprisonment "for much more serious crimes than this." The Opposition had a point when it demanded to know what crime could be more serious than the murder of dozens of Canadian prisoners, and asked the government to produce papers related to the case so that Canadians could reconsider the punishment on a factual basis **[F34-35]**. The government refused, and the debate raged on. Was this proposed release consistent with the treatment of Japanese war criminals **[F26]**? What would happen to Canadian service men serving time for lesser crimes: would they be released **[F39]**? Would Meyer assume a key military post in the West German forces then contemplated to defend Western Europe within NATO? Would arming Germany with former Nazis encourage the resurgence of fascism **[F38]**? Canadian military sources responded that Meyer was a sick man and that his medical condition precluded any such role.[142]

A précis of editorial opinion in the aftermath of the announcement of Meyer's impending release provides insight into the now-predictable uproar. The *Toronto Telegram* asserted that life imprisonment was "the least penalty compatible with the crime for which Meyer was convicted," and the Canadian public had been given no justification to justify leniency and the mitigation of his sentence. The *Windsor Star* labelled Meyer a "militaristic terrorist" and stated that, even though his "involvement was one of

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omission rather than commission, he is nevertheless an indoctrinated Nazi and the only excuse for his release is a wish to conform to the excessive leniency, shown war criminals by the Western Allies." This same British and American "soft policy," manifest as appeasement, had "failed previously to deter 'a war hungry Germany.'" The *Edmonton Journal* observed:

> *Meyer's name, to most Canadians, is indelibly connected with atrocities against Canadian troops. The public has never understood why the death sentence was not confirmed and are shocked to learn that he is now to be released. No doubt pressure has been exerted by the West German Government, but this leniency invites similar outrages in the future. Meyer's reported arthritic condition may be another attempt to lull public suspicion.*

The *Calgary Herald* complained that the Liberal Government had been "scheming and conniving" for Meyer's release for more than two years, and should have reviewed the case "openly and honourably" before he was sent to Germany. The *Victoria Colonist* found the whole process from his original death sentence to an early release to be "a little too pat," swift, and unsustainable. Canada could not dwell on the war forever, but his sentence needed to be upheld to maintain respect for his original trial.[143]

Meyer's health problems continued to raise as many questions as answers. The consulting physician with the British Army in Germany observed that his physical condition seemed to have improved by October 1953 **[F21]**, but other medical opinions suggested that further hospital or spa treatment might help if his situation deteriorated **[F37, F40]**. British authorities complained about what they saw as Canadian hesitancy on the issue, even though the Canadians only insisted that Meyer be kept under guard. "The Canadians are being rather troublesome about this and we must know just where we stand," H.W. Evans of the British Foreign Office noted in June 1954. "Otherwise there is the danger that Meyer may die in our hands in prison and that we shall get the blame for what was the fault of the Canadians" **[F40-42]**. The matter became moot in August 1954, when the British High Commissioner in Bonn advised the Canadian Embassy that the Remission Board at Werl had decided to grant Meyer full remission of one-third of his sentence for good conduct **[F44]**.

At 5:15 a.m. on 7 September 1954, a decade after his capture, Meyer departed Werl through a side door and returned to freedom **[F45]**. Former comrades, his wife, even family friend "Uncle Fritz" Lichtenberg (who made the trip from Canada) met him at the Werl hotel, where he was handed flowers by the Vice President of the North Rhine Westphalia Red Cross Association. After dealing with release formalities in Frieland, Meyer was driven to the town of Niederkrüchten, where his family was staying, arriving shortly after 10:00. He was met with a hero's welcome. The road was "black with people ahead. The fields on either side of the road are packed with cars. A triumphal arch, as is customary for Rhineland festivities, welcomes me." A line of torch bearers lit his way to his children. He finally addressed the circle of comrades: "Believe me, the years which lie behind me have left no hatred towards our erstwhile enemies. Let's not talk about the past but work for the future. We have to secure the future for our children and build a strong, vital Europe."[144]

Responses to the Release of Kurt Meyer

"Many Canadians remained bitter over his release," historian Patrick Brode aptly concluded based upon a survey of editorial opinion:

> *"Considering that he was convicted of inciting cold-blooded murder of eighteen Canadian prisoners of war during the Normandy campaign, Meyer has escaped remarkably lightly," editorialized the* Edmonton Journal*... In a thoughtful comment on Meyer's release, the* Montreal Star *wondered if the ideals of the trials had been forever lost in "some curious emergence of a professional spirit, a kinship between officer corps, between men who, as professionals in war, do, not like the development of a trend which means that orders given in the heat of battle can be held against them." The hope given to the world by the Nuremberg and the lesser trials was being thrown away in a cynical determination to appease a new ally: "Better not to have tried Meyer at all, or, having found him guilty,*

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> *to have shot him, than to stumble through to the point where a few years' good behaviour in jail entitles such a man to freedom. The war trials have been, in other words, a farce."*[145]

Bruce Macdonald maintained that the original sentence had been "logical, judicial and just," and that its reduction was "based on expediency, not justice." As the youngest German divisional commander during the war, Meyer remained "one of the youngest in the top bracket of former Nazi leaders":

> *Meyer will no doubt be heard from in the New Germany. He is comparatively young, has an outstanding military career, and is colourful and no doubt heroic figure to the younger ex-service men of Germany. He can be an eloquent and persuasive leader, and he can use his powers in that effect, either in harmony with Western aspirations for his country or with those of the Communists.*
>
> *He is still a Nazi, however, and their influence on Western Germany is an unpredictable one. It is said that they are making their influence felt again in positions of authority. We can only hope that we may not unwittingly release one who can be a menace to future good and peaceful relations in the world. Perhaps we overestimate his potentialities. But I do not think so.*[146]

The German media painted Meyer's release as a homecoming rich in celebration and fanfare **[G3-5, G7]**. Some Canadian parliamentarians were unimpressed, and saw proof that resurgent Nazism remained a threat **[G9]**. Senior British authorities noted confidentially that the German papers made remarkably little mention of his health and reproduced pictures showing a strong and jovial man, despite his German doctors' insistence that incarceration had taken him to the point of death **[G2]**. Perhaps he was not as ill as they had suggested? Meyer took a job as a supervisor of sales personnel with the Andreas Brewery of Hagen. Ironically, this employment brought him into further contact with Canadian soldiers.[147] Meyer was a frequent visitor to the Canadian Army mess in Soest, which was one of his best customers.

On 5 May 1955, West Germany officially joined NATO – exactly ten years after a Canadian general accepted the German surrender in Holland and Northwest Germany.[148] Would Canadians welcome their new German allies to train in Canada? "The recent strong feeling against mitigation of the sentence of Kurt Meyer must be taken as an indication that it is questionable whether the old enmities can be forgotten as quickly as present realistic interests would dictate," the Undersecretary of State for External Affairs noted in late 1954 **[G8]**. In fact, the Canadian military readily accepted that West Germany and Canada were now defence partners. Canadian soldiers stationed in Soest entertained Meyer at their mess, and the officers even invited him to speak on occasion. Diplomats and reporters noted the irony **[G10-13]**, but Conservative MP H.W. Herridge did not find it amusing. "We know this man has served his sentence," he told the House of Commons in July 1956, "but that does not alter the situation and I think we have to consider the sensibilities and feelings of mothers and widows of Canadian veterans before we consider the sensibilities of a former war criminal."

Meyer had, of course, moved on to other concerns. After his release from prison, Meyer was in no shape to pursue a military or political career: he needed orthopaedic shoes or a cane to walk, and suffered from chronic arthritis, kidney and heart disease. Instead, he became a key spokesperson for the Waffen-SS veterans' organization HIAG (*Hilfsorganisation auf Gegenseitigkeit der Waffen-SS* or Mutual Aid Society of the Waffen-SS), addressing rallies and attempting to rehabilitate their reputation. The aura of criminality that surrounded Waffen-SS veterans – who were associated with the guardians of the concentration and extermination camps – meant that the West German government did not grant them war pensions and benefits comparable to those available to *Wehrmacht* veterans. Meyer insisted that their service had been as honourable as that of any other formation, denied any collective guilt, and became a leading apologist for his comrades. Speaking to a rally of 8000 HIAG members in Bavaria in 1957, for example, Meyer claimed that SS troops "committed no crimes except the massacre at Oradour, and that was the action of a single man. He was scheduled to go before a court-martial, but he died a hero's death before he could be tried." He insisted that the Waffen-SS had operated as any other regular army unit, and lobbied that Waffen-SS veterans should be allowed to serve with the new German army.[149]

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To the end, Meyer remained unrepentant. He continued to wear his Nazi medals despite their unpleasant connotations and ties to Hitler, and his son remembers him as a stern disciplinarian who clung to the "old values."[150] Meyer's memoirs, published in 1957, venerated his comrades (and himself) and displayed no sense of responsibility for what had transpired during the war. When he visited the Abbaye d'Ardenne that year, he changed his story once again and told Jean-Marie Vico that he had sent the *SS-Unterscharführer* who had committed the murders to an untenable position on the front. Why did he lie at trial, Vico asked? "I could not, for reasons of honour, admit to an enemy Court that my men had done such things," Meyer replied.[151] He took the real story with him to his grave. On his fifty-first birthday, 23 December 1961, Meyer died after only seven years of freedom.[152]

Meyer's funeral was the largest in Hagen's history. More than five thousand people from all over Europe attended the service, the post office hired extra staff to cope with the thousands of condolences that flooded in, and Chancellor Konrad Adenauer himself sent a tribute to Meyer. "You did not build yourself a monument of stone but erected a shining example in the hearts of your comrades," Hubert Meyer proclaimed during the eulogy. "You worked a lifetime for a Fatherland, happy and free... Wherever we are, privately, publicly, at home or abroad we will say with pride, 'I… was a comrade of Panzermeyer!'"[153] The tributes were predictable in what they memorialized – and what they did not. "Needless to say," historian Harold Margolian concluded, "what had happened at the Abbaye d'Ardenne on 7-8 June 1944 was not listed among Meyer's accomplishments."[154] The modest monument in the garden at the Abbaye, dedicated to the memory of the Canadian victims, offers another testament to his controversial legacy.

Participants, Commentators, Historians, and the Meyer Trial[155]

Historical interpretation of the Meyer trial has developed in three waves. The first wave, representing personal reflection by the participants in the legal process and subsequent decision-making, perpetuated the original controversies over the fate of Meyer. These studies sought to justify individual actions and ensure that each party to the debate established their "facts" and counterbalanced conflicting perspectives. This entrenched the existing structure of the debate as it emerged during the trial and after, but did not move the body of literature any closer to a balanced interpretation of events. The second wave, the "relativist" or "revisionist" school, was based on the premise that both sides were guilty of war crimes. This wave of interpretation represented an effort to contextualize the Meyer controversy in a broad framework of understanding. If developments during the Cold War, like Vietnam, confounded the simple delineation of right and wrong, these narratives applied the sentiment that war can have no winners and losers. There were victims on both sides, and on the basis of broad comparisons the second wave authors made such a case for the Normandy crimes. By contrast, the third wave of scholarship has dismantled any reasonable claim that the Allies and Germans were equally immoral and unlawful on the battlefields of Normandy on the basis of existing evidence. If some Allied soldiers were guilty of transgressions, which they likely were, their actions were not comparable to the widespread atrocities committed by the 12th SS Panzer division.[156] By critically assessing the evidence and interpretations that emerged from investigations, the trial, and participants' reflections, recent studies have emphasized the salient distinction between the individual killing of surrendering soldiers and the systematic murder of Canadian prisoners of war that occurred in Normandy. These authors have restored the debate to the realm of detailed evidence and rigorous interpretation.

The First Wave: The Participants Reflect

The participants in the trial began to produce books and memoirs in the 1950s, providing the first wave of historiography on the subject of the murders and the legal proceedings associated with Meyer. In 1954, in the wake of the decision to release Meyer from prison, Bruce Macdonald wrote a comprehensive "factual account" of the investigation and trial. The author realized that he would be "guilty of special pleading" given his role as prosecutor in the case, but he nevertheless tried to be "objective and fair" in his interpretation so that the reader could achieve a "sound and balanced opinion" on the matter.[157] The *Trial of Kurt Meyer* reinforced Macdonald's conviction that Meyer was indeed guilty for the murders in Normandy. He saw the trial as a formality to establish guilt in a legal forum so that justice could be served, and his narrative was constructed on this premise.

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Macdonald's book sets out to reaffirm the guilt of Meyer and his "Murder Division" in light of the evidence and testimonies compiled against the Nazi general. After the author established the legal foundations of the trial, his recounting of the proceedings left little room to question Meyer's culpability. As prosecutor, Macdonald was profoundly disappointed in Vokes' decision to commute the sentence as "it seemed to question the usefulness of any effort to establish responsibility on any level above that of the actual perpetrator, and was discouraging to all of us who had laboured so arduously over a long period in the field of war crimes." Macdonald maintained that the trial was fair and his conviction correct by any measure of justice. Meyer's responsibility for the murders in Normandy had been clear, and the lawyer stressed that authorities should "try to place the responsibility on the highest level possible and not the lowest – to adopt gangster terminology, to place it on the 'boss gangster' and not to be satisfied with a conviction of his tool, the 'trigger man.'"[158] The only tragic heroes at the end of the legal process were the victims of Meyer's atrocities – there was no empathy for Meyer or Canadian political authorities who had succumbed to expediency and lost sight of justice.

If Macdonald's purpose was to bring about a clearer understanding of the controversial trial and outcome from his perspective, the book was a success. The *Trial of Kurt Meyer* was the first comprehensive examination of the case, the trial, and its aftermath. But critical reception of the book was not universally positive. Sam H.S. Hughes, reviewing Macdonald's account in the *Canadian Historical Review*, suggested that it was "neither topical nor timely." Although the "lucid and orderly narrative" convinced Hughes that Meyer was fairly tried and properly condemned for the murders, he reflected that had the book been "written a few years earlier… it could very easily have settled the question of the subject's confinement of the walls of Dorchester Penitentiary in the way in which the mass of Canadian opinion felt that it should be settled." Instead, Meyer had "profited from the sentimentalism" in Canada and other Commonwealth countries which had "cast a protective cloak over a beaten enemy."[159]

Kurt Meyer's memoirs, *Grenadiers*, first appeared in 1956.[160] His interpretation of the trial was self-serving, suggesting that the evidence presented against him was as insulting to the judges as to him. In the case of the alleged order to deny quarter to prisoners, he characterized the "scrap of paper" as being nothing more than "a mixture of undigested memories of platoon leaders' and company commanders' instructions and malicious defamations."[161] He saw fit to write a chapter entitled "The Facts of the Case" to try and convince the reader of his version of events. Meyer made no apologies in *Grenadiers* for his behaviour or for that of his troops.

After receiving his death sentence in December 1945, Meyer had expressed that he had indeed been given a fair trial.[162] In his autobiography, this sentiment was nowhere to be found. The trial was painted as a miscarriage of justice based on unsubstantiated and fabricated evidence, and he called upon Ralph Allen's controversial 1950 *Maclean's* article **[D20]** to substantiate his claim of innocence in light of an unfair legal process.[163] By stacking up Canadian newspaper articles and testaments that were sympathetic to his plight, Meyer tried to exonerate himself and demonstrate that he, not the Canadians killed in Normandy, was the real victim.

Chris Vokes, whose commutation of Meyer's sentence had "caused controversy, even furor, at home in Canada and abroad," defended his decision in his posthumously published memoirs *My Life*. While he had remained decidedly aloof from the actual court martial despite all of the "pomp and ceremony surrounding it," Vokes did recall that "most of the crap coming out of the trial via the media had Meyer condemned even before the trial was over."[164] Although this pressure was to be expected given the timing of the case, the circumstances, and the desire for Canadians to exact revenge for the atrocities they had heard about, the seemingly predetermined outcome was clearly disconcerting to the senior commander. Therefore, while Vokes had initially confirmed the findings and the death sentence, he claimed that he had done so reluctantly. "I know, and knew very well as a divisional commander in war, that certain things probably did not go on that were not always according to The Rules and Usages," Vokes explained. "I did absolve my own troops, post facto, of bits of hanky panky now and then, of various degrees of seriousness, that were not according to Cocker. But if I had known about the deeds at the time, I would have brought down the wrath of God upon their heads and punished them." In light of Vokes' own experiences, and a trial transcript that contained what he considered a mass of indirect hearsay and circumstantial evidence, he commuted the sentence. Since it had not been proven to his satisfaction that Meyer had given a direct order to refuse quarter to the Canadian prisoners of war, he did not want "to go to bed forever with his unwarranted death on my conscience."[165] Vokes' depiction of events was defensive, explaining and justifying why he made the decision that he did and who else was involved.

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The participants who wrote in this first wave saw their memoirs and books as occasions to defend earlier testimonies and decisions. Their histories reflect the inherent problem with autobiographical and first-hand accounts. Obviously, each author tried to solicit support for their particular point of view. While these books provided a rich body of primary evidence upon which subsequent historians could draw, they also served to perpetuate the original controversy. The divisions inherent in the original debate were embodied in the first-hand accounts of those who were there, and while they offered important insights into the motivations, positions and actions of those involved, they did little to satisfy the broad question of whether the right choices had been made and whether justice had indeed been served.

The Second Wave: Relativism and Revisionism

In the 1970s and early 1980s, American journalists and historians began to assess critically the Normandy campaign, challenging the established version of events and issues related to the war. In this revisionist current, even the most entrenched notions, such as Allied moral and ethical superiority on the battlefield, were called into question. Carlo D'Este's *Decision in Normandy* (1983) suggested that "Normandy was an infantryman's battle with little quarter given by either side." In his view, the tone of the campaign was established when 3rd Canadian division and the 12th SS met near Bayeux. D'Este noted that the Germans had heard rumours of the Allies shooting German POWs, which explained their own atrocities at Le Mesnil Patry and Audrieu.[166] In essence, Canadian atrocities precipitated German retaliation. Max Hastings, in *Overlord* (1984), offered the following interpretation of events:

> *Much has been made of the shooting of prisoners – most notoriously, Canadian prisoners – by 12th SS Panzer and other German units in Normandy. Yet it must be said that propaganda has distorted the balance of guilt. Among scores of Allied witnesses interviewed for this narrative, almost every one had direct knowledge or even experience of shooting German prisoners during the campaign. In the heat of battle, in the wake of seeing comrades die, many men found it intolerable to send prisoners to the rear knowing they would thus survive the war, while they themselves seemed to have little prospect of doing so. Many British and American units shot SS prisoners routinely, which explained, as much as the fanatical resistance that the SS so often offered, why so few appeared in POW cages.*[167]

The Second World War was no longer as black and white as earlier scholarship had depicted. Since atrocities were committed by both sides, these authors suggested, guilt should not be confined to the enemy.

D'Este's and Hastings' interpretations were indicative of a new stream of thought emerging in military history. The Second World War was now forty years past and viewed with more "objective" scrutiny that placed both Allied and Axis forces under the microscope. This reflected a post-Vietnam mindset, where the lines between good and evil had been blurred. Canadian amateur historians and journalists began to pursue similar themes and adopted more relativist stances.

Tony Foster's *Meeting of Generals* hit bookstores in 1986, offering a dual biography of his father, Major-General Harry Foster, and Meyer.[168] From childhood to death, Foster described their formative experiences, drawing parallels between the two men. The essence of his study was captured in a quote taken from his father, who after the war reflected on his feelings during the Meyer trial:

> *There was an irony to this whole distasteful affair... Not because of what had happened to my men – that was inexcusable. What struck me as I sat in my comfortable chair looking down at this hardnosed Nazi was that not one of us sitting on the bench, with the exception of [Lieutenant-Colonel W.B.] Bredin, could claim clean hands in the matter of war crimes or atrocities or whatever you want to call them. It hadn't all been one-sided. Our troops did some pretty dreadful things to the Germans. Didn't that make all of us who were commanding officers just as guilty as Meyer? I remember thinking all the time: you poor arrogant bastard. Except for an accident of birth and background our positions might have been reversed. In which case I would now be standing before you asking for justice at this meeting of generals.*[169]

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In this context, the dust jacket suggested that the book was a "uniquely dispassionate examination on the tragedy of men, women, and children on opposing sides in a war." Discussion did not focus on the men murdered by the 12th SS in Normandy or their families, but the Meyers and Fosters.

Meeting of Generals was typical of broader historiographical currents. The author suggested that, during the trial, his father had pangs of guilt and questions about the validity of war crimes tribunals given the realities of battle and his own unsavoury exploits on the battlefield. In his chapter on the Meyer trial, however, he omits his father's public response to Vokes' decision to commute Meyer's sentence. On 16 January 1946, Harry Foster issued a press statement in which he unequivocally suggested: "The best thing to do would be to shoot Meyer." He was subsequently called before his senior officers for having made such a bold assertion in direct contradiction to the action of Vokes, the convening and superior officer in the matter. Furthermore, when Foster was asked in Ottawa whether or not Canadian troops had ever shot German prisoners, he heatedly denied such accusations. In fact, one Manitoban applauded Foster for having the "courage to stand for the right, regardless of the political axe that might lop off his head afterwards."[170] These strongly expressed sentiments, frank and controversial, hardly correspond with Tony Foster's characterization of his father's beliefs at the time. If anything, they demonstrate the selectivity the author used to draw comparisons between his father and Meyer.

From a professional historical standpoint the book left much to be desired. Although based on the personal war diaries and memories of Meyer and Foster, archival material, trial transcripts, and interviews conducted by the author in Canada and Western Europe, Foster did not provide readers with adequate endnotes, making it difficult to validate his evidence and interpretation. The author also felt the need to create hypothetical conversations between the various actors in his drama. This device allowed him to show the reader nuances that could not have been derived from the existing archival materials, but also indicated that historical accuracy was of secondary priority.[171]

If *Meeting of Generals* called into question the fairness of war crimes trials, *The Valour and the Horror* simplified and amplified the argument, took it out of historical context, and disseminated it to a larger audience. In one of the most controversial documentary productions in Canadian film history, Brian and Terrence McKenna offered what they claimed to be a new perspective on Canadian participation in the Second World War. In sharp contrast to "conventional" interpretations, the writer-producers criticized the immorality and incompetence of senior Canadian and Allied commanders who led the various campaigns. One of the most polemical aspects of the episode "In Desperate Battle: Normandy 1944" centred on the McKennas' relatively brief discussion on the murders of prisoners of war in Normandy. The producers gave credence to allegations that the murders of Allied troops at German hands were simply retaliation for similar Allied atrocities. Telling the story of the Canadian prisoners of war murdered by their German captors at the Abbaye d'Ardenne, and noting that at least 134 Canadian soldiers are known to have been executed by the Waffen-SS in Normandy, the McKennas claimed that this criminal activity at German hands was but one half of the story. They reiterated SS commander Kurt Meyer's claim that he had evidence (that was, of course, never produced) to show that the Canadians had committed similar crimes, and used an actor to share a British soldier's claim that he had seen evidence of such activities. "While the German atrocity in [the garden at the Abbaye d'Ardenne] and others like it were prosecuted, reports of Allied atrocities against Germans were never pursued," the McKennas concluded. "The message seems clear. War crimes committed in good cause are politically acceptable, perhaps regrettable, but such crimes are only prosecuted on the side that loses the war."[172] Neither side had conducted a morally just war *(jus in bello)*, murdering non-combatants (prisoners of war) and violating the principle of discrimination. What the McKennas found distasteful was that only the losers had been penalized, an assessment similar to Foster's.

Professional historians, veterans and veterans' organizations all rallied to defend the war crimes processes and to oppose the notion that Allied and German forces had comparable records of immorality. Reginald Roy, the author of a detailed study of the Normandy campaign, believed that there were incidents in which Canadian soldiers killed German POWs but explained that these were very different from the horrendous record of the 12th SS:

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> *There are no incidents I know of where it was done systematically and in cold blood, as happened in the lines of the "Hitler Youth" division. Furthermore, I think to compare the incidents is unfair. When news got out about the murder of Canadians by the SS, our own soldiers were enraged, and with good reason. But I believe I am also right in thinking that it was either General Crerar or General Simonds who issued a special order at the time warning the troops not to take revenge on prisoners they captured, as doing so would be a criminal act. I wonder if Kurt Meyer and the rest of the SS did the same?*[173]

Robert Vogel similarly characterized the whole episode as "a somewhat forced fabrication" because no distinction was made between not taking prisoners (alleged to have been ordered with no substantiating evidence) and shooting prisoners once they had surrendered and were being moved to the rear.[174] The McKennas simply lacked convincing evidence. David Bercuson offered this challenge:

> *The narrator [of the Valour and the Horror] tells the viewers that the Germans explained their actions by claiming "they were often retaliating." What is the evidence for this? The actor representing SS General Kurt Meyer tells viewers that he (ie, Meyer) possessed a notebook from a dead Canadian officer with the notation that "no prisoners were to be taken" and that Canadian prisoners had confirmed this. Surely the producers recognize this for the self-serving statement it is? Are they not aware of the record of brutality, well recorded, of Waffen SS units on both fronts throughout the war? Does this not form a context for the shootings which took place at the Abbaye Ardenne?*[175]

By giving superficial allegations the same weight as established historical and legal cases, critics questioned the McKennas' moral judgment. Veteran Jean Baby, in no uncertain terms, castigated the producers of the *Valour and the Horror* for failing to use discretion and balance in their depiction of the issue:

> *The[ir] treatment of [the] prisoners of war [issue] was shameful, a shame in the face of Canada that Canadians would equate a few possible rumoured, spurious, spontaneous actions of individuals not ordered or commanded. It equates with that the deliberate murders ordered by Kurt Meyer and infers that that puts us about on the same footing as the Germans as a whole; that is six to 20 million individuals killed outside of the war by Germans.*[176]

The alleged comparability of Allied and German mistreatment of prisoners of war could be challenged in light of the specific evidence related to murders of prisoners, as well as the broad context of the war.

The Third Wave: Recent Studies

If the *Valour and the Horror* was problematic history that distorted perceptions and duped viewers by misconstruing evidence and historical context, it also spurred renewed interest in the history of the Second World War in Canada. Several studies into the murders of Canadian prisoners of war in Normandy have drawn a common conclusion: there can be no comparison between the systematic murder of Canadian prisoners by the Waffen-SS to any claims that a few Germans died at the hands of Canadian soldiers. Nevertheless, the authors' distinct approaches to the topic merit individual examination, not only to identify different ways in which war crime issues can be assessed, but also to attest to the various currents in recent Canadian military history.[177]

Ian Campbell's *Murder at the Abbaye* (1996)[178] presented the story of the twenty Canadian soldiers murdered at the Abbaye d'Ardenne. Jack Granatstein noted in the book's preface that while the murders were known, what had "always been missing from the accounts of these terrible events was the personal element. Who were the twenty Canadian soldiers killed by the Waffen-SS at the Abbaye d'Ardenne in the days after D-Day? What was the impact of their death on those they served with and left behind in Canada and England?" Campbell's purpose was to show the human face of the Canadian junior officers, non-commis-

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sioned officers, and private soldiers killed at the Abbaye. He took the reader on a journey through the victims' enlistment, basic training, their landings on D-Day, and their initial encounters with 12th SS. Perhaps most touching are the brief chapters containing excerpts from letters to the victims' families penned by comrades in the field, those sent by concerned wives and parents to Ottawa to try and obtain information on their missing loved ones, and the devastating telegrams sent to families announcing that the men were killed.[179]

In his reconstruction of events, Campbell takes the prosecution's evidence at face value. The reader is left with little question of Meyer's guilt, since the murders are viewed through SS Mann Jan Jesionek's eyes, and the orders heard through his ears. Meyer's allegations of Allied atrocities during his defence "could not withstand scrutiny," according to the author, the idea of retaliation for similar crimes was "hardly a solid legal defence," and his various statements implying rectitude were "unconvincing." Campbell concluded that "Macdonald had successfully undertaken to prove beyond any reasonable doubt that Meyer's responsibility for these crimes was personal and direct; his responsibility could hardly have been described as 'vicarous'" – the term Vokes had used to commute his death sentence to life imprisonment. The political opportunism that led to his eventual release was seen as "a turn of events that somehow seemed unfair, if not unjust."[180]

Campbell's study presents the lives and deaths of the Canadians killed at the Abbaye d'Ardenne as personal tragedies. Although the atrocities were committed collectively by the 12th SS, and can be remembered as such, Campbell ensures that the victims themselves are not forgotten or merely relegated to a numerical status as "one of twenty." The author has broken down the whole and illuminated each individual to stress that each atrocity had a tremendous impact on real Canadians. In this light, the reader is compelled to draw the conclusion that justice should have been carried out. Campbell encouraged the reader to think of it this way:

> *Today, there are very few wives or siblings of these twenty men left in the world to remember them... A couple of the murdered men had children; few of these children were old enough to remember their dads. But these twenty men, who went away to that war over half a century ago, were very real people. They were extraordinarily ordinary and total unremarkable men... Nevertheless, they were men with dreams and aspirations. They loved and were loved. They lived, they served and they were murdered while doing their duty. And today, all Canadians owe them something, if it is only to remember that they were once with us, that they did their duty to the best of their capabilities, and that they were murdered on the grounds at the Abbaye in a faraway place. Their deaths were tragic, but to forget them, or to remember them only as faceless statistics, is more tragic still.*[181]

Gregory Charles Pollard's *Missing* (2003), which tells the story of his uncle Lance Corporal George G. Pollard using family letters, adopts an even narrower lens to paint an intimate portrait of this "ordinary man" murdered by the Waffen-SS after battle.[182] In these books, the murdered Canadian soldiers remain the true heroes and victims.

Howard Margolian, former investigator for the War Crimes Section of the Canadian Department of Justice, has provided the most comprehensive account of the Normandy murders and the Meyer case: *Conduct Unbecoming: The Story of the Murder of Canadian Prisoners of War in Normandy* (1998). While Campbell deconstructed the whole to look at the parts, Margolian carefully laid each piece to construct the general story of Waffen-SS atrocities in Normandy. He places the reader at the scene of each crime, and using forensic evidence and eyewitness accounts (taken mainly from interrogation reports and the trial transcript) he details each Canadian murder at the hands of the 12th SS and illuminates the Hitler Youth's practice of systematic murder. The book offers a direct rebuttal to earlier revisionists who contended that Allied and German practices in Normandy were equally atrocious.[183] While the author concedes that some of the murders committed after the early clash of arms in Normandy may have been due to the unchecked emotions of young and inexperienced troops, he is careful to distinguish these from the cold, calculated, and systematic murders at German command posts like the Abbaye d'Ardenne and Château d'Audrieu, as well as the killing of large numbers of prisoners in transit well behind enemy lines. Arguably, even if scholars were able to prove the case of a Canadian soldier refusing quarter to surrendering German soldiers, Margolian's basic argument would still hold true. The sheer number of

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Canadian prisoners killed in Normandy seemed to dispel reasonable doubt that 12th SS policies and orders led to the widespread murder of prisoners of war in the hours and days after combat.

In *Conduct Unbecoming*, Meyer was just one of several Waffen-SS officers culpable for murder in Normandy. Margolian critically assesses Macdonald's prosecution and his decision to hold Meyer accountable not only for the Abbaye killings "but for *all* of the POW murders that had been perpetrated in the sectors in which he had exercised command," even though he was not physically present at the crime scenes. This unexplained reversion to a chain-of-command theory made the Crown's case daunting, but Jesionek's testimony was "devastating" to Meyer and the SS general's own defence "all but shattered" his credibility. That stated, Margolian concluded that Vokes' decision to commute the death sentence was "probably fair," given that Meyer had a "fair hearing" at the time – even if much of the evidence against him would not have been admissible in a civilian court. Furthermore, while "reasonable inference" could have been drawn that Meyer had ordered the shooting of Canadians at the Abbaye, this evidence was circumstantial. Meyer was not sentenced to death, but Margolian felt that the system worked in this particular case because "a clearly guilty man" was convicted on the grounds of command responsibility.[184]

If Campbell and Margolian might be accused of accepting the testimony against Meyer at face value, the same cannot be said of Patrick Brode. *Casual Slaughters and Accidental Judgments* (1997) included detailed chapters on the legal aspects of the trial and the sentencing of Meyer as part of the broader history of Canada's war crimes prosecutions from 1944 to 1948. He exposed the difficulties of a victor applying law to a vanquished enemy in the immediate aftermath of a war, when political and emotional factors impede impartial justice. Nevertheless, Brode made the case that there is a continued need to put war criminals on trial to ensure that war is fought humanely and according to established conventions.

Brode's book represents the most impartial study of the Normandy murders and Meyer trial. It begins with allegations of murders and the discoveries of the first bodies in Normandy. Rather than constructing a narrative of what might have occurred, Brode used the interrogation of Meyer and the trial itself to tell the story. This approach illuminated inconsistencies in the prosecution and defence cases respectively, giving the reader the sense that they are privy to the story of systematic murder in its historical context. Furthermore, the Canadian government's relative indifference to the pursuit of war crimes was exposed, illustrating that Macdonald had already fought a battle to establish the legal framework with which to try Meyer before actually prosecuting the Waffen-SS officer. Although questions of partiality and bias were inherent in the trial process, such as the permissibility of hearsay and circumstantial evidence, Brode left little doubt that the need to try alleged war criminals meant that special considerations were needed and that these did not necessarily undermine the fairness of the trial.

In the end, Brode argued that Meyer was properly convicted for responsibility in the Normandy murders. The author used a sample of newspaper editorials and letters to describe the public outcry over the decision to commute the war criminal's sentence, taking steps to account for these sentiments and the assumptions upon which they were based. Macdonald's interviews with other members of the 12th SS division after the trial further confirmed that that Meyer's testimony was flawed, and Brode asserted that politics explained why he was released in the mid-1950s. In light of the Canadian execution of convicted war criminals in the Far East, the reader could question the justice in Meyer's eventual release.[185] Brode concedes that Canadians clearly violated the laws in war, and such allegations should have been investigated and Canadians prosecuted, but he was very careful to avoid a relativist position. "Nothing excused Canada's failure to investigate those crimes" committed by her own troops, but clearly "none of them rivalled the extent or the pre-meditation of the 12th SS's crimes."[186] The Meyer war crime trial was relevant to Canadians, Brode asserted, because it embodied the need for a "system of enforceable international justice… to punish those who wantonly murder prisoners or the helpless."[187] This tone demonstrates the difference in his final assessment from that espoused in the relativist/revisionist histories. Like the other "third wave" authors, Brode believed that there would be no greater crime than letting alleged repeat criminals go free after a war on the basis of simplistic "we-did-it-too" sentiments.

These themes have also been disseminated to a broader audience in several documentary films that have dealt with the Meyer case. The War Amps produced *Take No Prisoners: The Nazi SS in Normandy* (1997) which outlined the story of the "130 young Canadians" marched behind German lines, interrogated, and brutally murdered by the Hitler Youth. Cliff Chadderton directly refutes the

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idea that Canadian soldiers were executed in retaliation for the alleged mistreatment of German prisoners, and asserts that indoctrination and immaturity made the SS in Normandy a band of merciless killers rather than responsible soldiers. In 1999, the History Channel aired *Murder in Normandy*, a Paperny Films-produced television documentary with historical consultation from Professors David Bercuson and Holger Herwig and narration by Ann Medina. Veterans from both sides reflected on their experiences and knowledge of events, family relatives came to terms with the fate of their loved ones, and like *The Valour and the Horror*, dramatizations were used to reconstruct the inside of the courtroom and the events at the Abbaye d'Ardenne. The difference was that this documentary remained very true to the recorded testimony in the trial proceedings and avoided introducing fallacious interpretation. Participants and those who have tried to understand the murders since then were left to explain in their own words. Highlights were Hubert Meyer, former staff officer in the 12th SS and no relation to Kurt Meyer, proudly asking the camera to pan in on the divisional ring on his finger; Kurt Meyer Jr., a school teacher who grew up in two different worlds, describing living with his father's fame and his personal search for closure; and Gregory Pollard almost tearfully asserting that his uncle, one of those murdered, died a hero. The illusive search for justice in the wake of killings off the battlefield and the related question of fairness for those involved, sometimes years after the event, are central issues in the documentary deserving of further exploration.

In 2003, *Crimes of Combat*, an episode in the History's Courtroom series on the specialty channel Court TV, also focused on Meyer's war crimes trial. Based largely upon in-depth interviews with leading researchers on the case (including Brode, Campbell and Margolian) and Wady Lehmann, Meyer's personal interpreter during the trial, the program examined the core legal issues raised by the trial, and the intrigue that led to Meyer's eventual release in 1954. After establishing the legal context and constraints facing war crimes prosecutors, it explained how Canada attempted to apply the new and evolving legal doctrine of command responsibility in Western Europe for the first time. The detailed coverage of the trial, featuring re-enactments to accompany narrator and author commentaries, stressed witness Jan Jesionek's incredible memory and attentiveness to detail, prompting Howard Margolian to conclude that he felt the court "had made a mistake in discounting Jesionek's testimony" in reaching their verdict. The "bitter and biting cross-examination" by Macdonald revealed personal animus between the prosecutor and defendant, Meyer's use of the trial to try to vindicate himself, and his proclivity to change his story when he recognized that his previous statements could not be sustained. While empathetic to the difficult decision facing Chris Vokes, the program leaves the impression that the final outcome was less than satisfying. "To many Canadians, the final outcome of the Meyer case is a bitter disappointment," the narrator observes in the introduction. Cold War intrigue led to Meyer's transfer to Germany, early release, and heroic reintegration into German society. By contrast, in his touching portrait of the Canadian victims, Ian Campbell noted that their families were deprived of saying that their sons fell in combat – they were simply murdered by thugs. The episode ends on a more positive note. "The issues raised by Meyer's [trial] are just as relevant now as they were in December 1945," Patrick Brode explains. The deliberations set a precedent that factored heavily in the command responsibility articles enshrined in the additional protocols to the 1949 Geneva Conventions. When Canadian Louise Arbour, Chief Prosecutor for the International Criminal Tribunal for Rwanda and the former Yugoslavia in The Hague, indicted Serbian President Slobodan Milosevic and four other Serbian officials for war crimes in 1999 based upon the doctrine of command responsibility, the narrator suggests that this was a direct legacy of the Meyer trial. Canada has played a critical role in establishing that leaders could and should be held accountable for atrocities committed systematically by their subordinates.

KURT MEYER ON TRIAL: A DOCUMENTARY RECORD

"We may in all modesty say that Canada's first Military Court has given a convincing demonstration of justice and firmness in the treatment of war criminals," prosecutor Bruce Macdonald boasted, "which should commend itself to all who, at any time in the future, have need to study its proceedings" **[B7]**. The fate of Canadian prisoners of war at the hands of their 12th SS Panzer division captors continues to captivate, horrify, and infuriate Canadians. It has become to interested Canadians what the Malmédy massacre is to the Americans – a symbol of the tragedy of war and the travesty of justice.[188] "Who, if anyone, emerges as a hero from these proceedings?" Macdonald reflected in *The Trial of Kurt Meyer*. "It was the Canadian soldiers, such as Lieutenants Windsor and Williams and those with them. They died bravely as prisoners of war in the best traditions of this service, because they

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would not betray their comrades or their country by giving information to the enemy. The hero was not Kurt Meyer."[189] Meyer, on the other hand, presented himself as a victim of Canadian justice and policy. In this documentary history, you can be the judge.

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Endnotes

1 B.J.S. Macdonald, *The Trial of Kurt Meyer* (Toronto: Clarke, Irwin & Co., 1954), xiii.

2 Geoffrey Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflicts* (London: Methuen, 1983), 147.

3 Theodore Meron, *War Crimes Law Comes of Age* (Oxford: Clarendon Press, 1998).

4 In the broader diplomatic field, separate Canadian delegations at international conferences became a distinguishing feature in the interwar period, when most of the relevant codification on the military side was already in place.

5 "Abkommen über die Behandlung der Kriegsgefangen vom 27. Juli 1929" (Berlin, 1939), National Archives and Records Administration (NARA), RG 242, entry 191 German Field and Technical Manuals, box 7, file H.Dv. 38/2.

6 Detlev F. Vagts, "International Law in the Third Reich," *American Journal of International Law* 84 (1990), 697-699. While German views on the laws of war were similar to Canadian understanding in certain respects, the ideological dimension was markedly different. After the assumed Germany victory in the world war, German jurists planned to rewrite the laws of war to reflect more adequately Nazi ideals. Indeed, a committee was struck for this purpose under Admiral Walter Gladisch. See Admiral Walter Gladisch to Chef OKW Generalfeldmarschall Keitel "Arbeitsplan für einen Ausschuss zur Forbildung des Kreigsrechts," 3 December 1940, Bundesarchiv-Militärarchiv, RW 2/26.

7 Chris Madsen, *Another Kind of Justice: Canadian Military Law from Confederation to Somalia* (Vancouver: UBC Press, 1999), 78-9.

8 Alfred de Zayas, *The Wehrmacht War Crimes Bureau 1939-45* (Lincoln: University of Nebraska Press, 1990), 14-17. For German investigations into the alleged killing of Canadians in Normandy, see 116-18.

9 Manfred Messerschmidt and Fritz Wüllner, *Die Wehrmachtjustiz im Dienste des Nationalsozialismus: Zerstörung einer Legende* (Baden-Baden: Nomos Verlagsgesellschaft, 1987).

10 Andrew Clark, *A Keen Soldier: The Execution of Second World War Private Harold Pringle* (Toronto: A.A. Knopf, 2002).

11 Christopher William Huffman, "The Waffen-SS Soldier in World War II: Fanaticism, Everyday Life and the New Military History," Ph.D. dissertation (Atlanta: Georgia State University, 2005), 298. In the Nazi world, Canadians were indistinguishable from Anglo-Saxon principles and the weak parliamentary democracy that supported the legal structure and military in Canada. That Canadian soldiers held alternative opinions and, moreover, volunteered to fight for what they believed right and fair in the world said much about the commitment to democracy and the rule of law. Such differences in nuance permeated the structure of military law in the Canadian and German armed forces.

12 War Office, *Circular Memorandum on Field General Courts Martial on Active Service for Use in the United Kingdom: 'The Green Book'* (London, 1940).

13 Ingo Müller, *Hitler's Justice: The Courts of the Third Reich* (Cambridge: Harvard University Press, 1991), 188.

14 File cover, NARA, RG 242 Berlin Document Center (BDC) A3433 roll SSO-313A file "Meyer, Kurt 23.12.10."

15 Tony Foster, *Meeting of Generals* (Toronto: Methuen, 1986), 48-51.

16 Background based upon NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10" and Kurt Meyer, *Grenadiers* trans. Michael Mendé (Winnipeg: J.J. Fedorowicz, [1957] 1994).

17 Official records show this date for membership, though Meyer himself claimed connections with the Nazi party as far back as May 1925. Kurt Meyer, "Lebenslaufe," 20 October 1934. NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10."

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18 Contract of employment, 5 November 1935, NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10."

19 Heinz Höhne, *The Order of the Death's Head: The Story of Hitler's SS* (London: Secker & Warburg, 1969), 110-111.

20 Meyer, *Grenadiers*, 4-5.

21 Performance review, 30 October 1940 [translated by Chris Madsen], NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10."

22 Charles Messenger, *Hitler's Gladiator: The Life and Times of Oberstgruppenführer and Panzergeneral-Oberst der Waffen SS Sepp Dietrich* (Washington, DC: Brassey's, 1988), 91-92.

23 Questionnaire, NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10." See also the marriage permission from the *Reichsführer* SS in Berlin to the chief of the SS-office in Munich at the end of the same file.

24 Tim Ripley, *Steel Storm: Waffen-SS Panzer Battles on the Eastern Front 1943-1945* (St. Paul, MN: MBI Publishing, 2000), 57.

25 Meyer, *Grenadiers*, 104.

26 George M. Nipe, Jr., *Last Victory in Russia: The SS-Panzerkorps and Manstein's Kharkov Counteroffensive* (Atglen, PA: Schiffer Military History, 2000), 316.

27 When Meyer's death sentence was commuted to life imprisonment, the Russians demanded that Meyer be turned over to them for their own war crimes trial based upon these atrocities. See, for example, "Soviets May Seek Meyer For Trial," *Winnipeg Free Press*, 18 January 1946, 1.

28 Omer Bartov, *Hitler's Army: Soldiers, Nazis, and War in the Third Reich* (New York: Oxford University Press, 1992), 61-62. Ben Shepherd, *War in the Wild East: The Germany Army and Soviet Partisans* (Cambridge: Harvard University Press, 2004), 115-117.

29 Patrick Brode, *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948* (Toronto: University of Toronto Press, 1997), 20. For Jefremovka (or alternately Yefrenovka) and the *Leibstandarte SS Adolf Hitler, see Trial of the Major War Criminals Before the International Military Tribunal*, 196th day, 6 August 1946, Vol. 20 (Buffalo, NY: William S. Hein & Co., 1995), 395.

30 Performance review, 29 April 1943 [translated by Chris Madsen], NARA, RG 242, BDC A3433, roll SSO-313A, file "Meyer, Kurt 23.12.10."

31 See the bibliography for general overviews of the Hitler-Youth and 12th SS Division.

32 Michael Earl Sullivan, "Hitler's Teenaged Zealots: Fanatics, Combat Motivation, and the 12th SS Panzer Division Hitlerjugend," M.A. thesis (Fredericton, NB: University of New Brunswick, 1999), 128-31. Huffman, "The Waffen-SS Soldier," 227-228. To address shortfalls in numbers, ethnically-related recruits were also conscripted from German-occupied territories.

33 Divisional Order No. 2, 6 September 1943, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 156, file 78016/46.

34 Meyer, *Grenadiers*, 114.

35 Howard, Margolian, *Conduct Unbecoming: The Story of the Murder of Canadian Prisoners of War in Normandy* (Toronto: University of Toronto Press, 1998), 10.

36 Michael E. Sullivan, "Combat Motivation and the Roots of Fanaticism: The 12th SS Panzer Division Hitlerjugend in Normandy," *Canadian Military History* 10 (Summer 2001), 54.

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37 Kurt Gropp, "Comparison between the Infantry Battalion and the Assault Battalion, developed by the Waffen-SS during the Course of the War," 5, NARA, RG 549, M1035, Foreign Military Studies D-0155.

38 Special order, *Oberführer* Witt, 6 February 1944, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 153, file 78016/2.

39 "Strafvollstreckungszug (St.V.Z.): Einstellung und Entlassung der Bestraften," 14 February 1944, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 155, file 78016/26.

40 General der Panzertruppen Leo Freiherr Geyr von Schweppenburg, "Panzer Group West (Mid-1943 – 5 July 1944)," 5, NARA, RG 549, M1035, Foreign Military Studies B-466.

41 Hubert Meyer, *The History of the 12. SS-Panzerdivision Hitlerjugend* (Winnipeg: J.J. Fedorowicz, 1994), 19.

42 Robert John Sauer, "Germany's I SS Panzer Corps: Defensive armoured operations in France, June-September 1944," Ph.D dissertation (Boston: Boston College, 1992), 57-58.

43 War diary, 1st battalion 25th SS Panzer Grenadier regiment, 6 June 1944, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 156, file 78016/38. Michael Reynolds, *Steel Inferno: 1st SS Panzer Corps in Normandy, the story of the 1st and 12th SS Panzer Divisions in the 1944 Normandy Campaign* (New York: Sarpedon, 1997), 55-56.

44 Generalleutnant Edgar Feuchtinger, "History of the 21st Panzer Division from the Time of its Formation until the Beginning of the Invasion," 24, NARA, RG 549, M1035, Foreign Military Studies B-441.

45 Mark Zuehlke, *Holding Juno: Canada's Heroic Defence of the D-Day Beaches June 7-12, 1944* (Vancouver: Douglas & McIntyre, 2005), 100-101. The 1st SS Panzer corps gave Meyer Courseulles-sur-Mer as his main attack objective. David Isby, ed., *Fighting in Normandy: The German Army from D-Day to Villers-Bocage* (London: Greenhill Books, 2001), 47. Schweppenburg, however, considered throwing the Canadians back into the sea as an overly ambitious and unattainable objective and instead counselled massed counterattacks by two or three panzer divisions with limited objectives to get "in among the Allied forces, forcing your air power to quit its attacks, which were a constant menace to panzer forces" and to stop "short of the beach, out of the range of your naval artillery, for which we had a healthy respect – this we learned at Salerno. We would have attempted to split up your forces and create havoc in your rear, disrupting communications, etc." General der Panzertruppen Leo Freiherr Geyr von Schweppenburg, "Panzer Tactics in Normandy," 1 and 3, NARA, RG 549, M1035, Foreign Military Studies ETHINT 013.

46 War diary (outline draft), 7th Army, 7 June 1944 [translated by Chris Madsen], NARA, RG 242, T-312 7th Army, roll 1568, file 75106/7. Meyer's action against the Canadians hardly warranted mention from senior officers of 1st SS Panzer corps, who mistakenly answered questioners in 1948: "The first elements of the 12th SS Panzer Division arrived in the designated area during the morning hours of 7 June 1944... The tanks of the division did not arrive until the evening hours of 7 June 1944. The division did not have any contact with the enemy on 7 June 1944." Generalmajor Fritz Kraemer and Oberstleutnant i.G. Berlichingen, "Panzer Operations 6-8 June 1944," 2-3, NARA, RG 549, M1035, Foreign Military Studies B-814.

47 Some Canadian military historians have suggested that Meyer's impromptu attack sapped away the strength for the planned counterattack in conjunction with 21st Panzer division. In fact, Meyer and the 25th Panzer Grenadier regiment were deployed, as the quote states, in a defensive position to block the Allies from moving toward Caen and gain time for preparations for the eventual planned counterattack. Meyer's commitment of his troops to battle was completely in accord with his orders from Witt in order for the later counterattack to go ahead. Mohnke's 26th Panzer Grenadier regiment and the tanks of the 12th Panzer regiment that arrived afterwards were the forces committed for the planned counterattack which took place the next day. The Germans had to scale down the intended counterattack because of air interdiction of forces moving to the staging areas, not because Meyer jumped the gun by attacking.

48 John A. English, *The Canadian Army and the Normandy Campaign: A Study of Failure in High Command* (New York: Praeger, 1991). C.P. Stacey, *The Victory Campaign: The Operations in Northwest Europe, 1944-1945* (Ottawa: Queen's Printer, 1966). Ted Barris, *Juno: Canadians at D-Day June 6, 1944* (Toronto: Thomas Allen, 2004), xiii.

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49 Terry Copp, *Fields of Fire: The Canadians in Normandy* (Toronto: University of Toronto Press, 2003), 13-14.

50 Reginald H. Roy, *1944: The Canadians in Normandy* (Toronto: Macmillan, 1984), chapter 1.

51 Generalleutnant Wilhelm Richter, "The Battle of the 716th Infantry Division in Normandy (6 June to 23 June 1944)," 28-29, NARA, RG 549, M1035, Foreign Military Studies B-621.

52 War diary, 9th Canadian Infantry brigade, 7 June 1944, LAC, RG 24, series C-3, reel T-12331, vol. 14152.

53 John Gilbert, *Bloody Buron! Canada's D-Day + 1* (Surrey, UK: Gargunnock, 2004), chapter 6. War diary, 1st battalion 25th SS Panzer Grenadier regiment (Hitlerjugend), 7 June 1944, NARA, RG 242, T-354, roll 156, file 78016/38. A tank crew member belonging to a platoon of the 12th Panzer regiment recalled: "We took a lot of prisoners, whom we sent back to the grenadiers without getting out of our Panzers." Will Frey, *Armour Battles of the Waffen-SS 1943-45* (Mechanicsburg, PA: Stackpole, 2003), 95.

54 Message log subordinate units to 7th Army, 8 June 1944 [translated by Chris Madsen], NARA, RG 242, T-312 7th Army, roll 1568, file 75106/8. The attack order for 8 June read: "The attack will be conducted with *21 Pz Div* (on the right) and *12 SS Pz Div* (on the left) along the road Caen, Line s.M. The point of gravity to be on the left where the bulk of artillery will be employed. The *Pz Lehr Div* will follow the attack echeloned rearward to the left in order to be able, depending on the situation, to bypass *12 SS Pz Div*, swing to the left and attack the enemy flank or in the case of an enemy thrust through the known gap, to prevent a possible flanking attack against *12 SS Pz Div*." Generalmajor Fritz Kraemer, "I SS Pz Corps in the West in 1944," 22, NARA, RG 549, M1035, Foreign Military Studies C-024.

55 Oliver Haller, "The Defeat of the 12th SS: 7-10 June 1944," *Canadian Military History* 3 (Spring 1994), 12-21. Tim Ripley, *Steel Rain: Waffen-SS Panzer Battles in the West 1944-45* (St. Paul, MN: MBI Publishing, 2001), 55-57.

56 Message log subordinate units to 7th Army, 12 June 1944 [translated by Chris Madsen], NARA, RG 242, T-312 7th Army, roll 1568, file 75106/8.

57 Order, 3rd battalion 25th SS Panzer Grenadier regiment, 2 July 1944, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 154, file 78016/7.

58 Don Learmont, "Soldier, POW, Partisan: My Experiences during the Battle of France, June-September 1944," *Canadian Military History* 9 (Spring 2000), 96.

59 Previous instructions on handling prisoners of war distributed within the 12th SS division principally stressed intelligence value. 12th Panzer Pioneer battalion "Behandlung von Kreigsgefangenen und Verhalten eigener Manner bei Gefangennahme," 27 February 1944, NARA, RG 242, T-354 12th SS Panzer division (Hitlerjugend), roll 154, file 78016/20.

60 Margolian, *Conduct Unbecoming*, 123.

61 Hubert Meyer, *History of the 12. SS Panzerdivsion*, 74-75. Witt was killed in a naval bombardment on his command post.

62 General der Panzertruppen Heinz Eberbach, "Report on the Fighting of Panzergruppe West (Fifth Pz Army) from July 3 – 9 August 1944," 17, NARA, RG 549, M1035, Foreign Military Studies B-840.

63 Brian A. Reid, *No Holding Back: Operation Totalize, Normandy, August 1944* (Toronto: Robin Brass Studio, 2005).

64 Meyer told Basil Liddell Hart in a later interview: "My division had 180 tanks, half of them Pz IV, half Panther, plus a Tiger Abteilung from Corps of 46. At Falaise I got a second Tiger Abteilung as well, but that was smashed up later on. Each Abteilung had about 10 tanks left. With those tanks, at Falaise I had perhaps 50 tanks in all, plus about 20 Tigers." "The Normandy Battle – SS Obergruppenfuehrer Meyer," Liddell Hart Centre for Military Archives King's College University of London, Basil Liddell Hart papers, LH 9/24/127.

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65 Arieh J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill: University of North Carolina Press, 1998), 54.

66 "Report of the Court of Inquiry re Shooting of Prisoners of War by German Armed Forces at Château d'Audrieu, Normandy 8 June 1944," Windsor Municipal Archives (WMA), Bruce J.S. Macdonald fonds MS 43 III-1/6.

67 Message, British Chiefs of Staff to Joint Staff Mission Washington, 27 2320B July 1944, NARA, RG 331, entry 56, SHAEF Special Staff Adjutant General's Division Executive Section Decimal File 1944, box 1, file 000.5-2.

68 Message, Canadian Military Headquarters to Canadian liaison officer 21st Army Group, 16 0915B August 1944, WMA, Macdonald fonds MS43 III-1/2. Macdonald had been relieved of command in the aftermath of Canadian tactical and leadership failures at the Verrières Ridge engagements. John James Maker, "Battalion Leadership in the Essex Scottish Regiment and the 4th Canadian Infantry Brigade during the Second World War," M.A. thesis (Waterloo: Wilfrid Laurier University, 2004), 95-108.

69 Memorandum, Brigadier T.J. Davis to Supreme Commander Allied Expeditionary Force "Report re Shooting of Allied Prisoners of War (Le Mesnil-Patry, Les Saullets, Buron and Authie)," 14 December 1944, NARA, RG 331, entry 1 Office of Chief of Staff Secretary General Staff Decimal File May 1943 – August 1945, box 1, file 000.5.

70 "Supplementary Report of the Supreme Headquarters Allied Expeditionary Force Court of Inquiry re Shooting of Allied Prisoners of War by 12 SS Panzer Division (Hitler-Jugend) Normandy France 7-21 June 1941," LAC, RG 24, vol. 2881, file HQS 8959-9/1.

71 "Oberführer Kurt Meyer – Interrogation for Lt. Col. B.J.S. Macdonald, E.D.," WMA, Macdonald fonds MS 43 III-3/3.

72 Memorandum, Lieutenant-Colonel John Page to G-1 division, 14 May 1945, NARA, RG 331, entry 6 SHAEF General Staff G-1 Division Administrative Section Decimal File 1944-45, box 2, file 000.5-20. SHAEF had established the policy before the Normandy invasion that enemy soldiers accused of war crimes would be tried after the end of hostilities.

73 Lieutenant-Colonel B.J.S. Macdonald, "Report of No. 1 Canadian War Crimes Investigation Unit on Miscellaneous War Crimes against members of Canadian Armed Forces in the European Theatre of Operations 9 Sep 1939 to 8 May 1945," 20 March 1946, Directorate of History and Heritage, National Defence Headquarters (DHH), file 159.95023(D1).

74 Memorandum, Colonel H.H. Newman to Canadian Military Headquarters, 20 June 1945, NARA, RG 331, entry 6, SHAEF General Staff G-1 Division Administrative Section Decimal File 1944-45, box 2, file 000.5-12.

75 Memorandum, Lieutenant-Colonel B.J.S. Macdonald "Interrogations in Canada and U.S.A.," 4 September 1945, LAC, RG 24, vol. 12841, file 67/Procedure/1.

76 Record of Evidence, "Kurt Meyer," 28 October 1945, WMA, Macdonald fonds MS 43 III-3/14.

77 "Minutes of Meeting in Attorney-General's Room, Law Courts, on 8th June, 1945, at 10:30 a.m," BNA, WO 32/12199. A.P.V. Rogers, "War Crimes Trials under the Royal Warrant: British Practice 1945-1949," *International and Comparative Law Quarterly 39* (1990), 786-7.

78 Memorandum Lieutenant-Commander R.E. Curran to Director of Military Intelligence "War Crimes," 18 July 1944, LAC, RG, 24 reel C-8316, file 6265-93. The War Cabinet considered sending a protest to Germany through the Protecting Power and "noted these reports, it being understood that the names of the Canadians executed would not be announced to the general public." Meeting, Cabinet War Committee, 26 July 1944, LAC, RG 2, series A-5-b, reel C-4876, vol. 5682.

79 Diary, 24 April 1945, Vincent Massey fonds, University of Toronto Archives (UTA), B87-0082, box 312, file 57.

80 Diary, 8 June 1945, Massey fonds, UTA, B87-0082, box 312, file 57.

81 "Minutes of Extraordinary Meeting of War Crimes Advisory Committee held in Conference Room, Department of External Affairs, Room 123, East Block, at 3:00 pm on Wednesday, June 20, 1945," LAC, RG 24, vol. 2906, file HQS 8959-9-5/2.

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82 *Hansard*, 13 September 1945, 135.

83 Record of Evidence No. 1 Canadian War Crimes Investigation Unit, "Interrogation - Kurt Meyer," 15 October 1945, WMA, Macdonald fonds, MS 43 III-3/14.

84 Lieutenant-Colonel Maurice William Andrew, LAC, Personnel file M515723; "Andrew, Maurice," Stratford-Perth County Archives, Clipping file. See also Whitney Lackenbauer and Chris Madsen, "Justifying Atrocity: Lieutenant-Colonel Maurice Andrew and the Defence of Brigadeführer Kurt Meyer," Yves Tremblay, ed., *Canadian Military History Since the 17th Century: Proceedings of the Canadian Military History Conference* Ottawa, 5-9 May 2000 (Ottawa: Directorate of History and Heritage, Department of National Defence Headquarters, 2001), 554-5.

85 Memorandum, Lieutenant-Colonel Bruce Macdonald to DAG HQ "Trials of War Criminals – Brigadeführer Kurt Meyer," 6 November 1945, LAC, RG 24, vol. 12,839, file 67/Kurt Meyer Case/1.

86 Macdonald, *Trial of Kurt Meyer*, 95-96.

87 Richard L. Lael, *The Yamashita Precedent: War Crimes and Command Responsibility* (Wilmington, Delaware: Scholarly Resources, 1982); Lawrence Taylor, *A Trial of Generals* (South Bend, Indiana: Icarus Press, 1981), Chapter 8. The British war crimes trial of *Generaloberst* Kurt Student, on charges related to mistreatment and killing of British prisoners of war during the 1941 German airborne invasion of Crete, also applied the concept of command responsibility. "Proceedings of a Military Court for the Trial of War Criminals held at the War Crimes Court Luneberg on 6th, 7th, 8th, 9th, 10th May, 1946, upon the trial of Kurt STUDENT, a German national," BNA, WO 235/115. Student was convicted on three out of eight charges, but the sentence of five years imprisonment was not confirmed by the reviewing authority.

88 R. v. Finta [1994], 1 *Supreme Court Reports*, 707.

89 *Crimes Against Humanity and War Crimes Act* (2000, c. 24), assented 24 June 2000.

90 Foster, *Meeting of Generals*, 484. Foster claims to have gained these opinions from an interview with Bell-Irving.

91 Brode, *Casual Slaughters*, 96-7. The Perth regiment belonged to the 11th Canadian Infantry brigade, and Johnston was Andrew's immediate superior officer during the final operations in Holland and Germany during 1945. Johnston was a lawyer from Toronto, and later became Honorary Colonel for the 48th Highlanders of Canada reserve regiment and a director of the Maple Leaf Gardens hockey arena.

92 Macdonald, *Trial of Kurt Meyer*, 195.

93 Macdonald, *Trial of Kurt Meyer*, 195-97; Meyer, *Grenadier*, 212-14. British and American intelligence officers wanted to interrogate Meyer before his execution, and did so on 6 January 1946. This request further delayed the execution.

94 Campbell, *Murder at the Abbaye*, 152-3. On Schapp's zealous activities to mobilize religious and popular support for Meyer in Germany, see Meyer, *Grenadier*, 215.

95 Letter, Chris Vokes to Lieutenant-Colonel I.J. Campbell, 15 May 1981, DHH BLOG files Vokes.

96 Diary, 9 January 1946, UTA, Massey fonds B87-0082, box 313, file 58.

97 James A. Oastier, "Meyer Case Draws Flood of Protest: Public Voices Disapproval of Commutation," *Montreal Daily Star*, 16 January 1946, 1-2.

98 Macdonald, *Trial of Kurt Meyer*, 200.

99 "Let's Have All the Facts," *Globe and Mail*, 23 January 1946.

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100 Dick Sanburn, "New Faggots in Fire of Anger: Gen. Foster's 'Shoot Meyer' Comment Worries Ottawa," *Winnipeg Free Press*, 18 January 1946, 14.

101 "Verdict Pleased Counsel," *Montreal Daily Star*, 16 January 1946, 2.

102 Letter, Clarence Campbell to Brooke Claxton, Minister of National Defence, 18 January 1949, WMA, Macdonald fonds, MS 43 III-3/4. See also "Life Sentence for Gen. Meyer Not Explained," clipping on file LAC, RG 73, vol. 9, file 2265-7; Lisa L. Goodyear, "In the Name of Justice or Finding a Place: Canadian War Crimes Prosecutions at the end of the Second World War" M.A. thesis (Kingston: Royal Military College of Canada, 2002), 71, 86.

103 Campbell, *Murder at the Abbaye*, 156; Meyer, *Grenadier*, 217.

104 Rumours abounded that Meyer might get special quarters. See, for example, *Ottawa Journal*, 25 April 1946 and *Globe and Mail*, 26 April 1946.

105 Kurt Meyer Jr., *Geweint wird, wenn der Kopf ab ist. Annäherungen an meinen Vater – "Panzermeyer," Generalmajor der Waffen-SS* (Freiburg: Herder, 1998), 27-28. Mit Stumpf und Stiel is the German term, which means "to its last trace, to the last remaining evidence of its existence." Thanks to Bryan Lovasz for translation of this passage and others from this book.

106 Ibid, 29.

107 James Whalen, "The Face of the Enemy: Kurt Meyer: Normandy to Dorchester," *The Beaver* 74 (April/May 1994), 21-22; Meyer to Minister of Justice, Ottawa, 28 June 1946, LAC, RG 73, vol. 9, file 2265 #7.

108 "Meyer's Move is 'Surprise,'" *Ottawa Citizen*, 19 October 1951.

109 Inspector J. Leopold, Officer in charge of Special Section, Royal Canadian Mounted Police Headquarters, to Superintendent of Penitentiaries, Ottawa, 16 August 1946, LAC, RG 73, vol. 9, file 2265 #7; "Meyer's Move is 'Surprise,'" *Ottawa Citizen*, 19 October 1951. On Meyer's "friends," see *Time*, 10 October 1949, 18, and "Probe Civilian Imprisonment of Kurt Meyer," *Ottawa Journal*, 28 September 1949.

110 Brode, *Casual Slaughters*, 208.

111 "Meyer Can't Kick at Civil Prison, Counsel Declares," clipping on LAC, RG 73 vol. 9 file 2265 #4; Campbell to Claxton, 18 January 1949, WMA, Macdonald fonds, MS 43 III-3/4.

112 Campbell, *Murder at the Abbaye*, 157.

113 Brode, *Casual Slaughters*, 207; Whalen, "The Face of the Enemy," 21-22.

114 James Eayrs, *In Defence of Canada: Growing Up Allied*, 310-49, 356-7. See also David Bercuson, "The Return of the Canadians to Europe: Britannia Rules the Rhine," in *Canada and NATO: Uneasy Past, Uncertain Future* eds. M.O. MacMillan and D.S. Sorenson (Waterloo: University of Waterloo Press, 1990), 15-26.

115 Dr. Wilhelm Schapp, Aurich to Canadian Embassy, Bonn, 27 January 1952, BNA, FO 1060/514.

116 E.A. Côté, Office of the High Commissioner for Canada London to R.C. Ormerod, Commonwealth Relations Office London, 1 February 1951, BNA, DO 35/2940.

117 See document E5 on Croll.

118 "Delayed Action," *Time*, 26 February 1951. On the media debate, see LAC, RG 73, vol. 9, file 2265 #2.

119 Eayrs, *In Defence of Canada: Growing Up Allied*, 356-7.

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120 Simonds quoted in Brode, *Casual Slaughters*, 209.

121 German Political Department to Legal Adviser's Office, Foreign Office, London, 26 September 1951, BNA, FO 1060/514.

122 *Globe and Mail* quoted in Brode, *Casual Slaughters*, 210.

123 R.C. Ormerod to A.B. Totty, Foreign Office, 29 October 1951 and A.G. Gilchrist to R.C. Ormerod, 7 March 1951, BNA, DO 35/2940; British Governor, Werl Prison, to Office of the Legal Adviser, Wahnerheide, BAOR, 22 October 1951, BNA, FO 102/455. British officials expressed their amazement in 1951 that Meyer was serving his sentence in Canada. In no other case had a convicted war criminal been removed from Germany to serve his sentence. E.A. Côté, Office of the High Commisioner for Canada, London, to R.C. Ormerod, Commonwealth Relations Office, London, 1 February 1951, BNA, DO 35/2940. For Meyer's perspective, see *Grenadier*, 224-5.

124 Extract for tel 181 sav for Canada, BNA, DO 35/2940.

125 Cipher No. 1133 from Wahnerheide to British Foreign Office, Departmental (German) Distribution, 29 November 1951, BNA, DO 35/2940; British Governor, Werl Prison, War Criminals Report on Petition for Leave, 16 November 1951, BNA, FO 1024/55.

126 "General Kurt Meyer," Extract for telegram 207, December 1951, BNA, DO 35/2940.

127 J.L. Frankel to Hon. Mr. Pearson, Minister of External Affairs, 4 December 1951, DHH 159.95 (D1).

128 "No Time to Lose," *Globe and Mail*, 11 December 1951.

129 See "References in Hansard to the Meyer Case" and "Summary of statements in the House on Kurt Meyer since his transfer to Germany," 2 September 1954, DHH 159.95 (D1).

130 Campbell, *Murder at the Abbaye*, 158.

131 See, for example, "Claim Rules of Evidence Mutilated in Meyer Case," *Globe and Mail*, 7 December 1951.

132 "Hamilton Brigadier Urges Release of Kurt Meyer," *Globe and Mail*, 29 November 1951.

133 "Prosecutor of Meyer Supports Conviction," *Globe and Mail*, 3 December 1951; Brode, *Casual Slaughters*, 211-12. German officials subsequently explained that Meyer's war crime record nullified his chances of joining a new German army. See, for example, Douglas How, "Record Too Black: See No Chance for Meyer to Join German Army," *Globe and Mail*, 13 December 1951, and "Little Chance Gen. Meyer Can Join in German Force," *Ottawa Citizen*, 13 December 1951.

134 Cabinet Defence Committee report, 20 December 1951, LAC, RG 2, vol. 2649, reel T-2368.

135 British Governor Allied National Prison Werl to Office of the Legal Advisor, Wahnerheide, 21 June 1952, BNA, FO 1024/55.

136 Excerpt from a translated letter from Kurt Meyer to Käte Meyer, 17 November 1952, BNA, PRO 1024/55.

137 W.D. Allen, note to file CW1661/50, 9 April 1953, BNA, FO 371/104144.

138 "War Crimes: Britain's Magnanimity," note to file, 18 April 1953, BNA, FO 371/104144.

139 Berlin telegram No. 171: Chancellor's Visit to Werl Prison, 30 June 1953, BNA, FO 371/104147.

140 "More Nazis May Be Freed: U.S. urges release," *Daily Express*, 20 July 1953; "'Mixed Courts' to Review War Crimes Cases," *Daily Telegraph*, clipping on BNA, FO 371/104148.

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141 R.H. Roy, *Sherwood Lett: His Life and Times* (Vancouver: University of British Columbia, 1991), 122-28; Campbell, 158. British officials argued that the Germans, Americans and French would not support Canadian membership in deliberations about prisoners under Canadian control, and expressed typical frustration that the Canadians did not simply "accept the impartial and independent appointee" of the British Government. British Legal Adviser to F.K. Roberts, Foreign Office, 3 April 1952, BNA, FO 1060/514.

142 Clipping, Robert Taylor, "Meyer Said War Genius But Too Ill to be Used," BNA, FO 1024/56.

143 *Toronto Evening Telegram*, 16 January 1954; *Windsor Star*, 18 January 1954; *Edmonton Journal*, 19 January 1954; *Calgary Herald*, 19 January 1954; and *Victoria Colonist*, 19 January 1954, quoted in "Precis of Editorial Opinion re: Kurt Meyer," DHH 159.95 (D1). This file contains a wealth of media reactions to the announcement.

144 Meyer, *Grenadiers*, 228-9.

145 Brode, *Casual Slaughters*, 214-5.

146 Macdonald, *Trial of Kurt Meyer*, 204-5.

147 In fact, Andreas Brewery approached Meyer about working for them while he was still in prison. Parbel, Andreas Brewery to British Governor, Werl, 10 August 1954, BNA PRO 1024/56.

148 Eayrs, *Growing Up Allied*, 361.

149 George H. Stein, *The Waffen SS: Hitler's Elite Guard at War, 1939-1945* (Ithaca and London: Cornell University Press, 1966), 252-8.

150 Meyer Jr., *Geweint wird*, 36-37. Meyer never talked about his war experiences to his son, but they still remained near the surface. "Once we walked through a park, in which there was a war memorial... I was twelve and decided to climb on the little wall that surrounded the memorial. I imagined you would walk beside me with your stick in your right hand and I could walk beside you on the wall and we would both be the same height. I don't remember exactly which hand you raised and which cheek you hit. You hit me because I was walking on the wall of the memorial. I was embarrassed, and we did not speak for a long time afterwards." *Ibid*, 21-22.

151 Campbell, *Murder at the Abbaye*, 172.

152 Brode, *Casual Slaughters*, 214; Whalen, "Face of the Enemy," 23.

153 Quoted in Tony Foster, *Meeting of Generals* (Toronto: Methuen, 1986), 515-16. See also Hubert Meyer, "In Memoriam," *Grenadiers*, 233-40.

154 Margolian, 183-4.

155 An earlier version of this historiographical overview appeared as P. Whitney Lackenbauer, "Kurt Meyer, the 12th SS Panzer Division, and the Murder of Canadian Prisoners of War in Normandy: An Historical and Historiographical Appraisal," *Gateway* 3 (University of Saskatchewan) (March 2001), available online. It does not include derivative articles such as Mark Reynolds, "Cold War Clemency: The Kurt Meyer Conundrum," *The Beaver* (April/May 2003), 12-19.

156 For documented atrocities and the extent of command responsibility on the Allied side, see James J. Weingartner, "Massacre at Biscari: Patton and an American War Crime," *The Historian* 52 (November 1989), 24-39.

157 Macdonald, *Trial of Kurt Meyer*, xv-xvi.

158 Macdonald, *Trial of Kurt Meyer*, 200, 212.

159 Sam H.S. Hughes, review of *The Trial of Kurt Meyer*, by B.J.S. Macdonald, *Canadian Historical Review* 36/1 (March 1955), 164-5.

160 The citations are of the English translation by Michael Mendé, published as *Grenadiers* (Winnipeg, MB: J.J. Fedorowicz, 1994).

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161 Meyer, *Grenadiers*, 202.

162 See Brode, *Casual Slaughters*, 100.

163 Meyer, *Grenadiers*, 219-223. See also Ralph Allen, “Was Kurt Meyer Guilty?” *Maclean's*, 1 Feb 1950, 9.

164 Chris Vokes and John P. Maclean, *Vokes: My Story* (Ottawa: Gallery Books, 1985), 205.

165 Vokes and Maclean, *My Story*, 205-8. For another frank discussion of Vokes’ rationale for commuting the sentence, see Vokes to Ian Campbell, 15 May 1981, DHH BIOG V file Vokes.

166 Carlo D'Este, *Decision in Normandy*, fiftieth anniversary edition (New York: HarperCollins, 1994), 507.

167 Max Hastings, *Overlord: D-Day and the Battle for Normandy* (New York: Simon and Schuster, 1984), 211.

168 The caption on the dust jacket was telling about the tone of the entire book: “They met first in battle – then in court. One sentenced the other to death for war crimes. But... who was guilty?” It was this “dispassionate” line of questioning that Foster sought to explore. Foster, *Meeting of Generals*.

169 Foster, *Meeting of Generals*, xxiii.

170 *Winnipeg Free Press*, 17 January 1946 and 18 January 1946; letter to the editor, 26 January 1946, 16.

171 Foster also made dubious claims. For example, the author suggested that the Canadian Army was so in awe of Meyer’s talents as a tactician that he was “spirited out” of Dorchester Penitentiary, disguised as a Canadian lieutenant, and joined a syndicate of Canadian officers planning for defensive measures in the Yukon. Although Foster claimed to conversed with Major-General Kitching about the incident, the latter denied having ever spoken with the author on the matter. Reginald Roy noted in a review of the book that this was just one of many assertions Foster made without substantiating documentary evidence; as such, he advised that the book “should be taken with a cup full of salt.” See Reginald H. Roy, review of *Meeting of Generals*, by Tony Foster, *Canadian Historical Review* 69/4 (December 1988), 123-4.

172 Post production script, Normandy Episode, 01:26:49:10 - 01:34:40:00, “The Valour and the Horror,” http://www.valourandhorror.com/DB/STORY/normandy_script.php (last accessed 30 March 2006). There were, of course, cases where Allied soldiers were tried for war crimes after the Second World War, although no Canadians were among those convicted of murdering POWs.

173 25 June 1992, Senate, *Proceedings of the Standing Senate Subcommittee on Veterans Affairs* (hereafter *Proceedings*), 3:64-65.

174 25 June 1992, *Proceedings*, 3:79.

175 David Bercuson in *The Valour and the Horror Revisited*, eds. D.J. Bercuson and S.F. Wise (Montreal & Kingston: McGill-Queen's University Press, 1994), 55.

176 3 November 1992, *Proceedings*, 6:44. Vogel expressed that “the inability to make distinctions – or the attempt not to make distinctions – ... gives the film a cartoon-like character.” 25 June 1992, *Proceedings*, 3:79-80. See also Terry Copp’s submission to Senate Committee, 25 June 1992, *Proceedings*, 3A:16-17.

177 Other historical studies that deal with the Meyer trial, but will not be analyzed here due to space constraints, include Whalen, “The Face of the Enemy,” which provides a brief overview of Meyer’s experiences in Canada.

178 Ian Campbell, *Murder at the Abbaye* (Ottawa: Golden Dog Press, 1996). Colonel Campbell, a retired Canadian Army officer who served in various staff and line appointments in Canada and overseas, became interested in the subject after a visit to the Abbaye d'Ardenne while he was serving in Germany.

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179 See Chapter 12 “The Home Front” and Chapter 13 “The Garden at the Abbaye d'Ardenne.”

180 Campbell, *Murder at the Abbaye*, 145-6, 165-66.

181 Campbell, *Murder at the Abbaye*, 167.

182 Gregory Charles Pollard, *Missing* (Cornwall: Astro Printing, 2003). For another example, see Lawyer Benoit Tremblay’s short unpublished biography, “”The Tragic Murder of Private Charles Doucette, June 8, 1944,” about a Mi’Kmaq Indian from Membertou who served with the North Nova Scotia Highlanders, DHH BIOG D, file Pte Charles Doucette.

183 Margolian listed two purposes. The first was to warn “of what can happen when soldiers are dehumanized by political indoctrination, the encouragement of ugly prejudices, and the creed of blind obedience.” The second was to “honour oft-forgotten and occasionally scorned heroes,” in light of the historical revisionists (*Valour and the Horror*) who debated and attacked the causes for which World War II veterans fought and bled. The author felt this book would educate readers and help to alleviate the “considerable anguish” felt recently be Canadian veterans, “particularly among the dwindling ranks of the survivors of the Normandy massacres.” *Conduct Unbecoming*, xi.

184 Margolian, *Conduct Unbecoming*, 180, 184-86.

185 See chapters 11 and 12, Brode, *Casual Slaughters*. For a discussion of inconsistencies in British policy towards Japanese and German war criminals, see document F27 in this volume.

186 Brode, *Casual Slaughters*, 220-1.

187 Brode, *Casual Slaughters*, 229.

188 James J. Weingartner, *Crossroads of Death: The Story of the Malmédy Massacre and Trial* (Berkeley: University of California Press, 1979). Charles Whiting, *Massacre at Malmédy* (New York: Stein and Day, 1971). James J. Weingartner, “Unconventional Allies: Colonel Willis Everett and SS-Obersturmbannfuehrer Joachim Peiper,” *The Historian* 62 (1999), 79-98.

189 Macdonald, *Trial of Kurt Meyer*, 214.

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Abbreviations

1 CWCIU	1 Canadian War Crimes Investigation Unit
2 i/c	second in command
AA	Anti-Aircraft or assistant adjunct
BDC	Berlin Documents Center
Bde	Brigade
Benelux	Belgium, Netherlands and Luxembourg
BNA	British National Archives (formerly Public Records Office), Kew
C in C	commander-in-chief
C.A.O.F.	Canadian Army Occupation Force
C.M.H.Q.	Canadian Military Headquarters, London, England
Capt	Captain
Cdn	Canadian
Cdn Inf Div	Canadian Infantry Division
CMHQ	Canadian Military Headquarters
Col	Colonel
comd	command
Coy	Company
Dept	Department
DHH	Directorate of History and Heritage, Department of National Defence Headquarters, Ottawa
Div.	Division
DND	Department of National Defence
EDC	European Defence Community
FFI	French Forces of the Interior
GAF	German Air Force
gaol	jail
GOC	General Officer Commanding
HIAG	Hilfsgemeinschaft auf Gegenseitigkeit der Soldaten Der Ehemaligen Waffen-SS (postwar organization of former Waffen-SS veterans)
HSF	Hauptscharführer
JAG	Judge Advocate General
L.O.	Liason Officer
L/Cpl	Lance Corporal
LAC	Library and Archives of Canada, Ottawa
Lieut	Lieutenant
Lieut-Col	Lieutenant-Colonel
M.M.L.	Manual of Military Law
Maj	Major
N.B.	New Brunswick
N.C.O.	Non-commissioned officer
N.S.	Nova Scotia
NATO	North Atlantic Treaty Organization
NARA	National Archives and Records Administration, College Park MD
O.C.	Officer Commanding
O.P.	Operation Post
Ops	Operations
P.C.	Privy Council
P.O.W.	prisoner of war
Para	Paratrooper
Pte	Private
QMG	Quartermaster General
R.A.F.	Royal Air Force
R.C.A.F.	Royal Canadian Air Force
Recce	Reconnaissance or reconnoitre
RV	Reconnaissance vehicle
S.S.	Schutzstaffeln
SHAEF	Supreme Headquarters, Allied Expeditionary Force
Sigs	Signals
Sitreps	Situation Reports
TAC	Tactical Command Post
U.K.	United Kingdom
U.N.	United Nations
U.S.	United States
UNO	United Nations Organization
UNWCC	United Nations War Crimes Commission
UTA	University of Toronto Archives
VJAG	Vice Judge Advocate General
vol.	volume
W/C	Wing Commander

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Editors' Notes and Acknowledgements

This compendium represents the culmination of nearly a decade of work in gathering and transcribing documents related to Canada's first war crimes trial. Archival materials have come from the Library and Archives Canada in Ottawa (formerly National Archives of Canada), the Directorate of History and Heritage at the Department of National Defence Headquarters in Ottawa, the U.S. National Archives and Records Administration in Washington (College Park), the British National Archives (formerly Public Records Office) in London (Kew), and the Windsor Municipal Archives in Windsor, Ontario.

Some of the text was standardized for readability (such as ranks, names, and acronyms), but not where it would detract from the integrity of the documents or transcript. For example, we have left telegrams in their original script to ensure that the reader recognizes them as that form of transmission. In the trial transcript, obvious typographic errors have been corrected, punctuation changed to improve readability, and spelling standardized. Given that the lawyers' and witnesses' statements were given verbally at the trial and recorded by different court stenographers, we believe that these changes are appropriate and in no way detract from the historical veracity of the document as reproduced.

We have chosen not to include Canadian newspaper coverage of the Meyer trial or subsequent developments. These rich resources are becoming more accessible to researchers in electronic databases or are readily available on microfilm. Representative samplings of Canadian media accounts can be found in Directorate of History and Heritage file 159.95 (D1) and Library and Archives Canada, Record Group 73 volume 9 file 2265 parts 1-7.

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Our final thanks are for our families. Jennifer Arthur-Lackenbauer and Sian Madsen provided support in their usual, innumerable ways. Our children, Sarah and Peter Madsen and Harrison Lackenbauer, remind us daily how precious life is.

P. Whitney Lackenbauer
Chris M.V. Madsen
March 2006

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Before the Trial



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Before the Trial

A. Legal and Pre-trial Documents

A1. Regulations Respecting the Laws and Customs of War on Land Annexed to The Hague Convention (IV) (Signed at The Hague, 18 October 1907).

Section I – On Belligerents

Chapter I – The Qualifications of Belligerents

Art. 1. The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and customs of war.

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Art. 3. The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war.

Chapter II – Prisoners of War

Art. 4. Prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them. They must be humanely treated. All their personal belongings, except arms, horses, and military papers, remain their property.

A2. International Convention Relative to the Treatment of Prisoners of War (Signed at Geneva, 23 June 1929).

Part I. General Provisions

Art. 1. The present Convention shall apply without prejudice to the stipulations of Part VII: -

(1) to all persons referred to in articles 1, 2 and 3 of the Regulations annexed to the Hague Convention of the 18th October, 1907, concerning the Laws and Customs of War on Land, who are captured by the enemy.

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Art. 2. Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them.

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They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity.

Measures of reprisal against them are forbidden.

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Part II. Capture

Art. 5. Every prisoner of war is required to declare, if he is interrogated on the subject, his true names and rank, or his regimental number.

If he infringes this rule, he exposes himself to a restriction of the privileges accorded to prisoners of his category.

No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to reply may not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever.

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Part III. Captivity – Section 1. Evacuation of Prisoners of War

Art. 7. As soon as possible after their capture, prisoners of war shall be evacuated to depots sufficiently removed from the fighting zone for them to be out of danger.

Only prisoners who, by reason of their wounds or maladies, would run greater risks by being evacuated than by remaining may be kept temporarily in a dangerous zone.

Prisoners shall not be exposed to danger while awaiting evacuation from a fighting zone.

A3. Manual of Military Law 1929, Amendment No. 12 (1936).

Chapter XIV: The Laws And Usages Of War On Land

IV. – The Means of Carrying on War

39. The first principle of war is that the enemy's powers of resistance must be weakened and destroyed. The means that may be employed to inflict injury on him are not, however, unlimited. They are in practice definitely restricted by international conventions and declarations, and also by the customary rules of warfare. And, moreover, there are the dictates of religion, morality, civilization, and chivalry which ought to be obeyed. The means include both force and stratagem.

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48. It is forbidden to declare that no quarter will be given.

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50. It is forbidden to kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion.

51. This prohibition is clear and distinct; there is no question of the moment up to which acts of violence may be continued without disentitling the enemy to be ultimately admitted to the benefit of quarter. War is for the purpose of overcoming armed resistance, and no vengeance can be taken because an individual has done his duty to the last but escaped injury.

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52. Few wars have occurred without both belligerents making mutual charges of breaches of the laws of war. Such charges as have been proved have almost invariably been shown to have been the deeds of subordinates who have acted through ignorance or excess of zeal; they have less often been deliberate acts. Care must therefore be taken that all ranks are acquainted with the laws of war and that they endeavour to observe them.

53. A belligerent is not justified in at once dispensing with obedience to the laws of war on account of their suspected or ascertained violation on the part of his adversary.

(i). B. – The Taking of Prisoners

54. Few of the customs of war have undergone greater changes than those relating to the treatment of prisoners. In antiquity war captives were killed, or at best enslaved; in the Middle Ages they were imprisoned or held to ransom; it was only in the seventeenth century that they began to be deemed prisoners of the state and not the property of individual captors. Even during the wars of the last 100 years they were often subject to cruel neglect, unnecessary suffering and unjustifiable indignities.

55. The written laws regarding prisoners of war are contained in the Prisoners of War Convention, in Chapter II of the Hague Rules, in certain paragraphs of the Red Cross Convention, and in the Convention concerning the Rights and Duties of Neutral Powers and Persons in War on Land.

56. The following can claim to be treated as prisoners of war if they fall into the hands of the enemy: (a) Every member of the armed forces, unless he has committed a war crime.

X. – Means of Securing Legitimate Warfare

435. Scarcely any war has taken place without complaints having been made of illegitimate acts and omissions of some kind or other having been committed by individuals or by commanders. In some cases belligerent Governments themselves, owing to differences of interpretation of the laws of war, have been accused of illegitimate acts or of refusing to punish alleged illegitimate acts of their soldiers.

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437. As war is the last remedy of Governments for injuries, no means would appear to exist for enforcing reparation for violations of the laws of war. Practically, however, legitimate warfare is on the whole at least, secured through several means recognized by International Law. Moreover, it is in the interest of a belligerent to prevent his opponent having any justifiable occasion for complaint, because no Power, and especially no Power engaged in a national war, can afford to be wholly regardless of the public opinion in the world.

438. These means fall into two classes according to whether or no they fall under the category of self-help. To the one class belong: complaints lodged with the enemy; complaints lodged with neutral states; and good offices, mediation, and intervention of neutral states. To the other class belong: punishment of war crimes committed by enemy soldiers and other enemy subjects; reprisals; and the taking of hostages.

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The Punishment of War Crimes

441. The term "War Crime" is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment or capture of the offenders. It is usual to employ this term, but it must be emphasized that it is used in the technical military and legal sense only, and not in the moral sense. For although some of these acts, such as abuse of the privileges of the Red Cross badge, or the murder of prisoners, may be disgraceful, yet others, such as conveying information about the enemy, may be highly patriotic and praiseworthy. The enemy, however, is in any case entitled to punish these acts as war crimes.

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442. War crimes may be divided into four different classes:

(i) Violations of the recognized rules of warfare by members of the armed forces.

(ii) Illegitimate hostilities in arms committed by individuals who are not members of the armed forces.

(iii) Espionage and war treason.

(iv) Marauding.

443. The more important violations are the following: – making use of poisoned and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request of quarter; maltreatment of dead bodies on the battlefield; ill-treatment of prisoners of war; breaking of parole by prisoners of war; firing on undefended localities; abuse of the flag of truce; firing on the flag of truce; abuse of the Red Cross flag and badge, and other violations of the Red Cross Convention; use of civilian clothing by troops to conceal their military character during battle; bombardment of hospitals and other privileged buildings; improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction; ill-treatment of inhabitants in occupied territory. It is important, however, to note that members of the armed forces who commit such violations of the recognized rules of warfare as are ordered by their Government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress which are dealt with in this chapter.

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449. Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment, and the utmost care must be taken to confine the punishment to the actual offender.

450. All war crimes are liable to be punished by death, but a more lenient penalty may be pronounced. Corporal punishment is excluded, and cruelty in any form must be avoided. The punishment should be deterrent, but great severity may defeat its own ends by driving the population to rebellion.

451. In pronouncing a sentence of imprisonment it need not be taken into consideration whether there is a probability of the prisoner being released at the end of the war. There is no right to claim release, and it would not be in the interests of humanity to grant such right, for otherwise belligerents would be forced to carry out capital punishment in many more cases than is now usually necessary.

(iv) Reprisals

452. Reprisals between belligerents are retaliation for illegitimate acts of warfare, for the purpose of making the enemy comply in future with the recognized laws of war. They are not referred to in the text of the Hague Rules, but are mentioned in the Report presented to the Peace Conference of 1889 by the Committee which drew up the Convention respecting the Laws and Customs of War on Land. They are by custom admissible as an indispensable means of securing legitimate warfare. The mere fact that they may be expected, if violations of the laws of war are committed, acts to a great extent as a deterrent. They are not a means of punishment, or of arbitrary vengeance, but of coercion.

453. The illegitimate acts may be committed by a Government, by its military commanders, or by some person or persons whom it is obviously impossible to apprehend, try, and punish.

454. Reprisals are an extreme measure because in most cases they inflict suffering upon innocent individuals. In this, however, their coercive force exists, and they are indispensable as a last resource.

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455. Although there is no rule of International Law respecting the matter, reprisals should never be resorted to by the individual soldier, but only by order of a commander.

456. An infraction of the laws of war having been definitely established, every effort should first be made to detect and punish the actual offenders. Only if this is impossible should other measures be taken in case the injured belligerent thinks that the facts warrant them. As a rule the injured party would not at once resort to reprisals, but would first lodge a complaint with the enemy in the hope of stopping any repetition of the offence or of securing the punishment of the guilty. This course should always be pursued unless the safety of the troops requires immediate drastic action, and the persons who actually committed the offences cannot be secured.

457. Even when both direct and indirect appeal to the enemy for redress has failed it should be considered, before resorting to reprisals, whether he is not more likely to be influenced by a steady adherence to the laws of war on the part of his adversary.

458. Although collective punishment of the population is forbidden for the acts of individuals for which it cannot be regarded as collectively responsible, it may be necessary to resort to reprisals against a locality or community, for some act committed by its inhabitants, or members who cannot be identified.

459. What kinds of acts should be resorted to as reprisals is a matter for the consideration of the injured party. Acts done by way of reprisals must not, however, be excessive, and must not exceed the degree of violation committed by the enemy.

460. Reprisals may be resorted to, or must at once cease, when the enemy gives satisfaction for the illegitimate acts committed by him.

A4. "History of the Hitler-Jugend Division," by Bernhardt Meitzel (PW A-763223) [Fall 1945].[1]

After the fall of Stalingrad, the then German Reichsugendfuhrer Axmann offered the Fuhrer of the German Reich to form an SS Division composed of volunteers of the Hitler Youth in order to make up, in part, for the losses suffered at Stalingrad.

The Fuhrer and the supreme commander of the German Wehrmacht accepted this offer and entrusted in the spring or summer, 1943, the SS Fuhrungshauptant (SS Directorate) and the Reichsjugendfuhrung, with the formation of an SS Division from volunteers of the Hitler Youth. At this time the lack of officers in the Waffen SS was already very great. In agreement with Obergruppenfuhrer Sepp Dietrich, or maybe at his suggestion, the SS Fuhrungshauptant decides to take the Officers Corps for the new Division from the Division Leibstandarte. First, because the Leibstandarte Adolf Hitler was always strong in officers; second, because one intended to form a new Panzer Corps made up of both Divisions and thus the best premises for subsequent harmonious collaboration would be achieved.

Later on the community of these two Divisions received a visible expression in the Divisional emblems. The emblem of the Leibstandarte Adolf Hitler was a Dietrich (skeleton key) – the name of its commander – framed by the decorations he had received, i.e., Oak Leaves and Swords. The emblem of the 12th SS Panzer Division Hitler Youth shows a Dietrich (skeleton key) crossed with a Sig-rune, the symbol of the Deutsches Jungvolk, in the Hitler Youth framed by the decorations of Brigadefuhrer Witt, Oak Leaves...

In August 1943, the real work of forming the Division was begun in the area of Turnhout, Beverloo, in Belgium under the supervision of the General of Panzer Truppen West, Gen Von Geyr-Schweppenburg. Shortly after Easter, 1944, the Division moved from Belgium into the area Verneuil, Dreux, Le Newbourg, Vimoutiers. From this area the Division on the 6th June, 1944, in the framework of the 1st SS Panzer Corps next to and on the left of 21 Panzer Div., went into action in defence against the invasion.

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A5. Minutes of a Meeting held in the Office of the High Commissioner for Canada, 24 April 1945.[2]

Following were present:-

- The High Commissioner (Chairman)
- *NAVY:* Lt.-Commander (S) J.H. Cleveland, R.C.N.V.R
- *ARMY:* Col. W.A.I. Anglin, Lt.-Col. MacDonald
- *R.C.A.F.:* G/C W.M. Martin, W/C Doble, W/C Hopkins, Mr. Andrew Bell

THE HIGH COMMISSIONER explained that the purpose of the meeting was to inform the three Canadian Services of the preliminary arrangements which had been made for association of Canada in the work of the United Nations War Crimes Commission and to consider the steps necessary to render this association fully effective. The Canadian Government had recently named him as the Canadian member of the Commission and he wished to elicit the co-operation of the three Canadian Services insofar as such might be required. Mr. Massey stated that a necessary preliminary to the presentation of any cases to the Commission was, of course, the collection and collation of evidence of war crimes involving members of the Canadian Armed Forces or Canadian nationals. Thus the onus would really be on the Services in the first instance to secure particulars of any instances where it was felt a crime had been committed against a Canadian. The functions of the three Service Headquarters in London and Canada House were complementary and it was important, particularly in view of the present military situation, that they should, without delay, work out practical arrangements to ensure that Ottawa received all evidence available on this side bearing on war crimes with which Canada was concerned.

COL. ANGLIN stated that the most serious cases of war crimes involving Army personnel were the Normandy murders committed by the 12th S.S. Division in June, 1944. The findings of the Court of Enquiry had already gone forward to Ottawa, but the collection of evidence with respect to these murders was still going on.

COL. ANGLIN stated that Lt.-Col. MacDonald had been closely concerned with the handling of war crimes at SHAEF, being on the Permanent Court of Enquiry since its inception, and latterly its President. COL. ANGLIN suggested that Lt.-Col. MacDonald should give a brief description of his experiences to the meeting.

COL. MACDONALD then explained that the handling of war crimes in the field had been, until recently, the responsibility of SHAEF, but had since become an "Army Group" responsibility, the discharge of which was now under consideration.

Army and Air Force representatives indicated that a pressing problem was the fact that many of the witnesses who might be useful in Canadian cases were German prisoners of war, some of whom were in Canada and the United States, while others were in the United Kingdom. The High Commissioner felt that the suggestion of the Army representatives, namely, the setting up of a peripatetic Court (along the lines of the SHAEF Court) and which could examine all witnesses, might meet the Canadian need. The High Commissioner further stated that the important factor at this stage was to complete the compilation of cases as soon as possible, and that the form of trial might be decided later. Now was the time, however, for the necessary investigations and the correlation of evidence.

W/C Doble informed the meeting it was his understanding that prisoner of war evidence relating to war crimes involving nationals of all the countries of the Commonwealth was being assembled by a new section at the War Office, A.G.3.(W.C) [the Adjutant General 3 (War Crimes)]. This section might be in a position to considerably aid Canada in the assembling of evidence. The High Commissioner then instructed Mr. Bell to ascertain the precise functions of A.G.3.(W.C.). It would then be possible to decide whether, in the interest of Canada, a Canadian officer should be attached to this section to ensure that evidence in which the Canadian Government was interested was further investigated, if necessary, and in any case reached the Canadian authorities concerned without delay.

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THE HIGH COMMMISSIONER concluded the Meeting with a statement that he felt the discussion had been a most useful one. Those present would no doubt wish to look into these vital questions further, and a meeting in ten days time would thus, perhaps, serve a useful purpose. It was agreed that such was the case and Mr. Massey undertook to call a meeting on or about May 4th.

Minutes of the Meeting by Acting Lieutenant Commander J.H. Cleveland, RCNVR

1. Lieut.-Col. MacDonald has been working under SHAEF gathering evidence for war crimes. This has included twenty instances of which three only were Canadian Army. By a recent rearrangement of functions, 21 Army Group will now be responsible for British and Canadian atrocity matters and the United States will look after its own.

2. The problem at present is to identify all the criminals involved in the investigation already being conducted. Leads indicate that further investigation is necessary among personnel scattered throughout Canada and the United States as well as the United Kingdom and the Continent and including Germans now Prisoners of War. It was the feeling of the meeting that a peripatetic Court of Inquiry to pursue to a successful conclusion the three instances of larger scale atrocities against the Canadian Army should be instituted for which purpose, of course, Lieut.-Col. MacDonald would be required.

3. Two R.C.A.F. cases have already been investigated and the evidence seems to be conclusive and it is unlikely that further investigation will be required.

4. No investigation has as yet taken place with respect to crimes committed during forced marches made by Prisoners of War. In addition, it is likely there will be further instances involving one or two individuals requiring investigation.

5. The High Commissioner expressed the strong opinion that the Canadian public would demand that all suggestions of war crimes against Canadian personnel be investigated most vigorously. Time is an important element in order that it may be presented to the appropriate court as soon as possible. Accordingly, the High Commissioner intends to dispatch at once to Ottawa a cable recommending that action to complete evidence should be taken without delay.

6. As Form Q goes from [Military Intelligence Section 9] to A.G.3W.C. and various other information also funnels to that office, and as neither the High Commissioner nor the Services seem to have received much information from thence, it was decided that representation should be made to the War Office with a view to obtaining better liaison possibly by the appointment of a Canadian Officer to represent Canadian interests.

7. The possibility of crimes against Merchant Seamen must be considered.

8. The meeting adjourned to reassemble upon call of the High Commissioner within twelve to fourteen days.

A6. War Crimes Regulations (Canada) P.C. 5831, 30 August 1945.

1. These Regulations may be cited as the War Crimes Regulations (Canada).

2. In these Regulations, unless the context otherwise requires and subject to any express provision to the contrary:

   (a) "accused" means a person charged with or suspected of the commission of a war crime;

   (b) "Army Act" means the Army Act of the United Kingdom as made applicable from time to time to members of the Canadian military forces;

   (c) "convening officer" means an officer authorized to convene a military court under these Regulations;

   (d) "military court" means a military court constituted and held under these Regulations;

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(e) "Rules of Procedure" means the Rules of Procedure made pursuant to the Army Act, as made applicable from time to time to members of the Canadian military forces;

(f) "war crime" means a violation of the laws or usages of war committed during any war in which Canada has been or may be engaged at any time after the ninth day of September, 1939;

(g) other expressions bear the same meaning as they have in the Army Act or Rules of Procedure.

3. The custody, trial and punishment of persons charged with or suspected of war crimes shall, on and after the date hereof, be governed by these Regulations.

4. (1) Any Canadian flag, general or air officer commanding any Canadian forces wherever such forces may be serving, whether in the field or in occupation of enemy territory or otherwise, and any officer acting for such officer commanding in his absence, and any officer not below the rank of colonel, or its relative rank, whom such officer commanding, or officer acting for him in his absence, may authorize in writing in that behalf, shall have power to convene military courts for the trial of persons charged with having committed war crimes and to confirm the findings and sentences of such courts: Provided that no military court shall be convened for the trial of any person for a war crime unless the case has been certified by the Judge Advocate General, or any representative of his appointed by him for that purpose, as approved for trial.

(2) Any authority to convene military courts conferred by an officer commanding or an officer acting for him in his absence under (1) Of this Regulation may be addressed to an officer by name or designation of an office and may be made subject to such restrictions., reservations, exceptions and conditions, compatible with these Regulations, as may seem meet to the officer conferring the authority.

(3) An officer having authority to confirm the finding and sentence of a military court may reserve confirmation of the finding and sentence, or of the sentence alone, to any authority superior in rank or appointment to him who is competent to confirm the findings and sentences of the like kind of military court convened under these Regulations.

5. Except as herein otherwise provided expressly or by implication, the provisions of the Army Act and the Rules of Procedure, so far as they relate to field general courts-martial and to any matters preliminary or incidental thereto or consequential thereon, shall apply so far as applicable or practicable to military courts and to any matters preliminary or incidental thereto or consequential thereon in like manner as if military courts were field general courts-martial and the accused were persons subject to military law charged with having committed offences on active service; Provided that

(a) Sections 49, 51, 54(I) (d) and (7) and 57(2) and (4) and 57A of the Army Act, and Rules of Procedure 3, 34, 35(D), 56, 110, 118(A) and (B), 119(B) and 120(C), (D) and (E) made pursuant thereto shall not apply;

(b) No departure from any procedural rule or other provision contained in the Army Act or the Rules of Procedure shall affect the jurisdiction of, or the validity of any proceedings by or before, any military court, or of any proceedings preliminary or incidental thereto or consequential thereon, unless in the opinion of the court, or of the confirming authority, substantial injustice has thereby been done to the accused.

6. (1) If it appears to a convening officer that a person then within the limits of his command or otherwise under his control has at any place committed a war crime he may direct that such person if not already in custody shall be taken into and kept in custody pending trial in such manner and in such charge as he may direct.

(2) The commanding officer of any body of naval, military or air forces having charge of an accused shall be deemed to be the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments; Provided that such commanding officer shall have no power to dismiss the charge

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or deal with the accused summarily for a war crime. He shall without any such preliminary hearing as is referred to in Rule of Procedure 3 either cause a summary of evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the convening officer may direct.

(3) The accused shall not have the right of having a summary taken or of demanding that the evidence at the summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the summary.

7. (1) A military court shall consist of not less than two or more than six officers in addition to the president, all of whom shall be appointed by name, but no officer, whether sitting as president or as a member, need have held his commission for any special length of time.

(2) If the accused is an officer of the naval, military or air forces of an enemy or ex-enemy power the convening officer should, so far as practicable, but shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused.

(3) If the accused belongs to the naval, military or air forces of an enemy or ex-enemy power, or if Canadian naval, military or air force personnel are in any way affected by the alleged war crime, the convening officer should appoint or detail, if available, at least one, naval, military or air force officer as a member of the court, as the case may be.

(4) Notwithstanding anything in these Regulations, where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, a convening officer may:

(a) invite one or more officers of the naval, military or air forces of such Allied power to become a member or members of the military court convened to try the person or persons charged with having committed the offence, in which case any officer so invited may sit as a member of the military court;

(b) appoint as a member of the court one or more officers of an Allied force serving under his command;

Provided that in no case shall the number of such Allied officers on a military court comprise more than half the members of the military court excluding the president.

(5) Any Allied officer sitting as a member of a military court pursuant to (4) (a) or (b) of this Regulation shall be vested with the same rights, duties and powers as an officer of the Canadian forces duly appointed to serve as a member of such a court.

(6) A convening officer may, with the consent of the appropriate naval, military or air force authority, appoint as president or member of a military court, an officer not under his command.

(7) The convening officer shall normally appoint at least one officer having one of the legal qualifications mentioned in Rule of Procedure 93(B) as president or as a member of the court. If no such officer is appointed, and in default of a person deputed to act as judge advocate by the Judge Advocate General, or any representative of his appointed by him for that purpose, the convening officer shall by order appoint a person having one of the said legal qualifications to act as judge advocate at the trial.

8. The accused shall not be entitled to object to the president or any member of the court or the judge advocate or to offer any special plea to the jurisdiction of the court.

9. Counsel may appear on behalf of the prosecutor and accused in like manner as if the military court were a general court-martial, and Rules of Procedure 88 to 93, both inclusive, shall in such cases apply accordingly. In addition to the persons deemed to be properly qualified as counsel under Rule of Procedure 93 any person qualified to appear

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before the courts of the country of the accused and any person approved by the convening officer shall be deemed to be properly qualified as counsel for the defence.

10. (1) At any hearing before a military court convened under these Regulations the court may 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, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial, and without prejudice to the generality of the foregoing, in particular:

(a) if any witness is dead or is unable to attend or to give evidence or it is, in the opinion of the court, not practicable for him to do so, the court may receive secondary evidence of statements made by or attributable to such witness;

(b) any document purporting to have been signed or issued officially by any member of any Allied (including British Commonwealth) or enemy force or by any Allied (including British Commonwealth), neutral or enemy government, shall be Admissible as evidence without proof of the issue or signature thereof;

(c) the court may receive as evidence of the facts therein stated any report of the "Comité International de la Croix Rouge" or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a "man of confidence" (homme de confiance), or by any other person whom the court may consider was acting in the course of his duty when making the report;

(d) the court may receive as evidence of the facts therein stated any depositions or any record or report of any military court or military court of inquiry or of any examination made by any officer detailed for the purpose, by any military authority;

(e) the court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge;

(f) if any original document cannot be produced or, in the opinion of the court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence;

(g) any statement made prior to trial by an accused or by any witness at such trial, whether or not such statement was made on oath, and whether made before or after or without the giving of any caution, shall be admissible in evidence for all purposes.

(2) It shall be the duty of the court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible.

(3) Where there is evidence that a war crime has been the result of concerted action upon the part of a formation, unit, body, or group of persons, evidence given upon any charge relating to that crime against any member of such a formation, unit, body, or group may be received as prima facie evidence of the responsibility of each member of that formation, unit, body, or group for that crime; in any such case all or any members of any such formation, unit, body, or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the court.

(4) Where there is evidence that more than one war crime has been committed by members of a formation, unit, body, or group while under the command of a single commander, the court may receive that evidence as prima facie evidence of the responsibility of the commander for those crimes.

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(5) Where there is evidence that a war crime has been committed by members of a formation, unit, body or group and that an officer or non-commissioned officer was present at or immediately before the time when such offence was committed, the court may receive that evidence as prima facie evidence of the responsibility of such officer or non-commissioned officer, and of the commander of such formation, unit, body, or group, for that crime.

(6) The court shall take judicial notice of the laws and usages of war.

(7) Unless the convening officer otherwise directs, a finding of guilty and the sentence shall be announced in open court by the president, who shall at the same time state that such finding and sentence are subject to confirmation. If such announcement is not made in open court the president shall notify the accused of the finding and sentence under sealed cover at the termination of the proceedings and record in the proceedings that this has been done. A finding of acquittal, whether on all or some of the offences with which the accused is charged, shall not require confirmation or be subject to be revised and shall be pronounced at once in open court, but the court shall not thereupon release the accused, unless otherwise entitled to be released.

(8) The sittings of military courts will ordinarily be open to the public so far as accommodation permits. Nevertheless the court may, on the ground that it is expedient to do so in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally, or otherwise, by order prohibit the publication of any evidence given or to be given or of any statement made or to be made, or of the names, descriptions or photographs of any witnesses heard or to be heard, in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normally take place in open court, except during the announcement of the finding and sentence pursuant to paragraph (G) above.

(9) A record shall be made of the proceedings of every military court.

11. (1) A person found guilty by a military court of a war crime may be sentenced to and shall be liable to suffer any one or more of the following punishments, namely:

(a) Death (either by hanging or by shooting);

(b) Imprisonment for life or for any less term;

(c) Confiscation;

(d) A fine.

(2) In a case where the war crime consists wholly or partly of the taking, distribution or destruction of money or other property the court may as part of the sentence order the restitution of such money or other property and in default of complete restitution award a penalty equal in value to that which has been so taken, distributed or destroyed or not restored.

(3) Sentence of death shall not be passed on any person by a military court without the concurrence of all those serving on the court if the court consists of not more than three members, including the president, or without the concurrence of at least two-thirds of those serving on the court if the court consists of more than three members, including the president.

12. The accused may within 14 days of the termination of the proceedings in court submit a petition to the confirming officer against the finding or sentence or both if he gives notice to the confirming officer within 48 hours of such termination of his intention to submit such a petition. The accused shall have no right to submit any petition otherwise than as aforesaid: Provided that, if such petition is against the finding, it shall be referred by the confirming

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officer, together with the proceedings of the trial, to the Judge Advocate General, or to any representative of his appointed by him for that purpose, for advice and report thereon.

13. (1) The finding and any sentence which the court had jurisdiction to pass may be confirmed and, if confirmed, shall be valid, notwithstanding any deviation from these Regulations, or the Army Act or the Rules of Procedure or any technical or other defect or objection.

14. When a sentence passed by a military court has been confirmed, the senior combatant officer of the Canadian forces in the theatre in which the trial took place not below the rank of major general or its relative rank, or any officer not below the rank of brigadier, or its relative rank, authorized by him, shall have power to mitigate or remit the punishment thereby awarded or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court: Provided that this power shall not be exercised by an officer holding a command or rank inferior to that of the officer who confirmed the sentence.

15. The fact that an accused acted pursuant to the order of a superior or of his government shall not constitute an absolute defence to any charge under these Regulations; it may, however, be considered either as a defence or in mitigation of punishment if the military court before which the charge is tried determines that justice so requires.

16. Any sentence passed by a military court shall, so far as practicable, be carried out as if the person so sentenced were a member of the Canadian military forces on whom a like sentence had been passed by court-martial.

17. In any case not provided for in these Regulations such course will be adopted as appears best calculated to do justice.

A7. Special Interrogation Report: Brigadeführer Kurt Meyer, Commander 12th SS Panzer Division "Hitler Jugend" (6 June 1944 – 25 August 1944) by G Intelligence Headquarters Canadian Forces in the Netherlands, 24 August 1945.[3]

DIVISIONAL COMMAND

1. Kurt Meyer, commander of 12th SS Panzer "Hitler Jugend, at the age of 35 is the youngest German divisional commander. In 1933, he became a member of Hitler's body guard and all his subsequent service has been with the SS. In 1939, he fought in the Polish Campaign with the Adolf Hitler Division and subsequently in Holland and France. As regimental commander, he took a leading part in the campaign in Greece, and at the outbreak of war with Russia was in the forefront of the drive to the East. For three years he fought in Russia reaching almost the furthest point to be achieved by the German forces, deep into the remote Caucasus. Three times he was completely encircled by Russian forces during the retreat, and fought his way out with a handful of survivors. It will be seen that his experience instilled into him a thorough knowledge of battle tactics, which stood him in good stead at the time of the Caen-Falaise battle.

2. Standing approximately 5 feet 10 inches in height, broad shouldered, thick-set, his whole appearance dominated by his cold grey-blue eyes, which fixed one with what almost amounts to a stare whenever he is talking, Kurt Meyer is the personification of National Socialism. His mind, paralyzed with long propaganda, is quite unable to even consider any other point of view. His whole outlook is dominated by the peril of Russia and the Communist threat to Germany, which reason he gives for his wholehearted adherence to Hitler and to his teachings. Time and again throughout the whole conversation he would turn, fixing one or other of the interrogators with the cold stare, saying slowly and distinctly, "As I sit here now, Germany in five years or less will be Communist." The English, he explained, had no idea of Russia, its system of life and its people. They would sweep away all the western culture such as we know it, and would set up in its place their own half developed animal-like existence, which could only mean the complete disappearance of western civilization. When it was suggested to him that Russia might have other things to think about in the next five or ten years than war, with pursed lips and the old familiar state, he replied, "Russia will always have both time and the necessary resources to do what she likes when she likes." This he said

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was the reason why the Führer had led them into the Russian adventure. The Führer had realized this peril all along, and his one idea was to save Europe from the menace of Bolshevism. He ended one of these statements with the remark that we should find many in the camp who would drag the Führer's name in the dust, but he and those SS men with him would never associate with these ideas, and would always maintain their faith in what he had taught them. When he spoke he spoke quietly but very firmly.

3. It seemed worthwhile to run over with such a man the pre-war years, and obtain from him some idea of how Germany's course of action in those years might appear to be justified in the eyes of the German people. The whole question of Germany's acquisitions prior to the war was discussed, and Meyer agreed that the British offer to send Lord Runciman to Prague was a very reasonable one, but then, of course, the British did not really understand the problem. Czechoslovakia, he said, had for hundreds of years been German, and furthermore, situated as it was in the heart of Germany, so long as it existed in that state would forever be a peril and threat to the very life of the Reich. Could we not see, he said, that advanced air bases would soon have been used in Czechoslovakia by the Russians. Therefore, in the German process of defeating Bolshevism, Czechoslovakia had to go. He was unable to give any reply when asked to consider whether this was not a very strange way of doing business. Against England, Hitler had no quarrel, and he, himself, with the 1st SS Division which entered Poland on 3 September 1939, was astonished when he heard that England had declared war. He never gave up hope of an agreement being reached between England and Germany. After the conclusion of the campaign in the West, Goering's Luftwaffe was not launched against England, nor were there any serious thoughts of invasion until Mr. Churchill's speeches which emphatically laid down that resistance by the British Empire was to continue.

4. This, briefly, may serve as a slight background to those who are interested in the study of this most ardent disciple of Hitler. One last point which may serve to demonstrate how impossible it is for such as he to be allowed to live in the future world as a normal citizen were his observations on the German concentration camps. Having first denied that he knew anything about what happened inside them, as he said he had always been away fighting the enemy, he was again asked whether he really knew what had occurred inside them. Before he could answer, a detailed description was given to him of what had occurred to two Dutch men personally known to the interrogator. He listened very quietly and did not reply for a few seconds, and then slowly turning he stated, somewhat defiantly, that our soldiers had descended to the mean trick of taking away watches, rings, and private papers from his men. When asked if he honestly considered this a reasonable comparison, he was quite unable to offer any reply. His state of mind, however, is well illustrated by this astonishing comparison which he solemnly offered as an excuse for the bestialities performed by the men wearing the same uniform as himself.

5. On military matters, his mind was crystal clear, and once having oriented himself on the map he was able to go through the campaign phase by phase giving strengths, boundaries, tasks, with consummate ease. The whole time, however, his conversation was coloured by the pride that he had in his men and the way they had fought. He attempted to dismiss the part played by the Wehrmacht in a few short sentences. Time and again when reminded that the Wehrmacht had also taken a pretty hard knock he would try to dismiss their part as no consequence, while showing how if the SS had not come to the rescue things would have been much worse. To him, the battle of Caen-Falaise was magnificent in the best Wagnerian tradition. As he described his actions and those of his men, it seemed as though he liked to consider himself as Siegfried leading his warriors to their death. When he described how he came out of the Falaise Gap with sixty men, it is likely that the familiar strains of the "Twilight of the Gods" were echoing in his ears. Such is the man Meyer and his story follows.

The Division Prior to D-Day

6. Prior to D-Day, Meyer was the commander of the 25th SS Panzer Grenadier Regiment and did not take over command of the division until 13 June on the death of the divisional commander, Major-General Witt. For four weeks prior to 6 June, they had been expecting the attack, and he had spent his time familiarizing himself with the various courses of action which were laid down in advance in case of emergency. The division was at full strength with

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between 20,000 and 21,000 all ranks and approximately 214 tanks. The organization of the division agreed with the normal organization of an SS Armoured Division with exception of the anti-tank battalion. When asked, he immediately filled in the details of the organization of this battalion, which at that time were lacking. The anti-tank battalion consisted of four companies of Panzer IV tanks with long 7.5 cm guns. On D-Day, however, he had only 22 of these. The other 22 were not received until late in July. Within the division were certain number of foreigners, approximately 500, mostly Russians and Italians. His own driver was a Russian, who gained the Iron Cross, second class. Both Italians and Russians were mostly employed with the administrative troops. Meyer said that he was very familiar with the whole of this District of France because he had been stationed in the Orne area in 1942 with the 1st SS Panzer Division during the time it was refitting after one of its many Russian adventures. He found this experience invaluable, since he possessed a detailed knowledge not only of the lie of the land, but of the communication system including all the minor roads.

Disposition of the Division Prior to D-Day

7. The division prior to D-Day was disposed as follows:

   - *Divisional Headquarters:* ACON R1439
   - *25th SS Headquarters:* La Trinite Q6048, with the regiment in the general area
   - *26th SS Headquarters:* Dreux R33, with the regiment to the north of the town
   - *12th SS Panzer Regiment:* General area of Elbeuf R19, Louviers R28, and Neuborg R0384

   The role of the 12th SS was to counter-attack any attempt to land north or south of the Seine. That was the main reason for having the tank regiment so near the Seine. The special task of the divisional engineers was to keep the ferries open to enable the tank regiment to be used on either side of the river. The various courses of action, already mentioned, had been most carefully worked out so that when the alarm actually was given Case I was immediately implemented, and there was no loss of time in making up orders for the advance.

6 June

8. At 0200 hours on the morning of 6 June, Meyer first heard of the landing. He had received his news from the radar station situated on the coast, with whom he had special liaison arrangements. It was not, however, until 1000 hours that orders were received for the 25th SS Panzer Grenadier Regiment plus the Panzer abteilung of Panzer IVs to proceed in the direction of the coast. At this time, the 12th SS, together with the 21st Panzer, were under direct command of Panzer Gruppe-West. The first task of this composite battle group was to move in the direction of Houlgate U2480, since it was thought that the landing that had already occurred might be a feint and that the major blow was to fall to the east of the Orne. On their way up, Meyer received orders at 1500 hours when he was at St. Pierre sur Dives U2749 to change direction and go towards Caen and establish communications with the 21st Panzer Division. The regiment reached Brettevile sur Laize U0653 at 2200 hours, and pushed on the Evrecy R9369. At midnight 6-7 June, Meyer went into conference with Feuchtinger of the 21st Panzer Division in Caen, and discussed the position with him. He is reported by Feuchtinger to have considered the British as little fish, adding that in no time he would have the situation under control. It was apparently Feuchtinger's idea to await the arrival of all three divisions, namely, Panzer Lehr, 12th SS and 21st Panzer before launching a counter-attack, but in this he, Feuchtinger, was over-ruled, and on 7 June, it was decided that 25th SS Panzer Grenadier Regiment with the Panzer Ivs should attempt to drive through to the sea between Cambes U0274 and Cairon R9775. Left flank protection was to be provided by the reconnaissance company up to Tilly-sur-Seulles. On 7 June, this attack was actually launched and succeeded in driving the Canadians from the western approaches to Caen. By the night of 7 June, the line had been stabilized with the 25th SS Panzer Grenadier Regiment's right flank on the Caen-Bayeux road. Meyer was asked why this attack had not been successful in achieving more substantial results; he replied that though they had made every effort they were unable to do what they wanted owing to the complete lack of petrol and a certain lack

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of ammunition. In fact, his tanks were brought to a complete standstill, which resulted in the attack failing in its final objectives. Meyer, in describing the attack said that our tanks had actually reached R9969 about two miles from Caen. His own attack was made with about 40 to 50 tanks, and in the course of the action, he lost approximately 6. The line was then stabilized through Galmanche U0173, Buron R9972, Gruchy R9872, Point 69 at R9600.

(*Note:* Feuchtinger, when questioned on his reason for the failure of the 12th SS, said that the lack of petrol was quite untrue since he, himself, would willingly have given Meyer all the petrol he needed had he asked for it. Feuchtinger states that the reason for the failure of the attack of the 12th SS was because our anti-tank defences were first class).

9 JUNE TO 7 JULY

9. On 9 June, the 26th SS Panzer Grenadier Regiment came up and took over the left flank of the divisional sector up to Tilly-sur-Seulles. At this time, Meyer spoke of the conference held with Geyr von Schweppenburg when it was agreed to put forward to the High Command in the strongest terms that further resistance in Normandy against the overwhelming mass of Allied strength both on land and in the air could only end in disaster; and furthermore, they would advise that steps should be taken at once to retire on to the Seine, using their armoured formations to get the infantry out, thereby giving the infantry the chance to get back behind the Seine. Needless to say, nothing came of this conference or of the advice proffered to the High Command.

10. On 8 June, the 12th SS Division came under command of the 1st SS Panzer Corps. Between 10 and 15 June, the 12th SS Division endeavoured to limit our progress by a series of counter-attacks on the left flank between Tilly-sur-Seulles and the Caen-Bayeux road. At this time, they were heavily reinforced with artillery, which included a flak regiment of 88s, one Werfer brigade with two regiments, a heavy artillery abteilung consisting of two 17 cm batteries and one 21 cm battery, and an additional artillery regiment. During this period and up until the time that the 12th SS Panzer Division shortened its line to take over from Gruchy R9872 through Carpiquet to the woods at Tourville R9464, especially the 26th SS Panzer Grenadier Regiment and the engineer battalion incurred heavy losses. In addition, the division was forced to send help in the shape of one battalion of the tank regiment to the Panzer Lehr Division, who as a result of the fighting had become perilously weak. On 27 June, it was stated in Allied Intelligence Summaries that the 21st Panzer Division and 12th SS Panzer Division were desperately in need of reinforcements. This was no understatement, and though help was given by a regiment of the 1st SS Panzer Division, which came on 28 June, the 12th SS Panzer Division was forced to take up the new positions aforementioned to the west of Caen through Carpiquet etc. because as a result of the losses incurred they were unable to maintain themselves on their original front. Furthermore, the 2nd SS Panzer Corps with the 9th and 10th SS divisions had made its appearance, thus relieving the immediate situation. Meyer declared that territorially the positions through Carpiquet were much more favourable. By the end of June, his total losses were 1500 men and over 20 tanks. He had also given a tank battalion and an armoured infantry battalion to Panzer Lehr. In the battle prior to falling back on Carpiquet, his losses totalled a further 800 men. Meyer interposed with a remark that during this bitter fighting he knew of three separate cases in which one of his men had tied explosives to his body and jumped on an Allied tank.

8 JULY

11. As a result of the allied attack on Caen, the division again endured heavy losses, the 25th SS Panzer Grenadier Regiment being the chief sufferer, the first battalion having only 200 men left, the second battalion a like number and the third battalion hardly 100. The losses were caused not by the allied bomber attacks, but mainly by the flame throwers that attacked immediately after the bombing ceased, and as result, caught many of the men in a somewhat dazed condition. It was only the arrival of the 21st Panzer Division that saved what might have been a very ugly situation. Waldmüller of the 25th SS Panzer Grenadier Regiment together with Wünsche of the 12th SS Panzer were able to offer some assistance to the 16th Luftwaffe Division in their predicament, but their combined losses had been too great and they fell back to the Orne where 12th SS took over from point U035672 to Maltot R9561.

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They were, however, only two days (13 and 14 July) in these positions when they were themselves relieved by the 1st SS. About 14 July, the division was ordered into a rest area in the general area St. Sylvian U1354, Cauvicourt U1053, Bretteville la Rabet U1050, Soumont U1045. Divisional headquarters was at Secqueville U0959. By this time, it was indeed an emaciated division. The reconnaissance battalion, one artillery battery, one complete regiment, and approximately 140 tanks had been lost. They were receiving no reinforcements except the odd Marsch battalion, which in no way could make up for the staggering losses which they had taken. Tank reinforcements they had none. Clearly, the division could not continue to operate under the old organization with so many of its best men fallen. With the idea of producing three units, which would incorporate the essentials of a Panzer Grenadier Regiment, Meyer reorganized the division into a series of battle groups, namely Waldmüller, Krause, and Olboeter. In these groups, they fought till the end in the Falaise Gap.

17 July

12. On 17 July, the tanks of the 12th SS Panzer Regiment were ordered up into the area occupied by the 86th Corps, north of the Caen-Vimont U1561 road, since the corps commander had applied for help, appreciating that there was to be a further landing or a new allied thrust from the Orne bridgehead. The tanks, however, remained only 24 hours and then returned.

18 July

13. 18 July saw the opening of a large-scale Allied attack, by name Operation "Goodwood," but it was not until 20 July that the 12th SS actually took over the sector of the line that lay between Emieville U1365 and La Hogue U0963. The strength of the division at this time was approximately 2,000 fighting men only. The tank regiment consisted of about 50 tanks. From about 20 July until the opening of Operation "Totalize" on 8 August, a period of comparative peace and quiet ensued for the division. Though the men were rested and the equipment over-hauled, no reinforcements came to them and their overall weakness was, therefore, not rectified. It had been the plan to relieve the 12th SS by the 116th Panzer Division, which moved into the area around St. Pierre sur Dives U2749. But, as a result of the Allied progress, the 116th Panzer Division was moved off elsewhere in an attempt to cope with the serious situation that was beginning to develop in the West.

14. During this static period, the main tasks of the 12th SS, whose headquarters was in the wood at U1968, were the construction of three defence lines. All the divisions, the 21st Panzer on its right and the 1st SS on its left, were similarly employed since it was felt that some form of Allied attack to break the German grip on Caen was the most likely move in the near future. Appreciating this, Meyer realized that we would be urgently in need of information concerning his intentions and his strength. He ordered, therefore, that by day the companies should sleep except for two or three sentries. At sun down, every company would stand-to and maintain an alert throughout the hours of darkness. In this way, Meyer was able to neutralize our patrols and prevent them from taking back information, which they were sent to procure. All the tank and artillery crews were employed on the construction of these three defence lines, which they were busily preparing. The first was a series of battle outposts, which extended from La Hogue on the left up to approximately the wood U1564. The second ran from Point 33 U1160 to Bellengreville U1461 turning east toward Argences U1761 and then north along the high ground. The third line followed the course of the Muance River U1656. At this time, one of the first Flak Sturm regiments of the 111st Flak Corps took up positions on the third line, namely the R Muance. Along the second line, Meyer had had constructed approximately 40 dummy tanks which, however, he backed up with 5 real ones. These tanks, made of wood, were constructed with the idea of concealing the true location of the tank regiment, which at this time was down to about 40 to 50 runners. The real location of the tank regiment was just to the south of Vimont U1561, where they were kept successfully camouflaged, ready, however, to go into action should an armed breakthrough occur. During this static period, however, the rest of the anti-tank battalion, namely 22 Mark Ivs arrived, but before they could go into action they had to be thoroughly overhauled and their guns calibrated. Both Rommel and von Kluge, commander-in-chief West, visited the 12th SS and on one occasion at 0400 hours von Kluge with Meyer went up to visit the

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forward infantry positions. Approximately 29 July, the 21st Panzer Division, right hand neighbour of the 12th SS, was relieved by the 272nd Infantry Division, and as the regiments of the 272nd Infantry Division arrived, gradually began to take over the sector of the 12th SS Panzer Division. On 5 August, the 12th SS had in fact been fully relieved by the 272nd Infantry Division. The division was brought out and went back into the neighbourhood of the Liason River and had a few hours of rest completely out of the line. The object of this move was to have available an armoured reserved between the Orne and the sea should the Allies attempt to break through south from Caen. In order that the Allies should believe the 12th SS was still in its old area, Meyer left behind near Vimont a wireless set in a Volkswagen with orders to transmit on the tank regiment frequency (*Note:* It will be remembered that these relays were in fact picked up by our own special wireless units).

15. Hardly had they been in this position more than a few hours when an appeal came from the German forces struggling to hold off the British, who were attempting to cross the Orne near the forest of Grimbosq R9656. Krause of the 26th SS Panzer Grenadier Regiment was sent off with 200 men and 20 tanks to help the sorely pressed 277th Infantry Division.

OPERATION "TOTALIZE"

16. Meyer realized that this period of rest north of Falaise could only be as a drop in the ocean. While he was up in the Vimont area, he had noticed that great activity was going on in the Allied lines. Furthermore, with the situation deteriorating so rapidly on the Orne front, an attempt to break the German defences around Caen was over-due. He had ensured against being taken by surprise by placing liaison officers with the 277th and 89th Infantry Divisions, so that if an alarm was raised he would at once be fully informed. On the night of 7-8 August, Operation "Totalize" commenced. The Allies had already penetrated to Roquancourt U0558 and Garcelles U0758 when the alarm reached the 12th SS. Meyer at once got into his car and went to Urville U0750, where he met the divisional commander of the 89th Division, who as a result of the bombing had little or no idea of the true situation. He went by the Caen-Falaise road and found himself in the middle of the bombing. In his own words, he described the situation thus: "I got out of my car and my knees were trembling, the sweat was pouring down my face, and my clothes were soaked with perspiration. It was not that I was particularly anxious for myself because my experiences of the last five years had inured me against fear of death, but I realized if I failed now and if I did not deploy my division correctly, the Allies would be through to Falaise, and the German armies in the west completely trapped. I knew how weak my division was and the double task which confronted me gave me at that time some of the worst moments I have ever had in my life." At the same time as Meyer was up on that road alone, groups of the 89th Division scattered in panic by the bombing were making their way down the Caen-Falaise road as quickly as possible. Meyer, on perceiving this serious situation, calmly lit a cigar, stood in the middle of the road and in a loud voice asked them if they were going to leave him alone to cope with the Allied attack when it came. One look at this young commander was enough and the men turned around and immediately started to take up defensive positions. He must certainly have looked an impressive figure, this 35 year-old divisional commander, wearing the highest decorations that the Germans could bestow on him, quietly but confidently facing this disorderly mob and by his example and sheer determination influencing the whole division to turn back into line and take up the fight once more.

17. Prior to leaving the 89th Division's headquarters, Meyer had ordered two things: first that Waldmüller and a mixed bag of twenty tanks, Tigers, Panthers, and IVs, should come up and take up positions on either side of the Caen-Falaise road at Cintheaux U0854. The Tigers had come from the 101st SS Heavy Tank Battalion, which joined them just prior to this action, and consisted of about eight to ten tanks. The object of moving this battle group to this position was to stop a breakthrough down the main axis of advance towards Falaise. The second thing that Meyer ordered was that Krause, who had been opposing the British, should return at once and then together with Waldmüller, should launch a counter-attack.

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6 AUGUST

18. As a result of the orders given by Meyer, the tanks of Krause arrived in two hours, though his infantry was somewhat slower. The first tanks, which were seen early on the morning of 8 August, were part of Waldmüller's group which was observed moving up the Caen-Falaise road, prior to taking up a defensive position around Cintheaux. As it has already been mentioned, Krause was also directed to this place, and once he had arrived, a combined infantry and tank attack was made against the woods at U0956, which, however, was beaten off with losses.

19. In this action, Captain Wittman, of the 101st Heavy Tank Battalion, was killed. This officer held the record for the number of tanks knocked out by one individual. Since 1943, on the Russian Front, until the time he was killed in Normandy, he was officially credited with having knocked out 143 tanks of all kinds. At the time of his death, he was part of the crew of a Tiger tank. It has been estimated on 9 August, that the 12th SS Tank Regiment contained 40 Mark IVs, 30 Panzers, and the 101st Heavy Tank Battalion contained 20 Tigers. In fact, according to Meyer they had only a total of 40 tanks in the Panzer regiment, and the 101st Heavy Tank Battalion had only 10. As an afterthought, he mentioned that there were three assault guns from Panzer Abteilung 301 available.

20. At the same time as the German counter-attack failed against the woods already mentioned, the Canadians struck heavy opposition south of the woods in U1160. This opposition came mainly from approximately 20 Panzer IVs belonging to the anti-tank battalion of the 12th SS, who, unable to move across at the time the division moved into reserve owing to troubles of one kind or another, now emerged, all repairs completed. As a result of the day's action and despite the fierce resistance of the 12th SS in company with what remained of the 89th Division, the whole German line was forced back some 5-6 kilometres.

8 AND 9 AUGUST

21. During the night of 8-9 August, the infantry of Krause's group arrived, and were put in south of Bretteville-sur-Laize. In this way, although the village itself had been captured, Meyer hoped to limit our progress on the left flank with the aid of these additional troops. The infantry and tanks of Waldmüller, who, it will be remembered, were primarily responsible for the first counter-attack, had by their action stayed longer than was wise, since the Polish Armoured Division had all but encircled them.

22. As a result of the day's events, Meyer, realizing the strength of the Allied thrust, decided on a new defensive line. He, therefore, went back to carry out personal reconnaissance of the new position which he had chosen, and which he, through long experience, knew so well, namely the Liason Valley. As a result of his reconnaissance, he gave the following orders: Waldmüller was ordered to pull out and make his way back to Maizieres U1749, via St. Sylvian U1355. Krause was ordered to fall back and take up position in the Quesnay Woods U1047, and protect the left flank by holding Fontaine-Le-Pin U0944. The artillery was to concentrate around Olendon U1644 and Tassilly U1242, with the task of covering the whole divisional front from including Fontaine-Le-Pin to his right boundary, which passed some 2000 metres east of Maizieres. In addition to the normal divisional artillery, Meyer had the assistance of a flak sturm regiment of approximately 30 or 40 88s, and a Werfer Abteilung.

23. The preparations, which were witnessed on 9 August by Allied aircraft along the whole valley of the Liason, were, in fact, Meyer's orders of 8-9 August being implemented, with Krause falling back on the left, and Waldmüller pulling back on the right flank. The latter, however, had a very sticky time and incurred heavy losses. At the same time as the withdrawal was taking place on the flanks, the centre was being mainly held by Wünsche with some 20 tanks. The Allied tanks had made a dangerous thrust towards the wood of U1348. On the left, Krause was in position in the Quesnay woods with about 200 men. Wünsche, collecting everything that he had, was able to throw back the Allied thrust, which if it had succeeded would have broken the whole of the Liason position before they had had time to man it. On the night of 9-10 August, Waldmüller succeeded in returning to the Liason Valley and took up position from Vieux-Fumes U2035, to the woods in U1649.

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24. It will be seen at this time that the 12th SS was going though the most critical stage in its career. Its divisional sector extended for approximately 9 miles, and its strength was down to 400 to 500 fighting men and 16 tanks. The only help that it had was from the remnants of the 89th Infantry Division, which, Meyer admitted, was worth very little. On the other hand, the 85th Division was on the point of coming in, and, in fact, the cyclist companies were already arriving, but the divisional commander's statement will be well understood when he said that if help was not forthcoming in the immediate future, he could not hold himself responsible for the further defence of Falaise. His troops had been in action practically continuously since D-Day, and were in urgent need of rest and refit. Finally, they were reduced to a mere handful. The once proud Hitler Youth Division, consisting of 21,000 men and 220 tanks, was down to a fighting strength of 450 to 500 men and 16 tanks.

10 August

25. The main event of 10 August was the arrival of the 85th Division, who took over from the right flank, which was previously occupied by Waldmüller and extended to Vieux Fumes, to the Caen-Falaise road on the left. It was a gradual process, as the division came in according to the usual German style, namely in small groups.

26. The appearance of the 85th Division had one important immediate result. It meant that what was left of Waldmüller's group could be withdrawn from the battle and sent out to form the basis of a new Hitler Jugend Division, which had already been decided upon. Meyer admitted that it was normal German practice to withdraw the remnants of good fighting troops from good divisions, before they were entirely wiped out, so that a cadre at least of experienced troops would be available for re-building the division.

From 11 August – Disappearance of the 12th SS as a Fighting Formation

27. From 11 August to the time when Meyer finally came out of the gap by himself on foot, the story of the 12th SS Panzer Division is very much the same. Its main tasks consisted of taking up a series of defensive positions with gradually decreasing numbers, ending up in the neighbourhood of Trun U3029, where as a division it disappeared almost entirely.

28. Once the 85th Division had taken over, the infantry of the 12th SS were brought out for a two day rest, though the tanks and the artillery remained in battle. Before the 12th SS finally left the Liason Valley, 50 men and a few tanks under Olbotter were sent by Krause to Bray-en-Cinclais U0648 to help out the remnants of the 89th Division. On 14 August, when the Allied attack opened with the object of crossing the Liason Valley and driving on Falaise, the 12th SS was thus placed: infantry out of the line, tanks and artillery supporting the 85th Infantry Division and the 89th Infantry Division. At this point, Meyer interposed with the remark that never in his life had he seen his infantry so completely tired out. They came out of the lines asleep and they slept solidly for two days. To these soldiers rest was more important than food; in his own words, they were completely out.

29. The sector that the 12th SS occupied behind the Liason Valley was in the neighborhood of Clendon-Falaise-Damblainville U2038. This period of rest did not last long and with the Allied threat growing more dangerous hourly through the fall of the Liason Valley position, the 12th SS Division, now reduced to 300 men and 11 tanks, was once more brought in for the final defence of Falaise. The actual positions that were taken up by the division were pointed out by Meyer. The division was split as follows: 80 men in Falaise, who it will be remembered, were completely wiped out in the post office, 100 men from the northern outskirts of the Bois-du Roi U1038 to the Caen-Falaise road, 20 men at Point 159 U1539, 20 men in the wood at U1640, and 50 men in Les Monts D'Erames U1940. Olbotter still remained with the 89th Division and had with him still his two tanks.

30. The only items of interest before Falaise finally fell were two counter-attacks by Wünsche at Epaney U1641 and up the Caen-Falaise road. Meyer also spoke of the last stand of Krause on the Caen-Falaise road with heavy infantry guns with which he fought to the end. On 16 August, Falaise fell, and the remains of the 12th SS took new positions on the high ground to the south of the town, extending from Point 182 at U1632 on the left to Les Moutiers-

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en-Auge U2536 on the right. These positions were manned by 120 men and six tanks. At this stage, Waldmüller came back on the scene with some 300 reinforcements and what he had been able to procure from the administrative troops, who had left the area over ten days before. He, according to Meyer, was given the task of keeping the exit from the Cauldron open. Meyer was not certain where Waldmüller was located but believed it to be in the area of Grand-Mesnil at U3137. One last position was taken up by the 1ast 60 men of the 12th SS inside the cauldron; this position was in the neighbourhood of Vignates U2131. When this had finally been over-run, Meyer reported for orders to [General Paul] Hausser, commander of the 7th Army, who was still inside the cauldron, and it was arranged that he, together with Meindl of the 2nd Parachute Corps and Schimpf of the 3rd Parachute Division, make a concentrated attempt to break out south of Trun. They became, however, separated, and all Meyer can say is that he personally came out of the gap by himself, led out by a French civilian. Thus ends the story of the 12th SS and the part it took in the Caen-Falaise battle. As a formation, it had been entirely annihilated, and would have ceased to exist altogether, had not Waldmüller been withdrawn.

31. It would appear from the past description as if the 12th SS had been the only formation that had been responsible for this series of well-fought defensive battles. Meyer spoke as if no other division, except the 12th SS, had taken part at all. Of the 89th Division and the 85 Infantry Division, he spoke little and dismissed their contribution in a few trite remarks. The 12th SS was the division; his men had borne uncomplainingly the burden and heat of the battle, which in his long experience was the toughest he had ever fought. He had never experienced such overwhelming might against him either from the land or from the air. He remained to the end intensely proud of the deeds and exploits of his division, which he reckoned had never put up a better show.

32. Naturally, therefore, with a man imbued with such ideas about his own troops, there was little room left for praise of the other troops who took part despite the fact that on a number of occasions both the infantry divisions fought well. The 12th SS had defended Falaise, the 12th SS had had the vast sector to defend, the 12th SS had had the responsibility of saving the German Army from being completely mopped up and it had carried out its tasks to the best of its ability, and incidentally, that of the divisional commander. Thus spoke the fanatic Meyer, the intrepid young divisional commander.

General Remarks

33. The few general remarks that Meyer had made on the fighting may be of interest. He said that there was one thing to which he must draw our attention, and that was the lack of wireless security of the Allied forces who opposed him. It was not only within units that it was bad, but frequently orders were given over the air by senior commanders who should have known better, which he was able to pick up and immediately initiate counter-measures before the orders were implemented by the Allied troops. Frequently, he would get warning of our attacks in this way, and as frequently, he was able to neutralize them.

34. Another criticism he made was the astonishing amount of valuable material carried in tanks. Code signs, simple map codes, cover names for places, not for one day but sometimes for 3 and 4 days, were frequently found on captured tanks. In fact, so valuable did this prove, that it was always an accepted process to let an Allied tank come into the German lines before knocking it out, so that these valuable stocks of codes, etc. could be obtained. On the question of our air superiority, he said that he thought this was one of the greatest factors in our success, not through our heavy bomber attacks, but the fighter-bomber, which harassed him from early morning to dewy dusk. The attacks on headquarters he confirmed as being very accurate. His rear headquarters, at one stage was severely engaged at Urville U1050 and many vehicles were knocked out. At the time of the attack on his headquarters to the east of Bons-Tassilly U1149 in the Liason Valley, he himself was within a stone's throw of the building. He saw the building go up in flames, and stood there, as an interested eyewitness. Speaking in general of the fighting on the Liason Valley, he said that he had exploited the mobility of his tanks, in order to deceive the Allies of the numbers available. Directly [after] a tank had shot it immediately changed position, giving the impression of many more than were actually there. On the work of the 88s he spoke enthusiastically, especially of the action at Point 195 R0846 when he inflicted a

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heavy defeat on our own armour. He never quite understood why we had let ourselves get into this situation, but he said, "Once you were in that position, we did not hesitate to make you pay for it."

35. On the general form of the invasion, he confirmed exactly what Feuchtinger, commander of the 21st Panzer Division, had said respecting the schemes of Rommel and Rundstedt to defeat the Allied landings. Rommel wanted everything, including the armoured forces on the coast, so that the invasion could be defeated on the beaches. Rundstedt, however, preferred to have his armour in reserve and to use it as a mobile counter-attack force. One last point; during some of this conversation, Wünsche, commander of the 12th SS Panzer Regiment, was present. Slightly younger than Meyer, decorated like a Christmas tree, he was a similar example of the system as Meyer. His ideas and general philosophy of life were stated in exactly the same terms as those of Meyer. In appearance he was approximately 6 feet 4 inches in height, broad-shouldered, though by no means stout. A good-looking man, blonde, with eyes not unlike Meyer's, and in one phase the perfect example of Aryan youth as laid down in the pages of "Mein Kampf."

A8. Confidential Memorandum, Lt.-Col. B.J.S. Macdonald, Officer Commanding, 1 Canadian War Crimes Investigation Unit to Brigadier R.J. Orde, Judge Advocate General, NDHQ, Ottawa, 23 August 1945.[4]

Re: Trial of War Criminals and The Trial of Brigadefuhrer Kurt Meyer

It was suggested that I should make some recommendations as to matters which will now require your decision and as to other matters for inclusion in administrative instructions to be forwarded to C.M.H.Q. and other proper authorities, following the passing of the Order-in-Council and the adoption by the Cabinet of the recommendations made.

(I) Re. Convening Officer

The question here for determination is whether General Simonds or General Vokes should act as convening officer.

Regulation 4(1) provides:
"Any Canadian – General – Officer Commanding any Canadian Forces wherever such forces may be serving, whether in the field or in occupation of enemy territory, or otherwise, – shall have power to convene military courts – and to confirm the findings and sentences of such courts."

Regulation 4(3) provides:
"An officer having authority to confirm – may reserve confirmation – to any authority superior in rank – who is competent to confirm."

Regulation 6(1) provides:
"If it appears to a convening officer that a person then within the limits of his command, or otherwise under his control, has – committed a war crime, he may direct that such person – be taken into custody pending trial –."

Regulation 14 provides:
"– the senior combatant officer of the Canadian Forces in the theatre in which the trial took place – shall have power to mitigate or remit the punishment thereby awarded –."

If the trial is to take place in Germany as intended, it would seem that Meyer should be taken to the Canadian zone of occupation so as to put him "within the limits of his (convening officer's) command, or otherwise under his control." Then either General Simonds (if he through General Vokes has control or command of the areas where the prisoner is), or General Vokes, having actual command, should act as convening officer. Probably General Vokes should convene and

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thereafter confirm the finding and sentence of the court, or reserve for the decision of General Simonds. The latter, as the senior Canadian combatant officer in the theatre, would, in any event, have authority to mitigate, etc.

(II) Re. Size of Court

Regulation 7(1) provides:
"A military court shall consist of not less than two or more than six officers, in addition to the president."

(III) Re. Selection of President and Members of the Court

Regulation 7(2) provides:
"If the accused is an officer of the – military – forces of any enemy –, the convening officer should so far as practicable, but he shall be under no obligation to do so, appoint or detail as many officers as possible of equal or superior relative rank to the accused."

The accused says that his rank is "Brigadefuhrer" of the Waffen SS, which rank is the equivalent of the Wehrmacht "General-Major." He was at the time of his capture and had been for three months previously, a Divisional Commander. His rank, therefore, apart from quibbling technicalities, is the equivalent of a Major-General.

To comply with the regulation it would therefore appear desirable to have a Lieutenant-General at least as the president of the court. Apart from Lieutenant-General Murchie, who as Chief of Staff at Canadian Military Headquarters might not, in any event, be available, the only Lieutenant-Generals overseas are Generals Simonds and Montague. General Simonds would appear to be disqualified, being "the senior Canadian combatant officer in the theatre" having authority to remit sentences, etc. This would leave General Montague as the only available officer of this rank. Major-Generals available overseas for president or members of the court include Generals Burns, Spry, Matthews, Keefler, Foster and Weeks.

I think it will be agreed, that it would add greatly, to the authority and prestige of the court, to its competence for its particular task, and to the value of its decisions, if all members of the court were overseas personnel with combat experience in theatre.

(IV) Re. Appointment of Allied Members of the Court

Regulation 7(4)(a) provides:
"Where any war crime appears to affect the interest of any Allied power, including any member of the British Commonwealth of Nations, the convening officer may invite one or more officers of such Allied power to become a member of the court," or, (b) "If he should have any Allied force under his command, he may appoint an officer of such force to the court."

While it does not appear that this specific war crime actually directly affects the interest of any other Allied power, the language is very broad, and it may be thought desirable, for various reasons, to include such officers. Mr. Reid is of the opinion that it would be well to do so. If so, I would suggest that one British and one United States Major-General, or Brigadier-General, be invited to sit as members. This might give a desirable uniformity of consideration and treatment in the different Allied military courts. If this course were adopted, then, necessarily, the court should consist of four or six members, in addition to the president.

(V) Re. Judge Advocate

I am assuming that in accordance with our previous discussion, either you or Brigadier Nolan would be readily available overseas to advise the convening officer in the event of an appeal against a finding, pursuant to Regulation 12. Otherwise, I presume you would appoint either Brigadier Anglin or Colonel Tritschler as your duly authorized representative

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for this purpose. Depending on that decision I also presume that one or the other of the latter two would be designated as judge advocate.

(VI) Re. Prosecuting Officer

With great respect I submit that if it is desirable for the members of the court to have had experience in the theatre (combat if possible) it is essential that this officer should likewise have had such experience. He must, of course, be a competent lawyer, but, unless he has also a complete knowledge of the operations in Normandy, the ground over which they took place, the German and Canadian orders of battle in detail, the personalities involved, and the practices prevailing in the field at the time, both operationally and administratively, he will be in difficulties from the outset. Especially is this likely to be so if all others taking part in the trial, including the accused and defence witnesses, are better informed in these matters than he is. I do not believe that this necessary background can be acquired from the reading of reports or evidence.

Moreover, this is not the type of case in which fine legal arguments are expected to take place as to the admissibility of evidence, etc., or where much will depend on the rhetoric or the cross-examination of defence witnesses or the accused. Every word uttered in court will at once have to be interpreted into English or German, and the proceedings will be slow and tedious. It will be essential that the case be meticulously prepared and carefully presented in all its details.

I have, as you know, prepared the case against Meyer myself and have examined all the witnesses who will be called, including the accused himself. Consequently, I know their attitude, temperament and mentality and how they should be handled in court to get the best results. I trust that I will not be considered immodest, then, when I say that with my experience in these matters and with valuable civilian legal, as well as military experience, I feel better equipped successfully to prosecute this particular case, than some more brilliant counsel who is not so familiar with all the matters mentioned above.

If, however, it should be your decision to recommend the appointment of someone else as counsel, then I feel he should be given complete responsibility for the case in every respect. For my part it is unnecessary to say, that if my services are desired, I will co-operate and assist in every way possible and will carry out to the best of my ability any instructions given. I have a staff of ten lawyers, two intelligence officers, and several court reporters and administrative personnel. All of these have had several months experience in this work, and it was intended that they should be employed to assist in the preparation of these cases for trial, and they are available to do so.

(VII) Re. Defending Officer

I would suggest that a slate of competent Canadian officers with legal qualifications be prepared from which the accused may, if he wish, make a selection of his defending counsel. It might be well, if one or two of the senior officers in the J.A.G. Branch overseas were included in this list, if you thought proper, and they could be spared. The accused is, of course, entitled to retain English or German lawyers, if he wishes, and he may prefer to do this, but I think, in any event, some Canadian officer should be detailed to assist such counsel on any points of procedure peculiar to our own organization. He should also be given the benefit of a competent interpreter who would be detailed to assist him throughout in the preparation of his defence, and until the conclusion of the trial.

(VIII) Re. Other Court Attendants

Interpreters and court reporters will be required, but these can be satisfactorily arranged for in advance as there are in the war crimes section itself competent personnel, and these could be augmented temporarily from others in the [Canadian Intelligence Corps] and Judge Advocate General Branch.

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(IX) General

Certain things will require immediate attention, and I would recommend that the prosecuting officer be given authority to request all necessary assistance from other Branches here and Overseas in the preparation of this case for trial. In particular the following matters require attention:

(a) Your formal approval should be granted for the prosecution of the Meyer case, and to a draft Convening Order and Charge Sheet, or this duty should be delegated to a representative overseas.

(b) Authority should be obtained for the transfer to Canadian custody of Meyer and other German prisoners required as witnesses who are in custody of the British or Americans, and their despatch to the scene of the trial, as may be required by the prosecuting officer.

(c) Authority should be obtained for the movement to Germany for the trial of such army and civilian witnesses as may be required by the prosecuting officer, and for the making of such expenditures as may be necessary in connection therewith.

(d) The arrangements in the field for the trial itself and for the custody and transport of the accused.

(e) A meeting should be called representative of the Judge Advocate General, Director of Military Intelligence and Administration to settle channels of communication and routine for future action on war crimes matters here.

(X) General Policy Instructions

I suggest that the following instructions should be included in any sent to the Convening Officer, President of the Court, and Judge Advocate:

(a) That Regulation 17 not only means that such course shall be adopted as shall do justice to the accused in protecting him against wrongful conviction, but also that justice shall be done in that if an accused is believed by the Court to be guilty he should be convicted and punished despite any technical defence or obstacle.

(b) That, owing to the difficulties of questioning enemy and certain Continental witnesses, the court should permit the prosecution to lead, where necessary, without proof of the hostility of the witness, especially where the purpose is merely to obtain confirmation of evidence already given elsewhere, and available, in any event, to the court in other form.

(c) That speed of trial and execution of sentence, consistent with reasonable consideration given to the needs of the defence, should be emphasized; that a long delay in trial should not be allowed for the purpose of procuring German witnesses whose availability is unknown or uncertain.

(d) That any publicity given to the Order-in-Council or plans for the trail of war criminals, should not include any mention of accused, by name, prior to the actual convening of the court for his trial.

A9. Statement of Jean Marie Vico, taken at Abbaye Ardenne near Caen by Lieutenant-Colonel C.S. Campbell, 30 September 1945.[5]

1. I am Jean Marie Vico son of Roland Vico and Francine Vico residing at the Abbaye Ardenne, near Caen, Calvados, France. I am twenty years of age. I have lived all my life at the Abbaye Ardenne and know it very well. I was a student at the Technical College in Caen.

2. About the middle of December 1943, I was obliged to leave the Abbaye because of the suspicion by the Germans that the Abbaye was being used as an arms depot for the French Resistance Movement and I learned that they were going to shoot me. My father and mother were arrested and put in prison at this time. Consequently I went with the Maquis. The first time I returned to the Abbaye was on the 19th of July 1944. At the time I returned there were Cana-

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dian or British troops in the Abbaye. The Abbaye was so badly battered up that it was impossible for us to live here in that condition. Our house ("H" in the plan) had been very badly smashed so I came back several days after that and cleared out two rooms on the second floor, marked "W" on the plan. All the family returned except my father and my brother Jacques Vico. My father was in a German concentration camp and my brother Jacques was with the French Army. We returned to the Abbaye to live about the first of August 1944. In the following months I saw many evidences of the German occupation after the invasion. There were many burnt and damaged vehicles and motorcycles at various places on the grounds and there was German ammunition, clothing, papers, letters, and newspapers at various places in the grounds and in the buildings.

3. About a month after our return a Canadian Sergeant came to the Abbaye with an officer. He said that he had been a prisoner here just after the invasion. He showed my mother and I the place where he had been interrogated. It was right in the small passageway which leads from the front court into the small park. When he was here he told us that about forty of his comrades had been murdered at the Abbaye. He did not say how or where. He and the officer walked around the grounds for some time and went into various buildings and then went away.

4. On the 26th of September 1944, a Lieutenant-Colonel came with several other officers. They were searching for information about the German occupation of the Abbaye after the invasion. I gave to the Lieutenant-Colonel a collection of papers which I had found in the dug-out in the small park and he gave me a receipt for them. I also gave him quite a number of SS badges and insignia of various kinds which were found in the same place.

5. As a result of the shelling during the battles there was a considerable amount of broken branches and other debris in the small park at the North-West corner of the Abbaye grounds. I worked from time to time removing this debris until I completed it some time in December 1944.

6. One day in January 1945 my young brother Michel told me that he had found a bone in the small park and I went with him immediately to see where it was. My mother came also and I saw a human jaw-bone at the point marked "A" on the plan. I dug around a little and it was clear that there was a human body there. I also found a small tin box. In the tin were two bottles on which were some instructions in English. I think that the box was used for purifying water. I filled in the small hole and my young brother Michel erected a small white cross. About a month later a Canadian officer came to the Abbaye with a work party and lifted the bodies but I was not present. I only heard that they took away the bodies of six Canadian soldiers from that grave.

7. Some weeks later my mother called me to the park and told me that she believed that she had found another grave and I dug a small hole and established that there was a human body in it. This was at the point "B" on the plan. I erected a small wooden cross to mark the place. The next day after we discovered this grave I went to the Allied Civil Affairs office in Caen and told them what I had found. Some time later a Polish officer from the Graves Registration Unit came to the Abbaye and I showed him where the grave was. He put up a metal cross and removed the wooden one.

8. When my brother Jacques Vico was on leave in April 1945 he discovered another grave of a Scotch soldier and I went to the park and I saw that another cross had been erected at the point "C" on the plan.

9. A short time later my young brothers Michel and Roland called me to the park one day and showed me the place where there was a bone of some kind. I dug away a little bit further and I found that it was a human skull. I told my mother about this and immediately covered the skull over with earth and we put up another cross at the point "D" on the plan.

10. Some time around the first of May 1945 two French gendarmes came to the Abbaye to investigate the discovery of the various graves in the park. They said they had been sent as a result of a report by Monsieur Aumont of Caen. I went with them to the park and we made a further search to see if there were any other graves. After some time we discovered another grave at the point marked "E" on the plan. We dug out some earth and saw three or four legs.

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At this grave we put the original wooden cross which had been at grave "B" on the plan and which was still lying in the park.

11. One week later a Canadian officer with a work party came for the purpose of lifting the bodies from the various graves in the park and I went with him while this work was being done. They worked there for from one to two hours and lifted bodies from graves "B", "D", and "E". The officer said he was not able to identify the body of the Scotch Canadian soldier in grave "C". It was covered over again and the metal cross which had been originally on grave "B" was put up to mark the place. I did not see how many bodies were removed from each grave because there was quite a number of people working in the park at the same time. However, I do know that there were eleven bodies taken away altogether at that time.

12. Near the end of May 1945 I was present when a British officer came to lift the body from grave "C". There was just one body there. The officer found the discs and he took the body away.

13. I was not present when the bodies were removed from grave "A" so I can not say how those bodies were buried. However, I was present when the bodies were taken from graves "B", "C", "D", and "E", and it was very clear that there had been no attempt to bury them properly. They had been dumped into very small holes and placed on top of one another. Some were face up and some were face down. I particularly remember the grave "C" where the Scotch Canadian was buried. It was lying full length with the hands up near the chest, with the elbows raised in the air. The bodies in grave "E" were particularly badly mixed up. I was not able to examine all of the bodies closely but I remember that two bodies from grave "E" had small holes in the forehead which looked like exit holes from bullets. I believe that one of the bodies in grave "E" had a broken leg but I can not be sure about this. There was no splint or bandage on it and I do not know whether it had been broken before the soldier died or afterwards.

14. The first time I returned to the Abbaye on the 19th of July 1944 I was in the small park and I saw that it was covered with branches which had been broken off the trees by the shelling. It did not look as though anyone had disturbed the park since the shelling. I returned to the Abbaye at least six times from that day until we came back to live in the Abbaye permanently and I passed through the park several times. Later in November and December I cleaned up the broken branches and cut them into wood. I am sure that no bodies could have been buried in the small park at any time after my first return. In fact, I do not think any bodies could have been buried there at any time after the heavy shelling of the Abbaye; otherwise, the broken branches would have been disturbed and the ground would have been freshly dug up. After I had removed all of the broken branches from the park there was nothing whatever to indicate that there were graves there. There were no crosses and no mounds of any kind. It is for this reason that no discovery of the graves was made until later when the ground had begun to subside into the graves as a result of the rain.

15. Some time in March 1945 when working around the shed in the front court with my brother Michel, we found two clubs just by the doorway marked "F" on the plan. They were on the ground under a pile of broken tiles and were in a position where they were sheltered from the rain by the roof of the shed. I examined them closely and one of them was covered with dark brown stains from the large and about half way up to the handle. These clubs were not of the same length – one would be fifty-five centimetres long and the other one about fifty centimetres long. They were round and about fifty millimetres thick at one end and thirty-five millimetres thick at the other end. There was no special handle on these clubs nor any cord and they appeared to have been hand-made; I examined the club with stains on it very carefully with my mother and we were quite sure that the stains on the club were dried blood. Some [days] later another similar club was found in the long grass about a few metres away from where the first clubs were found. It was the same type of club but it had no stains or markings on it.

16. At various times when I have been working around in the buildings I have found letters and papers in the German language, which I turned over to various officers who have come to investigate at the Abbaye. One day in January or February 1945 I found a body of a German NCO under debris in the room above the main gate. He had some

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personal documents on him which indicated that he was an SS soldier and I think his name was Hans Knold. His papers were turned over to one of the officers who came here. Some soldiers from the English Engineers came and took him away and buried him.

17. There was a dug-out constructed inside the shed "F" which had been used for a first aid post. There were a lot of bandages, ointments, vaccination capsules and some splints for fractures. There were also some old rags and uniforms which were blood-soaked.

A10. Lt.-Col. B.J.S. Macdonald, Officer Commanding, 1 Canadian War Crimes Investigation Unit, London, to Brigadier Orde, JAG, Ottawa, 21 October 1945.[6]

Trial of War Criminals

Brigadefuhrer Kurt Meyer

1. Attached, hereto, for your consideration, under the provisions of the War Crimes Regulations (Canada) are:

   (i) An Abstract of the evidence proposed to be adduced against Brigadefuhrer Kurt Meyer at his trial.

   (ii) A draft Charge Sheet with respect to the same.

   (iii) A draft order for his arrest.

   (iv) A draft order convening the court for his trial.

   (v) The actual evidence obtained by 1CWCIU summarized in the Abstract and, subject to your views, intended to be made available to counsel for accused, if requested.[7]

2. I am of the opinion that we have a good case and that convictions on all charges should be obtained. I should like, however, to direct your attention more particularly, to certain weaknesses that appear in the case, so that you may more easily reach a conclusion as to the advisability of authorizing prosecution and trial.

3. The charges fall into five main categories:

   (a) The issue of orders, etc., to deny quarter.

   (b) The killing of 18 prisoners at 25 [Panzer Grenadier Regiment Headquarters (PGR HQ)] on 7 and 8 June, 1944.

   (c) The killing of 23 prisoners at Authie in eight separate incidents on the afternoon of 7 June, 1944.

   (d) The maltreatment of dead bodies at Authie 7-13 June 1944.

   (e) The killing of seven prisoners at Mouen on 17 June 1944.

4. Discussing each of these in turn:

   (a) The issue of orders, etc., to deny quarter. We have the evidence of three members of the 15 Recce Company attached to the H.Q., 25 PGR, to the effect that prior to the invasion, Meyer, the Regt. Comd., said such things as: "My unit takes no prisoners". They were also aware of the reputation which he had in Russia for not taking prisoners as well as that of his former unit, the Leibstandarte Adolf Hitler. One other member of the regiment heard orders from his officer that they were not to take prisoners, while three others heard through other soldiers that prisoners had been shot by personnel of their unit in Normandy. The Investigation Unit examined all the prisoners that we were able to locate from this regiment, and the remaining eight or so examined denied that they had heard any orders that prisoners were not to be taken.

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The question arises as to whether it is my duty as an impartial prosecutor to place this complete evidence before the court, make it available to defending counsel, or, it being negative evidence, whether I should say nothing about it. It does, however, weaken to some extent the positive evidence which we have, although none of it is in direct contradiction to it.

(b) The killing of 18 prisoners at 25 PGR HQ on 7 and 8 June, 1944. These fall into two categories:

(i) With respect to the killing of 7 prisoners on the morning of 8 June 1944. This is established by the eyewitness evidence of the P.W. Jesionek.

This evidence, however, is only circumstantially corroborated and has not been consistent throughout. The original statement of the witness varies in several particulars from the more recent evidence given, and there is a slight variation in the precise words which he ascribes to Meyer and the description of the officer present. These discrepancies are open to explanation, however, and I should like to direct your attention to these given by Jesionek in his own examination. One of the explanations is a somewhat dangerous one respecting the circumstances in which he gave his original statement at the American [P.O.W.] Camp, and we have so far been unable to locate the U.S. sergeant concerned to verify the details. Part of the difficulty may be due to inaccurate and varying interpretations, and the discrepancy in language ascribed to Meyer may be due to the fact that Jesionek does not actually remember the exact words used, but remembers only the sense of what was said. It is to be anticipated that there will be minor discrepancies in the evidence and it is well to bear in mind that the first opportunity that the witness had of telling his story was very nearly a year after the events themselves. He explains that the details came back to him more accurately after his visit to the scene with the Investigating Team.

I am convinced myself that he is telling the truth to the best of his ability, that he has good powers of observation, a reliable memory and an unwillingness to be influenced into changing any of his story in its essential aspects. There can be no doubt that the prisoners were killed in the manner in which he relates, and there can be no doubt that Meyer was at the chapel that morning and that there were others present at the time who could have been those responsible for the shootings. It is also evident that other soldiers at the H.Q. at the time saw the shooting and if found could verify Jesionek's story. Meyer's answer to the charge is that the prisoners might very well have been brought in that morning and their presence reported to him, as stated, but he denies that he said anything from which it could have been inferred that he wished the prisoners done away with, or, that he had any knowledge whatever that in fact they were. The shooting nevertheless occurred within 100 metres of the chapel and within half an hour of the conversation alleged by Jesionek.

(ii) The other group under this particular heading (b) is represented by 11 bodies found in the same small garden as the other seven, and also all bearing head wounds. There is no evidence as to how they met their deaths but we do have the evidence of L/Cpl. McLeod that he saw one of the men (whose body was later found with the others in the garden), as a prisoner at the Abbaye on the evening of 7 June apparently unwounded, or, if wounded, only in a minor degree. All 18 prisoners are shown by Records as missing from their units on 7 June and are from units in action against the enemy on that day. Medical evidence that eight appeared to have died from bullet wounds in the head, and all to have died from head wounds.

(c) The killing of 23 prisoners at Authie on the afternoon of 7 June 1944. This is covered substantially by the report of the SHAEF Court of Inquiry, eliminating therefrom such incidents that do not appear to have been conclusively established as against personnel of Meyer's regiment. There is no positive connection with Meyer in these cases except for the fact that on his own evidence given to CWCIU (to which attention is particularly directed), he was in the vicinity during the afternoon of 7 June and, (despite his denials of knowledge) had by

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reason thereof, opportunity to know what was going on and to intervene. He is also shown, by the evidence of the witness Helzel, to have been in Chateau St. Louet, west of Authie, that afternoon.

Responsibility here must rest largely on regulations 10(4) and (5). The application of (4) is open to a question of interpretation as these troops, of course, were not under his direct command but under the command of their respective platoon, company and battalion commanders, and the degree of responsibility resting, therefore, on a Regimental Commander, despite the regulation, might not be very large. The application of (5) is dependant upon evidence of the civilian witnesses that officers or non-commissioned officers were present and participated, as one might well assume, there being a considerable body of German troops engaged in the mopping up of this village.

(d) The maltreatment of dead bodies at Authie, 7-13 June 1944. You may consider that it would be wiser to drop this charge and that we are making too much of this less important matter. On the other hand, it does convey an idea of the attitude of the SS troops which would be helpful in determining guilt of other atrocities. There is evidence that bodies were subjected to indignities on one occasion; that on another a tank was deliberately driven over the body of a dead soldier. The second incident is based on the evidence of one civilian witness. There is evidence that bodies were unnecessarily exposed to injury by traffic, and that the civilians were refused permission to bury the bodies for a period of six days, and that when the bodies were eventually buried they were found to number 37 of which at least five were so badly mutilated so as to be unidentifiable. Meyer denies that he knew of the presence of the bodies and says that he had no occasion during this period to go through the village. Obersturmfuhrer Meitzel says that six or seven days after the battle he observed the bodies in the village and ordered their burial.[8]

(e) The killing of seven prisoners at Mouen on 17 June 1944. This case is likewise based on the report of the SHAEF Court of Inquiry and occurred after Meyer took over command of the division. His responsibility, therefore, apart from the Regulations is somewhat remote. The divisional H.Q. at the time was located a distance of perhaps 3,000 metres away, and the shooting occurred under such circumstances of deliberation and organization that a very strong supposition exists, however, that at least the officer immediately in charge of the troops in the village ordered the execution, and had perhaps consulted higher authority prior to doing so. There is no positive proof that there was any officer or NCO actually present at the time the shooting occurred. On the other hand, the shooting was carried out by a party of 14 soldiers marching seven on either side of the prisoners, one of the party administered the coup de grace, and the following day a sergeant supervised the secret burial of the bodies and handled all the personal belongings of the victims. It is felt in these circumstances that we would be justified in asking a military court to draw the conclusion that the shooting was carried out under the direction and in the presence of an officer or NCO, so as to bring the case within Regulation 10(5). Meyer's responsibility is the greater in view of the atrocities previously attributable to troops under his command and also elsewhere in the division.

5. While it will be seen from the above that there is evidence to support each of the charges, taken by themselves, in the face of positive denial of knowledge of Meyer's part, it might not be felt sufficient to remove all reasonable doubt of guilt. It therefore seems to me most essential that these charges should all be tried together, and that a background must be created against which the court can judge as to the sincerity of Meyer's denials and can reach an opinion as to the likelihood of participation and responsibility on his part. This background could be created in two ways:

   (i) To get before the court the general history of the Nazi Party with which Meyer has been connected since 1929, and, in particular, that of the Leibstandarte Adolf Hitler of which he had been a member since 1936, both as to the activities of the latter in peacetime and during hostilities in Eastern Europe. This history should show the wanton disregard for human life in the treatment of Jews, minorities generally, and of both civilians and military personnel in Russia. From his service in Russia Meyer gained the reputation of being a "draufgaenger",

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which is apparently interpreted to mean an extremely ruthless and bold fighter. We have evidence, moreover, from two of Meyer's own officers, that in the one case... he is said to have destroyed a village called Jefremorka and to have put to death all its inhabitants, and from the other officer that Meyer himself admitted that on occasion in Russia where his forces were cut off it had been necessary to kill prisoners. He, of course, denies this but stresses the fact that fighting in Russia soon became so hard that neither side gave quarter and in reprisal for the acts of the other frequently killed prisoners. He admits this much but denies having had anything himself to do with the killing of prisoners, or, by reason of the nature of his unit at the time (Recce.) to have had any opportunity of doing so.

(ii) The other background is that of the performance of the other units in the 12th SS Panzer Division. Altogether 144 prisoners were killed on a total of some 33 occasions or incidents. In one incident we have eyewitness evidence from a German soldier that Meyer's fellow Regimental Commander, Mohnke, not only ordered the shooting of three Canadian prisoners but was present and witnessed the execution of his order. In another case we have evidence, this time from a German officer, that the 26 prisoners killed at Chateau Audrieu were executed as an act of reprisal, by order of the acting commander of the Reconnaissance Battalion. In another incident 40 prisoners were herded into a field and mowed down by machine gun fire after the apparent intervention of an officer. We have evidence also that Meyer's successor as Regimental Commander ordered the shooting of prisoners, and that it was common gossip in the 25 PGR that prisoners had been shot at Regimental Headquarters at Ardenne.[9]

6. The Judge Advocate at the trial must be persuaded that this evidence can be legally helpful to the court in arriving at a conclusion as to Meyer's guilt, and it should be introduced, not to prove Meyer's guilt of the specific charges laid against him, but to show a pattern of behaviour against which the court can evaluate his disclaim of knowledge and responsibility. How best this should be gotten before the court will have to be considered.

7. The first and second charges are based in direct evidence of personal responsibility, the others are based on the inference raised by Regulation 10, and the theory of military responsibility generally. It is not proposed to call witnesses in proof of the Authie and Mouen atrocities, but to rely on the reports of the SHAEF courts of inquiry, supplementing them only by some additional evidence which has since become available. This is an important departure for which I would like your approval.

8. I would recommend that you read in its entirety the evidence of Torbanisch, Helzel, Heyer, Jesionek and Meyer himself.

A11. House of Commons Debates, 31 October 1945, 1676.

War Crimes – Trial of Major-General Kurt Meyer by Canadian Military Court

Hon. Douglas Abbott (Minister of National Defence): I should like to inform the house that preliminary proceedings have now been taken for the trial of Brigadefuhrer (Major-General) Kurt Meyer, Commander of the 12th SS Panzer division (Hitler Jugend) during the fighting in Normandy in June, July and August 1944. Major General Meyer will be tried by a Canadian military court convened pursuant to the war crimes regulations (Canada) of which the Prime Minister (Mr. Mackenzie King) informed the house on September 13, 1945.

Meyer will stand trial on seven charges having to do with the murder of forty-eight Canadian prisoners of war during the fighting in which the 3rd Canadian infantry division was engaged in the vicinity of Caen in June, 1944. He is charged specifically with having directed his troops to deny quarter in contravention of the laws and usages of war; to have been directly responsible, while a regimental or brigade commander, for the killing of seven prisoners at his headquarters, for twenty-three shot at the village of Authie, and also for seven later executed at Mouen after he had become divisional commander.

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Meyer has been taken into custody of the Canadian military authorities and placed, pending trial, in the charge of Lieutenant Colonel R.P. Clark, D.S.O., commanding officer of the Winnipeg Rifles, Canadian Army Occupation Force in Germany. Lieutenant Colonel B.J.S. Macdonald, O.B.E., E.D., head of the war crimes unit at Canadian military headquarters London, will be the chief prosecutor of the trial which is expected to begin on November 28, 1945, thus allowing Meyer four weeks in which to prepare his defence. Colonel Peter Wright, O.B.E., has been detailed by the Canadian army to act as defence counsel.

The members of the military court will be: Major General H.W. Foster, C.B.E., D.S.O., president, and members Major General R.H. Keefler, C.B.E., D.S.O., E.D., and Brigadiers I.S. Johnson, D.S.O., E.D., H.A. Sparling, D.S.O., H.P. Bell-Irving, D.S.O., O.B.E., with Brigadiers T.G. Gibson, D.S.O., and M.P. Bogert, D.S.O., O.B.E. as waiting members. The judge advocate will be Lieutenant Colonel W.B. Bredin, D.J.A.G., Canadian Occupation Force. The trial will be held at the marine barracks at Aurich, in the northwestern portion of the Canadian area of occupation in Germany.

A12. Ross Munro, "Canada Will Conduct Trial of SS General,"* Globe and Mail*, 1 November 1945, 1-2.

London, Oct. 31 (CP) – Responsibility for the shooting of 48 Canadian prisoners of war during the Battle of Normandy in June 1944, today was placed squarely on Maj.-Gen. Kurt Meyer, former commander of the German 12th SS Hitler Youth Division.

The steely eyed, broad-shouldered Meyer was indicted at Aurich, Germany, on seven charges of war crimes involving shootings of prisoners by members of his division in the bitter fighting which raged around Caen, Normandy, after the Allied landings in France.

The SS general's trial is due to begin 28 November at Aurich, near Emden, in Northwest Germany in the Canadian occupation zone, and may last for two weeks.

Gen. Meyer was flown today from Britain to Canadian-occupied Germany. Meyer was indicted immediately on alighting from the plane.

This case – the first Canadian war crimes trial – will be heard by a special Canadian military court, headed by Maj.-Gen. Harry Foster, former commander of the 1st Canadian Division, and convened by Maj.-Gen. Chris Vokes, commander of the Canadian occupation forces in Germany.

Further Hearings Likely

Canadian war crimes investigators have estimated that the 12th SS Division killed at least 144 Canadian prisoners of war in 33 different incidents in Normandy. The forthcoming trial may be followed by others based on atrocities committed by this division.

Gen. Meyer, whose division was annihilated in the Battle of the Trun Gap in August 1944, and who was captured three weeks later south of Liege in Belgium, appeared at Aurich before Lt.-Col. R.P. Clark of Vancouver, commanding officer of the Royal Winnipeg Rifles, the occupation force battalion stationed at Aurich, and was remanded.

He was given a list of charges and an abstract of the evidence taken by the prosecution from various witnesses. On the basis of these documents, the accused will prepare his defense during the four-week period before the trial opens.

(It was announced in Ottawa Wednesday that Meyer will be defended by Col. Peter Wright, OBE, of York Mills, Ont.)

Call Soldiers From Canada

As chief prosecutor, Lt.-Col. Bruce J.S. Macdonald of Windsor, Ont., will call as witnesses some soldiers and demobilized servicemen brought from Canada.

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The charges allege that Meyer was responsible for 11 different atrocities in which Canadian prisoners of war were killed. The grimmest were at Buron and Authie, villages four miles northwest of Caen, where it is alleged that on or about 7 June 1944, the day after the Normandy landings, 23 Canadian prisoners were killed in eight incidents.

The North Nova Scotia Highlanders, of Amherst and Truro, N.S., and the Sherbroooke Fusiliers, of Sherbrooke, Que., had penetrated that day 10 miles inland from the beaches to these adjoining villages and were pushing on to Carpiquet airfield, further south, when they were attacked by tanks and infantry of the 12th SS. There was a bloody battle in which losses on both sides were heavy.

After the encounter the Germans herded their prisoners into buildings and yards in the villages, and it was there that they allegedly murdered 23 of them in cold blood.

The charges also state that on the same day Meyer ordered his troops to shoot seven other Canadian prisoners at his headquarters at the ancient Abbey of Ardennes, one mile east of Buron and Authie and three miles northwest of Caen.

This order was carried out the seven prisoners were killed, the charges allege.

A third charges states that Meyer was responsible for the death of an additional 11 Canadian prisoners at the abbey on or about 8 June.

At this time Meyer was commanding the 25th SS Panzer Grenadier Regiment – equivalent to a Canadian brigade – in the 12th SS Division. It covered the front from the western outskirts of Caen to Buron and Gruchy, one mile southwest of Buron, where the 9th and 8th Brigades of the 3rd Canadian Division had coverged in the advance from the beaches.

About 13 June, Meyer succeeded to the command of the division after its previous commander was killed and on or about 17 June another charge alleges that seven more Canadian prisoners were killed at the Village of Nouen, well back from the battle-line southeast of Caen. Meyer also is charged with responsibility for these killings.

In addition, Meyer is charged with telling his troops during training in France and Belgium to deny quarter to Allied soldiers.

The North Nova Scotia Highlanders lost about 35 men in these atrocities and other regiments which lost men were the Queen's Own Rifles of Toronto; the 1st Hussars of London, Ont.; and the Cameron Highlanders of Ottawa.

The indictment against Meyer marks the first official disclosure of atrocities against the Canadian prisoners in Normandy, other than one announced in August 1944, by the 1st Canadian Army in the field, when it stated that a court of inquiry had found that 19 members of the Royal Winnipeg Rifles had been murdered 7 June by the 12th S.S. Division at Pavie, three miles southwest of Bretteville on the Caen-Bayeux Highway.

Find Mass of Evidence

In the battle area at the time there were scores of rumours and unconfirmed reports about such killings and every unit in the 3rd Division had some charge against the hated 12th S.S. Careful investigation covering the last year has produced a mass of evidence and much of it will be presented to the court by Col. Macdonald.

Meyer, however, is not charged with responsibility for the Pavie killings because his troops were not in that area at the time. It was the 26th Regiment of the 12th S.S. which fought the Winnipegs, the Regina Rifles and the Canadian Scottish of Victoria around Pavie and Bretteville, and its commander, Col. William Mohnke, will face a trial similar to that of Meyer if he can be located. It is thought that he was in Berlin with Hitler when the Russians were storming through the city and he may now be in Russian hands.

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A13. House of Commons Debates, 1 November 1945, 1705.

War Crimes – Trial of Major-General Kurt Meyer by Canadian Military Court – Counsel for Defence

Hon. H.A. Bruce (Parkdale): Mr. Speaker, I should like to ask a question of the Minister of National Defence. In view of the announcement made yesterday by the minister respecting the appointment by him of Colonel Peter Wright to act as defence counsel for Major General Kurt Meyer,... I should like to ask the minister whether he would reconsider this matter and ask the authorities overseas if they will appoint a German counsel to defend this criminal.

Hon. Douglas Abbott (Minister of National Defence): Oh, I don't think so. That appointment was made after full consideration by Canadian military headquarters overseas, and unless some other reason is advanced for making a change, I think it should stand. I am told that the British are following the same policy in the trials of which they have charge.

Mr. Bruce: I think it is placing this Canadian officer in a most invidious position. I noticed recently that a German defence counsel was asked to act instead of a British counsel.

A14. "Our Opinion," The Maple Leaf, 15 November 1945.

KURT MEYER, the German SS General who is Canada's No.1 war criminal, is charged with the wholesale murder of 48 Canadian prisoners of war during the early Normandy battle in June 1944. His trial is scheduled to begin in the near future.

The men who were killed in cold blood by Meyer's 12th SS Hitler Youth Division were mostly Winnipeg Rifles personnel. At the time the 7th CIB, under command of Brig. Harry W. Foster (Winnipegs, Reginas, 1st Battalion Canadian Scottish), were holding the hottest spot on the Normandy front – the tip of a long, narrow salient, with base at the beachhead and apex in and around Bretteville L'Orgeueilleuse.

Weather was hot, roads dusty, fighting bitter. Reinforcements were slipped to the three harassed battalions by night, while the Luftwaffe bombed almost at will. The Canadians were spearhead troops; had landed first and cut a bloody swath to sever the Caen-Bayeux highway. During those first two or three days the Winnipegs in particular took a severe beating from overwhelming odds, but they didn't quit.

It was the only brigade that Monty mentioned in his first press conference.

The graves… or grave… of these 48 men was found later, and evidence clearly pointed to the miserable action of the captors. When the news was told, it infuriated Canadian troops in action. Now Kurt Meyer, the perpetrator of the deed – the man responsible for the action – is awaiting trial, and the scales weigh heavily against him.

Canadians-in particular those who have any first-hand knowledge of the mass murder- want sound and speedy justice... not long, involved harangues such as have been in evidence at the Belsen trials… not opportunities for the defendants to be glamorized or deglamorized when faced with charges of foul play.

Maj.-Gen. Harry W. Foster will head the special military court that will try Meyer. He is a hard but fair man... and his memory will be fresh.

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A15. Top Secret Army Message, 3 Cdn Inf Div CAOF, to JAG (Action), C.G.S., M.S., 1150 am, 12 December 1945.[10]

IN EVENT DEATH SENTENCE BEING PASSED IN MEYER CASE AND CONFIRMED DESIRABLE TO SETTLE PROCEDURE IN ADVANCE IN WHICH IMPORTANT QUESTION OF PRINCIPLE INVOLVED...

UNDER SECTION 5 WAR CRIMES REGULATION PROCEDURE GOVERNING CARRYING OUT OF SENTENCE AWARDED BY COURT MARTIAL APPLIES AND LEGALLY COMPETENT FOR CONFIRMING AUTHORITY TO ISSUE PROPER DIRECTIONS IN WHICH CASE PROCEDURE GOVERNING PRINGLE EXECUTION ITALY AS SET OUT APPENDIX 'A' PC 4418/20 JUNE 1945 HQ 55/P/980, WILL BE FOLLOWED...

IN RESPECT OF EXECUTION WAR CRIMINALS CONVICTED BY MILITARY COURTS UNDER UK WARRANT BRITISH AUTHORITIES GERMANY HAVE ISSUED DETAILED INSTRUCTIONS INVOLVING MANY FORMALITIES APPARENTLY NOT LEGALLY NECESSARY UNDER UK WARRANT AND CERTAINLY NOT LEGALLY NECESSARY UNDER CANADIAN REGULATIONS. SUCH FORMALITIES INCLUDE ISSUE OF FORMAL DEATH WARRANT PRESENCE AT EXECUTION OF MANDATORY MILITARY WITNESS, FORMAL CERTIFICATE OF EXECUTION ETC COPIES OF THESE INSTRUCTIONS HAVE BEEN SENT TO GOC(CAOF)...

YOU WILL APPRECIATE THAT CAOF UNDER MILITARY COMMAND GOC-IN-C BAOR AND I HAVE ADVISED GOC CAOF THAT FROM UK STANDPOINT CANADIAN LAW LEGALLY COMPETENT FOR HIM TO ISSUE DIRECTIONS RE EXECUTION SIMILAR TO THOSE WHICH WOULD BE ISSUED IN CASE OF CANADIAN SOLDIER SENTENCED TO DEATH BY CANADIAN COURT MARTIAL. ON OTHERHAND GOC UNDER SUPERIOR MILITARY COMMAND AS INDICATED AND QUESTION ARISES AS TO WHICH HE SHOULD IF SENTENCE OF DEATH PASSED ON MEYER ISSUE DIRECTIONS IN CONFORMITY WITH AND IN COMPLIANCE WITH THOSE ISSUED BY BRITISH MILITARY AUTHORITIES. THIS INVOLVES IMPORTANT QUESTION POLICY AND DESIRE INSTRUCTIONS AS TO ADVICE I SHOULD GIVE GOC.

MATTER MOST URGENT AND REPLY SHOULD BE ADDRESSED ME DIRECT 3 CANADIAN INFANTRY DIVISION CAOF VIA CMHQ THEREBY OBVIATING NECESSITY OF DECIPHERING AT CMHQ...

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Endnotes

1 LAC, RG 24, vol. 12839, file HQ 67/Kurt Meyer/3.

2 LAC, RG 24, vol. 11751, file 41-3-11.

3 DHH 159.95 (D1).

4 Windsor Municipal Archives, Bruce J.S. Macdonald fonds MS 43 III-1/6, box 1, file 1/3.

5 LAC, RG 24, vol. 12840, file 67/Kurt Meyer/5.

6 LAC, RG 24, vol. 12839, file 67/Kurt Meyer Case/1.

7 Marginalia: “O.K.” beside 1(v).

8 Marginalia: “8th Charge Out” beside 4(d).

9 Marginalia: “Out” beside 5(ii) and 6.

10 LAC, RG 24, vol. 2906, file HQS 8959-9-5.

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The Trial of Kurt Meyer



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The Trial of Kurt Meyer

B. The Trial of Kurt Meyer, December 1945

B1. Record of Proceedings (Revised) of the Trial by Canadian Military Court of S.S. Brigadefuhrer (Major-General) Kurt Meyer held at Aurich, Germany 10-28 December, 1945.

Orders by Major-General C Vokes CB CBE DSO, General Officer Commanding 3 Canadian Infantry Division (Canadian Army Occupation Force) Bad Zwischenahn, Germany – 4th December 1945.
The detail of officers as mentioned below will assemble at Headquarters 2/7 Canadian Infantry Brigade at Maple Leaf Barracks, Aurich, Germany on Monday the 10th day of December 1945 at 1030 hours, for the purpose of trying by Military Court, pursuant to the War Crimes Regulations (Canada),

Brigadeführer Kurt Meyer, an officer of the former Waffen SS, then a part of the Armed Forces of the German Reich now in the charge of 4 Battalion Royal Winnipeg Rifles, the Canadian Occupation Force.

President
Major-General HW Foster CBE DSO – General Officer Commanding 4 Cdn Armd Div

Members
Brigadier I S Johnston DSO ED – T/GOC 5 Cdn Armd Div
Brigadier H A Sparling DSO – CRA 3 Cdn Inf Div CAOF
Brigadier H P Bell-Irving DSO OBE – Comd 10 Cdn Inf Bde
Brigadier J A Roberts DSO – Comd 8 Cdn Inf Bde

Waiting Members
Brigadier M P Bogert DSO OBE – Comd 2/8 Cdn Inf Bde
Brigadier T G Gibson DSO – Comd 2/7 Cdn Inf Bde

Judge Advocate
Lieutenant-Colonel W B Bredin – DJAG 3 Increment "B" (CAOF),
Canadian JAG Overseas

Prosecutor
Lieutenant-Colonel B J S Macdonald OBE ED, OC No 1 Canadian War Crimes Investigation Unit CMHQ

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Assisted by:
Captain C S Campbell – No 1 Canadian War Crimes Investigation Unit CMHQ
Captain D G Dean – No 1 Canadian War Crimes Investigation Unit CMHQ

Defending Officer
Lieutenant-Colonel M W Andrew DSO – Officer Commanding the Perth Regiment

Assisted by:
Captain F. Plourde – North Shore Highlanders CAO
Captain W. Lehmann, (Personal Interpreter) – NWE Det 1 Canadian War Crimes Investigation Unit

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Assistant-Adjutant and Quartermaster General, HQ 3 Canadian Infantry Division (Canadian Army Occupation Force).

The Convening Orders dated the 31st day of October 1945 and the 23rd day of November 1945 are hereby cancelled.

Signed this fourth day of December 1945.

(C Vokes) Major-General, General Officer Commanding
3 Canadian Infantry Division (Canadian Army Occupation Force)

First Charge Sheet

The accused, Brigadeführer Kurt Meyer, an officer in the former Waffen SS, then a part of the Armed Forces of the German Reich, now in the charge of 4 Battalion, Royal Winnipeg Rifles, Canadian Army Occupation Force, Canadian Army Overseas, is charged with:

First Charge: Committing a War Crime, in that he, in the Kingdom of Belgium and Republic of France during the year 1943 and prior to the 7th day of June 1944, when Commander of 25 SS Panzer Grenadier Regiment, in violation of the laws and usages of war, incited and counselled troops under his command to deny quarter to Allied troops.

Second Charge: Committing a War Crime, in that he, in the province of Normandy and Republic of France on or about the 7th day of June 1944, as Commander of the 25 SS Panzer Grenadier Regiment, was responsible for the killing of prisoners of war, in violation of the laws and usages of war, when troops under his command killed twenty-three Canadian prisoners of war at or near the Villages of Buron and Authie.

Third Charge: Committing a War Crime, in that he, at his HQ at L'Ancienne Abbaye Ardenne in the Province of Normandy and Republic of France on or about the 8th day of June 1944, when Commander of the 25 SS Panzer Grenadier Regiment, in violation of the laws and usages of war gave orders to troops under his command to kill seven Canadian prisoners of war, and as a result of such orders the said prisoners of war were thereupon shot and killed.

Fourth Charge: (Alternative to the Third Charge) Committing a War Crime, in that he, in the province of Normandy and Republic of France on or about the 8th day of June 1944, as Commander of the 25 SS Panzer Grenadier Regiment, was responsible for the killing of prisoners of war in violation of the laws and usages of war, when troops under his command shot and killed seven Canadian prisoners of war at his HQ at L'Ancienne Abbaye Ardenne.

Fifth Charge: Committing a War Crime, in that he, in the province of Normandy and Republic of France on or about the 7th day of June 1944, as Commander of the 25 SS Panzer Grenadier Regiment, was responsible for the killing of

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prisoners of war, in violation of the laws and usages of war, when troops under his command killed eleven Canadian prisoners of war other than those referred to in the Third and Fourth Charges) at his HQ at L'Ancienne Abbaye Ardenne.

Second Charge Sheet

The accused, Brigadeführer Kurt Meyer, an officer in the former Waffen SS, then a part of the Armed Forces of the German Reich, now in the charge of 4 Battalion, Royal Winnipeg Rifles, Canadian Army Occupation Force, Canadian Army Overseas, is charged with:

Charge: Committing a War Crime, in that he, in the province of Normandy and Republic of France on or about the 7th day of June 1944, as Commander of the 12 SS Panzer Division (Hitler-Jugend), was responsible for the killing of prisoners of war, in violation of the laws and usages of war, when troops under his command killed seven Canadian prisoners of war at or near the Village of Mouen.

The War Crimes Regulations (Canada)

Certificate

I, Brigadier Reginald John Orde, Judge Advocate-General, pursuant to sub-section (1) of Section 4 of The War Crimes Regulations (Canada), as enacted by an Order of His Excellency the Governor-General in Council dated the 30th day of August 1945 (P.C. 5831), hereby certify the case of Brigadeführer Kurt Meyer, an officer of the Former Waffen S.S., then a part of the Armed Force of the German Reich, now in the charge of the Canadian Army Occupation Force, Canadian Army Overseas, as approved for trial on the six charges set out in the Charge Sheets annexed and identified by my initials thereon.

Dated at CMHQ, London, England, this 27th day of November, 1945.

(R.J. Orde) Brigadier,
Judge Advocated-General

10 December 1945

The accused is brought before the Court and the medical certificate of the accused's fitness to stand trial is laid before the Court.

President to accused: Do you object to:

- Major J.J. Stonborough, No. 1 Canadian War Crimes Unit, CMHQ,
- Captain J. Henley, HQ 3 Cdn Inf Div, CAOF,
- Captain van Os, HQ 3 Cdn Inf Div, CAOF,
- Captain R.J. Pootmans, Cdn Int Corps, CMHQ,
- Lieutenant R.E. Robichaud, NWE Det, 1 Canadian War Crimes Unit, as interpreters?

Meyer answers: No, sir. *(The Interpreters are sworn.)*

President to accused: Do you object to:

- SM (WOI) Saull, J.L., No. 1 Canadian War Crimes Unit, CMHQ,

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- SM (WOI) Hubbard, T.S., No. 1 Canadian War Crimes Unit, CMHQ,
- S/Sgt. Nethercut, F.J., HQ 3 Cdn Inf Div, CAOF,
- QMS Crone, W.J., HQ 3 Cdn Inf Div, CAOD, as shorthand writers?

Meyer answers: No, sir. *(The shorthand writers are sworn.)*

At 1000 o'clock the Trial commences.

The President, members and Judge Advocate are duly sworn.

The accused is arraigned upon each charge in the above-mentioned First Charge Sheet.

Question to the Accused: Are you guilty or not guilty of the first charge against you, which you have heard read?

Meyer answers: Not guilty. *[Meyer pleads not guilty to the remaining four charges against him.]*

Q. Do you wish to apply for an adjournment on the grounds that any of the rules as applicable to relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. No, sir.

PROCEEDINGS OF THE COURT

President: I declare this court, convened by Major-General C. Vokes, CB, CBE, DSO, General Officer Commanding 3 Canadian Infantry Division, Canadian Army Occupation Force, for the trial of Brigadeführer Kurt Meyer, to be now open. The accused will now be brought before the court. *(The accused is brought before the court.)* Lt-Col Macdonald, I understand that you are appearing for the prosecution, together with Lt-Col Campbell and Major Dean, and that each of you is a qualified Canadian barrister in good standing. Is that correct?

Macdonald: Yes, sir.

President: Lt-Col Andrew, I understand that you are appearing for the accused together with Capt Plourde and that each of you is a qualified Canadian barrister in good standing. Is that correct?

Andrew: Yes, sir.

President: Has the prosecutor a medical certificate that the accused is fit to undergo trial?

Macdonald: Yes, sir. *(Medical certificate is produced initialled by the President and annexed to the proceedings.)*

President: I will now read the certificate of the Judge Advocate General made under the provisions of the War Crimes Regulations, Canada, and the Order convening this court. The officers will answer to their names as they are read.

[The Certificate and Convening Order are read by the President and interpreted to the accused and the officers named in the said Order answer to their names.]

President: The members of the court and the Judge Advocate will now be sworn.

[The President swears in the Judge Advocate; the Judge Advocate swears in the President and Members of the Court.]

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President: The Waiting Members may withdraw. The Judge Advocate will now arraign the accused.

Judge Advocate: *(To the accused through the interpreter)* Brigadeführer Kurt Meyer, it is now my duty to read the charges to you as set forth in the First Charge Sheet and to ask you to plead "Guilty" or "Not Guilty" to each of them. You are charged as Brigadeführer Kurt Meyer, an officer of the former Waffen SS, then a part of the armed forces of the German Reich, now in the charge of the 4th Battalion, Royal Winnipeg Rifles, Canadian Army Occupation Force, Canadian Army Overseas. Is that your correct name and description?

Meyer: Yes, sir.

[The accused is arraigned by the Judge Advocate through the interpreter, on all charges in the First Charge Sheet and pleads "Not Guilty" to all the said charges.]

President: The Court will now adjourn for ten minutes.

President: Do you wish to apply for an adjournment on the ground that any of the rules as applicable relating to procedure before trial have not been complied with and that you have no had sufficient opportunity for preparing your defence?

Meyer: No, sir.

B2. Case for Prosecution

Opening Address of the Prosecution

Opening Address by the Prosecutor, Lt-Col B.J.S. Macdonald

Macdonald: May it please the court, sir... This case, the first of its kind to be tried in a Canadian Military Court, is of considerable importance, not only in that it concerns the murder of a large number of Canadian prisoners of war; but also, in that it is the first occasion, in the prosecution of war criminals, at least in Europe, in which an effort will be made to establish, not only the immediate responsibility of a high ranking officer, for atrocities committed under his order, but also his vicarious responsibility for such crimes, committed by troops under his command, in the absence of a direct order. The responsibility for the former is well understood. The responsibility for the latter is based firstly: on a known course of conduct and expressed attitude of mind on the part of the accused; secondly: upon his failure to exercise that measure of disciplinary control over his officers and men which, it is the duty of officers commanding troops to exercise; and thirdly: on a rule of evidence applicable in these cases, which in effect says that upon proof of certain facts, the accused may be convicted, if he does not offer an explanation to the court, sufficient to raise in their minds a reasonable doubt of his guilt. Because of these unusual features and the wide public interest which is being shown in this trial, it would perhaps be well if I should endeavour at the outset to define the issues involve, the law applicable to the charges laid, and the evidence which the prosecution proposes to adduce in support of them.

Judge Advocate: Col Macdonald, I don't want to interrupt you, and I am not suggesting for a moment that the subjects with which you wish to deal are not entirely proper, but the Court will finally take questions of law from me. I don't wish the court necessarily to accept, nor do I necessarily accept what you conceive to be the law.

Macdonald: Quite so.

Judge Advocate: You understand what I mean? I may entirely agree with you.

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Macdonald: You will have no objection to clarifying that later in the proceedings?

Judge Advocate: I think you should do so when the question is before the court. As an opening address I think it should be primarily confined to what you intend to prove – the witnesses you intend to call and what you intend to prove, in respect to the particular charges.

Macdonald: I had intended to lay the foundation for that by stressing the points of law which are peculiar to this type of case and thought it may be helpful to the court to direct their minds along those lines in considering the facts which would later be referred to.

Judge Advocate: Yes, as long as the court understands that I may or may not advise them that the law is as you have expressed it.

Macdonald: Quite.

Judge Advocate: And the court will, finally, I presume, take the law from me.

Macdonald: I would expect so, yes. *(Continuing opening address)* Now with what offences is the accused charged? In a few words he is charged with the murder of prisoners of war, in legal terms, as a principal, for some, and as an accessory before and after the fact for others. To avoid overly technical legal concepts however, he is charged with committing war crimes or with responsibility for the unlawful killing of prisoners of war, and with having counselled and incited such acts.

It is nothing new or novel in civilized countries to hold persons responsible for the unlawful taking of human life, and to punish them if convicted, and there is nothing new or novel in holding soldiers responsible for the killing of unarmed enemy, in contravention of international law. The only thing that is novel about it is that during this most recent war, so many and so frightful were the war crimes of all kinds that were committed by the enemy, that it became one of the major objects of the war to ensure the proper punishment of those responsible.

Judge Advocate: Now, that is a particular statement too, Col Macdonald. Are you going to prove that?

Macdonald: We are prepared to do that, if necessary. I took it that that was common knowledge.

President: That is not part of the case at all. You are not going to bring that into the case as part of it, I hope.

Judge Advocate: I don't know that I agree that it is common knowledge, Col Macdonald. At any rate, what I hoped you would do is confine the statements of facts to those in respect to which you are going to bring evidence, and to those facts which the court may take judicial notice of. Now, you are not suggesting that they will take judicial notice of that are you, the question of war crimes by other people in other places?

Macdonald: These things, I should think, are fundamental to the enforcement of international law and the reasons behind the enactment of war crimes regulations in various countries, which has been necessary, by reason of what I was about to suggest, the failure of the part of Germany after the last war to enforce this law themselves when they had the opportunity to do so.

Judge Advocate: Well, I think we are getting rather far afield.

President: I think it is getting off the track. We are not trying the whole German nation here. We want to keep order in this particular case.

Macdonald: It was with no idea of that in mind, sir. I was hopeful that, by briefly turning to the background behind the passing of these regulations, we might enlighten the minds of any in doubt as to the reasons

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for the necessity of so trying war criminals. After the last war the German nation undertook to do it themselves and it wasn't a very satisfactory experience, and our leaders declared that this time we would have to do it ourselves and I was going to go through that. If you would sooner not hear that, I am perfectly content to pass it over and go on with something else.

President: I think we all have a fair idea in our minds now of that and I don't think it is necessary.

Macdonald: *(Resuming opening address)* We are fortunate in at least one respect, in that there are no new or complicated problems of international law involved in this case, at least in the view of the prosecution. The legal issue is reasonably straight forward, and, in the international aspect, free from serious dispute. On the facts, I believe it will be found, that the evidence overwhelmingly establishes that prisoners of war, at least to the number alleged, were killed as charged, without justification, cause, or excuse. The issue therefore will, if that be so, resolve itself largely to one of determining what, if any, responsibility for these murders should be placed upon the accused, first directly and secondly as commander of the troops who actually committed the offences.

First as to the international law involved. *The Hague Convention of 1907 and the Geneva Convention of 1929*, both of which are acknowledged to be binding on both Germany and Canada, contain provisions for the proper treatment of prisoners of war. *The Hague Convention* lays it down specifically in Article 23(c) and (d), which can be seen at page 379 [of the *Manual of Military Law (M.M.L.)*] that: "In addition to the prohibitions provided by special conventions it is particularly forbidden (c) to kill or wound an enemy who, having laid down his arms or no longer having means of defence, has surrendered at discretion. (d) to declare that no quarter will be given." The *Geneva Convention, 1929*, relative to treatment of prisoners of war, which can be seen in *M.M.L. Amendment* No. 13, Appendix 24, provides in Article 2 that: "Prisoners of war are in the power of the hostile government, but not of the individual or formation which captured them. They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity. Measures of reprisal against them are forbidden." And Article 5 provides that: "Every prisoner of war is required to declare, if he is interrogated on the subject, his true name and rank or his regimental number. If he infringes this rule he exposes himself to a restriction of the privileges accorded to prisoners of his category. No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to reply may not be threatened, insulted, or exposed to unpleasantness or disadvantage of any kind whatsoever." *The Geneva Convention 1929* for the amelioration of the conditions of wounded and sick, for which see Appendix 23 of the amendment to *M.M.L.*, provides in Article 1: "Officers and soldiers who are wounded or sick shall be respected and protected in all circumstances; they shall be treated with humanity and cared for medically without distinction of nationality by the belligerent in whose power they may be." And Article 2: "Except as regards treatment to be provided for them in virtue of the preceding article the wounded and sick of an army who fall into the hands of an enemy shall be prisoners of war and the general provisions of international law concerning prisoners of war shall be applicable to them." Amendment No. 12 of *M.M.L.* 1929, with respect to "*The Laws and Usages of War on Land*" also contains a number of relevant provisions, many of which are simply restatements of the *Hague* and *Geneva Conventions*, Paragraph 51, however, in dealing with the prohibition against the killing or wounding of an enemy who has has laid down his arms and has no longer means of defence says this: "This prohibition is clear and distinct. There is no question of the moment up to which acts of violence may be continued without disentitling the enemy to be ultimately admitted to the benefit of quarter. War is for the purpose of overcoming armed resistance and no vengeance can be taken because an individual has done his duty to the last but escaped injury." Paragraph 56: "The following can claim to be treated as prisoners of war if they fall into the hands of the enemy: (a)

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every member of the armed forces, unless he has committed a war crime (b) wounded and sick." What is a war crime? Paragraph 441 defines the term "war crimes" as the technical expression for such an act of enemy soldiers, and enemy civilians as may be visited by punishment of offenders on capture. Paragraph 442 sets forth the four different classes of war crimes, the first, being violations of the recognized rules of warfare by members of the armed forces, the only class with which we are here concerned. 443 points out that among the more important violations is killing of the wounded, refusal of quarter, maltreatment of dead bodies on the battlefield, ill treatment of prisoners of war, etc. This section also refers to the question of superior orders, a question which I do not believe will arise in this trial. 449 provides that charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. Section 450 provides for punishment.

The law which we are here seeking to enforce is, then, nothing new. It is applicable by reason of the conventions and the usages of war recognized by all civilized countries in the world, to the Germans as well as to ourselves. Their military manuals, as do ours, provide for the proper treatment of prisoners of war. As an example of the German legal view, I quote you from one of the very few successful war crimes trials after the last war, before the German Supreme Court at Leipzig, the "Landovery Castle" case in which the court declared: "In war on land the killing of unarmed enemies is not allowed." (Compare the *Hague* regulation as to [*War on Land*], Para. 23 (c).) "The rule of international law which is here involved is simple and universally known."

Neither the enemy nor the accused has ever openly maintained that it is proper to deny quarter or to kill prisoners of war, and the accused has on his interrogations expressed his own shame, that such charges should be laid against him or against members of his regiment. Moreover, the accused has not attempted, so far at least, to justify these atrocities. What he may say before this court, however, we have yet to learn. I think, therefore, in the meantime, that it is unnecessary for me to labour this matter further, as all will be agreed, that if the prosecution succeed in establishing that troops were incited to deny quarter, and that prisoners of war were killed without justification or excuse, then war crimes were undoubtedly committed. I have included in my address some remarks with respect to the difficulties of obtaining evidence and the methods that were employed eventually to do so. At first the may appear irrelevant but, inasmuch as we propose to bring before the court excerpts from some of these bits of evidence and reports that were obtained, I think perhaps it might be helpful to the court if I take up a little time in explaining them.

One of the great problems, however, in the punishment of war crimes arises from the difficulty of obtaining the necessary evidence of the crime during the course of a war. It is equally difficult to preserve it in a form that convictions can be obtained at the end of the war in courts following the British jurisprudence, with its stringent rules of evidence for the protection of the subject. The knowledge of the crime and of those responsible for it is, of course, usually confined to the enemy. If suspects should be captured, they are unlikely to admit that they themselves were responsible, or to name those who were. At least under our law, there is no effective method of extracting the information from a prisoner who refuses to talk. There is the further difficulty, that before the conclusion of the war, guilty enemy personnel and our own prospective witnesses are apt to be killed, or, before the case is finally ready for trial, dispersed to the far corners of the world. Again the evidence to be obtained from the bodies of victims, and other tangible clues, which put together help to make a good circumstantial case of guilt, deteriorate to an extent where they are no longer of value, or become lost entirely. Again, there is the difficulty of getting sound testimony, long after the events themselves have occurred, for in the meantime many other things have taken place of equal or greater importance to the individual witness, which render his recollection of the events in question and of its details less clear. Finally, even where none of these particular difficulties are encountered, there is the problem

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of locating the culprit for trial. Many millions of German soldiers are prisoners of, or in the custody of, at least four nations, and it is not easy to locate "wanted" Germans, even given the best information. If they have guilty consciences or want to hide their identity as members of the SS, they will be registered as private soldiers of the Wehrmacht, or under some false name. The Central Registry known as Crowcass at Paris has for various reasons not functioned as well as was hoped, and the records of the various nations themselves holding prisoners are not too reliable. The advantage, therefore, is all in favour of the culprit escaping trial and the just punishment which he deserves. It is well to bear these difficulties in mind when considering the amount of evidence to be presented in this case.

It was realized soon after 'D' Day that to overcome some of these handicaps some agency must be established to collect and perpetuate evidence while it was still of value, to ensure that as many as possible of those guilty of war crimes would eventually be brought to trial and convicted. Late in July 1944, two atrocities were reported affecting Canadians, and a special court of inquiry of high ranking Allied officers was appointed by 21 Army Group and by SHAEF to investigate and report upon them. As additional complaints came in, the need for a standing court became apparent, and this was then established at Supreme HQ. Each of the British, US, and Canadian Armies appointed to it a colonel or lieutenant-colonel having legal qualifications, and I was named as the Canadian representative on the court. Eventually, as the work increased, two courts were established on the same basis of national representation. The findings reached by these various courts were by agreement of all members of the courts concerned. However, I wish to emphasize that these findings are only opinions, so far as this court is concerned, and are only submitted as such. The court is perfectly free to disregard them entirely if it wishes.

In May 1945, SHAEF requested the various national authorities to assume responsibility for their own investigations thereafter. Along with the other nations Canada thereupon set up its own war crimes unit for this purpose. A continuity of effort was obtained by the transfer of some of the Canadian personnel who had served at SHAEF, so that we have been able to carry out a uniform and continuous investigation of the same crimes over a period of some 15 months. The methods adopted by the Canadian unit may be of interest to the court, in evaluating the evidence to be heard. All reports are investigated and, in those appearing to have some value, evidence on oath is recorded. A similar method is employed also by the British and Americans. Each investigating team is composed of a Lt.-Col. and Major (both with legal training and combat experience) to carry out the interrogation. The main interrogation is conducted by the Lt.-Col., while the Major acts as his assistant, but has the particular duty of cross-examining the witness on behalf of any prospective accused. He endeavours to bring out any points which might prove helpful to an accused in the event that the witness is unable to appear at the trial in person. This should add to the value of the evidence, and to its acceptability at trial in lieu of the witness. We have, however, in this case taken the precaution of having all witnesses who can be obtained, actually brought here so that the accused is not handicapped in any way in his defence. Where in some cases it was obvious that a witness would be essential at trial he has not been cross-examined.

To provide the machinery and procedure by which war crimes would be tried and criminals brought to justice, both UK and Canadian authorities made regulations for this purpose. In substance they are much the same. They are procedural only, and declaratory of the international law applicable. The Canadian regulations authorized by the Governor-General in Council, like the British, are designed to ensure that justice will not be defeated by an excess of legality, or by a too technical compliance with the complicated British law of evidence. The latter is peculiar to our own particular jurisprudence and as some of our legal authorities are beginning to discover, justice can be done, and has been done in many other jurisdictions, quite adequately, without benefit or undue worship of this law. We

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lawyers are apt to smugly regard our own law of evidence as of divine origin and as the only certain method of ensuring justice. Truly, it gives more than ample protection to an accused, but it also permits many a guilty person, who should have been convicted, to escape by reason of some technical rule or procedural flaw in the preparation or trial of the case. I submit that, having regard to past experience, we cannot regard with equanimity the escape from conviction and punishment because of technical rules of evidence of nine out of every ten war criminals brought to trial. That is a luxury in the administration of municipal or domestic criminal law meant for a generally peace loving, and well-behaved citizenry, who have fought and died when necessary, to preserve such protection and decency among themselves. What must be done here is nonetheless British justice, if it merely reduces the chances of the guilty to escape, and is thereby more efficient.

You will, for instance, observe that the *War Crimes Regulations*, a copy of which is before you, Regulation 10(1) makes admissible in evidence, practically anything which the court regards as relevant. The test of relevancy is that it must "appear to the court to be of assistance in proving or disproving the charge," and it is left to the court to judge of the weight to be given to such otherwise inadmissible evidence.

You will also observe by sub-sections (3), (4) and (5) of the same regulation, that certain facts established by testimony may constitute prima facie evidence of the responsibility of an accused: in subsection (3): of other members of the same group; and in (4) and (5): as prima facie evidence of the vicarious responsibility of a commander. The latter two sub-sections, (4) and (5), are of importance to our present case, because evidence will be submitted on which it will be contended that, apart from anything else, the accused is prima facie responsible for war crimes on both of these grounds. The prosecution will lead evidence to show, in Charges 1, 3 and 4, that an officer and NCO or both were present at the time these offences were committed; that they were probably also with respect to Charges 2 and 5; and we will show, in connection with all charges, that taken together, or singly, they constitute more than one offence within the meaning of sub-section (4), so as to be prima facie evidence of the commander's responsibility. This is apart, entirely, from the positive evidence which will be superimposed upon these presumptions, to provide what we shall contend, is more than adequate factual evidence of the responsibility and therefore guilt of the accused.

These presumptions in (3) and (4), at first blush may appear to go very far. Technically it could be said that an Army Commander might be held responsible for the unlawful acts of a private soldier hundreds of miles away, simply because an NCO happens to be present at the time the offence was committed. Now, no Army officer, however, with the minimum... of experience and brains, would dream of arguing such a ridiculous proposition, in the absence of other evidence of responsibility. It is only pedantic nonsense to suggest that any such meaning is intended. A reasonable line must be drawn in each case, depending on its circumstances. The effect of the provision is simply, that upon proof of the facts there set out, the burden shifts to the accused to make an explanation or answer, and the court may convict but it is not obliged to do so, in the absence of such explanation or answer. The section does not say that the court must receive such evidence as prima facie evidence of responsibility, but merely that it may. If ridiculous propositions are presented we would expect that the accused would not even be called upon for an explanation; but the accused must run the risk in all cases that if he fails to answer the evidence, that the court may, as it is entitled to do under the Regulations, convict him of the offence charged.

As the learned Judge Advocate will advise you, however, if the explanation given by the accused is sufficient to raise, in the minds of the court, a reasonable doubt as to his responsibility or guilt, it is your duty to acquit him.

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Sub-sections (3) and (4) contain... merely the statement of the responsibility of a commander well understood in the Armed Forces of any country, particularly in the German Army. As officers of experience in the command of troops, both in training and combat, we all know, that if something happens in our unit or formation which should not have occurred, that we are held responsible personally by our superior officers. We may be able to escape the consequences of that responsibility, if we are able to show that what occurred was something that was beyond our control or was impossible of reasonable anticipation, or that all reasonable steps had been taken to ensure that the particular thing did not occur. The responsibility, however, is ours, to establish that the act complained of was not the result of any bad judgment, dereliction of duty, or direct act of our own.

Judge Advocate: I just want to interject there. There is a particular responsibility for which an officer would not incur punishment upon a charge; that is, a general responsibility for conduct and discipline of troops under your command. If an officer is held responsible for the lack of discipline in his troops, he is not necessarily – because he is so-called responsible – necessarily liable to be charged and punished for an individual act of his troops.

Macdonald: Of course, it depends upon the nature of the acts complained of.

Judge Advocate: Or whether, too, he is responsible in the sense that he may be charged and punished.

Macdonald: In a criminal sense, yes.

Judge Advocate: No, I don't go so far as to say in a criminal sense, but I do say such responsibility as would involve, it may not be a good way to express it, punishment upon a charge. That is a good test, I think. It may not be criminal. A lot of offences under the Army Act we call crimes. They are not crimes in a sense. They are offences and therefore I don't like the words "criminal responsibility."

Macdonald: I am using that term as I think it is probably understood, not in connection with the Criminal Code, but offences of a general criminal nature.

Judge Advocate: Which may be punished. Isn't that the test?

Macdonald: It is very different to say "punishment" because in the Army one may be punished by removal from command. I take it that what you suggest is punishment in the sense of some court proceedings?

Judge Advocate: Yes, I do, and I think that is a good test.

Macdonald: May I finish this by saying that the consequences which flow from a finding of responsibility depend upon the seriousness of the offence, and the degree of personal responsibility attributable to it.

Defending Officer Lt.-Col. M.W. Andrew: Mr. President, isn't this a question of law to be argued in the argument for the prosecution after all the evidence has been heard and not at this time, to quote a precedent which may or may not be rejected by this court.

President: Yes. I think you are quite right.

Macdonald: *(Continuing opening address)* It is no new thing, therefore, to say that if more than one forbidden act occurs in a unit or formation, that [the acts are] some evidence that the commander has been at least negligent in his duty, if not directly responsible for at least the second of these offences; for if he should have had knowledge of the first one, steps should have been taken to make certain that another or many other similar offences were not later committed by the troops under his command.

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Similarly, a commander acts through the agency of those serving under him. The chain of command from himself to the private soldier acting upon his policy or orders, is through the medium of his officers and NCOs. It is therefore a fair conclusion, that where a forbidden act occurs on the part of a private soldier, in the presence or immediately after the departure of an NCO or officer, that that act was done on the orders of that NCO or officer, or at least that it had his tacit approval and consent, and if he stood by and took no action to restrain the offender or subsequently punish him.

How much greater then must be the responsibility of the commander, if the actual perpetrator is himself or an NCO or officer. It would be most unusual in any reasonably well-disciplined unit or formation to find officers or NCOs acting openly, in direct violation of the express orders of their commanding officer, and even more unusual if several such instances occur. I am sure that even without the existence of sub-sections (4) and (5), this court, composed as it is of high ranking officers, every one of whom has had wide and very great experience in the command of troops in battle, would, as similar American courts have, where no such written rule exists, arrive at the same conclusions as to a commander's responsibility. In the last few days in the Yamashita case, one almost the same as to its facts as this one, the US courts have held a commander –

Judge Advocate: I don't think you should continue with what you are just about to start.

Macdonald: With reference to the American case?

President: Yes. Let us not be influenced by that at this stage.

Macdonald: Very good, sir. *(Continuing opening address)* In effect, the sub-sections, then, really add nothing to what is generally understood anyway in military practice and experience.

There is just one other regulation to which I wish to call your attention before I go to the facts in issue, and that is No. 17 which reads as follows: "In any case not provided for in these regulations, such course will be adopted as appears best calculated to do justice." It will be clearly seen from this that justice is what is sought in these trials.

Now as to the facts:

Lest there should be any confusion of thought about the type of case which we have before us, let me assure you that we are not trying a private soldier, who acted in a single case, or even in several cases, either as a result of his own ignorance or excess of zeal, or in response to an order from his superior, or in conformity with what he thought to be the wish and policy of that superior. We are trying here, today, a man who, we shall contend, is supremely responsible both directly and indirectly for the killing, by those under his command, of the 41 Canadian prisoners referred to on the first charge sheet. We shall seek to establish that he was the motivating force, behind the cold blooded, deliberate and calculated murder of these prisoners. Many of them were killed far behind the front line, where there was no conceivable justification or excuse – other than possibly the brutal punishment of a helpless prisoner, who refused to answer improper questions asked of him. If he is not directly responsible then we do contend that the prisoners lost their lives as a result of a wilful or criminal negligence and failure of the accused to perform his duties as commander of the troops concerned.

What is the history of the accused? A veteran member of the Nazi Party, the SS, and of Hitler's own body guard, with a glowing reputation earned in combat in almost every German theatre of war, known to be a "Draufgänger," a dashing and reckless commander and stern disciplinarian.

Judge Advocate: You are going to call evidence to prove that?

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Macdonald: Yes indeed. *(Continuing opening address)* Bearing the popular nickname of "Schnell" which he earned as an intrepid motorcyclist, or of "Panzer Meyer" as he was generally known in the Waffen SS, he was promoted to the command of the 25th SS Panzer Grenadier Regiment in August 1943, at a time when it was being organized as a part of the new Hitler-Jugend Division, the 12th SS Panzer. This division drew its officers and NCOs largely from the Leibstandarte SS Adolf Hitler, the premier formation in the Waffen SS, and also contained a large number of Wehrmacht officers, who had been transferred to it. While later some of the private personnel should be more aptly described as "involuntary volunteers," most came from the 17 and 18 year old members of the Hitler Youth throughout Germany and were enthusiastic volunteers. What Meyer, experienced in the ways of warfare, should say then to these inexperienced, avid and fanatical products of the Hitler Youth as to the way they should conduct themselves in battle, is of the greatest importance in determining responsibility for the things that occurred when this regiment went into action.

The First Charge Sheet, which is the only one with which we are now concerned, deals with four main offences described in five charges. The charges are not organized in order of gravity, but rather with a view to convenient presentation of evidence. The first charge or offence is to the effect that the accused, during their training prior to the invasion, incited and counselled his troops to deny quarter; and gives us an idea of what was in their minds when they first went into action.

The Second Charge has to do with the killing of 23 prisoners at Authie on 7 June, the very first day in combat for this regiment.

The Third, Fourth and Fifth Charges deal with the murder of a total of 18 prisoners at Meyer's own HQ L'Ancienne Abbaye Ardenne, in the late afternoon or evening of 7 June and during the morning of the following day, 8 June.

The Third and Fourth Charges relate to seven of the 18 prisoners last referred to, whose death, we charge, was ordered by Meyer. The Fifth Charge has to do with the remaining 11 of the 18, for whose deaths we say he was also responsible.

The total number of victims referred to on the First Charge Sheet is 41, and the separate incidents or occasions on which they were murdered number at least 10.

The Prosecution will call, in proof of the First Charge, three former members of Meyer's favourite company, the 15th Recce (MC) Company (Coy), attached to his own HQ, who will say that during the course of their training in which Meyer took a particular interest, he said to them on more than one occasion "My unit takes no prisoners" and "I don't care what other units do, my company here takes no prisoners." Evidence will be given that these orders were repeated to the men by their company commander, Hauptscharführer (HSF) von Buettner, his associate of many campaigns who had for long been Meyer's regimental Adjutant and was so up until a week or ten days before the invasion. As 15th Company Commander, von Buettner's HQ remained with Meyer's at Regiment[al HQ], so that he was at all times in close proximity to Meyer and in a position to know at all times the wishes and policy of his commander. Further, the CSM (Stabscharführer or "Spiess" as that rank is colloquially known in the German Army), a man name Hagetorn, read to the company secret written orders that they were not to take prisoners, or that if taken such prisoners should be shot after interrogation. The members of the company were required to sign that they had heard and understood these orders. There is also talk ascribed to Meyer, of retaliation against British prisoners for the bombing of German cities, and the consequent loss of life among the mothers, wives, etc., of the troops. Some of those orders were repeated just immediately before the invasion. To show that the orders were not confined to this particular company alone, another witness will be called from the I Battal-

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ion of Meyer's regiment to say that this unit also was told by Meyer "My unit takes no prisoners," and that on 6 June, while on their way to meet the invading Canadians, one of the company commanders went from platoon to platoon of his company telling the men that they were not to take prisoners. At that time it was thought that they were going to drive the Allies into the sea and prisoners for interrogation purposes were not important.

If this evidence is to be believed, then Meyer undoubtedly incited and counselled his men to deny quarter. In fact, you may well come to the conclusion that such remarks coming from a Regimental, i.e. Brigade Commander, to his troops is tantamount to an order. We have, however, to avoid any argument on that point, confined our charge to one simply of inciting and counselling, which of course, in any event, is a war crime. If this particular charge stood by itself without anything more, the accused would, of course, deserve punishment. I think, however, it will also be agreed that with nothing more to indicate how seriously this language was intended to be taken, it would be questionable whether he should receive the maximum penalty if convicted. With these other charges, however, against him, this indication of Meyer's attitude and policy is of great significance, and it should be of assistance to the court in weighing the evidence, which he may give to escape responsibility and punishment for these atrocities. We will submit that...

Judge Advocate: Col Macdonald, you should not imply to the court indirectly what punishment may be awarded in any of these charges. You have indicated what the punishment on the first charge might be. It is for the court to decide punishment. It is purely for the court to do that. I don't think you meant to imply what punishment is fit for what offence.

Macdonald: No, I quite understand that. *(Continuing opening address)* On all the evidence, these instructions and declarations cannot be taken to be, simply, the over enthusiastic effort of a Commander to inspire in his men a necessary fighting spirit, but something more significant and vicious.

To indicate that these seeds did not fall upon barren ground, but upon a very fertile soil, we have only to look at the harvest of lives as detailed in the succeeding charges. The Second Charge has to do with the killing of a total of 23 prisoners of war, on a total of eight separate instances or occasions on the afternoon of 7 June, at the villages of Buron and Authie where his Regiment made its very first contact with Allied forces. The testimony to be offered here will be that of soldiers who participated in the battle and were taken prisoner, and of civilians who are likewise eyewitnesses of the offences charged. The killings consist of mass shootings, in which as many as nine are killed at one time, and of individual and very brutal killings of wounded soldiers, in which it is believed at lest one officer participated. Apart from regulation (4), which makes this participation prima facie evidence of Meyer's responsibility, he himself has admitted that he took an active part in leading this battle and was well forward, as was his usual practice, in an effort to "draw on" his young troops in this, their first engagement. It will be submitted that because of this, the court can reasonably infer that the accused must share directly in the responsibility for what occurred. Owing to the nature of the engagement, and to the fact that bodies were permitted to remain on the streets for some six days afterwards, and as a consequence were, in some cases, mutilated beyond recognition by passing traffic, we are unable to produce specific identification by name and traceable body for each of the 23 persons alleged to have been killed; but we feel that we are able to do this in a sufficiently large number of cases, to serve as corroboration of the eyewitness accounts that will be tendered in evidence.

Seven witnesses will be called and a large number of affidavits will be read to establish this charge. I shall not attempt at this stage to describe each of these individual crimes, but will, with your permission, do so just prior to the introduction of the evidence on the particular charge. The testimony

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is somewhat complicated, and it may serve better to keep the separate offences distinguished from each other in our minds, if this explanation is given then, rather than now.

Judge Advocate: How can you do that, Col Macdonald; make more than one opening address?

Macdonald: Well, I will simply read in the findings of the SHAEF Court which summarizes each incident. After that the defending officer...

Andrew: Mr President, what are you making out of that is a separate trial on each charge, and you will have to keep in mind, the Court that is, what is the evidence on the First Charge when you finish the Fourth and Fifth Charges. Either try them separately or all on one trial.

Judge Advocate: I don't see how you can make, as it were, several opening addresses by segregating your opening address in that manner.

Macdonald: It is merely that I think the court will be better able to follow the evidence. *(Continuing opening address)* You will find through the course of this evidence that reference is made to the killing of a larger number of prisoners than 23. However, the charge itself has been limited to this number for convenience of proof. So far as the charge is concerned, therefore, I would ask you only to consider the 23, but to listen to the evidence respecting the others, as you are entitled to do, as it is indicative of the general behaviour of the German troops taking part in this action, and supports other evidence of the killings. The ferocity of this treatment of prisoners, its widespread character, and the large number of separate crimes, conveys a definite impression that there must have been preliminary incitement and approval given, or orders issued, and is therefore of assistance to the court in determining the responsibility of the accused on this particular charge.

The evidence will further show that those prisoners, who had not previously been killed, were escorted to what is described as the Ancienne Abbaye Ardenne, which was established that day as Meyer's HQ for the 25th Panzer Grenadier Regiment. The offenders referred to in the Third, Fourth and Fifth Charges all relate to the killing of prisoners of war at this HQ, either on 7 June or on the morning of the following day. Because of the nature of the offences and the manner of their discovery, the Third and Fourth Charges deal with the crimes that were committed on 8 June, while the Fifth Charge deals with those that were apparently committed on the preceding evening, 7 June.

The Third Charge is that Meyer gave orders for the murder of seven prisoners at this HQ; and that the prisoners were thereupon, after interrogation by an officer, killed at a point within 100 metres of Meyer's own command post, by a Corporal or Sergeant attached to the Headquarters, and that the bodies were permitted to lie there, unburied, for at least two days thereafter. We are fortunate here in having in proof of this charge, the evidence of a soldier serving with the 15th Recce Company at the Headquarters at the time, who saw and heard most of what occurred. This witness, a Polish lad named Jesionek, was wounded on the evening of 8 June and after his recovery went to a training school for NCOs. From there he deserted in March of the following year, and it was his original statement, given voluntarily on his first interrogation, that resulted in this evidence being uncovered. He will say that when these prisoners were brought to the Headquarters, their presence was announced to Meyer by the guard in charge of them. That Meyer then said words to the effect: "What do we want with these prisoners, they only eat our rations?"; that he then had a private conversation in a low tone with one of the officers standing beside him, and then in a louder voice, so that all could hear, said: "In future we will take no prisoners." Following this, the officer to whom he had spoken privately left with the guard, followed by the witness, and after the officer had interrogated the prisoners and left, they were individually taken into an adjoining small park, where an Unterscharführer shot each in turn.

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In May last the witness was taken to the Caen area by the Canadian Investigating Team and there described on the ground exactly how this crime was committed. It was observed by the members of the team that the ground in the part had been recently disturbed. Inquiry was made of the French occupants of the buildings, and it was discovered that only shortly before eighteen bodies had been removed from the park. The civilians will describe to the court how they had been eventually found in carefully concealed graves. These bodies were all examined by a pathologist, and it appeared without exception, that all had died of head wounds. Eight had been killed by bullets fired into the head or neck, while the others had been killed either by multiple bullet wounds fired into the head, of which there was no positive evidence, or by the application of some blunt instrument such as a club or a rifle butt. All bodies were identified by disc, and each soldier was found to have been missing in action from his unit on 7 June. Evidence will be adduced to show that six, and possibly seven, of the eleven victims (other than the seven shot the following day) were seen by their comrades at the Headquarters alive and unwounded, as prisoners of war on the night of 7 June. Five of them were last seen in the custody of NCOs. The witness, Jesionek, accounts for the seven more killed the following day.

The evidence, therefore, on these last three charges, should establish that seven were killed on 8 June either as a direct result of Meyer's orders given immediately prior to their execution, or because of what he had declared to his troops prior to the invasion, and at the time in question. Depending, therefore, on the view which the court takes of the matter, and as to the credibility of the Polish witness Jesionek, the court will be invited to find the accused guilty of either the Third or the Fourth Charge. With respect to the killing of the eleven prisoners referred to in the Fifth Charge, the evidence is circumstantial, but it will be submitted as sufficient to render the accused again responsible for their deaths. It is not possible to determine precisely which prisoners were killed on which of the two days, but it is possible to identify six of them who were probably killed on 7 June. It will be suggested as a reason for the killing of most, if not all, of the eighteen, that it is because when questioned at the Headquarters they either refused to betray their comrades, their country and their cause, or that they were simply executed as a matter of routine after interrogation, as laid down in the order to the 15th Company. There is evidence, for example, that one of the victims, Lt. Windsor, because he would only give his name and rank, was slapped across the face by the German NCO interrogating him at the Headquarters He is one of those whose bodies were found in the concealed graves at the Abbaye Ardenne with a bullet wound in the back of the head.

The accused denied, in the course of his several interrogations, any knowledge whatever of any of these atrocities or any others. Some days, however, after having been told that he was about to be tried for these offences, he sent for a senior officer of my unit to make a voluntary statement. At the time, an effort was being made to secure suitable counsel for him, and he was advised not to make a statement until such counsel had been appointed, and had had an opportunity to advise him. He persisted, however, in his determination to make the statement, and was given the opportunity to consult with a professor of International Law, Oberst von der Heydte, a fellow prisoner of war. Following the latter's advice and in his presence, the evidence was taken and recorded. Meyer said that he wished to make it, so that he would not be charged with being a perjuror at the trial. It was to be merely as an "amendment" to his previous statement. He admitted that he had known all the time that eighteen prisoners had been killed at his HQ. He said, however, that he had only discovered this, some two days after the murders had taken place, when it was reported.

Andrew: Excuse me, that is not quite right, Mr. President. He does not admit to eighteen prisoners. He said "Prisoners." He didn't say eighteen prisoners at all.

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Macdonald: My recollection of the evidence is definitely that he saw eighteen or nineteen prisoners. I cannot turn it up at the moment but it will be before the court.

President: It will be turned up?

Macdonald: Yes, sir. He said that he didn't learn of this until some two days after the murders had taken place, when it was reported to him by the medical officers attached to the Headquarters. He says that he made an effort to discover the culprits, but was unable to do so. The Adjutant, Schuemann, on whom he seeks to place some of the blame, was subsequently sent back to his original battalion, the inference being that it was because of his negligence in this respect. The accused, when asked to name witnesses who could support his most recent story, mentioned a number of names, several of whom are known to be dead and others who well may be, by reason of the last information which is available with respect to them. One of the medical officers referred to by Meyer was unknown to him by name. His name was, however, eventually obtained by another German prisoner, who also said that this medical officer was an almost constant companion of Meyer, and had gone with him to Divisional HQ when he was appointed Divisional Commander. Upon this name being mentioned to Meyer, he was able to confirm that it was the one to whom he had been referring. Some of the others mentioned have themselves been listed as war criminals for many months and, needless to say, we have been unable to find them or they would be occupying the prisoners dock along with Meyer at the present time. Despite this, however, we have made every effort to locate all witnesses mentioned and have sent special investigators even to the Austrian homes of some of them, in an effort to bring them here. In the absence of these witnesses I have no doubt it will be contended by the defence that the accused is greatly handicapped. I suppose whenever the trial would be held that could be said. How, in any event, it would permit the accused to escape major responsibility is not at all clear. At most, it will be submitted, their evidence might serve in mitigation of punishment. It will be for you to judge, however, what weight is to be given to this story, after you have heard all that the prosecution and defence have to say on the points. These, then, are the facts which will be adduced in proof of the charges contained in the first charge sheet.

In announcing in the House of Commons the organization of the War Crimes Investigation Unit at CMHQ and the policy to be followed in the prosecution of war criminals, the Prime Minister of Canada, Mr. Mackenzie King, said, "The courts will be constituted from Military personnel, experienced in the laws and usages of war, and the proceedings will be conducted with dignity, fairness and justice." In pursuance of that policy, so laid down, and of the provisions of the *Manual of Military Law*, I, as prosecutor and CO of the unit carrying out the investigations into war crimes, have endeavoured to conduct myself in an impartial manner, and will place before the Court all the relevant evidence to enable it to come to a correct conclusion as to the guilt of the accused. We have offered our services to the Defence to locate any witnesses whom they may require, and we have offered them complete access to all our files and material. We have examined many Canadian soldiers, and every member of the 25th Panzer Grenadier Regiment that we have been able to locate. These examinations have been available for Col Andrew's inspection. I do not propose to bring before you, evidence which is merely negative. All evidence of a positive character, however, will be made available to the defence for their use as they maybe advised. We have arranged for the attendance, even from Canada, of those witnesses requested by the defence, whom we were able to find. And, in this connection, I think I should make it clear at this point that there is no legal authority by which we can compel the attendance of witnesses before this Court, that is, the non-military witnesses, and, particularly some residing in another country and some of the witnesses whom we wished to bring here for the prosecution have refused to come and there was no way by which we could bring them here. For that reason we will have to produce affidavits in a number of cases in lieu of their personal attendance.

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I feel sure that the Court will appreciate the somewhat difficult role that both my friend, Col Andrew and myself have at this trial. He has very recently been engaged as a combatant officer. I know, however, that despite that handicap, he will, as a good lawyer should, do everything he can to get his client acquitted. I likewise have a similar difficulty to overcome. I am required to be impartial, to assist the Court in reaching a just result, and to avoid comments or language designed to "inflame," whatever that may mean. If I should inadvertently, in my zeal, go beyond my proper limitations, I would be grateful if you, sir, or the Judge Advocate, would call that to my attention. I shall endeavour to be as objective as possible, for I am sure that we are all in accord, with the belief, that this trial should not be regarded by anyone as in the nature of a witch hint. We are not trying the accused because he is a Nazi or a member of the SS but because we say he, as an individual, violated the laws of war. He should, therefore, be given a fair trial, according to our concept of justice, and only if he is convicted after such a trial, should he be punished. It is more important that that principle prevail, than that we should succeed only in giving temporary satisfaction to the feelings of those most affected by these crimes, by convicting this man, in retribution for offences which he is not personally responsible. If, in the opinion of the court, the charges are not proved, I most seriously ask that there be no compromise, but that the accused be completely cleared and acquitted.

If, on the other hand, you are satisfied, as we confidently anticipate you will be, that the prosecution has succeeded in its task, and has established beyond a reasonable doubt the moral, military, and I submit the criminal responsibility of the accused for the offences charged, then we shall ask that without fear or favour a clear finding of "guilty" be recorded.

If this trial is to serve its purpose as a deterrent for the future, so that if, despite our best efforts, war again should come to our nation and its forces, then it must serve as an object lesson of inexorable justice, effectively to restrain under battle conditions, all, no matter what their rank may be, who, even momentarily, consider the murder of prisoners of war.

I apologize for occupying so much of your time, but I hope that what I have said will somewhat clarify the issues to be tried, and will, at the same time, save me the necessity and you the misfortune, of having to hear me at length, at the conclusion of the case.

(At 1220 hours the Court adjourned until 1400 hours on the same day.)

The Prosecution Proceeds to Call Witnesses

By the Prosecutor, Lt-Col B.J.S. Macdonald

Before calling the first witness, sir, I would like to refer to a matter brought up this morning by my learned friend, during the course of my address. He took issue with me as to my accuracy in reference to the number of bodies seen by the accused at the Ancienne Abbaye, so I have turned up the relevant evidence, which is that of the accused given to 1 Canadian War Crimes Investigation Unit on 28 October at p. 11, Question 29 which reads as follows:

"*Q.* Now, when you went to look at these bodies, where were they – where did you find them? *A.* In the garden.

Q. How many bodies were there? *A.* The number I cannot give exactly, it must have been eighteen or nineteen."

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I would also like to get the consent of the Court to a course of action that I wish to follow. There are two interpreters, official interpreters that I should like to call as witnesses. The first one, Major Stonborough, I propose to call merely on certain matters of formal proof. You each have a document before you or will have, which contains certain comparisons with respect to Waffen SS and Canadian units and it is purely a matter of formal proof to which my learned friend has no objection, I understand.

Andrew: Yes, I have no objection.

Macdonald: The other one is as to Captain Pootmans who is both a Flemish and German interpreter and I would like to call him during the course of reading the first evidence I shall bring before the Court to interpret a Flemish document, and he will later be called on matters of fact but I have warned him that after he has given his evidence he will have to leave the court and not appear again until he is called again as a witness before the court. I have spoken again of that to the Defending Officer and he has no objection.

Andrew: No objection.

Macdonald: My third point is as to my assistant, Lt-Col Campbell. At a certain stage of the proceedings I should like to put him in the box to prove certain photographs and maps. He took the photographs himself and he can put us straight on the photographs and maps which are put before the Court. It would be more convenient if it were done then than now, because I am afraid it will have very little meaning if we had him in now. My friend, I understand has no objection to that?

Andrew: I have no objection.

Macdonald: Now, the next matter is, as I suggested this morning, the difficulty of getting all the evidence before the Court through a personal witness and the witness I should like to call [as] if he were here is a German by the name of Torbanisch. I have made every effort to get him here but have been unable to do so. His evidence, however, was taken before the SHAEF Court of Inquiry and recorded in a volume described as *Supplementary Report of the Supreme HQ Allied Expeditionary Force Court of Inquiry Re Shooting of Allied Prisoners of War*, and with the permission of the Court I would like to read that evidence at the present time. I have placed before the Judge Advocate copies of the various documents to which I propose to refer. I have not supplied the other members of the Court with them, and I am sorry I am unable to do that, but as every one of these examinations involves, as you will readily understand, certain irrelevant material in connection with other things which we were investigating, and contain certain suggestions about other theatres of war which, I imagine, you will agree should not come before the Court in this connection. To prevent that question ever arising as a reason for, or supposed reason for, a possible miscarriage of justice, I have placed this before the Judge Advocate and my learned friend only so that they can check me as I read from them, to see that I read all they would like me to. If that meets with the approval of the Court, I will proceed with the examination of the first witness. First I will call Maj Stonborough as to the formal matters to which I referred.

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CALLING OF THE WITNESSES FOR THE PROSECUTION

FIRST WITNESS FOR THE PROSECUTION

Maj John J. Stonborough, Intelligence Officer, No. 1 Cdn War Crimes Investigation Unit, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Q. What is your name, rank and unit? *A.* My name is Stonborough, John J. and rank is Acting Major and I am Intelligence Officer of No. 1 Canadian War Crimes Investigation Unit.

Q. Have you in the course of your duties in such capacity had to examine and inquire into compositions of the various German military formations and make comparisons with similar Canadian formations? *A.* I have.

Q. And have you had a part in the preparation of a folder described as Miscellaneous Organizational Data and Plans, Trial of Brigadeführer Kurt Meyer which I now show you? *A.* I have.

Q. Are you able to certify that to the best of your knowledge the matters contained in that folder are with respect to the various comparisons, apart from the plans themselves, accurate and correct? *A.* Yes, I can do that.

(Folder entitled Miscellaneous Organizational Data and Plans, Trial of Brigadeführer Kurt Meyer is entered as Exhibit T-1, signed by the President and annexed to the proceedings.)

Judge Advocate: Col Andrew, have you seen this Exhibit T-1 and are you satisfied that it is correct?

Andrew: Quite – to the best of my knowledge.

(Folder containing copy each of Caen Sheet 7F/1 1:50 000; Thaon Sheet 37/16NE 1:25 000; Ouistreham Sheet 40/16NW 1:25 000 is entered as Exhibit T-2, initialled by the President and annexed to the proceedings.)

(The Defending Officer declines to cross-examine.)

(The witness withdraws.)

Macdonald: I wish to read from the evidence of Friedrich Torbanisch which is Exhibit No. 5 in the *Supplementary Report of the SHAEF Court of Inquiry*. Unfortunately, these interrogations have no numbers as to the questions and answers and I can only refer you to the exhibit and as many lines as I can estimate they are down the page.

Judge Advocate: Now for the purposes of the record it is important that you indicate exactly what you are reading from. I think you may have done so.

Macdonald: I think so, yes, sir.

Judge Advocate: It is the Supplementary Report of the Supreme HQ Allied Expeditionary Force re: Prisoners of war by 12 SS Panzer Division in Normandy, France 7 June 1944, and you are going to read from Exhibit No. 5 of that report the evidence of Pte. Torbanisch?

Macdonald: Yes.

Judge Advocate: I don't know if it is the best way to call this man Torbanisch the second witness. What do you think? Or just to say "Prosecuting Officer now reads so and so." I think that perhaps is better. What do you think?

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Macdonald: We might refer to it possibly as the "statement or evidence of so and so, given to so and so."

Judge Advocate: "Pte. Torbanisch" – is that his description? It doesn't appear here. Who is he?

Macdonald: He describes himself as he goes through his examination as a grenadier of the 15th Company 25 Panzer Grenadier Regiment.

Andrew: Mr. President, may I ask for a direction of the Court? When my learned friend has finished reading what parts of Torbanisch's evidence he proposes to read, may I have the opportunity of reading those parts I wish to have entered as soon as my friend has finished because if the witness were here he would be produced for cross-examination.

President: Yes, I think we shall have to allow that.

Macdonald: Yes, I have no objection to that at all. It would be very similar to cross-examination. For simplification and reference later I suggest we refer to this Report as the *Supplementary SHAEF Report*.

Judge Advocate: Yes. Will you read slowly please.

Macdonald: I will refer first of all before reading this evidence to page two of the Report which is a *Report of the Proceedings of the Court of Inquiry* so you will have before you some knowledge as to where this Court sat and on what date...

Macdonald: *(Reading)* "The Court, constituted as last mentioned, was composed of as shown on page one, Lt-Col J.H. Boraston, CB, OBE, Lt-Col B.J.S. Macdonald and Lt-Col C.S. Cutting, US Army,... United States Prisoner of War Overhead Detachment 2021, APO 517, Chartres, France,... 6 Jan 1945'."

... The following named witness was examined on oath, ***Grenadier Friedrich Torbanisch*** Prisoner of War, late of 15 Company 25 Panzer-Grenadier Regiment, 12 SS Panzer Division, (Hitler-Jugend)..." This is the evidence.

"Lt-Col Boraston: Q. What is your full name? *A.* Friedrich Torbanisch.

Q. What is your rank? *A.* Private, Grenadier.

Q. To what Regiment did you belong when you were taken prisoner? I want to know your unit. *A.* I was not in the front. I was a deserter since 4 April 1944.

Q. From what unit did you desert? *A.* Fifteenth [Company] 25 Regiment SS Division (Hitler-Jugend).

Q. What is your age? *A.* Eighteen and one half years. I am going to be nineteen on the 27th March.

Lt-Col Macdonald: Where did you live? *A.* Sassahnfart, near Banberg, Bavaria.

Q. Do your parents live there now? *A.* Yes.

Q. Are you married or single? *A.* Single.

Q. What languages do you speak? *A.* I speak Flemish. I was with the Belgian Resistance Movement and worked with them.

Q. Do you speak French or English? *A.* No.

Q. When did you first become attached to the 25 SS Panzer Regiment? *A.* 16 June 1943, but it was not voluntarily. I was transferred into it.

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Q. With what unit had you been serving prior to that time? *A.* No others.

Q. Had you been with a Hitler Youth Organization prior to that time? *A.* We had to belong after our tenth birthday.

Q. Where did you serve with the 25 Regiment? *A.* At first we were in Belgium. Beverloo in Belgium. I was there for training. The Railroad Station is Bourg-Leopold.

Q. How long were you there? *A.* Until January 1944.

Q. What year? 1944? *A.* Yes.

Q. Where did you go from there? *A.* From there I went to Montague.

Q. Where is that? *A.* Also in Belgium, five kilometres from Diest.

Q. How long were you there? *A.* Until the 4th April.

Q. What were you doing there? *A.* I was practicing close combat.

Q. Where did you go when you left Montague? *A.* To France.

Q. What part of France? *A.* L'Aigle near Caen.

Q. How long did you remain there? *A.* As we came out of the transport I deserted.

Q. Was that at L'Aigle? *A.* Yes. ...

Q. Were you still in the 25th Panzer-Grenadier Regiment at that time you deserted? *A.* Yes.

Q. Who was the Commander of the 25th Panzer Grenadier Regiment at that time? *A.* Panzer Meyer Standartenführer.

Q. Who was in command of your Company? *A.* Captain Poehnike. I can't spell it because I don't know how it is spelled.

Q. And which company was this? *A.* Fifteenth Company, Reconnaissance Company.

Q. Who was your battalion commander? *A.* We were a regimental support unit, not a battalion.

Q. Were you attached to Regimental HQ? *A.* Yes, we were attached to Regimental HQ. We were a Regimental Unit.

Q. Who were the other officers in your Company? *A.* Untersturmführer Fuss, Untersturmführer Feling, Untersturmführer Peug, Untersturmführer Exner. Those were all the officers and the Captain who was Company Commander.

Q. Was he Hauptman or Hauptscharführer? *A.* He was a Hauptman. He came from the Wehrmacht.

Q. Were you given any order as to what you should do in the event of capturing Allied soldiers? *A.* Yes, we had secret orders.

Q. What were those orders? *A.* I gave those to the White Army Intelligence Service.

Q. Did you give those orders from memory or did you have a copy of them? *A.* No, I gave them from memory of what I could remember but my memory was still very fresh.

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Q. How were these orders communicated to you? *A.* They were read to us and we had to sign.

Q. What did you sign? *A.* That these secret orders were known to us.

Q. When were these orders read to you? *A.* That was in April 1944.

Q. And was this while you were at Diest? *A.* Yes, in Montague.

Q. Who read the orders to you? *A.* The Stabscharführer Spiess.

Q. What was his name? *A.* Hegetorn.

Q. Who was present when this order was read? *A.* The Company was in formation.

Q. Were the officers on parade? *A.* No, we had roll call at 6 o'clock at night and there the orders were read and later on we had to sign.

Q. Can you remember the date on which this occurred? *A.* No, I don't know that any more.

Q. Can you say whether it would be at the beginning or the end of April? *A.* It was right at the beginning of April, either 1st, 2nd or 3rd, just before we left for France.

Q. Did Spiess add anything to what he had read in the way of orders? *A.* No, he didn't add anything to it; he just told us that we had to sign that we had heard the secret orders, but we couldn't tell them to anybody else, otherwise we would be shot as spies.

Q. How long did you serve with the White Brigade after you deserted? *A.* Since May. They kept me supplied with clothing and food and also brought me to a farmer where I could work in my free time when I wasn't busy as a spy.

Q. Are you in a Prisoner of War Camp at the present time? *A.* Yes, I am now in a Prisoner of War Camp.

Q. I show you what purports to be a photographic copy of the orders which you said were read to you; will you look at these papers and see whether they contain the substance of what you remember of the orders that were read to you in April by the Spiess? *A.* Yes, this paragraph referring to the first one is right. Second paragraph is also correct. The third order is right, too. Fourth is correct. That they shouldn't take any prisoners. The second paragraph of the fourth order is right too. Sixth order is right. The general paragraph is also right.

Lt-Col Macdonald: These will be entered as Exhibit A-1 for the first page and A-2 for the second."

Macdonald: Now, I think at this point it might be well so that the Court can follow the evidence, if these documents were placed before the Court and the Interpreter interprets them for you. My friend says that he is willing to accept the English interpretation which is marked A-3. I have Captain Pootmans here and he has some minor criticisms of the translation. They don't affect the substance of it at all. We will call him, however, if you wish.

Judge Advocate: The Defence is satisfied that they are proper translations?

Andrew: Yes, I am satisfied, sir...

Judge Advocate: That is, originals and the translations, all in one?

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Macdonald: Yes. The first is in the Flemish language and is marked Exhibit A-1. A-2 is the translation of A-1 into German and A-3, which is the third piece of paper, is a translation of both into English, or I should say possibly an interpretation of A-1. They will be pinned together and marked as T-3?

Judge Advocate: I should think so.

Macdonald: I have copies for each member of the Court. With your permission I will read the order.

President: Just before you read it, what is this? Is this the photostatic copy of this order as dictated to the Belgian White Brigade?

Macdonald: Yes.

President: Well, who has the original?

Macdonald: It was part of the SHAEF Proceedings and it was, of course, not an original insofar as the witness was concerned. It was merely something that he dictated and agreed to as being correct. It appears as an Exhibit in the SHAEF Report.

Judge Advocate: He dictated it out from memory?

Macdonald: Yes.

Andrew: This will be, sir, the subject of an argument when the time comes. I could object to it now, make my objections now as to its proper proof, but I think perhaps it would be better later.

Judge Advocate: If you are going to say it is not admissible before the Court, it would be better to say so now.

Andrew: I will argue about that later.

Judge Advocate: That will be Exhibit T-3 then.

(Photographic copies of orders of Exhibits A-1, A-2, and A-3 to SHAEF Supplementary Report *is marked Exhibit T-3, signed by the President and attached to the proceedings.)*

Macdonald: *(Reading)* "***1st Order:*** – Attitude towards civilian population in occupied countries: If the population looks contemptuously at an SS soldier or spits at him, the person concerned may be beaten and arrested. If the cross-examination results in the impression that the arrested is an Anti-German he shall be secretly executed.

2nd Order: – If a person tries to get information about weapons and ammunition he shall be arrested and cross-examined in the most rigorous manner. If the cross-examination results in the impression that the arrested is a Anti-German he shall be executed for espionage. The same punishment shall be meted out to soldiers who pass on information about their weapons.

3rd Order: – Guards are not allowed to leave their posts, nor are they allowed to eat, sleep, smoke, lay down, let their weapons out of their hands as long as they are on guard duty. Leaving the post before being relieved or passing on of the password to the population will be punished by death. The password is the most important thing of guard duties.

4th Order: – Attitude at the front: The SS troops shall take no prisoners. Prisoners are to executed after having been interrogated. The SS soldiers shall not give themselves up and must commit suicide if there is no other choice left. The officers have stated that the British do not take prisoners as far as SS soldiers are concerned.

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5th Order: – Information about enemy's troop movements is to be communicated quickly. Communications on paper shall, at the same time, be learnt by heart. If a soldier gets into danger all papers must be burned or eaten up. He is to carry nothing but his identification disk. Silence must be kept about everything. The traitors will be executed, even after the war.

6th Order: – The observers returning with information from the front and accompanying officers shall not take the same route as to the front."

Macdonald: Now, to continue with the reading of the evidence.

"Q. Do you remember the date upon which you related these orders to the person who copied them down in this form? *A.* I know the person, but I don't know the date.

Q. Was it in the month of April? *A.* No, it was later, after I deserted.

Q. What was the date upon which you deserted? *A.* I don't remember that either. I only know that we came to France on the 4th of April and after that I deserted.

Q. How many days or weeks was it after you arrived in France that you deserted? *A.* About two or three days later.

Q. Where did you go when you deserted? *A.* Back to Belgium.

Q. How long did it take you to get there? *A.* I arrived there on Pfingsten. Pfingsten is a German holiday which follows seven weeks after Easter; it includes the Sunday and Monday. *(The interpreter explains: The witness is referring to the Monday.)* It was sometime in May.

Q. Did it take you over a month to get back to Belgium? *A.* Yes, it took longer.

Q. And how long after you got back to Belgium was it that you told someone about these orders? *A.* When I got the civilian clothes; but I don't know when.

Q. Would it be within a few days after you got to Belgium? *A.* It might have been some days later. It might have been in June, in July, I don't remember; but these orders always remained the same; they are not changed even after commitment of the troops.

Q. How were you able to remember in such detail the contents of those orders? *A.* We had to know them.

Q. Did you have to memorize them? *A.* He read them to us and he told us that we had to know them; and if we didn't know them we would be punished.

Q. And are you quite sure that everything that you have read on Exhibits A-1 and A-2 was read to you by the Spiess on the occasion that you have mentioned? *A.* Yes, we had to sign that we had heard these secret orders.

Q. I noticed in the fourth order you say the officers have stated that the British do not take prisoners as far as the SS soldiers are concerned; is that something which you have added or is that a part of the order itself? *A. (Interpreter reads from the exhibit)* That is the way we have been told, the way it is stated in the order, and for that reason we should not take any prisoners either.

Q. Is that what the Spiess said at the time? *A.* Yes, he said that the British don't take any SS; don't take any prisoners when they come to SS prisoners, so we wouldn't take any either...

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Lt-Col Cutting: Q. What is the difference is observance on secret orders when compared with others? What is the difference between secret orders and any other orders? How are they described to you? Do the secret orders vary or are different from other orders when they are read out to a formation or a line as you were? *A.* Yes, there is a difference. The whole company comes in a tight formation and they are announced in a less loud voice so that no passing civilians can hear them.

Q. Did they tell them not to speak to anybody outside their units about them? *A.* Yes, that is with the secret orders.

Lt-Col Boraston: Q. You said that you knew the name of a person to whom you gave this summary of the secret orders; will you tell us what his name was? *A. (Witness writes down name.)* Loras Swei, house number 208, Village of Assent. That is where I was when I gave them the secret orders. ...

Q. Why did you desert? *A.* I was no volunteer with the Waffen SS. I was forced to serve with the SS.

Q. Did you actually serve with the White Brigade in Belgium? *A.* Yes, I worked with them...

Q. Your question will be recorded. *A.* How am I to interpret that?

Q. That it is recorded and I am afraid that is all I can tell you now. *A.* I would like to know what is going on back home. I have never been registered; never been processed or given a prisoner serial number. May I communicate with my people?"

Andrew: There are one or two places, sir, I would like to read in this evidence. The last question and answer on page six.

"Q. How long exactly were you at L'Aigle? *A.* It was evening at 1030 when the company was unloaded from the train and then we drove to our bivouac area and I was with a motorcycle; so I went with my motorcycle the other way in order to escape on my way back to Belgium. The next day it was known; it became known that I had deserted and the SS Police started looking for me and I had to shoot an SS officer.

Q. So you weren't actually at L'Aigle at all yourself? *A.* No, I wasn't there where the company was.

Q. Do you know the name of the officer that you shot? *A.* No, I had to hurry, otherwise the other police would have caught me...

Q. In this Court is set up for a special purpose; but any question you may put to the Court, which are not within the authority of the Court, will be passed by the Court to the proper authorities. *A.* I told this man Loras Swei that I should be in Belgium Intelligence, that he should find a way to pass word to my parents and say where I am, and also that when some spies come in winter or any time why they would try and find shelter with them; and I want to know if I can go there.

Q. What you are saying is recorded and will be passed to proper authorities. *A.* That is all, only, I would like to wash myself because I feel like a pig.

Q. Yes, we will arrange for it."

Macdonald: The next witness will be SS Panzer Grenadier Alfred Helzel.

Judge Advocate: Referred to in the abstract?

Macdonald: Yes, sir. I would like to suggest that this witness be asked to affirm rather than to be sworn on oath. In the course of his original interrogation he said that he did not believe in God, and since then he

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told me that he somewhat changed his views on religious matters but would still prefer to be affirmed rather than sworn.

Judge Advocate: *(To interpreter):* Will you tell the witness that he is going to be asked to make a solemn declaration that he will tell the truth.

Second Witness for the Prosecution

SS Mann Alfred Helzel, 12th SS Panzer Division (Hitler-Jugend), having been duly affirmed by the Judge Advocate, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Q. What is your name? *A.* Helzel, Alfred.

Q. What is your rank? *A.* SS Mann.

Q. How old? *A.* Nineteen years.

Q. When were you taken prisoner of war? *A.* 11 June 1944.

Q. Where? *A.* In Bretteville, near Caen.

Q. Had you been previously wounded? *A.* Yes.

Q. On what day were you wounded? *A.* It was approximately at mid-night from 8 to 9 of June.

Q. Was that in the course of an attack on Bretteville? *A.* Yes.

Q. Where were you born? *A.* Kunnersdorf.

Q. Where is that? *A.* Czechoslovakia.

Q. What was the occupation of your father? *A.* Farmer.

Q. Did your father ever serve in any of the armed forces of the German Reich? *A.* Yes.

Q. In what branch? *A.* In Artillery.

Q. Were you, prior to your enlistment in the Waffen SS, a member of the Hitler Youth? *A.* Yes.

Q. When did you join the Waffen SS? *A.* 10 August 1943.

Q. To what unit were you posted? *A.* I came to the 10th Reserve Battalion of the Totenkopf Division.

Q. And were you then transferred to some other unit or formation? *A.* We were then taken over to the 12th SS.

Q. Where were they at that time? *A.* At that time it was being formed in Beverloo in Belgium.

Q. And to what place did the Division move after it left Beverloo? *A.* France.

Q. Now, to what Company or Battalion had you been posted? *A.* We were posted to the 15th Company of the Regiment.

Q. What Regiment? *A.* 25th Regiment.

Q. Who was commander of that Regiment at the time you were posted to it? *A.* Standartenführer Meyer.

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Q. Do you see him in the Court Room? *A.* Yes.

Q. Point him out. *A*. In the second row. *(Witness points towards accused.)*

Q. Who, at that time, was your Company Commander? *A.* Obersturmführer Ritzert.

Q. Will you tell me to what place your Company moved after it left Beverloo. *A.* To a small locality in Belgium called Montague.

Q. How long did you remain there? *A.* Approximately two months.

Q. And to what place did you then move? *A.* To France.

Q. To what part of France? *A.* Normandy

Q. Do you know the name of the place in Normandy? *A.* Le Sap.

Q. And when did you move next – from Le Sap? *A.* On the morning of the day of the beginning of the invasion.

Q. Was that the morning of 6th June 1944? *A.* Yes.

Q. Up until the time you were taken prisoner of war, were you continuously a member of the 15th Company of 25th Panzer Grenadier Regiment? *A.* Yes.

Q. Who were the various Company Commanders which you had during the period of your service with the 15th Company? *A.* The first was Obersturmführer Ritzert. Then subsequently the Company Commander was Hauptsturmführer Baederkel.

Q. And who succeeded him? *A.* Then the real Company Commander, Hauptsturmführer von Buettner.

Q. And when did von Buettner come to be Company Commander? *A.* On the 2nd or 3rd of June 1944.

Q. And did he command your Company in action? *A.* Yes.

Q. And what became of him? *A.* As much as I know, he fell during the attack on Bretteville.

Q. Do you mean that he was killed in action? *A.* Yes.

Q. Who was your Stabscharführer during the period of your stay in Belgium? *A.* StaSchS. Hagetorn.

Q. Were you at any time given any instructions or advice by the Regimental Commander, Standartenführer Meyer, as to the taking of prisoners? *A.* Not from Meyer personally but in Company instructions.

Q. Who gave you the Company instructions? *A.* The Company Commander or the Company Chief.

Interpreter: May I add here, sir, the Company Commander is the man who leads the Company and the Company Chief is the real OC. There is a difference here in the German Army.

Q. And who was the Company OC? *A.* It was HSS Baederkel.

Q. And what did he say to you? *A.* That if prisoners are taken they are immediately to be brought back to be treated decently as it is of great value if the prisoners make statements.

Q. Did you have any instructions from any of the other Company Commanders, for instance, von Buettner? *A.* No.

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Q. Had you any instructions from your company Stabscharführer? *A.* Yes.

Q. What was the nature of the orders which were given to you by StaSchS. Hagetorn? *A.* In the main it was about the behaviour towards the French civilian population.

Q. Were these orders given to you in the normal way or in some unusual way? *A.* These orders were read to us and subsequently we had to sign them.

Q. Where and when did this take place? *A.* It was in Montague.

Q. I show you a document in the German language, marked Exhibit A-2, which is part of Exhibit T-3, a document which I believe you have previously identified. Will you look at that and tell me if you heard any such order ever given at any time? *A.* Yes.

Q. Where and when did you hear these orders? *A.* It was approximately the middle of March in Montague.

Q. And who gave you these orders? *A.* StaSchS Hagetorn.

Q. Will you know examine each one of these orders carefully and tell the Court whether you agree that the orders shown on that Exhibit accurately record what was told to you at that time? *A.* Yes. Paragraph one is not correct – the first order.

Q. Will you say what is wrong with it?... *A.* If a Frenchman looked hostile at an SS Mann in the street, he could not be beaten but he could be arrested and taken to the Company Orderly Officer and there handed over. And it says here "secretly executed." The Company Orderly Room had to hand him over to the police.

Judge Advocate: That is order number two, I take it?

Macdonald: No, we are still speaking of order number one.

Helzel: If someone tried to obtain information about weapons or ammunition, he could be arrested and also handed over to the Orderly Room, and not as it says here in paragraph two, to be executed for espionage. Paragraph three is also not quite correct. If a sentry left his post or left it before he was relieved he was not shot, but was punished with seven to fourteen days close arrest. Paragraph four is also not quite correct. SS troops were to take prisoners. Also the prisoners were not to be executed after interrogation. The last paragraph can also not be correct that the officer had said that the English had not taken prisoners otherwise I too would not be a prisoner. Paragraph five is also not quite correct. The papers were to be burnt except pay book and identity disc.

Q. Now, I show you a certain document. Is that your signature? *A.* Yes.

Macdonald: I wish, Mr. President, to file as an exhibit, as identified by the witness, a record of the evidence given by this witness to No. 1 War Crimes Investigation Unit on the 3rd of July 1945 and attached to that, a further record, a further examination before No. 1 War Crimes Investigation Unit on the 2nd of October 1945.

Judge Advocate: *(To Andrew)* Have you any objections to these reports, inasmuch as the witness is here himself?

Andrew: Yes, I object to that. The witness is here before the court and he can bring out whatever evidence he did on the enquiry and give it before the court, regardless of any regulations or the governing paragraph relating to evidence. He is here now and can be examined and cross-examined.

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Judge Advocate: I would advise the court, subject to hearing the argument, that when you have the witness here in person surely that is the time for his evidence to be brought out. You can't read from any previous report except with the permission of the court to ask him if he has previously made that statement. In other words, you may check him on his evidence with reference to any past evidence as you may in the case of any other witness.

Macdonald: That, of course, is the point in introducing this record of the examination. He was previously examined on the matters and the evidence was read back to him as the second exhibit will show, and he agreed and signed his name across the front and back to indicate that he has identified his signature and said he signed the first copy of the evidence. I wish that to be before the court for what value it may be.

Judge Advocate: Ask the witness if he has on a previous occasion made these statements and refer him to the statements by reading them and asking him whether he made them.

Macdonald: I propose to do that next.

Judge Advocate: What you want to do is to read these statements and to ask him whether he did or did not make those statements before.

Macdonald: I will go about it that way if you prefer it. If you refer to Regulation 10 of the *Canadian War Crimes Regulations*, you see in paragraph 10, I, "At any hearing before a military court convened under these Regulations the court may 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."

Judge Advocate: What you should do, though, is ask him if he made the statements. He may say that he was forced to make those statements.

Macdonald: Very good, we will go about it that way. *(To the witness) Q.* Now, do you remember giving evidence before some Canadian officers of which I was one, at Hull, Quebec, Canada on the 3rd of July 1945? *A.* Yes.

Q. And do you remember again being examined at the London District Prisoner of War Cage, Kensington Palace Gardens, on the 2nd of October 1945 by myself? *A.* Yes.

Q. And do you remember on that occasion that Maj Stonborough, the present interpreter, read to you all the evidence which you had given to me in Canada? *A.* Yes.

Q. And do you remember at that time saying, do you remember this question being asked you, "Now you have had translated to you the twenty-three pages of your evidence. Subject to the corrections which you have asked to be made, do you agree that you are correctly reported?" *A.* Yes.

Q. And your answer to that question was "yes, sir"? *A.* Yes.

Q. And "In order to identify again the copy which you have been looking at during the course of the translation, I want you to write your name on the first and last pages." *A.* Yes.

Q. And your answer, "yes, sir *(Witness signs his name twice)*." *A.* Yes.

Q. And the question "You took an oath to tell the truth" and your answer "Yes, sir." *A.* Yes.

Q. And "Do you consider that oath binding on your conscience" and your answer "yes, sir." *A.* Yes.

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Q. And then a further question "And then do you swear that the evidence you have given and are reported as having given is correct and truthful?" and your answer "yes, sir."

Q. You remember being asked those questions and giving us those answers? *A.* Yes.

Q. Do you remember being asked this question by me in Hull, Quebec, "Did von Buettner subsequently tell you himself that you were not to take prisoners?" Do you remember me asking that question? *A.* Yes.

Q. And do you remember saying in reply to that question, "That he said, yes"? Do you remember giving that answer to the question which I have just read? *A. (No audible answer.)*

Q. Answer the question, witness. You have had this read to you before. *A.* I did so answer.

Q. And were you asked this question "Did you ever hear Meyer say that?" Were you asked that question? *A.* Yes.

Q. And do you remember giving this answer, "Yes, he said that, but I cannot assert that it was said on that day"? *A.* Yes, I said that.

Q. Do you remember being asked this question, "When did he make that statement?" *A.* Yes.

Q. And do you remember making this answer, "Meyer was frequently with our Company. Therefore, I cannot precisely say when he said that"? *A.* Yes. I said that.

Q. "Did you hear him say something to that effect yourself?" Do you remember that question? *A.* Yes.

Q. And do you remember having made this answer: "I heard him personally say that"? *A.* Yes, sir.

Q. Do you remember being asked this question: "Will you repeat as nearly as you can the exact language which he used"? "My regiment takes no prisoners." That is the answer which you gave at that time, is it not? *A.* Yes.

Q. And were you telling the truth when you said that von Buettner also told you not to take prisoners? *A.* I cannot remember that Hauptsturmführer von Buettner said such a thing.

Q. But you remember telling me in Canada that he had told you that you were not to take prisoners? *A. (No audible answer.)*

Q. You have just said that you heard that question asked at that time? *A.* I no longer quite recall the answer which I gave.

Q. Well, I shall read the question to you again. "Did von Buettner subsequently tell you himself that you were not to take prisoners?" That is the question which you have just said you remembered that I asked you and the answer which you have just said that you gave at the time was that you said "Yes." *A.* It is correct.

Q. So, then, it is correct that von Buettner told you that you were not to take prisoners? *A.* Yes.

Judge Advocate: Col Macdonald, you are, in effect, treating your own witness as hostile. You realize that?

Andrew: Quite.

Judge Advocate: *(To Andrew)* And you are satisfied that under the circumstances of the previous report that he is, or could properly be, treated as hostile.

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Andrew: No. I am not saying that at all because there are two different settings.

Judge Advocate: Two different what?

Andrew: Settings. Places or circumstances in which this evidence has been taken in. One of them is an interrogation in a prisoner of war camp where the setting is not the same as in the court room. I am just giving you my answer as to why I don't think he should be treated as hostile.

Judge Advocate: No, but you are rather late to say that.

Andrew: But you just asked me a question and I am just answering you, sir.

Judge Advocate: Will you continue then?

Andrew: I was going to say that the method of interrogation is absolutely different than the method of interrogation the prosecution has used in this court room, with the witness here, and he was allowed – I want to put this to you, sir, – he was allowed, in order to put in this statement, to question the witness on it, but he has been allowed to treat him as a hostile witness. I have not said anything but that he has been allowed...

Judge Advocate: No, but you made no objection to him being treated as a hostile witness. That is the point I am making.

Andrew: No, but what happened is this: my friend should have said, "May I be allowed to go ahead and treat this witness as a hostile witness?" and the court so decides before he starts the examination. He started in and asked these questions before I could make any objections. The answers are down: most of them: the first two. The usual request is that he asks the Court that the witness be allowed to be treated as a hostile witness.

Judge Advocate: Yes, I think that should have been done, Col Andrew. The point is that the prosecutor was [bringing] in a document.

Andrew: Quite.

Judge Advocate: And to my mind he has put the questions to determine whether or not the document was admissible.

Andrew: Right.

Judge Advocate: Now, it is quite conceivable – it is a debatable point – that under the regulations, they are entirely new regulations, that the document could have been put in as an exhibit. The court agreed that it is not fair to put in the document when the court has the witness before it, but that the prosecution may refer the witness to the document and ask him if he did make the statements recorded in it and did he sign it.

Andrew: Yes. That was done by my learned friend. The first few questions were alright and then two questions regarding von Buettner slipped in before I made objection. Before I could make any objection the questions were in. The usual practice is to state: "May I treat this witness as a hostile witness?" and the court says "yes" or "no."

Judge Advocate: I think if that document had been placed before the Court that that would have been their decision, and I think if that had been done that we would be where we are now. Do you agree with that?

Andrew: Quite. Quite.

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Macdonald: *(Resuming examination)* Do you also remember that I asked you in Canada this question: "Do you remember Stabscharführer Hagetorn having an assembly of your company a few days before you left for France, in the evening at which time he gave you certain secret orders?" You answer: "That I cannot remember, sir"? *A.* Yes, sir.

Q. And the question, "Did you know a man in your company by the name of Torbanisch?" *A.* Yes.

Q. And your answer: "Yes." *A.* Yes.

Q. And, "Was Torbanisch's first name Friederich?" And your answer: "I didn't know him that well." *A.* Yes.

Q. Question: "He has told us that at Montague shortly before you left for France that Stabscharführer Hagetorn had a company assembly at six o'clock on this particular evening and that at that time he gave you certain secret orders, and you were required to sign that you had heard the orders given to you. The orders had to do with your behaviour in France with regard to the civilian population and what you should do about taking prisoners, and other things?" and your answer: "Yes, we signed that order"? *A.* Yes.

Q. Question: "And do you remember that one of the orders that Hagetorn gave you at that time was that SS would not take prisoners, and that the British did not take SS prisoners and therefore you would not take prisoners?" Your answer to that was "Yes, sir." Do you remember that question and making that answer? *A.* Yes.

Q. And then this question: "But the fact is that you do remember an order being given to you that the SS troops would take no prisoners?" This question was asked after you had made corrections in the order as you have today, and your answer to that question was "At that time that order was given." *A.* Yes.

Q. I repeat to you the question. "But the fact is that you do remember an order being given to you that the SS troops would take no prisoners?" And your answer, "At that time that order was given." *A.* Yes.

Q. Now, when you gave that answer were you speaking the truth? *A.* Yes.

Q. What had been von Buettner's employment prior to his appointment as 15th Company Commander? *A.* He was Regimental Adjutant.

Q. And how long had he been Regimental Adjutant? *A.* That I do not exactly know.

Q. Was it one month or several months? *A.* It was several months.

Q. Do you remember when he took over command of the company. *A.* Yes.

Q. Where was that? *A.* That was in Le Sap.

Q. And who was present at that time? *A.* Standartenführer Meyer.

Q. And did Standartenführer Meyer speak to the troops? *A.* He gave us a brief speech.

Q. What did he say in the course of his speech? *A.* That he expects from our company in action the very best, and that Hauptsturmführer von Buettner would from now on lead the company.

Q. And did he have anything else to say about von Buettner? *A.* I am in no position to remember that.

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Q. Did he tell you that von Buettner had been his adjutant? *A.* I am in no position to reply to that.

Q. Do you mean by that that you don't remember? *A.* Yes.

Q. Did he refer to any previous service that he had seen with von Buettner? *A.* I cannot remember that.

Q. Now, you told us that von Buettner took over command of the company about the 2nd or 3rd of June; is that correct? *A.* Yes, sir.

Q. And it was at Le Sap on the 2nd or 3rd of June when this parade was held, I presume?

Andrew: Mr. President. This is an examination. Now, as far as the rules of examination are concerned, are they to be disregarded according to the *War Regulations*? I would like a ruling on that now. My friend is asking leading questions.

Macdonald: I apologize. That question is leading.

Judge Advocate: This witness is being treated as a hostile witness and has been so treated...

Andrew: And still is being so treated.

Judge Advocate: He has been so treated. For the benefit of the record it would be better, and it should have been done, to go through the proper procedure, to have a formal application made for the treatment of a witness as hostile and for a formal decision to be made by the court after hearing the argument.

Macdonald: I deferred making that application because I thought the regulations made it permissible for me to introduce this document, and when we reached the point where the witness became hostile I would then make application. I thought he was hostile from the beginning and that is why I did not make the application in so many words.

Judge Advocate: The defending officer did not make an objection to the cross-examination of your own witness, and, as I have previously said, he has been treated as a hostile witness but it would have been proper to hear argument on it and had the defence raised the question, that would have been done.

Andrew: There is one thing I must say. I am at a disadvantage, I must admit perhaps through ignorance but mostly by reason of the *War Regulations*. It is all right to say that the defence, sir, should have raised the question but I think it is up to the court to do so under these regulations. You are the interpreting body; otherwise I would be butting in, jumping up and down all the time and I don't want to hinder the court, sir, and my idea is to assist in any way possible in the expedition of this case. Now, I cannot interpret these rules relating to evidence. They are too broad, and any rules that the court decides upon, the rules relating to examination, the court will have to take a leading stand, otherwise they are so broad that I have nothing to go on.

Judge Advocate: I think the general procedure is as in any other trial. All of these particular regulations regarding evidence are designed to allow in documents and statements which would not otherwise be admissible.

Andrew: Quite.

Judge Advocate: But they have no bearing upon the duties and limitations of examination, cross-examination and re-examination insofar as I can see.

Andrew: Quite. Quite.

Macdonald: I have sought to avoid treating this witness as a hostile witness beyond what seemed necessary and that is the reason I am trying not to lead at this point.

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Judge Advocate: In my opinion, whatever has been done, the accused has not been prejudiced. I think in the face of that document the prosecution could have properly established that this witness is hostile so that he might be cross-examined. Do you agree with that?

Macdonald: Yes, sir. If the court so decides, I agree with it. I think that there should be on the record the decision of the court as to whether this witness is hostile or not, and then all this evidence is permissible.

Judge Advocate: *(To Andrew)* Well, the court has permitted, Col Andrew, the treatment of this witness as hostile, just this witness; but it does not mean that the rules of cross-examination and the limitations of examination are in any way waived or altered by those regulations.

Macdonald: *(Resuming examination)* Now, do you remember whether Meyer, on that occasion, said anything about the previous service which he had seen with Hauptsturmführer von Buettner? *A.* No, I do not remember that.

Q. Is it possible that he might have? *A.* It may be.

Q. Now, this occurred, did it, at Le Sap, on the 2nd or 3rd of June? *A.* Yes.

Q. Whereabouts in Le Sap? *A.* It was about two minutes to the west of the village on a meadow.

Q. Was that meadow used as a football field? *A.* Yes.

Q. Now, was it after von Buettner's appointment as your company commander, or before that, that he told you that you were not to take prisoners? *A.* Afterwards.

Q. Now, you told us that on the day of the invasion, the 6th of June, your company moved up farther into Normandy? *A.* Yes.

Q. And when did you first see action? *A.* The night of the 6th we were on recce patrol.

Q. And did you take part in an attack on the 7th of June? *A.* Yes.

Q. What was the nature of that attack? *A. (No audible answer.)*

Q. Just describe the action; when it started, and so on? *A.* English troops at approximately noon hour attacked in the direction of Caen, were then held up by parts of our regiment who then started counter-attacking, and we were asked to assist them to strengthen them as reinforcements.

Q. Now, will you tell me the road that you yourself took that afternoon? You are now referring to Caen Map Sheet 7F/1. *A.* From St. Germain up past the little castle Ardennes.

Q. The castle to which you are now pointing is at approximately MR 996701. Is that correct? *A.* Yes.

Q. And where did you go from there? *A.* Then we turned to the right, went up on the road to Authie. Then we pushed into the left wing of the village and after about two hours we returned by the same road back to the little castle Ardennes but before we got there we took the little road which leads down to the main road from Caen to Bayeux.

Q. Now, during the course of your movement that afternoon did you see the accused Brigadeführer Meyer? *A.* Yes.

Q. Where was that? *A.* On the tower of this castle.

Q. You are now pointing are you to the Ancienne Abbaye Ardenne? *A.* Yes.

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Q. At what time of day was that? *A.* It was in the afternoon approximately at four o'clock.

Q. Was it on your way up to Authie or on your way back? *A.* It was on the way up to Authie.

Q. When you gave your evidence in Canada do you remember being asked this question: "Have all the answers that you have given to the questions I have asked you so far been given voluntarily and of your own free will?"? *A.* Yes.

Q. And do you remember making this answer: "I answered to the best of my knowledge and conscience"? *A.* Yes.

Q. And being asked this question: "Have the answers that you have given been of your own free will?"? *A.* Yes.

Q. And your answer: "I can't just say out of my own free will. I have answered them but it is the best I could do according to the circumstances which I am in – the best I could do"? *A.* Yes.

Q. And do you remember being asked this question: "Have you been threatened in any way to induce you to answer these questions in the way in which you have? *A.* Yes.

Q. And do you remember making this answer: "No"? *A.* Yes.

Q. And do you remember being asked this question: "Have you been given any promise to induce you to answer the questions in the manner in which you have?"? *A.* No, I received no such inducements.

Q. Well, that was the answer you made at that time – "No." And are you prepared to repeat that at the present time as a truthful statement? *A.* I am prepared.

Judge Advocate: Col Macdonald are you still reading from the same document you used before?

Macdonald: Yes.

Judge Advocate: And you wish to put that in evidence? Well, I think for two reasons it should go in as an exhibit. One, in fairness to the accused, as showing the whole examination to which you are referring, and secondly, I have been considering Regulation 10 (g). I don't think you had an opportunity to refer the court that Regulation when applying to put in the document but I think perhaps it covers the situation doesn't it?

Macdonald: Yes.

Judge Advocate: And in any event I think it should come in now, so would you put it in?

(Statement taken by OC 1 Cdn War Crimes Investigation Unit on 3 July 1945 from PW A-443933 Mann Alfred Helzel, 15th Coy 25 Panzer Grenadier Regiment is marked Exhibit T-4...)

(Statement taken by OC 1 Cdn War Crimes Investigation Unit on 2 October 1945 from PW A-443933 Mann Alfred Helzel, 15th Coy 25 Panzer Grenadier Regiment is marked Exhibit T-5. ...)

Judge Advocate: You used both of those in your examination?

Macdonald: Yes, sir.

Andrew: *(Cross-examines) Q.* Helzel, when you were examined by Col Macdonald before, you were in a PW Camp, were you not? *A.* Yes.

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Q. And when you said that you gave your answers, when you told Col Macdonald that you gave your answers in the best manner you could according to the circumstances you meant the best you could do at that time in a PW camp. Is that not right? *A.* Yes.

Q. And the answers that you gave today to Col Macdonald before he read to you out of the paper were correct, were they not? *A.* Yes.

Q. And when Col. Macdonald asked you the questions and showed you this paper today your answers were right, were they not? *A.* Yes.

Q. That was referring to Exhibit T-3. The answers that you gave in the prison camp when you were asked questions by Col Macdonald regarding Meyer and Buettner stating that the unit would not take prisoners was not quite correct, was it [sic]? *A.* They were correct.

Q. Could Meyer have used the words as follows...? *(Defence Counsel shows witness a written memorandum.)*

Macdonald: May I suggest that it be put into record what reference this is?

Andrew: I can't speak German, sir.

Judge Advocate: This book you are referring to will be put into the evidence?

Andrew: No, sir. I don't speak German. I am just pointing to the words I want him to read.

Helzel: I can't remember those words.

Andrew: *(Resuming cross-examination)* Might those words have been said by Meyer when he gave you an address?

Macdonald: Might I suggest that we have these words on the record.

Interpreter: The words are "From this Company I want no Prisoners of War" and he has said "No."

Andrew: The book is nothing. I don't talk German and I just wanted the interpreter to have this and I laid it down on the table there. *(Resuming cross-examination)* Was Brigadeführer Kurt Meyer a good soldier – a good commander?

Judge Advocate: The word "good" could mean well-behaved or capable.

Helzel: *A.* Yes.

Andrew: And he was respected by his men, was he not? *A.* Yes.

Q. And he was very interested in the training of the 15th Company particularly, was he not? *A.* Yes.

Q. And that Company was a reconnaissance company, was it not? *A.* Yes.

Q. And, being a reconnaissance company its duties were a little different than the three Grenadier battalions? *A.* Yes.

Q. And Brigadeführer Kurt Meyer gave lectures on how a reconnaissance company should act in battle, did he not? *A.* Yes.

Q. And he said that a reconnaissance company worked well into enemy lines? *A.* Yes.

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Q. And therefore a reconnaissance company would not have the opportunity of taking prisoners? *A.* The main object of a reconnaissance company is to ascertain where the enemy is and how strong he is.

Q. And were you not told that you would not be in a position to take prisoners and handle them – send them back? *A.* I can't remember that.

Q. You spoke about Hagetorn. Hagetorn didn't stay long with the Company did he? *A.* StaSchF Hagetorn was with us from the beginning of September 1943 until the middle of May 1944.

Q. Why did he leave? *A.* He embezzled Wehrmacht property and sold it.

Q. Now, in your evidence that you gave to Col Macdonald, you said in your first evidence that you didn't remember a speech being made at Le Sap?

Judge Advocate: Do you mean the examination recorded as Exhibit T-4 of the 3rd July 1945?

Andrew: Yes. 3 July 1945. *(Resuming cross-examination)* I will read on [page] nine of the examination Exhibit T-4, the question 115 "Do you remember Hagetorn having an assembly of your Company a few days before you left for France?" and your answer was "That, I can't remember, sir." How did you remember about this meeting at Le Sap when you were examined the second time?

Macdonald: I think my friend is confusing two incidents.

Helzel: *A.* It cannot be any different then that I made a mistake. There was in fact a meeting in Le Sap.

Andrew: *(Resuming cross-examination)* Were you in prison camp with Torbanisch? *A.* No.

Q. Were you in prison camp with a man by the name of Jesionek? *A.* I don't know him.

Q. Do you remember, just before action on the 7 June, being told to send back prisoners? *A.* No.

Q. Did your section commanders and other NCOs tell you it was necessary to take prisoners or send back prisoners? *A.* I know nothing of that.

Q. I will read from the same exhibit, page nineteen, and refer you to Question 238 "were you never told that it was necessary to take prisoners in order to question them? *A.* "Yes, that has been told to us." *Q.* "Who was that told to you by? *A.* "That we were told by the Section Leaders and the NCOs that it is better to take prisoners."

Judge Advocate: Are you asking him whether he said that?

Andrew: Yes. *(Continues to cross-examine)*

Q. Did you say that; did you make these answers? *A.* Yes.

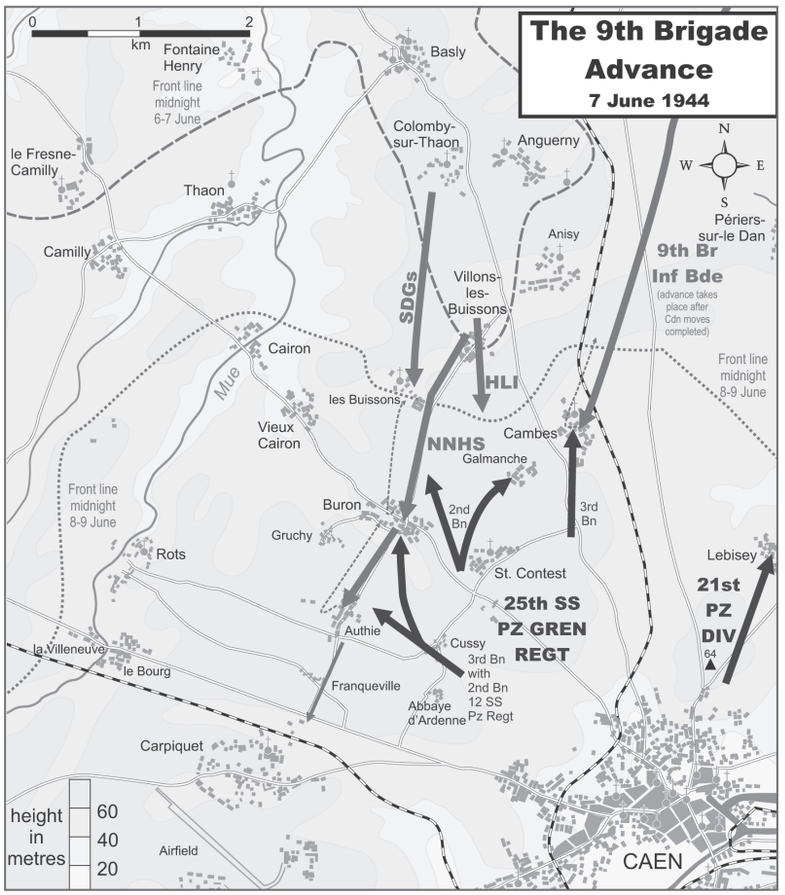
Q. Are they right? *A.* Yes.

Q. On the 7th of June you saw Brigadeführer Meyer at the tower of the Abbaye at Ardenne is that right? *A.* Yes.

Q. Now, who was with Meyer at that time? *A.* That I cannot say.

Q. Was there anybody else with him? *A.* I only saw him alone.

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Q. Did you see anyone at the entrance to the Abbaye? *A.* There was a wounded post of ours, a Regimental Aid Post of ours, with the Regimental Doctor, Dr. Gatternigg.

Q. Where was that? *A.* On the right hand side of the castle wall.

Q. It was close to the castle, was it? *A.* Yes.

Q. Were there wounded in it when you saw it? *A.* I saw two men.

Q. Were they Canadians? *A.* No, one man was from our Company and the other from another Company.

Q. You were fairly close to the castle, then? *A.* Yes, the road follows the walls.

Q. Were there vehicles around the castle at that time? *A.* Apart from our Company vehicles I cannot remember.

Q. Where were the 15th Company vehicles on the 7th? *A.* First we passed it and while we made our attack; the vehicles were standing in a field with quite high grain.

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Q. Now you say that you came through Abbaye d'Ardenne- past the Abbaye d'Ardenne, to attack Authie. Did you have your vehicles in Authie? *A.* No, the vehicles were just about here in the open field. *(MR 988709 approximately.)*

Q. And were you successful in your attack at Authie? *A.* The English soldiers were in front of the village and through our attack were thrown back beyond the village.

Q. And after the attack on the 7th what happened to the 15th Company? *A.* We went back again past the Abbaye. We drove back along this road here *(Main Caen-Bayeux Road)*. On this road we turned right towards Bayeux about 200 metres further on, approximately, we stopped and there we were on outpost duty.

Q. Now, when you came back from the attack on Authie you passed the Abbaye again? *A.* Yes.

Q. Very close to the Abbaye? *A.* On this road which makes the sharp corner.

Q. Could you see into the Abbaye? *A.* No.

Q. You never went to the Abbaye after that time, did you? *A.* No.

Q. Did you see any Canadian prisoners on your way back to the Abbaye? *A.* No.

Q. What time would that be that you returned past the Abbaye? *A.* Approximately between five and six o'clock.

Q. And you made your attack at four? *A.* Yes.

Re-examination by Macdonald: *Q.* Have you seen Torbanisch since he deserted the Company on the way to France? *A.* No.

President: *Q.* Did you ever receive in your company an order that prisoners would not be taken? *A.* Yes.

Q. Did you understand by that order that you were not to take any prisoners? *A.* Yes.

Q. From whom did you receive such orders? *A.* They were read by the Stabscharführer.

Q. They were read? *A.* Yes, read.

Q. When? *A.* On that I cannot precisely recollect when that was.

Q. Do you know approximately what month it was? *A.* February or March [1944].

Macdonald: Mr. President. Would it be in order for me to suggest that the court ask if he received such orders from other persons?

President: Yes, I think so. *(To the witness) Q.* Did you at any other time receive orders that prisoners shall not be taken? *A.* I could not remember.

Q. When these parades are held at six in the evening for the reading out of orders by the NCO, on whose behalf is he reading the order and, in reading it, does that NCO say, for example, orders by so and so, or signed by so and so at the end of it? *A.* Mostly not.

Q. So that you accept orders as the order of the person reading them out? As a normal procedure you act on orders as if they were the direct orders of the person reading it out? *A.* No.

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Q. Well, then, surely you must know who originated the orders? *A.* Mostly, as the name of the man who signed the order is not read out to the Company, the Company is in the dark as to who has originated the order.

Q. It is normally read out from a document, is it? *A.* Yes.

(The witness withdraws.)

Macdonald: Do you wish me to call another witness now, sir?

President: No, will the accused and escort move out, please. The court will adjourn until ten o'clock tomorrow morning.

(At 1700 hours, the Court adjourned until 1000 hours on 11 December 1945.)

11 December 1945

President: I declare the Court now open...

Andrew: Mr. President: I would ask the Court's permission to file, only for future reference, a consent that the accused has signed as to my services; my being detailed as his senior counsel; Capt Plourde as his junior counsel and Capt. Lehmann as his private interpreter; and he also says "I dispense with the services of a German counsel." I think perhaps if that is filed, if you see no objection to it, it may come in handy in the future if any objection is ever raised as to counsel.

Judge Advocate: I think that consent may be initialled by the President and attached to the proceedings. ...

Macdonald: While we are on that subject, sir, I might suggest that it be recorded as part of the proceedings, that the accused has not requested that the proceedings be translated into German, and that he is content to rely on his private interpreter, Capt. Lehmann. I think it might be useful if the question should arise later to have that recorded.

President: Does the accused agree to that procedure?

Andrew: Yes, sir, he does, because he has had appointed to him by the authorities a private interpreter, – personal interpreter, I should say.

Judge Advocate: I take it that you are referring principally to arguments and addresses not to evidence?

Macdonald: I am referring to anything said in evidence which is not interpreted or said in German openly.

Judge Advocate: Unless the defending officer from time to time agrees otherwise, I think all evidence should be interpreted into German, but where it is written documentary evidence of which the accused has had a copy and has, no doubt, already had read to him in German, then it would not be necessary to have that documentary evidence translated into German in the court.

Macdonald: Well, we have not had that done so far with the English speaking witnesses, but we have only had the one.

Judge Advocate: That is what I was coming to yesterday. Was the defence quite satisfied with that? I think there was a document that the second witness put in evidence, two reports and they were not at the time translated to the accused. You were satisfied with that were you?

Andrew: Right, sir.

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Macdonald: I think the precaution that was taken of detailing an officer to be with the accused at all times and to interpret next to him in a running way, so to speak, as the trial proceeded, was to overcome that.

Judge Advocate: Don't you think that all oral evidence given for the first time in this court should be given through the court interpreter to the accused, that is oral evidence as distinct from documentary evidence and from what the accused has already got?

Macdonald: That is, evidence given in English?

Judge Advocate: Yes.

Macdonald: I would not have thought so in view of the arrangement that has been made.

Andrew: If I may answer that on behalf of the accused: Capt Lehmann is sitting here and anything that is of importance in the case, provided the questions and answers are given slowly so that he is given time to do his translation, he can interpret it here and it won't hinder the court and it won't take as long, and, further more, the accused will get the gist of the whole thing.

Judge Advocate: Subject to the court's decision, I think the sworn interpreter rather than the accused's own private interpreter should interpret all oral evidence because it is new. It is coming up here for the first time, and the responsibility of this court is to see that the accused hears all the evidence. Now, documents that he has already had are in a different category.

Andrew: It is purely up to the court.

Judge Advocate: That is for the court's decision. I think that oral evidence which is new must be translated by one of the official interpreters in this court.

Macdonald: May I suggest these two further difficulties for you consideration. First, as a partial solution to the problems that you have raised, would it not be of assistance to have Capt. Lehmann officially sworn in as interpreter? Secondly, if the court does decide that all the English evidence must be interpreted, does it mean that evidence given by witnesses previously examined by the investigation unit and whose evidence is before the court should also be interpreted?

Judge Advocate: If you call a witness he may not say the same as he said before in some report or interrogation judging from yesterday's witness.

President: We will have the court interpreter interpret the English evidence for the benefit of the accused.

Macdonald: Now, sir, at the close of the hearing yesterday the court asked the witness Helzel certain questions, and, at my suggestion, asked a further question which brought forth an answer "I don't remember" which, I think, we will all agree is apparently in conflict with the evidence previously given. Now, after the witness had finished, the interpreter, Maj Stonborough, when escorting him out of the room, asked him why he had given this answer to you and he said that he had been mixed up and that both von Buettner and Meyer had said, "You are not to take prisoners." And, he said, however, that that was in the form of an address. It was not an order...

Judge Advocate: Col. Macdonald, I find myself in a difficult position. First of all I think it is highly improper that an interpreter should interrogate a witness, and, secondly, I cannot see that what a witness said to the interpreter outside the court should be told in court now.

Macdonald: I think this is a circumstance which should be brought to the attention of the court.

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Judge Advocate: No, but the court has before it at second hand more evidence of this witness which was given, when he was walking from here, to somebody else.

Macdonald: But the remedy for the situation is covered by the rules of procedure which provide that the court may recall a witness to be asked further questions.

Judge Advocate: If you had simply asked that surely the court would not have been prejudiced or liable to have been prejudiced by hearing what the witness said to an interpreter outside this court room.

Macdonald: I didn't think that it was proper that I should put this to you as a mystery or something that I had thought up myself, but that there was this reasonable basis for asking the court to recall the witness if they thought is was in the interest of justice to do so. It may turn out that it is all to the advantage of the accused to have this man brought back and asked this specific question "Was there anything said in the course of an address...?" He may have thought in answering the question in the way in which it was put, that he was being asked about formal orders such as from Hagetorn. It is definitely in contradiction to the evidence which he eventually and formerly gave, which he orally gave here and elsewhere and I don't think that I am introducing anything new which isn't already before the court in evidence. There is a further matter which I think I ought to press at this moment. The accused is not being charged with the ordering of anything. He is only being charged with inciting and counselling, and the question asked did not meet that particular charge.

Judge Advocate: I quite understand that and I am sure the court will understand that when they come to consider this charge later on; but I can only say that I find myself in a position that I must advise the court that the application is irregular and that what has been done is irregular and that I think the court should exclude from their minds anything that a witness has said out of this court room. You have told them something and I don't think they should know that.

Macdonald: I don't think that it is anything that the court would not have heard in any event in open court.

Judge Advocate: I am sorry. I find myself in disagreement with you and I advise the court that this course is irregular.

Macdonald: I felt that as Maj Stonborough felt it his duty to report that to me as an officer of the court, and I am an officer of the court, that as an impartial prosecutor I thought this was a point most relevant and most important to this trial in getting at the truth and this therefore should be brought to the attention of the court and should be presented to you in the form and in the way it was received.

Judge Advocate: I don't want to add anything more to what I have said. The witness has said to the interpreter whatever he said but it is not for the court to consider that.

Macdonald: It is whether or not the witness misunderstood the question and that is why I am endeavouring to point out what he said outside. The answer given may not be in conflict with the facts and he may distinguish between an order and something else.

Judge Advocate: What is your motion?

Macdonald: May I suggest, and I am placing these facts before the court for whatever action the court, under the rules of procedure, should take as to recalling this witness for questioning in whatever terms may be agreeable, or, the court may choose to ask him to clarify the matter. The answer which he gives may be detrimental to the things I am arguing but I think that is not my concern. I think I should bring the facts before the court as they are, and, I would like, if I have gone about this in the wrong way, to be instructed in what course I should have taken.

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Judge Advocate: That is not my duty. I suggest that the court should not be apprised of a conversation between the witness and somebody else outside the court room not given in evidence.

Macdonald: If the information was any different from the evidence already given by the witness, if it was not in agreement.

Judge Advocate: The information you refer to was not evidence.

Macdonald: I quite agree, but I would like to be instructed in what course I should have taken if that was wrong.

Andrew: I only want to say one thing and leave it to the court, that the President, if you remember, placed a question on this point at the end of the witness' evidence, – placed this question and then placed it again in order to clarify, to be sure, that the witness understood. I think, Mr President, that you will recall that.

Macdonald: I should like to read the question that was asked if I may. I was partially to blame in the way I put the suggestion. "Mr President, would it be in order for me to suggest that the court ask if he received such orders from any other persons?" By the President, "Yes, I think so." Question: "Did you ever at any other time receive orders that prisoners shall not be taken?" Answer: "I could not remember."

President: The court is closed for ten minutes.

(The court closes to consider the prosecutor's application.)...

—

President: The court has decided that that witness will not be recalled.

Macdonald: I have sent for another witness, sir. I would suggest that this witness also be affirmed.

Judge Advocate: Does he object to being sworn in the ordinary way?

Macdonald: I asked him which he preferred and he said that he preferred to be affirmed.

Judge Advocate: I think he should be sworn if he respects the oath as binding as he is a Christian.

Macdonald: Yes, he is a Christian, he is a Protestant.

Judge Advocate: *(To witness through Interpreter)* Are you a Protestant?

Heyer: *A:* Yes.

Fourth Witness for the Prosecution[1]

PW 430055 Sturmmann Horst Heyer, 23rd SS Panzer Division (Hitler-Jugend), being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name? *A.* Horst Heyer.

Q. What is your rank? *A.* Sturmmann.

Q. How old are you? *A.* Nineteen years of age.

Q. Where were you born? *A.* Arnstadt, Thuringia.

Q. Are you now a prisoner of war? *A.* Yes.

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Q. When were you taken prisoner? *A.* 10 July 1944.

Q. Where? *A.* In Caen, Normandy.

Q. Had you first been wounded? *A.* Yes.

Q. With what unit were you serving at that time? *A.* 25th Regiment 12th SS Panzer Division.

Q. And with what Company and Battalion? *A.* 3rd Company, 1st Battalion.

Q. Who was your Company Commander? *A.* Oberleutnant Fuchs.

Q. And how long had he been your Company Commander? *A.* From the end of [1943] up to action.

Q. And who was your Battalion Commander? *A.* Sturmbannführer Waldmüller.

Q. And who was your Regimental Commander? *A.* Standartenführer Meyer.

Q. And for how long had he been your Regimental Commander? *A.* From the beginning of August 1943 up to action.

Q. And how long did he continue to be your Regimental Commander? *A.* Up to the middle of June, approximately.

Q. And then where did he go? *A.* He became Divisional Commander.

Q. Do you remember giving evidence to me in Canada on the 8th of July last at Medicine Hat, Alberta? *A.* Yes.

Q. And do you remember also giving evidence to me at London on the 2nd October last? *A.* Yes.

Q. I show you a copy if this first evidence, is that your signature on the first page? *A.* Yes.

Q. And is that your signature on the last page? *A.* Yes.

Q. Now, were you at any time during the course of your training given any instructions with respect to taking of prisoners? *A.* No, I cannot remember that.

Q. Were you given any instructions by your Company Commander at any time with respect to the taking of prisoners? *A.* That was on the 6th of June shortly before action that he made a little speech.

Q. Who was that? *A.* Oberleutnant Fuchs.

Q. And where were you at the time he made this speech? *A.* I was in the platoon to whom he addressed these remarks.

Q. Where was the platoon at the time? *A.* I cannot give you the exact locality.

Q. Were you in Belgium or were you in a position of action? *A.* We were on our way to action. We were just driving up to Caen and we stopped for a brief time in a field and there it was.

Q. And what did he say to you? *A.* The exact words I cannot reproduce. He approximately expressed himself as follows: that we should not take any prisoners.

Q. And what was your impression with respect to these orders. Did you feel that they were his personal instructions? *A.* I personally am inclined to believe that it had some reference to what Standartenführer Meyer had at one time said in an address in Beverloo but I cannot be quite certain.

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Q. Now, what was it that Meyer said at that time? *A.* I remember a large assembly at Beverloo and during the address he made the following remark "My regiment takes no prisoners."

Q. Now, who were present on that occasion? *A.* It must well have been the Regiment.

Q. And can you say precisely when that was? *A.* It must have been in the last quarter of the year 1943.

Q. Now, during the course of action did you hear that any of your fellow soldiers that any of your fellow soldiers had either refused to take prisoners or had shot prisoners after they had been captured? *A.* I only know from one case, one Mueller, that he once in my presence mentioned that he, Mueller, had shot prisoners.

Andrew: *(Begins cross-examination) Q.* Were you ever told by any of your officers or NCOs to shoot prisoners? *A.* I cannot remember to have heard such a thing.

Q. When Brigadeführer Meyer gave this speech you mentioned at Beverloo, did you think he meant you to shoot prisoners? *A.* In this expression "my unit takes no prisoners" that lies in it.

Q. What other words do you remember that Brigadeführer Meyer said during that speech? *A.* Other words I cannot say.

Q. Do you remember what the speech was about? *A.* I cannot say whether it was in honour of 9th November or whether it was just a regimental assembly (Appell).

Q. Is it not a fact that Brigadeführer Meyer was giving a pep talk to the regiment? *A.* I can no longer say about what the purpose of it was, perhaps it was about the 9th of November. I cannot say what the particular purpose was.

Q. Was it a long speech? *A.* It was a long speech, it may have been half an hour or it may have been an hour, I cannot say precisely.

Q. And after the speech was supposed to have been made, you and your comrades forgot about the contents of the speech, did you not? *A.* No, we did not forget the subject right away but that was the essential point of the speech which I remember now.

Q. I have been informed that the speech was in the nature of telling the regiment what Brigadeführer Meyer expected of it in action. Is that correct? *A.* That can also be possible.

Q. And is it not possible that Brigadeführer Meyer said "I do not want any of my troops to be made prisoners"? *A.* That I can today no longer say.

Q. And do you remember an order that you would get 18 or 24 days leave if you took a prisoner? *A.* Yes, I remember that order.

Q. And that was at the beginning of the invasion, was it not? *A.* It was approximately the middle of June when that order came.

Q. And was that not an order of the Regiment or Division? *A.* Whether it came from the Regiment or Division I cannot say today. I heard it from my Section Commander.

Q. Were you not told by your Section or Platoon Commanders what you should do with prisoners when you took them? *A.* I do not remember from my Section or Platoon Commanders that I had heard that we should shoot them.

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Q. Were you not told that prisoners must be sent back to Regimental HQ immediately? *A.* No I do not remember that.

Q. Did your Battalion or unit take any prisoners? *A.* I only saw after the first attack, as I got back myself, I saw two prisoners sitting in the ditch and I think in the middle of June a patrol of ours told me that a patrol of ours had taken two prisoners of war.

Q. Do you know if your Regiment took any prisoners? *A.* I cannot say that, but it may well be the case.

Q. Did you ever hear of your Regiment taking any prisoners? *A.* I myself did not hear it, no.

Q. What would happen to you if you took a prisoner? In your own mind what would happen? *A.* Apparently nothing because I know of those two prisoners who were taken and none of us were punished. I heard nothing about that.

Q. Well then, this statement that Brigadeführer Meyer made at Beverloo, to your mind and that of your comrades, didn't it mean a great deal? *A.* During action we didn't think about it rightly at all. During action we no longer thought about it.

Q. And therefore, not thinking about it in action, there was not much weight to what Brigadeführer Meyer was supposed to have said regarding prisoners? *A.* Major, I can only speak of myself. I no longer thought of those words.

Macdonald: *(Begins re-examination) Q.* What did you understand your objective was as you went into action on 6th/7th of June? *A.* Personally, no one told me that, we were only told "attack."

Q. Attack what, or in what direction were you attacking? *A.* Towards the sea.

Q. And were you expecting to take many prisoners in the course of that attack to the sea? *A.* We would have taken them once we had arrived at the ocean.

Q. You were in the area immediately north of Caen and how long were you in the same position there? *A.* Four weeks.

Q. And did you have any opportunity to take prisoners during that time? *A.* No.

Q. Now, you have said that the promise was made to you for a leave of 30 days or something of that kind came to you about the 15th of June? *A.* Yes, approximately the middle of June.

Q. And do you know why that offer was made? *A.* Yes, so one would know who was on the other side.

Q. In other words for purposes of interrogation? *A.* Yes.

Q. And you have said that you did not have an opportunity to take many prisoners on that front during the four weeks that you were there? *A.* Yes.

President: *Q.* Could you give us the time and the date exactly where Oberleutnant Fuchs spoke to the Platoon and gave this order "There shall be no prisoners taken"? *A.* It was on the 6th of June 1944. It was at any rate in the afternoon, it may have been at two o'clock in the afternoon.

Q. And can you remember the place? *A.* It must have been north-east of Vimoutiers.

Q. Can you point out the spot on the map? *A.* Precisely I cannot say. It must have been 15 or 20 kilometres north-east of Vimoutiers.

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Q. How long after this address by Oberleutnant Fuchs did you go into action? *A.* Approximately one day more.

Q. Is it the custom in the German Army for an officer of the rank of Oberleutnant Fuchs to issue orders of that description on their own initiative? *A.* That I can't say. That depends upon the individual. *(Interpreter repeats the question.)* I cannot say that that is the custom.

Q. On this occasion what was the manner in which this officer delivered this order? Did he read it to the troops or did he deliver it spontaneously? *A.* No, it was during a brief address where he said to us that we should fight bravely and then he kind of interwove it, saying we should not take any prisoners.

(The witness withdraws.)

Macdonald: Mr. President, I would like to ask at this stage that the names of some of these German witnesses for the Prosecution be withheld by the Press. I don't want to ask the court to make that as an order although you are empowered to do so, but I would like to appeal to the Press to withhold the names of these witnesses as they may find it difficult if later on it is felt that they should not have given the evidence they did, by their own people. These people are members of the SS and there may be retaliation at some time. I refer you to the provisions in the PC Order. I think probably if that request is made to the Press that they will be willing to co-operate with us. We have had evidence of so-called Kangaroo Courts and things of that kind and the newspapers are available to prisoners of war in these camps.

President: I see no useful purpose as far as the Press is concerned in disclosing the names of these witnesses. I think it would be most unjust. The names of these witnesses have no earthly value to the public generally except persons who might want to get at these witnesses as a result of their having given evidence. Are we empowered to demand this? Where is this Regulation?

Macdonald: It is in Regulation 10 sub-section (8): – "The sittings of military courts will ordinarily be open to the public insofar as accommodation permits. Nevertheless the court may, on the ground that it is expedient to do so in the national interest or in the interests of justice, or for the effective prosecution of war crimes generally," (this is what concerns us most,) "or otherwise, by order prohibit the publication of any evidence given or to be given or of any statement made or to be made, or of the names, descriptions or photographs of any witnesses heard or to be heard in the course of the proceedings before it, or direct that all or any portion of the public shall be excluded during any part of such proceedings as normally take place in open court, except during the announcement of the findings and sentence pursuant to paragraph (6) above."

President: Then that gives us authority. The names of the witnesses will not be published in the press.

Macdonald: I am referring, of course, only to the German witnesses, sir.

President: Yes.

Macdonald: Next is the evidence of ***Lt-Col Petch which is reported in the Report of the SHAEF Court of Inquiry Re Shooting of Allied Prisoners of War*** by the German Armed Forces in the vicinity of Le Mesnil-Patry, Les Saullets, Buron and Authie, Normandy, 7-11 June 1944. For convenience of reference I would suggest that this be referred to in future as the *SHAEF Authie Report*. We will just have the two SHAEF Reports before us, the *SHAEF Supplementary Report* which was referred to yesterday and this one...

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Macdonald: I now propose to read from Exhibit 29, record of the evidence of Lt-Col Charles Petch... "... The following witnesses, after being duly sworn, were examined by the court: Charles Petch, Lt-Col., CO, North Nova Scotia Highlanders (Canadian)... The Court adjourned at 12.55 hours." As a matter of fact, I intend to read all of this evidence except one part and I will indicate to the Reporter when I reach that part.

Lt-Col Macdonald: Q. What us your full name, rank and unit? *A.* Charles Petch, Lt-Col., North Nova Scotia Highlanders.

Q. I believe you were on 7 June 1944, commanding officer of the North Nova Scotia Highlanders? *A.* That is correct.

Q. And commanded that unit until when? *A.* 4th August.

Q. Was your unit engaged in an operation against the enemy at or near the village of Authie on 7th June last? *A.* Yes.

Q. Will you describe the part that your battalion had in the fight at Authie? *A.* On the morning of June 7th at 0700 hours I was ordered to continue my advance from my position at Amisy cross-roads to our objective, Carpiquet airfield, along the axis Villons les Buissons, Buron, Authie, Franqueville to Carpiquet. My battalion and the 27th Canadian Armoured Regiment (Sherbrooke Fusiliers) were the advance guard of the 3rd Canadian Division. I moved off with "C" Company, the vanguard under Major J.D. Learment on the carrier platoon, whose orders were to precede the remainder of the force along the axis. "A" Company on "A" Squadron tanks were on the right of the axis, "B" Company on "B" Squadron tanks were on the left of the axis, Battalion HQ behind the vanguard on the axis and, bringing up the rear, "D" Company on "C" Squadron tanks on the axis. The vanguard captured Villons les Buissons without much opposition and then moved on to Buron where I ordered them to halt until we had closed up. About one o'clock I ordered the advance to continue and the vanguard reached Authie. After some fighting they took the town and sent a patrol towards the next village. About this time they came under heavy mortar and shellfire from both flanks and the front. Enemy armour and infantry were seen moving from the direction of Caen to their positions. I ordered the vanguard to dig in where they were and "A" Company and "B" Company to close up and form a fortress. Before this could be completed the enemy armour had surrounded the vanguard at MR 983701.

Q. Would you give this map reference of each Company as it took up this fortress position? *A.* As near as I can remember "C" Company took up a position in the town about MR 983711, and "A" Company dug in an orchard about MR 986715. "B" Squadron of tanks had to go into action at St. Contest and it was necessary for "B" Company to get off the tanks. The Company was mortared and shelled and was unable to get to its objectives so I ordered it back approximately MR 992723 where it dug in with the reserve company. It could be seen that an armoured battle was in progress, as the armoured regiment deployed and took on the enemy armour. The infantry remained in their position until the attack had died down when what was left of the enemy armour withdrew back towards Carpiquet. "C" Company and "A" Company reported they were OK and had not been committed. I then ordered "B" Company and the remainder of the battalion to close up on Authie. Just as the remainder of the battalion began to move forward, "A" Company reported an enemy armoured counter-attack coming in from the right flank. I could not get in touch with "C" Company but the officer (the Troop Leader) who had been with "C" Company reported to me that all his tanks were engaged in heavy fighting with what he thought were nine Tiger tanks and at least a battalion of infantry which had come in from the direction of the left flank. I heard nothing further from "C" or "A" Company,

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as at this time the remainder of the battalion was attacked from the direction of Gruchy by armour and infantry who dismounted from half-tracks.

Q. Did you see any of the members of "C" and "A" Companies from that time on? *A.* No, not from the Companies who were in position, but later in the day one officer and several other ranks from each Company reported to the battalion, having been cut off from their Companies and unable to rejoin them in battle. I did not hear nor have I seen any members of those two companies who were engaged in the action.

Q. Is it true, then, that practically all the members of "C" and "A" Companies were either killed or taken prisoner? *A.* Yes, with the exception of those I have mentioned who reported later in the day.

Q. How many would that be? *A.* Roughly from "C" Company one officer and twenty-three men, and from "A" Company one officer and about twenty-five men who were later captured at Buron.

Q. How many men did you go into battle with in each of these two Companies, "C" and "A." *A.* I cannot say definitely, but very few were left out of battle before the action happened.

Q. In other words, I take it, each Company had in the neighbourhood of 120 men? *A.* 115 to 120 men.

Q. Those who did not become casualties in the counter-attack were roughly twenty-five in each Company? *A.* Roughly, yes.

Q. What happened to the other Companies? *A.* My orders were that in the event of the position being such that it was impossible to capture Carpiquet, I was to hold the high ground at Buron until such time as the Brigade could assemble there and deploy for a Brigade attack. This we attempted to do with what was left of the battalion plus twelve tanks, which were all that could be accounted for in the armoured regiment. We withdrew from the forward edge of the town to about two hundred yards into an open field north of Buron where we had a better chance of seeing the enemy. There we hastily dug in.

Q. Did your troops go back into Authie that day? *A.* No.

Q. Did they go back into Authie during the next two weeks? *A.* No.

Q. Can you tell us what elements of our own forces were involved in any fighting in Authie from 7th June until 15th June? *A.* Practically all "C" Company and "A" Company of my battalion, part of the three squadrons of 27 Armoured Regiment (The Sherbrooke Fusiliers) and two machine-gun platoons of the Cameron Highlanders of Ottawa.

Q. Were you able to obtain the identification of any enemy units in the neighbourhood of Authie during the fighting there, first of all on the 7th June? *A.* Yes, before the final counter-attack several prisoners were sent back and were identified as of the 12th SS Panzer Division...

Q. Did you issue any instructions with respect to the burial of men of your unit whose bodies were found in the village of Authie? *A.* Yes, on the completion of the second attack on Authie by my battalion on 8th July, I ordered my second-in-command, Major D.F. Forbes (now Lt-Col) and Capt Cox, the unit Padre, to go over the battlefield of June 7 and see if there were any bodies of men of our unit left unburied.

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Q. Did they report to you that they had found any bodies? *A.* Yes, in the areas where we knew the Companies were, unburied bodies were found and had remained there since June 7 and also locations of some men who had been buried by a civilian.

Q. How many unburied bodies were reported to you, roughly? *A.* Roughly, about twenty-five to thirty.

Q. Had the Germans been in occupation of the village of Authie from 7th June until you put in your attack on the 8th July? *A.* Yes, they were in possession of Buron and Authie from the morning of 8 June until we attacked and captured the village on July 8."

I would now like to refer to the *SHAEF Supplementary Report*, Exhibit No. 25 Appx "C," p. 7...

Andrew: Sir, before my friend goes on with this – I would like to say that it is not the evidence of Col. Petch.

Macdonald: No, it is not.

Andrew: Then I would like to read from Col. Petch's evidence and I am reading from the same Exhibit as the Prosecution has read from, Exhibit 29, p. 3. I am reading the fifth question commencing:

"*Q.* Were you able to secure the names of regiments of any of these men? *A.* No, it was not our job to interrogate them and our orders were to send them back to Brigade as quickly as possible.

Q. How did you identify them then as members of the 12th Panzer Division? *A.* From the badges which were on their uniforms. During the advance to Authie prisoners were immediately sent to Brigade.

Q. Can you tell us of your own knowledge what enemy troops would be in the town of Authie on the afternoon of June 7? *A.* I definitely know that elements of the 12th SS Panzer Division were there and also of two other infantry regiments who were part of the static defences of the area. I do not remember the numbers of the regiments.

Q. Do you know to what regiment those SS troops belonged? *A.* No, I do not know as far as Authie is concerned.

Q. Can you tell us of any other enemy troops you were able to identify in the neighbourhood on 7th June? *A.* We captured a prisoner from the 21st SS [Panzer Division] in the counterattack from Buron.

Q. When was that? *A.* On 7th June."

Macdonald: Now, reading from the ***Diary of the North Nova Scotia Highlanders*** of 7th June:

"At 0045 hours "A" and "D" Companies on "A" and "C" Squadrons arrived in from Colomby-sur-Thoan, "A" Company digging in behind and on the right flank of "C" Company and "D" Company astride the road behind "A" and "B" Companies, with Battalion HQ in the centre. A patrol of carriers from the vanguard to Amisy, MR of 015759. At 0740 hours the Battalion again moved off in the same order, changing our axis of advance through Villons-les-Buissons along the main road to Carpiquet. At 0745 hours several enemy gliders were sighted landing at approximately 9978. By 0930 hours the village of Les Buissons was cleared and the command post moved up to that point. As the vanguard moved on to Buron. Being pressed for time, the vanguard advanced quickly through Buron on Authie, MR 985713, leaving the mopping up to "D" Company coming behind. "A" and "B" Companies bypassing the town. It was too late for the vanguard to withdraw to the battalion position so they decided to fight it out in front of Authie. Captain F.C. Fraser, who was with the leading elements, took command of the situation and hastily organized the defence, taking the Brownings from

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three knocked out tanks and a machine gun from the platoon commander's carrier of the Cameron Highlanders of Ottawa, who had become a casualty. At 1630 hours it was found that it was impossible for the battalion to push forward to Authie and Maj Learment was ordered by the Commanding Officer to bring the forward troops back and form a fortress just on the outskirts south of Buron. Battalion HQ moved back to the woods at Les Buissons, MR 995741. Permission was asked of the Brigadier to withdraw to the high ground in the woods at Les Buissons with the Stormount Dundas and Glengarry Highlanders and the remainder of the 27 Canadian Armoured Regiment. Permission was granted and the remnants of "D," "A," "B," and "C" and Support Companies were withdrawn into the fortress."

Macdonald: I wish now to refer to the ***evidence given by the accused on page eleven of the evidence given to 1 Canadian War Crimes Investigation Unit at London*** on the fifteenth of October.

Judge Advocate: The document is here, is it?

Macdonald: Yes, you will find it in Book Number two, page eleven – commencing to read at the bottom of the page – question 110: ...

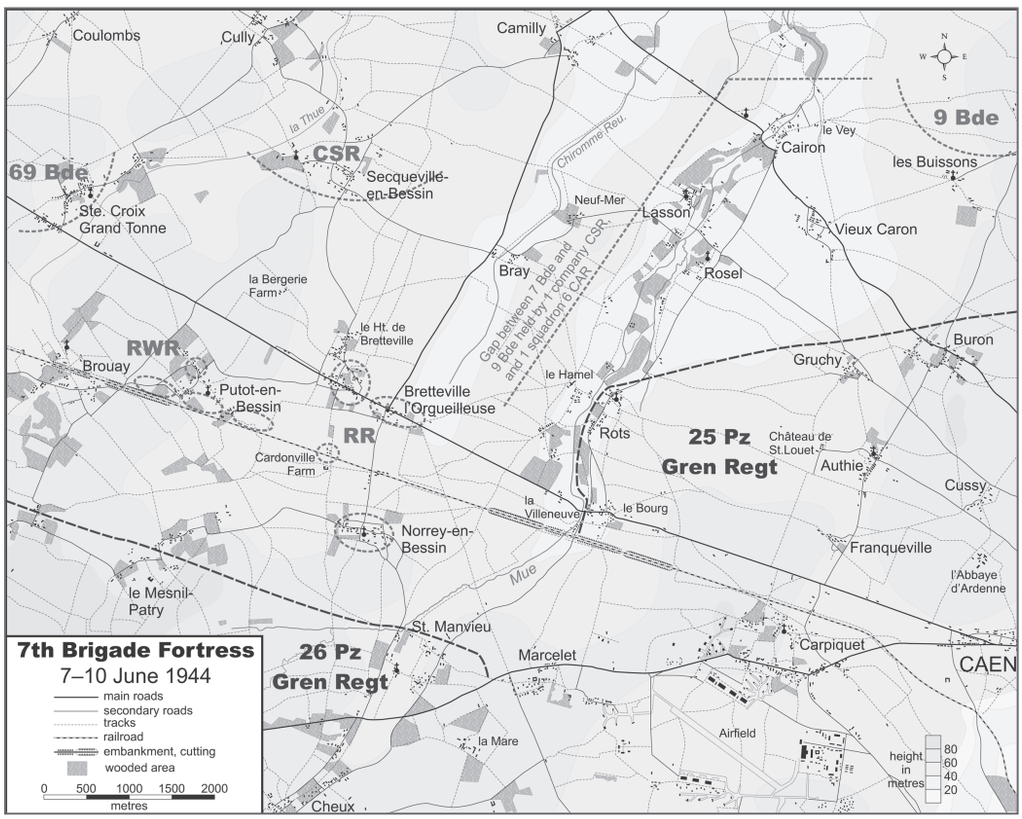
"*Q.* No, I want your movements on the 7th... of June. *A.* On the 7th, in the morning, I and my Regimental HQ which was here (MR 004671) right near the railroad. I gave the order to be ready for the 1st Battalion through Caen up the road leading from Caen towards Courseulles. Area of readiness (La Folie) and to seek contact towards the right with parts of the 21st Panzer Division. The 2nd Battalion ordered from the same position to go up via the road through St. Germain (intersected by grid line 70 and in the square). 3rd Battalion to start from the same place, to get out of its vehicles to let the vehicles move southward, to lead the Companies into an area of readiness south-west of the Monastery Ardenne. From the same place again to bring Artillery in such a position that it could be effective direction north. Tank Abteilung with two companies put in readiness behind the 1st Battalion. The remainder of the Abteilung behind the 3rd Battalion. 15th Company Recce to be pushed forward on the main road in the direction of Bretteville L'Orgueilleuse on the main road Caen-Bayeux. 16th Company and the remainder south of St. Germain. Battle recce was to be carried forward independently by all units. All orders that I have given now were given by me in this first HQ, it took some hours till all units had passed. By that time the new HQ had been recce'd and was moved into St. Germain opposite the petrol station at this fork in the road (999690). At this place I myself spoke to the Divisional Commander. An Observation Post for the battle area was established here (001693), in an old pill-box which had apparently been built by the French population against air raids. In the course of the morning, for when I spoke to the Divisional Commander it was towards nine o'clock in the morning, the times that I will give now can only be approximate, I cannot give them on oath. I left with my little PKW, my little Volkswagen. I went via this battle or observation post on this height, through this little wood, up the little path which I am now marking, through the arrow point of the arriving 2nd Battalion, put myself at the head of this Battalion, went through this village (Cussy), my intention being that my personal presence I would pull along my men forward. Here in Cussy I found dispersed parts of the 21st Panzer Division. As those troops could not provide me an appropriate picture of the enemy situation and my men, that is part of the 2nd Battalion, had in the meantime taken over part of the village of Cussy, I left the village with the intention in one jump in quick time to reach Buron. Here, on this height, I was heavily shelled by your tanks which already were...

Q. Which point do you mean that it was where you came under fire? *A.* Here at the 'S' in the word Cussy. I then turned about went the same road back until I met the Battalion. I met the Battalion Commander at the hedge between the Monastery Ardenne and Cussy. I gave the Battalion Com-

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mander the enemy situation and drove to the Commander of the 3rd Battalion, who was located sharply south of Ardenne, and his Battalion had reached this area to which I am pointing to now – tell the Lt-Col that some weeks ago I gave Lt-Col Chater an exact map with all entries for his Intelligence Department. It also contained the times of day as far as I can remember them.

Q. The difference is of course, that what you are now giving us is sworn to. It is under oath. Are you prepared to say that what you gave Col Chater is of the same value as it would be had it been given under oath? *A.* Yes, sir. I would like to say this last sentence that as far as the precise hours of the day and some of the days go, I cannot take them on oath. That is to ask too much. One cannot do that. Do you also want the artillery?



Q. Generally, yes. *A.* I can only give the artillery positions approximately. Not quite precisely. What I have now drawn, these three are the areas of readiness for the three battalions, and the similar ellipses are the artillery corps. After I had shown the Commander of the 3rd Battalion to his area I drove to the Monastery Ardenne by the route which I am now marking in red; and went up the church tower with the Commander of the 2nd Battalion and while reconnoitring ourselves we found enemy forces on the road Authie-Buron on the height north of St. Contest, heavy traffic from the direction of Colomby via Cairon; and we also noted tank massing in the area of north-west of Cairon. Apart from that we noted heavy fleet assemblies on the coast. After these observations I left the church

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tower and looked up the commander of the 1st Battalion and put him in the picture regarding what I saw of the enemy and about the situation of our own troops. From the battalion commander of the 1st Battalion I went back to Regimental HQ and informed the adjutant of all I have seen, and from there I spoke to the divisional commander on the telephone. The divisional commander at that time had no news yet of his troops who were to push themselves into the area which is bounded on the left, and I can only say approximately – by Tilly-sur-Seulles. There existed a danger, especially from the tank formation which I had seen out there, that they would, via the airport of Carpiquet, push and reach the main road running from Caen to Villers-Bocage. As the situation was painted to me in blackish colours I came to the decision to push with my troops right into the enemy formations and to attack. I gave the order after completing the "readiness" without regard to all losses to reach the coast. I, myself, took myself to the Monastery, Ardenne, to the tower in order to observe the deployment and preparation for the attack.

Q. Now at what hour was it that you went to the tower this time? *A.* I can only give this time conditionally as that already was the second or third night that I had had no sleep. It must have been either shortly after or just about noon. After I had observed the deployment of my men from the right to the left flank, and also still observed the tank battle at Franqueville and Authie and had observed the entry of the tanks and the infantry through the village of Authie and also had observed the troops in its advance at Gruchy and Buron. I left the tower and drove – I would like to do it in a different colour so that you will know it is the second trip – and drove with a motorcycle, which I drove myself, to the commander of the 3rd Battalion whom I found between Authie and Buron. The conversation was brief as enemy tanks shot from a few hundred metres into our group. My motorcycle was shot up with another vehicle. I drove back via Cussy. There I met a group of prisoners of yours, among them, I believe two officers. This group of prisoners was instantly removed from this artillery area and at the entry to the Monastery of Ardenne, taking full cover as there was shellfire, I conversed with the two officers in this entry here, the north-easterly entry to Ardenne.

Q. Now at this point, when you spoke to the 3rd Battalion Commander on the Buron-Authie road, was it just after he and his troops of the 3rd Battalion had come through the village of Authie? *A.* I do not exactly know whether he walked through Authie on foot or came past and was sitting on a tank. That I do not know how he did it.

Q. But his troops of the 3rd Battalion you had seen from the tower moving through Authie previously, had you not? *A.* Yes. While I stood up there I also saw German troops there *(indicating Franqueville.)* As I found out later, those were soldiers of the coast divisions who had streamed back among the men of Aust Battalion; also a few dispersed flak artillerymen, whom I believe although I do not know it, were in position around the airport at Carpiquet.

Q. Now, to be entirely clear, however, the troops which attacked and captured Authie and which you observed in the process of doing that, were the 3rd Battalion, Panzer Regiment. *A.* Of the Abteilung Prinz, yes. The mass of the Battalion did not go through the village but pushed on next to it, but the left wing of the battalion did push through that village.

Q. Yes, now who was the commander of the 3rd Battalion whom you met on the road? *A.* Milius.

Q. How was Milius dressed? *A.* He could not be distinguished from his men. He wore a camouflage suit made of tent material. I wish to add that all officers of the division could not be distinguished from the men. They all looked like that."

Judge Advocate: That is ending at answer 119?

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Macdonald: Yes, sir.

Judge Advocate: *(To the defending officer)* Is there any part of that examination you wish to put in?

Andrew: Yes, if I may read a few of the following – directly following – starting at question 120:

"*Q.* Now, how were you dressed yourself? *A.* Also that way.

Q. With camouflage jacket? *A.* I had one of my own cut so that I could get into the tanks. It fitted very neatly like the jacket you are wearing *(indicating the battle dress blouse of the Interpreter)*.

Q. And did you also have camouflage trousers? *A.* Also yes.

Q. Now, did you see any officers dressed that afternoon in the long black rubber coat? *A.* He could not have been from the division. It could only have been one of the flak officers, or of the people who came back from the coast. I wish to add that it is quite impossible to make an attack in a long coat; that already proves that he could not have belonged to the division."

President: The Court will adjourn until two o'clock.

(At 1145 hours the Court adjourned until 1400 hours on 11 December 1945.)

Fifth Witness for the Prosecution

M. Constance Raymond Guilbert, being duly sworn, is examined by the Prosecutor, Lt-Col Macdonald, through the interpreter, Lt Robichaud. Questions and answers are translated into German by the interpreter, Capt van Os.

Q. What is you name? *A.* Guilbert, Constance Raymond.

Q. Where do you live? *A.* Authie.

Q. Who long have you lived there? *A.* I was born in Authie in 1902. I left it in 1928. I returned there in 1941.

Q. And is your home still there? *A.* Yes, still there, sir.

Q. What is your occupation? *A.* Mason.

Q. Were you in Authie on the 7th of June 1944? *A.* Yes.

Q. Now, were the Germans in occupation of Authie on that day? *A.* No, not before.

Q. Were there any German soldiers there that day? *A.* No.

Q. I am speaking now of the 7th day of June 1944; do you clearly understand me? *A.* Yes.

Q. Were there any troops in Authie during the month of June – German troops? *A.* No, they only passed through.

Q. And did some German troops pass through the village of Authie on the 7th of June? *A.* Yes. At one o'clock and at five o'clock.

Q. Now, the troops that passed through at first – at one o'clock on the 7th June, in which direction were they moving? *A.* The German troops, they were going towards Carpiquet.

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Q. And what happened after the Germans had passed through the village of Authie at one o'clock? *A.* We saw the Canadians arrive.

Q. And at what hour did the Canadians arrive at the village of Authie? *A.* Immediately after the Germans; it was one o'clock.

Q. And what happened after their arrival? *A.* Several tanks had been damaged and remained there. We went to speak with them.

Q. Are you speaking now of Canadian or German tanks? *A.* Canadian tanks.

Q. Now, did you see any fighting take place later that afternoon, that is, between the hours of one o'clock and five – between the Canadians and Germans? *A.* No, the Germans had left.

Q. Well, at five o'clock you say you saw the Germans again. Will you describe that occasion? *A.* In the afternoon when we went to see the Canadians whose tanks had been damaged, we spoke with them at about four o'clock or a quarter past four, the Canadians told us we had to go into our homes since the Germans were coming.

Q. And what happened afterwards? *A.* At five o'clock we began to hear firing.

Q. Where were you at this time? *A.* I had gone into my home.

Q. Where is your house in Authie? *A.* In the village, on the square.

Q. Now, will you tell us slowly in sentences what you saw, if anything, from your house? *A.* When I heard the sound of firing come closer, I went up to the first floor and I looked from the window. It was then that I saw a Canadian soldier giving himself up. As he was crossing Madame Godet's garden and when he had got to within three or four metres of the Germans, he was shot down. The Canadian soldier had his arms up in the air.

Q. Did you later see the body of this Canadian soldier? *A.* Yes, it was myself that buried him.

Q. Now, I show you a photograph taken from the *SHAEF Authie Report*, marked Exhibit K-4. Will you tell me what that photograph shows? Can you read English? *A.* No.

Q. What does the photograph show? *A.* I was here in the bottom of the yard. The Canadian soldier was there, near the wall.

Macdonald: I think it might be better if we marked these for identification at the present time and then the witnesses can refer to them from time to time and not confuse the court. I would like to put them all in and give them a number so that we shall be clear about them from then on. This first photograph should be Exhibit T-6 – that is the one K-4. Then Exhibit K-5 would be T-7. K-3 is on the same page. Some of the witnesses do not know about the other pictures on this page. K-5 is T-7. K-6 would be T-8 and the plan marked Exhibit 'D' would then be T-9...

Judge Advocate: That is all, is it?

Macdonald: That is all at the moment. *(Resuming examination-in-chief)*

Q. Now, referring to Exhibit T-6 – originally, you pointed to a part of the photograph... as the position where you were in relation to the things shown on the photograph. Is that the point 'P'? *A.* Yes, the letter 'P' indicates the spot where I was at the bottom of the yard.

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Q. Now, will you indicate where the German soldier was standing at the time he shot the Canadian? *A*. There is a little path – a road beyond the wall here and the German soldier was coming down that road.

Q. Now, will you point on this photograph where you saw the German soldier stand at the time he shot the Canadian? *A.* We can't see very well, we could see better on another photograph.

Q. You are now, however, pointing at a spot on this photograph which is marked "X." Is that correct? *A.* Yes.

Q. Now, will you indicate by pointing on the photograph where the Canadian soldier was standing with his hands up at the time he was shot by the German? *A.* He was a little back of that, he was crossing the garden. He was near the little wall at the time he was killed.

Q. Now will you say – was the point that you were indicating on the photograph the point marked 'C'? *A.* That is the spot where he fell.

Q. Now, I now show you Exhibit T-7. Will you indicate there where you were at the time you saw this – when you saw this shooting take place? *A.* Here in the bottom here – exactly. There are three windows there. Here, in the corner.

Q. Now, are you pointing to the window marked with the letter 'P'? *A.* The spot where I was?

Q. Yes. Is that correct? *A.* Yes, that is correct, certainly.

Q. Now, is this the road running past Madame Godet's house? I am now indicating in the left-hand corner of the photograph. *A.* Along Madame Godet's wall – it was near there that the Germans were when they killed the other.

Q. Would that be correctly indicated relatively by the letter "X"? *A.* Yes.

Q. I now show you Exhibit T-8. What is shown there? *A.* The Canadian soldier was coming from there. I couldn't see him from where I was before he reached this point here. *(Witness indicates position on photograph to the right of the centre and the other position is about the centre of the photograph.)* Just here – just against the edge of the picture I was able to see it from the window there.

Macdonald: I should say the witness indicates the spot shown 'C'-1 but over towards the edge of the photo on the same level. *(Resuming examination-in-chief)*

Q. Whose house is that which is marked 'A'? *A.* Madame Godet's house.

Q. I now show you Exhibit T-9. Will you indicate there where you were at the time you saw this shooting? *A.* Here. *(Witness points to the point 'P' on Exhibit T-9.)*

Q. Now, will you indicate where the Canadian soldier was when you saw him shot? *A.* Here, just before this point.

Macdonald: At this point I should say that the witness does not indicate 'C', but a point to the left of that... closer towards the corner of the fence. *(Resuming examination-in-chief) Q.* Will you now indicate where the German was at the time he shot the Canadian? *A.* He was approximately down the road. He was approximately here. *(Witness indicates as the position where the German was point marked 'X' on the exhibit.)*

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Macdonald: Now, the next photographs to which we will be referring are exhibits K-1, K-2, and K-3 and I would suggest that they be entered as T-10, T-11 and T-12...

Macdonald: *(Resuming the examination-in-chief)* *Q.* Now, did you see any other Canadians killed that afternoon? *A.* Yes, in the evening, one wounded man.

Q. How long was that after the Germans had retaken the village? *A.* Ten minutes, approximately.

Q. How long was it after you saw the first shooting? *A.* There were five minutes approximately between the two of them.

Q. Where were you when you saw this incident? *A.* I was in the opposite window in the room.

Q. Will you describe what you saw? *A.* Yes. I was in front of the window. There were several Germans under the trees who were machine-gunning the church. After this the wounded man who was under the trees moved. Then one of the German soldiers who wore a gabardine took a bayonet and hit him, opening his head.

Q. What was the nature of the Canadian's wound? Could you tell from looking out of the window? *A.* He was lying on his back and there was a bloodstain that was here. *(Witness indicates right side of abdomen.)*

Q. When you say that he moved, will you describe as nearly as you can what that movement consisted of? *A.* He moved his left arm and his leg a little.

Q. Had he been lying motionless previous to that time? *A.* No, he had already moved. I had seen him.

Q. Was he armed at the time you saw him move, the last time? *A.* No.

Q. Had the Germans been in occupation of this place that you have described as among the trees previously to the time that you saw the Canadian killed? *A.* No.

Q. Then did you take it that the Canadian had been killed in the course of fighting and had been in action immediately prior to the time he was killed by the Germans? *A.* He was not killed; he was wounded.

Q. You have said that at the time this Canadian was killed he was unarmed. *A.* No, he was not armed.

Q. And was he, in your opinion, seriously wounded or just slightly wounded from what you could see? *A.* He was unconscious.

Q. And I take it that if he was unconscious he was not resisting at the time he was killed by the Germans? *A.* No.

Q. Now, you say that the person who killed the Canadian was wearing a long coat? *A.* A gabardine.

Q. What was the colour of the gabardine? *A.* Light grey.

Q. Was it of a cloth material? *A.* No, very thick waterproof material.

Q. Were you able to distinguish the rank of the individual who killed the Canadian? *A.* No, I couldn't; his gabardine concealed everything.

Q. Did you see that same soldier at any other time? *A.* Yes, he made us come out of the house.

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Q. Were you able to say by having seen him on these two occasions whether he appeared to you to be an officer or another rank? *A.* I took him to be an officer since all the soldiers went to him and he was the one who was giving orders to everybody.

Q. Did you see the body of this Canadian soldier afterwards? *A.* Yes, I also buried him.

Q. And did you have an opportunity to see the body again that same afternoon? *A.* Yes, in the evening. They were there seven days before they could be buried.

Q. Now, what wounds did you see on this particular body? *A.* A bayonet thrust that opened the head from here to here *(Witness indicates line from left temple to point on the head just behind the left ear).* The brain was coming out.

Q. Now, will you describe in a little greater detail if you can precisely how this soldier was killed? *A.* He was lying on his back. When he moved, the German soldiers who were firing into the church steeple saw him. The one that seemed to be the leader took a rifle from one of the soldiers, went forward and opened his head.

Q. And was this done with the bayonet on the soldier's rifle? *A.* Yes.

Q. And was anything else done with the body afterwards? *A.* He gave him three or four more bayonet thrusts in the middle of the body and a burst from a machine-carbine. It was not the officer who gave the burst from a machine-carbine but a soldier.

Q. Now, when you describe this person whom you thought was an officer who ordered you out of your house later [on], did you have an opportunity to see at a little closer range the uniform and badges which were being worn by these soldiers and the officer? *A.* Yes.

Q. How were the men, that is the ordinary soldiers, dressed to whom this so-called officer was giving his orders? *A.* Some had greatcoats. Others had a jacket-blouses like your own. Others had camouflage material.

Q. Were you able to see anything on the uniforms of any of these soldiers from which you could tell to which formation or unit they belonged? *A.* Many had two s's, two things, zig-zags here. *(Witness indicates left lapel of his coat.)*

Q. Now, I show you Exhibit T-10. Will you tell us what that represents? *A.* This is the spot where the wounded Canadian was.

Q. Are you now pointing at the spot marked with the letter 'B'? *A.* This is where the Canadian was killed. *(Witness indicates spot marked by letter 'B'.)*

Q. Do you know from what position that photograph was taken? Was this photograph taken to your knowledge from your own window on the second floor of your house? *A.* No, it was taken from the opposite side.

Q. Was it taken from the first floor, that is, the first one above the ground floor of your house? *A.* This photograph was taken from the ground. My house is there. *(The witness points to the upper right-hand side of the photograph.)*

Q. Does this photograph show the same view as that which you have from the front window of your house on the first floor? *A.* Yes, to a certain extent, from where I am I see the trees from a different position.

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Q. I now show you Exhibit T-11. Will you indicate on that photograph, if it shows it, where the window is from which you saw the wounded Canadian killed? *A.* Here. *(Witness now points at window marked 'O' on Exhibit T-11.)*

Q. Now, will you indicate on this photograph where the body of the wounded Canadian was lying at he time he was killed by the Germans? *A. (Witness indicates position on the Exhibit marked 'B'.)*

Q. I now show you Exhibit T-12. Will you again indicate now on this Exhibit the window of your house from which you saw what you have just related. *A.* The second one here. *(Witness indicates window marked with letter 'O'.)*

Q. Will you also indicate where it was that you saw the body of the wounded Canadian? *A.* Here. *(The witness indicates point marked 'B' on the Exhibit.)*

Q. I now show you Exhibit T-9. Will you indicate there where your window was and where your house was from which you saw the wounded Canadian? *A.* Here is my house. This is where I was and the other was here. *(Witness indicates point marked 'C' on Exhibit T-9 and 'B'.)*

Q. Now you state witness, that you were not able to bury the body of this Canadian for some six days later. What do you mean by that? *A.* The Germans had forbidden us to touch the bodies.

Q. How was it then that you were able to bury the bodies six days later? *A.* Because we went to the Commandanteur at Caen and asked permission.

Q. Who went to the Commandanteur in Caen? *A.* M. Alaperrine.

Q. How do you know that? *A.* M. Alaperrine told is that he had been to the commandanteur and showed us the paper.

Q. What was M. Alaperrine's job in Authie? *A.* President of the Air Raids Precautions.

Q. Now, how do you know that the Germans would not permit you to bury the bodies until that time? *A.* They did not permit us to touch them. Those that we dragged out of the middle of the road to the side of the road they would put back. It was not good for them to see us at this.

Q. Why did you pull the bodies to the side of the road? *A.* Because the vehicles ran over them.

Q. Did you see any bodies that had been run over by vehicles as a consequence of their having been in the highway? *A.* Yes.

Q. How many? *A.* Two were reduced to complete jelly, one was [run]over from end to end and then there were others less serious.

Q. Now, did you see any of the Germans yourself pull these bodies back into the centre of the highway? *A.* Yes, one.

Q. Do you mean by that one body or one German? *A.* One German.

Q. Do you know whether bodies had been moved to the side of the road by any other of the French civilians? *A.* Yes, Fernand Gehr had already pushed some aside.

Q. Now, did you have anything to do eventually with the burial of these bodies? *A.* We were obliged to take two of them up with a shovel because they had been reduced to jelly. Three others who were in a hole had been shoved down hard into that hole. You could see the trace of heels on their shoulders.

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Q. Now, did you assist in the burial of these bodies? *A.* All.

Q. How many bodies did you bury? *A.* Thirty-seven.

Q. And were these all bodies of Canadian soldiers? *A.* Yes.

Q. And when you say that you were not permitted to bury these bodies until six days after the fighting, do you then say that they were buried on the 13th of June? *A.* Yes.

Q. How were the two buried that were badly crushed? *A.* In a piece of canvas.

Q. And were the two bodies buried separately or together? *A.* Everybody together, one next to the other, but the two who had been reduced to jelly together.

Q. I now show you photograph K-12, which will be entered as T-13. What is shown on this photograph?

Judge Advocate: That will be Exhibit T-13. ...

Witness: *A.* The road that passes here *(Witness points to photograph)*. The grave in the field behind.

Q. What grave is this? *A.* That is the Canadian soldier's grave.

Q. And is this the place where you assisted in the burial of thirty-seven bodies? *A.* Yes.

Q. Now, will you indicate... where you saw any of these bodies that you have been referring to? *A.* The two who had been reduced to jelly were here. *(Witness indicates points marked 'D' and 'E' on Exhibit 'K.')* Another one was here. There is a little road here and the other one was right around the corner. *(Witness now points to point marked 'F' on the Exhibit.)*

Q. Where else did you see the bodies of Canadian soldiers? *A.* All along here and also in this direction. There was another one here at the end of the pond. *(Witness indicates main highway running from the road junction in either direction and the place at which he saw another single body at a place marked 'X'.)*

Q. The place where you saw the single body to which you have just been referring, is it by any chance shown on Exhibit T-12? *A.* There was one here at the end of the pond but there was another one around the corner to the left. *(Witness indicates point marked 'R' on Exhibit T-12.)*

Q. Now, were there others with you in your house who may have seen some of the things which you describe as having seen from the window on the afternoon of 7th June? *A.* Yes.

Q. Who were they? *A.* Louis Marie, Maurice Gilbert, my whole family including my wife. Mrs. Villalba, Mrs. Coronet, Mr Houel. There were about thirty of us. Clement Faucon, I believe he was interrogated also.

Q. Do you remember a number of Allied Officers accompanying you to the village of Authie towards the end of August 1944? *A.* Yes.

Q. And do you remember that I was one of these officers? *A.* Yes, the Colonel there *(indicating Lt-Col Macdonald)*.

Q. And do you remember on that occasion you took us to the various places and described to us on the ground what you have just now told us? *A.* Yes.

Q. And do you remember that certain photographs were taken at that time? *A.* Not that day.

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Q. Was it later that photographs were taken? *A.* Yes, obviously, since I did not see.

Q. Now, I believe, witness, that you are, at present, serving a sentence for looting? *A.* Yes.

Q. And what was the sentence imposed for? Will you tell us what it was about? *A.* I found two thousand bottles of wine and brought them home and I drank them. I was thirsty. That is all.

Q. You are not going to ask the court to believe that you drank the whole two thousand bottles are you? *A.* I made a distribution of them because there were a lot of my friends who were also thirsty.

Capt F.R. Plourde for Defence Counsel: May I ask for a ten-minute recess in order to prepare the cross-examination of this witness?

—

Capt F. Plourde, Assistant Defending Officer: *(Begins cross-examination) Q.* You mentioned when the Canadian soldier was hit with a bayonet that he was not armed, didn't you? *A.* Yes, I have seen that as I see you now.

Q. Was there not a Bren gun near him? *A.* Ten metres away from him there was a machine carbine.

Q. What kind of machine carbine? *A.* A little machine carbine this long with a magazine underneath...

Q. You mentioned that the German who hit him with a bayonet was wearing a coat. Are you sure it was not a black coat? *A.* No, it was a gabardine.

Q. Exactly what colour was it? *A.* Light grey going on yellow. About like that. *(The witness indicates the wood panelling of the Court Room.)*

Q. You mentioned the Canadian bodies being left on the road. About how many? *A.* On the road – on both sides of the road there were at least twenty-five.

Q. And only two were crushed? *A.* Two were reduced to jelly. Others had their legs crushed. Another body had been run over from head to toe.

Q. How long did the battle last that day? *A.* A quarter of an hour to twenty minutes.

Q. You mean to tell us that the Germans took that town in fifteen to twenty minutes? *A.* In front of my place, the battle lasted fifteen minutes but you could hear firing going on throughout the whole village from one end to another for some time.

Q. By "some time" how long do you mean? *A.* Three-quarters of an hour – almost an hour.

Q. There must have been quite a bit of smoke and dust. *A.* Not very much, only when the cars came.

Q. There were many cars? *A.* From six o'clock to eight o'clock there was no stop. There were tanks and everything.

Q. After the battle was over and the Germans took the town, was there shelling and bombing – by the Allies on the town? *A.* Some shells fell but late in the night.

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Q. You mentioned about thirty persons witnessing these incidents you mentioned. Were they all looking out the window with you? *A.* No. I was the only one. The others were hiding between the walls for fear of bullets and what could fall in the staircase.

Q. You mentioned being under sentence for stealing some wine. When was it that you were sentenced? *A.* On the 7th of August.

Q. And how long a sentence did you get? *A.* Three years.

Q. And you think that's funny? *A.* But I have already received eighteen months remission of sentence.

Macdonald: *(Begins re-examination) Q.* When you say you received that sentence in August are you referring to this year or last year? *A.* Last year.

President: *Q.* I would like the witness to give us a little more information with regard to the description of this coat he refers to as a gabardine. For example, how long was it; did it have a waist belt on it? What did this man have on his head? *A.* The gabardine fell down about half way down the calf of the leg. It had no belt and the man wore a helmet.

Q. Was the man wearing any equipment over it? *A.* No. When he took out his revolver to make me get out of my house, he opened his coat and drew his pistol from under it.

Q. How tall was this man? *A.* About a metre- seventy – well-built – no beard. He was about my height...

(The witness withdraws.)

Macdonald: In connection with the evidence given by this witness, I would like to read certain of the ***proceedings of the SHAEF Court in connection with his previous examination. I refer now to the record of proceedings in the SHAEF Authie Report*** at page two of part one.

"... The following witnesses, after being duly sworn, were examined by the Court: (I)M. Albert Builbert, Authie, Calvados, France... The Court resumed at l'Ecole Normale d'Instituteurs, Caen, Normandy, at 0930 hours 30 August 1944... A statement of the proceedings of the Court at that location is attached hereto and marked Exhibit 16... *[Exhibit 16 is the Statement of the proceedings of the Court at Authie, 30 August 1944.]*... The Court and interpreter accompanied by the Witness, Albert Guilbert, still under oath, proceeded to Authie... to view the scene of events related by said witness, Albert Guilbert, in his evidence given on the previous day. The witness first indicated the position of the wounded Canadian soldier who he swore to have seen bayoneted and shot while lying in the village square and this position was marked on Exhibit 'L' with the letter 'B.' The Witness then took the Court to the second window from the north-west and, on the second floor at the front of the building..."

Macdonald: Now, I can assure the Court that it means the first floor up,

"in which he was living on 11 June 1944, and from which he said he had seen the attack upon the wounded soldier at 'B'. This window was marked on Exhibit 'D' with the letter 'O'. The window was found to be 15 yards from position 'B' shown on Exhibit 'D', and the members of the Court looking from the window satisfied themselves that position 'B' was clearly visible from window 'O'.

The witness then went to the position in which he said the Canadian had been, whom he had seen killed while in the act of surrendering, and this position, was marked on Exhibit 'D' with the letter 'C' and the position which the German soldier was, who did the shooting was marked with the letter 'X'.

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The witness swore that he had witnessed this latter killing from a window on the second storey at the read of his house while standing on the window sill. This window was indicated on Exhibit 'D' with the letter 'P'. The members of the Court then satisfied themselves that positions 'C' and 'X' were so visible from 'P' and pacing out the distance found 'C' and 'X' to be approximately 64 yards from 'P'.

Exhibit 'D' was found to be inaccurate in showing the home of the witness to be part of an L-shaped building one wing of which, as drawn on the map, would have obscured such a view. Actually this building and the adjoining one to the southeast are separated by an alley, and the adjoining portion of the building to the southeast only extends to the height of the ground floor. Through this a view is obtainable from 'P' to 'C' and 'X'. Exhibit 'D' was altered accordingly by the Court and alterations were marked with letter 'J'.

The witness then indicated on the ground the positions in which he had seen Canadian soldiers' bodies run over and crushed by enemy vehicles. The positions of two such bodies which, the witness stated, had been so badly crushed as to be unrecognizable, were marked Exhibit 'D' with the letters 'D' and 'E'. Other bodies which he said had been run over were marked with the letter 'F' and the position in which he said seven or eight bodies had been moved back by the enemy into the roadway, after they had been placed on the sides of the road by French civilians, and were then run over by German vehicles, was marked 'G'.

The Court then went to the grave site marked 'H' at which witness had assisted in digging graves and burying Canadian dead killed on or about the 7th of June 1944. Thirty-five crosses had been erected, and a list of the names shown on such crosses is appended to this Report and marked 'E'.

The witness said that actually thirty-seven had been buried there, the additional two being crushed by enemy vehicles and so unrecognizable.

The witness took members of the Court to a grave on the outskirts of Authie where he said he had buried the body of a German soldier found by him at that spot on or about 12 or 13 June. The Court directed that the body can be exhumed and examined for identification of unit. The grave had been marked with a rough cross bearing the words pencilled in English, 'German soldier killed 8 June.' At the subsequent exhumation no identification could be made from the body in this particular grave (see Exhibit 21)."

Macdonald: And now I read Exhibit Number 18, which is the ***Record of Evidence of Captain J.R. Gauthier, RCMP***.

"Capt J.R. Gauthier is called and having been duly sworn, is examined as follows:

Lt-Col Macdonald: What is your name, rank and unit? *A.* John Robert Gauthier, Captain, Royal Canadian Mounted Police.

Q. I believe you went to Authie in company with certain members of the Court and the Witness, Albert Guilbert? *A.* Yes.

Lt-Col Boraston: I put to you a statement of proceedings at Authie on 30 August when certain members of the Court visited Authie together with the Witness Albert Guilbert, on which occasion you acted as interpreter. Will you read the statement and say whether it is a correct account of what took place on that occasion, making any alterations or corrections that you may consider are required? *A.* Yes.

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Lt-Col Macdonald: I show you certain photographs which will later be proved and from an examination of these photographs can you identify the spots marked as the ones referred to by the witness, Guilbert, in the proceedings of the Court on the day in question, now being read by you? *A.* Yes.

Q. You have the record of the proceedings. Are you prepared to swear this is an accurate account of what occurred and of the evidence given on that occasion by the witness Albert Guilbert? *A.* I am.

Q. I note that in the record of the Court proceedings it was observed that Exhibit 'D' was not accurate in respect of the manner in which it shows the building occupied by the witness Guilbert, and alterations were made in the exhibit by dotted lines in ink to indicate the way in which the plan should have been drawn, and these changes are indicated by the letter 'J' on the exhibit. Are you prepared to agree with the alterations made on this exhibit as showing the true formation of this building? *A.* Yes.

Q. I show you Exhibits 'K4', 'K5' and 'K6'. Do these exhibits correctly show the building in question and the portion marked 'J' on Exhibit 'D'? *A.* Yes.

(The witness withdraws.)

Macdonald: Sir, with your permission I will ask Col Campbell to continue with the reading of the testimony.

Campbell: The two portions that I wish to read are contained in the *SHAEF Authie Report*. I will read first from Part 1, "Record of the proceedings of the Court of Inquiry," at page 4.

"The court resumed at l'Ecole Normale d'Instituteurs, Caen, Normandy, at 10.15 hours 5 September 1944... ***M. Leon Lenoel, civilian, whose recorded evidence*** is attached hereto and marked Exhibit 24."

Campbell: I should have preceded that by saying that, "The following witnesses, after being duly sworn, were examined by the Court," and to save going back through this procedure again I will read also Paragraph 'H', which is a part of the section I wish to read.

"Mme. Bertha Fauvel, civilian, whose recorded evidence is attached hereto and marked Exhibit 25."

Campbell: In the course of this examination reference will be made to further pictures which are part of the SHAEF Court of Inquiry proceedings in the *Authie Report* and to save everyone's time and to have some continuity to it, I should like to put in the balance of the pictures now, commencing with Exhibit K-7. [The second one is K-8 of the *Authie Report*, which I understand will now be T-15, K-9 now T-16, K-10 now T-17 and K-11 now T-18] ...

Campbell: Reading now from Exhibit No. 24 of the SHAEF *Authie Report*:

"M.L. Lenoel is called and, having been duly sworn, is examined as follows:

Lt-Col Macdonald: Q. What is your name? *A.* Leon Lenoel.

Q. Where do you live? *A.* Authie.

Q. How long have you lived there? *A.* Since 1941.

Q. How old are you? *A.* Twenty-five.

Q. Are you married or single? *A.* Married.

Q. What is your occupation? *A.* Farmer.

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Q. Were you in Authie on 7th June last? *A.* Yes."

Campbell: Down at the bottom of the same page,

"*Q.* What time did the Germans recapture the village? *A.* About five thirty or quarter to six.

Q. Did you see the Germans kill any of the Canadians? *A.* No, when I got out of the house about six o'clock I saw two or three Germans around a Canadian lying on the ground. One of them tried to take the Canadian's clothes off on the point of his bayonet.

Q. Was the Canadian alive or dead? *A.* I believe he was dead.

Q. Where was this body? *A.* There *(indicating point 'B' on Exhibit 'K3').*"

Campbell: Then the second last question on the same page, page 2:

"*Q.* Did you see any bodies lying on the road before you were evacuated? *A.* Yes.

Q. Look at these photographs. *A.* I saw at least two Canadian bodies in the vicinity of the road there *(indicating road marked 'G' on Exhibit 'K11'*). I also saw four bodies behind Mme. Godet's house there *(indicating house as the complete building with roof and two dormer windows on Exhibit 'K11')*. I saw two bodies of Canadian soldiers in the garden of Mme. Godet's house there *(indicating 'C1' on Exhibit 'K6')*.

Q. Are those the only bodies you saw? *A.* I saw some on the road near Mme. Godet's house. I could not say how many bodies but there were about four.

Q. Were the bodies crushed? *A.* Yes, they were there *(indicating points 'D' and 'E' on Exhibit 'K7')*.

Q. Could you see how many? *A.* A few days after that when those bodies were buried two or three blankets were used, but I could not say how many bodies there were.

Q. How did you pick up the bodies? *A.* I did not pick them up.

Q. How do you know they used two or three blankets then? *A.* Because I buried them myself."

Campbell: And the second last question on the same page,

"*Q.* Do you know to what formation the German troops who occupied this village belonged? *A.* They had long grey coats on and I could not see any mark.

Q. Do you know the names of any of the German soldiers? *A.* No, I could identify them but I do not know their names."

Campbell: I have read practically all of it and I just want to know if my learned friend wants to add anything.

Andrew: No, sir.

Campbell: The second one is very short and I think it should be read now:

"***Record of the evidence of Mme. Bertha Fauvel. Mme. Fauvel*** is called and, having been duly sworn, is examined as follows:

Lt-Col Macdonald: Q. What is your name? *A.* Mme. Bertha Fauvel.

Q. Where do you live? *A.* Authie.

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Q. How long have you lived there? *A.* Twenty-eight years.

Q. How old are you? *A.* Sixty."...

Q. Were you in Authie on 7th June? *A.* Yes.

Q. Did you see the fighting between the Germans and the Canadians on that day? *A.* I was there when the first Canadians came in and was there during the exchange of milk, cider, cake and chocolate between the Canadians and villagers. Before I got in the house I saw a Canadian fire with a... machine-gun, but when I came back five or ten minutes after, that same Canadian had dragged himself from the house to just close by the pond.

Q. Point out on this photograph the spot to which the Canadian dragged himself? *(Exhibit 'K3' handed.) A.* There *(indicating point 'R' on Exhibit 'K3')*.

Q. Did you see a Canadian among the trees in the square? *A.* Yes, there *(indicating points marked 'B' on Exhibits 'K2' and 'K3')*.

Q. When you first saw the Canadian in this position was he alive or dead? *A.* He was dead when I first saw him.

Q. How close were you to his body when you saw it? *A.* Close by, I was less than a metre in front of the body.

Q. In what position was he lying when you saw him there? *A.* He was lying on his back with his hands up on each side of his head.

Q. Could you see any injuries which might have caused his death? *A.* He had a fractured skull.

Q. Could you tell what might have caused that? *A.* I could not say. The skull was wide open.

Q. Did you see the bodies of any other Canadian soldiers? *A.* I saw one body there *(indicating point 'F' on Exhibit 'K10')*.

Q. Did you see any other Canadian bodies there? *A.* I saw the body in the position marked 'F' on Exhibit 'K10' and also from the position where I observed that body I saw some near the places marked 'D' and 'E' on Exhibit 'K7' from that position I saw a man's thigh. I did not wish to see any more so I did not go.

Q. Do you know the formation to which any of these German soldiers belonged? *A.* No."

Campbell: Now, there is one further extract from the *SHAEF Authie Report* in the form Exhibit 3-E to that Report. It is the deposition taken by the ***SHAEF Court of Inquiry of M. Maurice Guilbert***. It is given in the original French and it is also given in English.

"Deposition of M. Maurice Guilbert. Native of Authie, near Caen (Calvados). I was born on 25 October 1920, at Authie, near Caen (Calvados), where I live. I am a bachelor and by profession a navvy. I volunteered into the FFI on the 30th of July 1944, under the orders of Capt. Georges, whose Command Post is at No. 1, rue Grusse, Caen. On the 7th of June was at Authie in the shelter of M. Capron, a farmer in the village. Several shells had fallen on his farm and set it alight. We had extinguished the fire with the aid of buckets of water, which I went to get from the point in the village square. In the moment I noticed what I believed to be Canadians (about 50), who were working along the walls. As the fire was by this time nearly out, I set off with them. Arriving at the end of the village I saw an Allied tank which had been smashed by the shells and had gone on fire. Several men got out of it se-

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verely burned. I asked a villager who was wearing a Red Cross what he could do for them. He brought them water and milk. During one of these journeys I was caught in a storm of light machine gun fire from Germans who were returning to the village. The wounded Canadians, who I told that the Germans were coming back, said I was not to stay. So I went back to my comrade, Albert Guilbert, where already several persons had gathered. Those I can name:... Guilbert, Albert; Faucon, Clement; Marie, Louis and wife; Guilbert, Raymond, (my brother); Lenoel, Leon, (my brother-in-law); Lenoel, Gaetienne, (my sister); Houel, Charles, and his wife. We observed the battle between the Canadians and the Germans who retook our village. It lasted approximately 17 or 18 hours."

Andrew: Excuse me. Is that an error there? A typographical error?

Campbell: Yes.

Macdonald: The reference is 17 or 18 hours the battle lasted. It meant 1700 hours to 1800 hours.

President: Yes.

Campbell : *(Resuming)* "At one time we saw through the window of a room in the house of Albert Guilbert, SS men (I knew the markings of this formation) fire at a soldier who had his arms raised. When the battle had calmed down, the German SS men gathered round a wounded man who was lying in the square. About 5 or 6 of them pierced this wounded man with bayonet thrusts. Then, having scoffed at him for some minutes, they finished him off with light machine gun and revolver fire. Afterwards, they went into the house and made us get out in order to verify their papers. Earlier on, according to the allegations of Mme. Godet, they had shot in her house six Canadians whom they had ordered to put their hands up (they are to be found, moreover, still buried in this position). M. Barrette, an intimate friend of Mme. Godet, confirmed to me that they hid the six bodies in front of his house door (these corpses were buried by me and other comrades and honest men of the district, namely, Albert Guilbert, Leon Lenoel, Jules Pierre, my brother Raymond, etc.). Two days later on the 9th, German tanks and motor lorries passed through the village and without making attempts to turn aside, passed over several corpses. They were so mashed up (like a pulp) we were forced, in order to bury them, to gather them up with a shovel. We were only able to bury the bodies on the 12th of June, as the Germans had forbidden us to do it before. We buried them side by side in a communal grave, which lies on the road from Cussy. The identity of all the bodies, with the exception of some who were unrecognizable, has been made note of. The number of bodies identified is about 25. Of these a list exists in the hand of town councillor Alaperrine. A box containing articles which belonged to his corpses should also be in his hands. Signed on 1st August 1944. M. Guilbert."

Campbell: And there is also a ***declaration by M. Louis Alaperrine***, Exhibit 'T' to the *SHAEF Authie Report*:

"A declaration by M. Louis Alaperrine, 22, Avenue Crole, Caen, Calvados, living prior to 7 June at Authie. The witness, having been duly sworn by Captain J.R. Gauthier, states that – 'On 7 June, between 4.30 and 5.00 P.M. about thirty Canadian soldiers arrived at Authie. At 6.00 or 7.00 P.M., the Germans put in a counter-attack. There were three Canadian soldiers outside my house near my kitchen. The Germans sent a shell into the kitchen and two of these soldiers were killed out-right, the third wounded in the foot and kidneys. I had just left my shelter trench and I began to bandage this soldier's foot wound when a German officer and another rank arrived near the house and looked at the two bodies. They then turned towards the wounded man. The officer took out his revolver and fired two shots into the Canadian soldier's head. I was then about 8 metres away from the incident. I cannot give this officer's name but I can provide the following description: Height: about 1m 80, slim waist, very close shaven. He wore a shiny, rain-proof coat. All I can say is that the Germans who counter-attacked belonged to the S.S. The same day in the evening, I also saw, at the back of Mme.

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Godet's, six or seven dead Canadian soldiers of which a few had their arms raised above their heads. Five or six days afterwards I took it upon myself to have all the Canadian soldiers killed at Authie buried, of which several had been mutilated in the road, through having tanks roll over them. I collected all the personal effects of the Canadian soldiers buried at Authie, and handed them to M. [Lefebvre], who was Mayor of Authie at the end of August. I believe that these were all handed in to Civil Affairs officials at Bretteville L'Orgueilleuse. This declaration having been read back to me, I am willing to sign it'. (Signed) Louis Alaperrine. Witness: J.R. Gauthier, Capt. 9 October 1944.

Macdonald: Referring to the evidence of ***Maj J.G. Learment found in the SHAEF Authie Report*** Exhibit No. 33. Reference to the occasion on which the evidence is given at p. 6 of the Report, Part 1 where it says that:

"On 18 September 1944 the Court resumed at Canadian Military HQ, Cockspur Street, London, England at 14.50 hours 18 September 1944... The Court then proceeded to the examination of witnesses. The following witnesses having been duly sworn, were examined as follows: (b) J.D. Learment, Major, North Nova Scotia Highlanders, whose recorded evidence is attached hereto and marked Exhibit 33.

Lt-Col Macdonald: Q. What is your full name, rank and unit? *A.* Major John Donald Learment, North Nova Scotia Highlanders.

Q. I believe that you were engaged in operations against the enemy on the 7th of June last? *A.* Started on the 6th. Yes.

Q. And I believe that this was in the vicinity of Caen? *A.* That is right, sir.

Q. Is it correct that your unit was proceeding in a south-westerly direction, having as the axis of your advance generally speaking, Buron, Authie and Franqueville, having as your objective the Carpiquet airfield? *A.* That is correct.

Q. What Company were you commanding? *A.* "Charlie" Company.

Q. What was the position of your company in the line of advance? *A.* We were in the vanguard.

Q. Will you in your own words briefly describe your engagement with the enemy? *A.* We cleared the town of Buron and continued along the main axis to Authie. Upon reaching there, we received information there were large forces of enemy infantry and tanks in the vicinity. I had a large number of soft-skinned vehicles with me, and was given orders to have the troops dig in and await the outcome of the tank battle which we knew was coming.

Q. Could you give us the precise location by a map reference? *A.* The bulk of the company was at [MR]984713. By this time the tanks which were working with us began to withdraw rapidly. I took the carriers which I had under my command and moved to the vicinity of Buron where I contacted the CO and we discussed the possibility of taking the vehicles and what men we had forward to Authie to either relieve or pick up the infantry. We attempted to do this and came under heavy fire, both mortar and 88's, and were not able to proceed to Authie. I sent the carriers back to report to the CO and with what men I had left dug in at MR 993728. In this position we were heavily mortared and shelled for a period of approximately 2 hours. At this time, infantry supported by tanks attacked and over-ran our position.

Q. What time would this be? *A.* In the vicinity of 1900 hours I would say: 1830 or 1900 hours.

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Q. Do you know at what time the village of Authie was captured by the enemy? *A.* I believe it was around 1730 hours. I saw a white flare fired at this time which came from the direction of Authie and I took it to be an enemy success signal. We were not using light signals ourselves.

Q. Then what happened? *A.* We were over-run by tanks and infantry at roughly 1930 hours. After a short fight we were taken prisoner and a group of about 18 to 20 were taken to Buron where we were searched and at this time one of the men was shot for having a hand grenade stuck in his belt or in his blouse.

Q. Who was this soldier? *A.* Private Metcalfe, J.

Q. Why do you give that as the reason he was shot? *A.* He was beside me when he was being searched. I saw this German take the grenade and let out one of those screeches they are noted for and immediately he turned his machine gun on Private Metcalfe.

Q. Was Metcalfe killed? *A.* He did not die instantly. He lay on the ground for a bit and this guard then put his Schmeisser up to his head and fired three shots into his head.

Q. The German did this? *A.* The same chap did it all.

Q. Was he an NCO or private? *A.* I could not tell. They wore camouflaged suit[s] and showed no rank.

Q. Do you know what unit he belonged to? *A.* I know he definitely belonged to the Adolf Hitler division. The 21st Panzers, I believe they were. In any event, they were Panzer Grenadier personnel.

Q. Why do you think so? *A.* Well, after we had gone back probably a few kilometres we met with Germans without camouflaged suits, and they all had the Adolf Hitler ribbon on their cuffs.

Q. What made you think they were the 21st Division? *A.* I found that out after I came back, that they were the 21st that were opposed to us.

Q. To go back to Metcalfe, had he made any move to make use of his grenade? *A.* No.

Q. Had you been given any orders to get rid of your grenades? *A.* No, sir.

Q. Did you see Lt Fairweather or Veness at that time? *A.* No, I did not see them until later when we joined them and other prisoners at the Abbaye.

Q. Were you thoroughly searched at Buron? *A.* No, very roughly.

Q. What was the nature of the search? *A.* More to see what we had on us, personal loot. Any books or papers taken were thrown on the ground and they immediately started to eat any emergency chocolate rations they found on us.

Q. Were any other articles taken from you? *A.* Our field dressings, steel helmets, sulphanilamide powders and morphine syrettes.

Q. What did they do with the field dressings? *A.* Simply threw them on the ground.

Q. And it was in the course of this search I take it that this grenade was found on Private Metcalfe? *A.* Yes, sir, that is correct.

Q. How do you account for it that Metcalfe still had this grenade in his possession? *A.* I think he simply did not have time to get rid of it before.

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Q. What was your impression of the conduct of your captors at this particular time? *A.* They were wildly excited and erratic and nobody seemed to be actually in charge of this group.

Q. In what way did they manifest this excitement and lack of control? *A.* They were continually yelling and screeching to one another and when we were searched, as I said before, if they saw anything they liked they simply put it in their pocket. Generally they behaved in an exceedingly disorderly manner and I actually thought they must have been taking drugs.

Q. Was there any firing still going on at this time? *A.* Yes, the village was under heavy shell fire.

Q. Were your particular captors doing any firing except the incident of shooting Metcalfe? *A.* No. I did not see them doing any.

Q. You were taken then from Buron to some other place? *A.* We were taken to the Abbaye which is at MR. 996700."

Macdonald: The Court may wish to see that spot on the map; it will appear a great deal in the testimony from now on. *(Continuing)*

"*Q.* What happened there? *A.* The prisoners who had previously arrived there were then brought out in the Abbey and the group I was with were searched in a more orderly manner. I was searched by an officer almost at once and the whole group was formed up and marched off in the general direction of Caen.

Q. What time would this be? *A.* It would be at least 20.00 hours, I would say, possibly a little later.

Q. To get back to Buron, was there any other instance you remember which occurred at that time in which any one of the prisoners was either shot or threatened? *A.* On the way to the Abbey some of them were wounded by our own mortar and shell fire and I was later told that Private Hargreaves, J.D., had been wounded in the legs and could not carry on. He was promptly shot by the Germans.

Q. Who did this shooting? *A.* They were the same group of guards who had searched us.

Q. Did more than one of these guards take part in this shooting? *A.* I do not know about that. I would imagine so. The chap that shot Metcalfe was at the front of the column. I remember seeing him there and Private Hargreaves was in the rear of the column when he was shot. He was the last man in the column.

Q. What was your position in the column? *A.* I was third from the last. The man behind me told me about Hargreaves being shot.

Q. Did you not actually see him shot yourself, then? *A.* No, sir.

Q. Who was the man behind you? *A.* Private Talbot, G.P."

Macdonald: I will be calling him as a witness later. *(Continuing)*

"*Q.* Where is he now? *A.* He is still a prisoner, as far as I know, sir.

Q. Is there any other incident at Buron that you feel should be mentioned? *A.* Yes. We attempted to help a couple of chaps that were wounded. They motioned us away with their guns and would not let us help them along. And again, as soon as we arrived at Buron we were put against a wall and machine guns put on each flank as they apparently intended to shoot the group of us. A German soldier, who I took to be an NCO of some description, arrived at the scene and from his actions I judged he

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prevented the shooting. Up to that time, they had not made any effort to search us and as soon as he did this they started to search us.

Q. How many prisoners were in your party? *A.* I would say between 18 and 20. I am not sure.

Q. Are you quite sure that they were preparing to execute you rather than just to set up machine guns as temporary guards to prevent your escape? *A.* It did not look like it to me. Every man carried a Schmeisser.

Q. When you say you were lined up in some orderly fashion, was it in the manner we are led to believe prisoners are sometimes executed? *A.* They kicked us and shoved us until they got us in a line against the wall with our hands up. Fortunately, the chap who I took to be an NCO arrived and prevented it. I certainly have no doubt it was their intention to shoot us.

Q. On your way to the Abbey did you march through the village of Authie? *A.* Part way through it, sir.

Q. Did you see any Canadian prisoners there? *A.* No, sir.

Q. Did you see the bodies of any Canadians soldiers there? *A.* Yes, I saw the bodies of them; about half a dozen men that I recognized from my own company.

Q. Where were the bodies you saw? *A.* They were lying right in the streets of Authie, in the northern end of the village.

Q. Was there anything that you noticed in particular about the condition of these [b]odies? *A.* No, sir. Some had been run over by tanks. There had been no effort to move them at that time."

Macdonald: And then from an Affidavit which Maj Learment provided which will be found in Book No. 1. I am reading the document described as "***Extract relating to atrocities as taken from experiences of Maj J.D. Learment, DSO, Officer Commanding "C" Company, North Nova Scotia Highlanders***. Given to Historical Officer Canadian Military HQ, London, England, 13 September 1944" and this document is sworn to by Maj Learment on 19 November 1945... The document is available for filing if it is desired.

"1. Maj J.D. Learment, DSO, Commanding "C" Company, North Nova Scotia Highlanders, was in charge of the vanguard of the 9th Brigade, 3 Canadian Infantry Division. This group consisted of a recce troop from the 27 Canadian Armoured Regiment, a platoon of M.G's from the C.H. of O. (M.G.), a troop of A. Tank gun 105 A. Tank Battery, two dets. 3 in. mortars, two assault sections pioneers, the carrier platoon North Nova Scotia Highlanders, two flails from the RAC, and "C" Company, North Nova Scotia Highlanders.

2. This group landed on 6 June 1944 at approximately H plus 200 at Bernieres-sur-Mer. From the point of landing they proceeded to the Assembly Area at Beny-sur-Mer. At this point all troops under command and in support were organized as planned and the vanguard, with Capt. F.C. Fraser, second in command of "C" Company, commanding the Company and Maj Learment commanding the vanguard group. The preceding Brigade, the 8th, did not reach the Divisional intermediate objective on schedule and the vanguard did not leave its assembly area until approximately 1800 hours, six hours behind schedule due to slowness of 8 [Brigade].

3. Proceeding along the main axis toward the village of Basly, the vanguard met some light opposition and took some prisoners, mostly Russians, Poles, etc. They were not held up seriously and proceeded along the axis Basly-Caen, taking more prisoners and were finally ordered to halt at

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approximately 2130 hours in the vicinity of [cross-roads] (0075) near Villons- les-Buissons and dig in for the night. The battalion took up an all-round defensive position for the night and although there was some patrol activity and a few skirmishes no serious threat developed.

5. At approximately 1530 hours, the leading elements of the vanguard had entered and cleared Authie after a sharp action during which the enemy suffered rather heavy casualties. At this time word was received simultaneously from both Capt. Fraser with the forward infantry and Lt-Col C. Petch, O.C. North Nova Scotia Highlanders, of the presence of enemy tanks, and was further followed by an order from Col Petch that the infantry were to dig in where they were and the vehicles got to cover. The infantry dug in slightly south of Authie while Maj Learment, who was at that time between Buron and Authie with the vehicles in an exposed position, received orders to move slightly north of Buron. This was done, but as the vehicles were still very exposed, Maj Learment and approximately one section of infantry and his Company HQ dismounted and dug in and sent the vehicles back slightly north in the vicinity of Les-Buissons. Before this was done an attempt was made to relieve the troops of "C" Company at Authie who were having a rough time of it. A goodly number of the tanks of the 27 CAR were out of action and the remainder retired to the vicinity of Les Buissons to [hold] down positions. The attempt to get through to Authie was met by heavy artillery and mortar fire, casualties were suffered and the task given up while the remaining troops dug in near Buron.

6. By this time, approximately 1630 hours, it was certain that the two forward platoons of "C" Company had been wiped out and a few stragglers confirmed this when they filtered back through Buron and joined "C" Company HQ in their dug in position. During the next two hours, this position was under severe artillery and mortar fire. At approximately 1830 hours, enemy infantry attacked the position and although they were held for a time, the defenders, about twenty in number, exhausted their ammunition and were over-run. The infantry who captured this position were dressed in camouflage clothing and it was not possible to make any identification at this time.

7. At this time, approximately 1930 hours, this small group I was with were turned to the east and after travelling through a large wheat field arrived at the Ancienne Abbaye Ardenne, which we later learned was the HQ of General Meyer, later Commander of the 12th SS Hitler-Jugend. Here we met Major L.M. Rhodenizer, O.C. "A" Company, North Nova Scotia Highlanders and a number of his men who had been captured a few hours previously. Also, Lieut. J.M. Veness who had commanded 14 Pl. "C" Company and a few of his men who had been taken earlier in the day at Authie. We were searched here in a more orderly manner and the attached picture is that of the SS Captain who searched me. I have had a photostatic copy of this picture made and am enclosing it as evidence, marked Exhibit A. The picture I found in a former German dugout after the Rhine crossing in March, and at once recognized the SS Officer and this has been verified by Lieuts. Veness and Fairweather, North Nova Scotia Highlanders, who were also captured 7 June 1944, and escaped when I did."

Macdonald: And I may say in connection with the photograph that I have shown it to a number of the witnesses and it has not been identified by any of the German witnesses. *(Continuing reading)*

"8. I was not interrogated until our group reached a HQ near Venoix at which time the seven officers with me were taken into an Orderly Room and asked by an SS Corporal, in the presence of an SS Colonel, whom I would not recognize, such questions as when and where we landed, our Division, Brigade, etc. None of these questions were answered by any of the group, whereupon the Corporal read to us from the German Order of Battle many facts pertaining to the 3rd Cdn. Div., its state of training, mainly trying to impress us with their knowledge of our order of battle. We were then taken out and rejoined the main group of prisoners and proceeded to the school at Bretteville-sur-Odon."

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Macdonald: I should like to file the photograph apart from the affidavit because of the clause which is in it pertaining to another incident in case it turns out that someone later on will be able to identify the person shown in the photograph.

Andrew: There is one part of this, sir, I should like to read, if I may. That is a portion of paragraph eleven –

"From the time of our arrival at the Ancienne Abbaye Ardenne our particular group was escorted by Field Gendarmes of the 12th SS Division, all of whom wore a strip of black cloth on their left forearm with Adolf Hitler written on it in silver." *(Photograph of an unidentified SS Captain is entered as Exhibit T-19...)*

President: The Court will adjourn until 1000 hours tomorrow.

(At 1655 hours, the Court adjourns until 1000 hours on 12 December 1945.)

12 December 1945

President: I declare the Court is now open. Can we have the accused and escort, please. *(The accused is brought before the Court.)...*

Macdonald: I presume, Mr. President, that the Court appreciates that, at the present time, we are directing our evidence to the Second Charge and that the evidence with respect to the First Charge has been completed. Furthermore, we are not proposing to adduce any evidence of a direct order that prisoners should be shot because our case rests largely on circumstantial evidence. The charge is one of inciting and counselling and we don't go so far as to try to prove the existence of a direct order. The first witness is Sgt Dudka.

President: It may transpire that the Court might want to ask some of these witnesses to appear again later on, so I don't want them to be sent away as if they had completed their evidence.

Macdonald: Very good, sir.

President: In regard to the witnesses that have already been examined, may these witnesses be kept separate from the others.

Macdonald: Now, in that connection it will rest largely with the Commanding Officer of the Royal Winnipeg Rifles. I proposed to keep SS Mann Helzel separate, but discovered that the only place he could be put was in the cell block along with the accused.

President: Well, this problem has got to be solved by the Winnipeg Rifles.

Macdonald: It is your wish that the witnesses be kept separate?

President: Yes.

Sixth Witness for the Prosecution

F. 44705, Sgt. Stanley Dudka, North Nova Scotia Highlanders, being duly sworn is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Q. What is your name, rank and unit? *A.* F.44705 Sgt Stanley Dudka, North Nova Scotia Highlanders.

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Q. And I believe that you landed in Normandy with your unit on 6 June? *A.* Yes.

Q. And that you were taken prisoner of war the following day, 7th of June? *A.* Yes.

Q. And that during the month of August you escaped from the Germans and were wounded in the course of that escape? *A.* Yes.

Q. After you recovered from your wounds did you then rejoin your unit? *A.* Yes.

Q. And I believe that thereafter you took part in the fighting in which your unit participated for the succeeding two months? *A.* Yes.

Q. And that you then spent a couple of months in hospital? *A.* Yes.

Q. And were then sent to England for training purposes? *A.* Yes.

Judge Advocate: Col Andrew, you will say if there are any questions which you object to as leading. You probably have no objection to leading questions in respect to introductory matters, but later on if you object to any question, please say so.

Andrew: Yes, sir. There is no objection.

Macdonald: *(Resuming examination-in-chief) Q.* And that you again rejoined your unit just before VE Day? *A.* Yes.

Q. That you volunteered for the Pacific Force? *A.* Yes.

Q. And that you were in Canada on VJ Day and were subsequently demobilized? *A.* Yes.

Q. And that you now, therefore, are a civilian appearing voluntarily before this Court? *A.* Yes.

Q. When did you receive your Military Medal? *A.* 9 November.

Q. Now, where is your home? *A.* At Stellerton, Nova Scotia.

Q. How many times have you been wounded? *A.* Altogether three times sir.

Q. You are only wearing two wound stripes? *A.* Yes. One was a slight wound.

Q. Now, with what Company were you serving on 7 June? *A.* With Charlie Company.

Q. And who was your Company Commander? *A.* Maj Learment.

Q. Now, along with the rest of your Company, did you take up a position on the afternoon of 7 June 1944 in the vicinity of the village of Authie? *A.* Yes.

Q. And was that position south of the village of Authie? *A.* It was in the rear of Authie, sir. North, I believe.

Q. And was it that two platoons of your Company were further forward, that is, to the south of Authie? *A.* Yes.

Q. Now, as a consequence of a counter-attack made by the Germans, I believe that your Company was forced to withdraw from the village of Authie? *A.* Yes sir, some of us withdrew, but two platoons were trapped in Authie.

Q. And did you take up a new position, then, in the village of Buron? *A.* Yes.

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Q. Indicate by map reference where that was, please. *A. (Witness indicates a point which is approximately south on the right of the road indicated approximately by MR 995737 on the Caen Sheet 7F/1.)*

Q. Now, who was with you in this position that you took up north of Buron? First of all, what officers? *A.* Maj Learment and Lieut Graves, but he wasn't there when we were captured.

Q. How many men altogether [would] there be there? *A.* Twenty-three all ranks.

Q. And was that the position in which you were taken prisoner? *A.* Yes.

Q. Where were you taken after being captured? *A.* Buron, sir.

Q. And how many were there in the party which were taken to Buron? *A.* Approximately twelve.

Q. And were you taken to the village of Buron or through it? *A.* We were taken and lined up on a road running east and west through Buron, lined up on the north side.

Q. Will you indicate by map reference where this road was? *A.* It was this main road here, and it was about here. *(Witness indicates a position approximately MR 992727.)*

Q. Now, will you describe what occurred there, breaking it up into short bits so that the interpreter can translate? *A.* We were lined up and we were searched, sir. When the search was finished we were put to the south side of the street with our faces to the wall. I was one of the first ones to reach the south side of the street, I heard a commotion and I turned around and I saw the guard was tugging on the pocket of Pte Metcalfe. He then let go of the pocket and Metcalfe went stumbling forward and the guard fir[ed] as he was running forward. The guard fired approximately four shots at him.

Q. Now, did Metcalfe start to move before shots were fired or afterwards? *A.* Well, the guard was pulling on his pocket and it seemed to be a strain and when he let go Metcalfe stumbled and kept going and the guard was firing at this time. As he started firing, Metcalfe kept going forward and then he dropped.

Q. Now, when he dropped, how far in terms of feet was he from the position in which he had been standing when you first saw him move forward? *A.* Approximately ten feet sir.

Q. And had he been hit by this firing? *A.* Twice sir.

Q. In what part of the body? Could you tell? *A.* Right side sir.

Q. And then did you observe anything further with respect to Metcalfe? *A.* Yes, sir. The guard let him lay there, in my opinion about twenty minutes, and then went over and shot him. Metcalfe moved and the guard smiled. A few minutes later the guard emptied the remainder of the magazine into Metcalfe's body. Approximately fifteen rounds.

Q. Now, when you say that twenty minutes later you saw this guard do these things to the body of Pte Metcalfe, how long, altogether, were you kept standing on this highway? *A.* About half an hour sir.

Q. And you think you are correct in your estimation of fifteen shots being fired into his body? *A.* Yes sir, I'd say it was about that.

Q. Now, what was the character of this search? How did the German troops behave?

Andrew: Well, now we are getting into the realm of leading questions.

Judge Advocate: That question is proper. Their behaviour may have been good, bad or indifferent.

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Dudka: *(Answering question)* The behaviour of the troops; they were searching everybody, it wasn't an organized search, more to my estimation for loot. They took everything we had with the exception of the guard that searched me. He didn't take my watch. We were lined up against the wall with our faces to the wall, one man covering another off, that is front to the other fellow's back. The guard then signalled to some other German troops and about four of them came up with Schmeissers. Just then an officer, I think, came around the corner and started shooting off the German troops.

President: When you say "shooting off" you don't mean he was firing?

Dudka: No sir, that's just a slang expression. *A.* They then took us out on the road and started marching us to Authie.

Q. Now, in the course of your march, before we leave that, was Maj Learment in the party of prisoners that were searched at the time you have just described. *A.* Yes, sir.

Q. Now, can you remember the names of any other soldiers who were there with you? *A.* Yes sir. Hargreaves, McNeil, McCullough, Sgt-Major Mackie, Pte Talbot, L/Cpl Buckley, Pte Gould, L/Cpl Tobin, Pte Macrae. That is all I remember.

Q. During the course of this search and during the time that you were standing lined up on this roadway, in what position did you have your hands? *A.* Above our heads sir.

Q. And did you continuously keep your hands above your heads during the course of this? *A.* Yes sir.

Q. Did you at any time see any of the prisoners make any effort to escape? *A.* No sir.

Q. Did you at any time see any of the prisoners make any effort to resist the search that was being carried out? *A.* No sir.

Q. Did you at any time see any reason or occasion for the shooting of any prisoner? *A.* No sir.

Q. Were you carrying in your possession at that time chocolate rations? *A.* Yes sir. Every man was carrying emergency chocolate rations in a tin.

Q. Do you know in what part of the uniform most of the troops were carrying those rations? *A.* A lot of them carried them in the inside of their jacket pocket. Some carried them in the rear pocket of the trousers.

Q. Now, during the course of your march from Buron to Authie, was there anything that occurred of which you think the Court should hear? *A.* Yes sir. About halfway between Buron and Authie, a shell landed close to us. Everyone went down, including the guards. When we got up, there were three of our men I know of that were wounded. They were McNeil, Hargreaves and McCullough, H.E. The German guard then ordered us to double. Hargreaves was wounded in the right leg. He could walk but he couldn't double. I tried to help him along and the guard made me put him down and the guard either kicked me or hit me. I don't remember now what is was he ordered me to put Hargreaves down. I did sir and we kept running and I was observing the shells and mortar that [were] coming down then. Quite a few of them landed. We still had our hands clasped behind our heads. I turned around just then and saw the guard standing over Hargreaves' body which was lying face down to the ground and the guard was pointing his – I don't remember if he had a Schmeisser or a rifle – but he was pointing it directly at Hargreaves and I heard two distinct shots.

Q. Now, how far were you from Hargreaves at the time you observed this firing? *A.* About thirty yards, sir.

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Q. Have you seen Hargreaves since? *A.* No, sir. I haven't.

Q. Where were you along with the other prisoners at the time you observed this shooting? *A.* I was near the rear of the line.

Q. So this would be a line at that time consisting of approximately ten prisoners? *A.* Yes, sir. Approximately.

Q. Now, as you went through the village of Authie, did you observe anything there? *A.* Yes, sir. As we got near the village of Authie, I saw a medical orderly with a wounded Canadian soldier.

Q. Now, will you say whereabouts in the village of Authie you saw this? *A.* It was just at the approach of Authie, just on the outskirts.

Q. Yes? *A.* And the column stopped and fell out two men to sort of help and I don't know what happened, but the two men fell in the rear of the line and we kept going.

Q. Now, who exactly did you see at that time? *A.* At the time of this medical orderly, sir?

Q. When you saw this medical orderly, was he by himself or was there a wounded man with him, or several wounded men? *A.* There was one wounded man that I know of, the medical orderly, and a German.

Q. Now, was the wounded man a Canadian or a German? *A.* He was Canadian, sir.

Q. Could you tell whether he belonged to your unit or to some other unit? *A.* No, sir. I am not sure.

Q. Did the stretcher-bearer belong to your unit or to some other unit? *A.* I think he belonged to the Sherbrooke Tanks.

Q. How can you state that he was a stretcher-bearer? *A.* He had a Red Cross arm-band.

Q. And was the wounded man sitting up, standing or lying down? *A.* I don't remember, sir.

Q. Well do you know whether he was standing or in a recumbent position of some sort? *A.* I think he was lying but I'm not just sure, sir.

Q. Well, the two men that were fallen out. What were they supposed to do? Have you any idea? *A.* They were supposed to help him, sir.

Q. Now, as you went farther through the village of Authie, what else did you observe? *A.* I noticed seven bodies lying on the left-hand side of the road. They were from our platoon, sir – fifteen[th] platoon.

Q. When you say you observed seven bodies, how can you be so precise? *A.* I counted them sir.

Q. And did you recognize any of these men? *A.* Yes sir.

Q. Which one did you recognize? *A.* Julian, A, L/Cpl Murray and a Webster – Private.

Q. Will you indicate by reference again to the map, if you can, whereabouts in Authie you saw these bodies?

Macdonald: The witness indicates a position on the main north-south road running through Authie, approximately MR 985713. *(Resuming the examination-in-chief) Q.* Was this near a road junction which shows on the map? *A.* Yes sir, it was.

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Q. And when you reached this road junction, did you turn to the left or go straight along? *A.* We turned to the left sir.

Q. Now, did you see anything else there? *A.* Yes sir, I saw a badly mutilated body.

Q. Where did you see that body? *A.* It was just on the side of the turn, sir.

Q. You mean by that, at the road junction? *A.* Yes sir.

Q. And will you describe the appearance of this body? *A.* One of the legs was bare – the clothing was torn off it and it was torn away from the body. The head was off the body and it was badly torn apart sir.

Q. Now, were you able, despite the mutilation of this body, to recognize it? *A.* Yes sir. It was Cpl Davidson, sir.

Q. Now, to go back to the seven bodies which you saw a little farther north on the road, what was the appearance of these bodies? Did you ever see any weapons, for instance? *A.* No, sir. I saw no weapons there.

Q. Were they wearing steel helmets? *A.* No sir.

Q. How close with relation to each other were they lying? *A.* They would be approximately two feet apart, sir.

Q. And do you mean by that that they were uniform throughout the whole seven – approximately two feet apart? *A.* There might have been one body about three feet, but the rest were quite uniform.

Q. Now, where on the road were these bodies – to the edge of the road or more towards the centre? *A.* They were on the edge of the road, sir.

Q. Is this road an open road or is it bound on either side by walls and buildings? *A.* It is bound on either side by walls and buildings.

Q. I show you now a photograph, Exhibit T-18. Now, does that picture assist you at all in locating the bodies? *A.* Yes sir.

Q. Where were the bodies, as shown on that picture? *A.* Some of the bodies were here, marked 'G' and 'M', and the body of Corporal Davidson was where it is marked 'M'.

Q. To what place were you taken after you left the village of Authie? *A.* We were taken to the Abbaye of Ardenne sir.

Q. And what happened while you were there? *A.* There, we were stopped in the Abbey and we were searched. Our pay-books and any papers or anything we had on our person then was taken away from us. We were allowed to take our hands down. That was the first time sir. And there we met some of the other two platoons of "C" Company and some of "A" Company.

Q. Now, I want to ask you some direct questions and before you answer, wait until we see if there are any objections from the Defence Counsel. Were there any men selected from others at this HQ, for any purpose?

Andrew: No. That is definitely leading. There is no mention of selection at all – what happened at the Abbey?

Macdonald: Very well.

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President: Ask him to describe everything he saw, or what was going on at the Abbey.

Dudka: *A.* While I was at the Abbey the Germans asked for volunteers – ten men, I believe. Nobody volunteered.

Q. Were you told what you were being asked to volunteer for? *A.* No.

Q. Well then, what was done? Was the matter done? *A.* No sir. They picked some men. I never paid much attention to it, but they did pick ten men.

Q. Now, did you see a man named Moss at the Abbey? *A.* I did sir.

Q. Are you quite certain of that? *A.* Yes sir.

Andrew: Sir, in these questions – who did you see at the Abbey – not "Did you see a man named Moss." These are leading questions, and I wish the Court would tell my friend about it.

Macdonald: The actual point about this, sir, is that there was a very large number of prisoners at the Abbey – seventy-five or a hundred, and to ask him a question like that is too much. A further reference will be made to these people later on. He has, of course, already been asked whether he remembers seeing certain persons and some he can't remember and some he can.

Judge Advocate: I am sure the President or I will stop you if you do ask questions which are unfair.

Macdonald: *(Resuming the examination-in-chief) Q.* Do you remember having seen a man, Swampy McKinnon, there? *A.* Yes sir.

Judge Advocate: Can he not say the names of the men he remembers having seen there without being reminded of the names?

Macdonald: Actually, these are the only two names I wanted to ask him about but I will pursue that practice in future. *Q.* Will you tell me why in particular you remember these two? *A.* They were both from my home town. I was brought up with both of them. I went to school with Swampy McKinnon, and Moss only lives about five hundred yards from me.

Q. I take it that Swampy is not his correct name? *A.* His name is James. Swampy is his nick-name.

Q. What was his rank? *A.* Private, sir.

Q. Have you seen either of these men since then? *A.* No, sir.

Q. Now you said some papers were taken away from you at the Abbaye? *A.* Yes, sir.

Q. Were any of those papers returned to you at any time later? *A.* Yes sir. Our pay books were returned to us the next morning at a school-house which we were kept at in Bretteville-sur-Odon.

Q. Did you observe the distribution of these pay-books? *A.* I did sir.

Q. And do you know whether they were all distributed at that time? *A.* No sir. There were some left over.

Q. And do you know to whom any of these pay-books left over belonged? *A.* Yes. One in particular I know was Cpl McIntyre.

Q. Why do you remember his? *A.* Because we looked it over, sir, Sgt-Maj Mackie and myself.

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Q. What was eventually done with the pay-book? *A.* Sgt-Maj Mackie took it sir.

Q. Did you see Cpl McIntyre at Bretteville-sur-Odon? *A.* No sir.

Q. Did you know Cpl McIntyre? *A.* Yes sir. I knew him quite well.

Q. Have you seen him since 7 June? *A.* No sir, I haven't.

Q. Now I believe that during the month of September you gave evidence to the SHAEF Court of Inquiry? *A.* I did, sir.

Q. And then in company with the British member of the Court and myself, you went to the village of Authie? *A.* Yes sir.

Q. And showed us on the ground where the things that you have just related occurred? *A.* Yes sir.

Andrew: *(Begins cross-examination) Q.* Sergeant Dudka, when you were lined up against the wall at Buron, there was quite heavy shelling in that area, was there not? *A.* Yes sir, there was.

Q. And I am informed that there was some machine-gun fire too, in your immediate vicinity? *A.* Yes sir.

Q. And that the battle was still going on in your immediate area? *A.* Yes sir.

Q. I am also informed that Metcalfe had a grenade hanging on his belt. Is that correct? *A.* No sir.

Q. Were you standing next to Metcalfe in the line? *A.* I was standing close to him, sir.

Q. How far away were you standing from Metcalfe? *A.* At the time of the shooting you mean?

Q. Yes. *A.* Directly across from him. I had been sent to the other side of the road.

Q. Now, before you were sent to the other side of the road and still in the line, where were you with respect to Metcalfe? *A.* The direct place I couldn't tell you, but I was not far away from him.

Andrew: I would just like the direction of the Court. Some reference has been made by my learned friend to the depositions of this witness previously taken. May I refer to them?

Judge Advocate: I think you can put them in if you wish to do so.

Andrew: No I just want to refer to them at this stage.

Judge Advocate: You may certainly cross-examine him, if you first tell him the occasion of the previous deposition and ask him if he said what is there recorded...

Andrew: *(Resuming the cross-examination) Q.* Did you, on this previous occasion when Col Macdonald examined you, say that you were the eleventh man in the line from the right? *A.* In which way do you mean, from the right? Which side of the road?

Q. When you were first lined up with your backs to the wall.

Macdonald: May I suggest that my friend refer to the question and answer and then I think we will have the matter more precisely before the Court.

Judge Advocate: I think that is the proper way, Col Andrew.

Andrew: *(Resuming the cross-examination) Q.* Were you near Maj Learment in the line? *A.* Yes sir.

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Q. Where were you standing, on which side of Maj Learment? *A.* When our backs were to the wall I was on the right because I was talking to him.

Q. And where was Metcalfe? *A.* Metcalfe had been shot at this time, sir.

Q. I can't follow you. Will you go through it again. Let's start – you were taken prisoner? Is that correct? *A.* Yes sir.

Q. With twelve – eleven or twelve other people? *A.* Yes sir.

Q. And marched to Buron? *A.* Yes sir.

Q. And lined up against a wall? *A.* No sir. We were lined up on the north side of the street.

Q. When you were on the north side of the street, where was your position in this line? *A.* It was near the right, sir, of the line.

Q. And where was Maj Learment? *A.* Maj Learment was, well, he was somewhere near the end of the line.

Q. To the left or the right of the line? *A.* He would be more to the left at that time, sir.

Q. How many men were between you and Maj Learment? *A.* I don't remember now, sir.

Q. Where was Metcalfe standing with regard to Maj Learment? *A.* I don't remember that either sir.

Q. You don't remember whether Metcalfe had a grenade on his belt or not, do you? *A.* Yes, sir. I know he definitely did not. I saw him.

Q. I refer you to the evidence of Maj Learment where he states that Metcalfe had a grenade. *A.* He could have been mistaken, sir, but I know I am not mistaken.

President: My recollection is that he said that he had a grenade in his jacket.

Judge Advocate: Have we Maj Learment's evidence before the Court?

Macdonald: Yes.

Judge Advocate: Well, this witness is giving his own evidence which may or may not agree with Maj Learment's.

Andrew: *(Resuming cross-examination) Q.* Now, when you were there in Buron you were on the south side of the street. You said an officer came along? *A.* Yes, sir. I took him to be an officer.

Q. And after that officer ran off there were guards or Germans who moved you away; *A.* Yes, sir.

Q. And is it not a fact that he seemed to stop any further action that might have been taken by the Germans? *A.* Yes, sir. It seemed to me like that.

Q. Now, when you got to the Abbaye were you taken inside the Abbaye or were you left outside in the [courtyard]? *A.* We were left out in the courtyard, sir, but you were allowed to wander in the Abbaye if you wanted to.

Q. And it is a fact, is it not, that you were allowed [a] certain amount of liberty and movement at the Abbaye? *A.* You were allowed to smoke if you had any left and you were allowed to take your hands down.

Q. And move around to a certain extent? *A.* To a certain extent, sir.

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Q. Did you go in[to] the Abbaye? *A.* Well, sir, I went by the door.

Q. Did you look inside the Abbaye? *A.* Yes, sir.

Q. What was it like inside? *A.* Well, this part was like a church and there was some wagons in there; some two-wheeled wagons, and our fellows were preparing them for some wounded there. They were going to put some wounded in them and take them along with us on our march.

Q. Was there a big door at this Abbaye? *A.* Yes, sir.

Q. Do you remember seeing a wooden screen or something across the door? *A.* No I don't, sir.

Q. Did any German officer come and speak to any of the prisoners when you were there? *A.* The fellow that searched me. I took him to be an officer; he spoke English.

Q. And is it not a fact that the treatment at that Headquarters was, from your opinion as a soldier, decent? *A.* I wouldn't go so far as to say it was decent.

Q. Well, would you go so far, [S]ergeant, to say it wasn't bad? *A.* They weren't killing our fellows at the time, sir. If that is what you mean.

Q. That is partly what I mean, but what I mean is this: [y]our treatment was the ordinary treatment that prisoners received, even at your own HQ, is that not correct? *A.* Yes, sir.

Q. Right. Now, when you were passing through Authie you said you saw a soldier, I am sorry, a medical sergeant, or, a medical orderly, rather, with the wounded Canadian? *A.* Yes, sir.

Q. You said that two men fell out to help the wounded man? *A.* Yes, sir.

Q. That is, fell out of your line of prisoners? *A.* Yes, sir. They fell out from the front of the line.

Q. Who detailed them to fall out? *A.* I don't know, sir.

Q. Well, unless they had orders from the guard they would not have likely fallen out, would they? *A.* No, sir, but they fell out and they fell right back in again at the rear of the line.

Q. Now, I want to come to Hargreaves. Was it the guard that shot Hargreaves? *A.* I would say it was, yes sir.

Q. Now, then. Who would you say shot Metcalfe? A guard? *A.* Well, I mean, he wasn't an original guard, that wasn't his duty. He was just a soldier but at that time he was a guard over us.

Q. You were going along from Buron to Authie? *A.* Yes, sir.

Q. When Metcalfe was killed? *A.* No, sir; when Hargreaves was killed.

Q. When Hargreaves was killed, I am sorry, when Hargreaves was killed. Now, then, Metcalfe was killed. Metcalfe was the one killed between Buron and Ardenne; is that not correct? *A.* No, sir. Metcalfe was killed in Buron and Hargreaves was killed between Buron and Authie.

Q. Right. Now, when you were marching along after you left Buron there were German soldiers going up into attack at that time, were there not? *A.* Yes, sir.

Q. You were going right through the advancing troops; is that not correct? *A.* We were going through, I would say, the second wave of advancing troops.

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Q. And it was right in the midst of the battle, was it not? *A.* It wasn't in the midst of the battle. The battle was on the north side of Buron. This was between Buron and Authie.

Q. It was part of the battle area? *A.* It was part of the battle area, sir.

Q. I don't mean where they were, in close combat, but it was part of the immediate battle area? *A.* Yes sir.

Q. Correct. And as you were going back you were being shelled too, were you not? *A.* Yes, sir. There was quite heavy shelling.

Q. And when you got to Ardenne Abbaye, were you attacked by our own planes from the air, or by Allied planes from the air? *A.* No, sir.

Q. You weren't under any air attack when you were at the Abbaye Ardenne? *A.* No, sir.

Q. What time were you at the Abbaye? *A.* I would say approximately 7:30 in the evening.

Q. How long did you stay there, [S]ergeant? *A.* About a half hour, sir.

Q. When you got to the school house at Caen and they gave back the pay-books, the person who gave you back the pay-books was not one of the guards, was he? *A.* No, sir. One of the fellows brought them up in a basket like box and gave them to a corporal of the German Army who told us – he spoke good English – that he was a Hungarian.

Q. And those pay-books would have come from Ardenne Abbaye? *A.* Yes, sir.

Q. And whoever sent those pay-books from Ardenne Abbaye did not know that McIntyre was not in your party; is that not right? *A.* Yes, sir.

Q. And he delivered the books with the intention that McIntyre would get his book back the same as you all; is that not correct? *A.* I just don't know how to answer that, whether that was his idea. He may have made a mistake or something like that.

Q. Will you tell me the people who captured you? *A.* The 12th SS Panzer.

Q. And did you see other troops in Buron? *A.* In the battle area, you mean, sir?

Q. Other formations? *A.* No, sir. I just saw the Panzer.

Q. And how were they dressed, by the way? *A.* In camouflage suits, sir.

Macdonald: *(Re-examination by the prosecuting officer) Q.* Did you see any wounded being treated by the Germans at the Abbaye? *A.* No, sir.

Q. Or at the school house either? *A.* No, sir.

Q. And were there wounded among you? *A.* Yes, sir.

Macdonald: That is all.

President: *(To witness)* As you came through Authie, did you see any German troops? *A.* There were some on the left as we were coming into Authie, but in them days, sir, as we were going through there were no Germans.

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Q. Did you see any German wounded or dead in either Buron or Authie? *A.* I saw a German soldier being wounded in Buron.

Q. Will you describe his dress? *A.* He was in a camouflage suit, sir.

Q. Have you made the statement that you were captured by the 12th SS Panzer Division? *A.* Yes, sir.

Q. When did you find that out, and under what circumstances? *A.* The next day, sir. What I am telling you now I just remembered last night. I know that I am sure of it. This Hungarian corporal that I mentioned before was talking to us and he told us that it was the 12th SS Panzer and that we were very lucky because that unit never took no prisoners in Russia.

Q. Did you notice any of your captors not wearing the camouflage jacket? Was there anything characteristic about their turn-out? *A.* At the Abbaye I noticed men wearing the cap with cross-bone and skull and the SS on their collars.

Q. And any other characteristics? *A.* They were all very young men. They wore the Adolf Hitler on their left sleeve of their tunics.

Q. When you were marched from Buron to Authie was there an officer or an NCO in charge of the party? *A.* There might have been at the head of the line, sir, but I don't know for sure.

Andrew: Mr. President, may I be permitted, through the Court, to ask one more question?

President: Yes.

Andrew: *(To witness) Q:* Were there any field Germans, field police or Feldgendarmerie, as they call it, at the Abbaye? *A.* The first time I remember seeing Feldgendarmerie is at the school house, sir.

Andrew: Thank you.

Macdonald: I think it might be of some interest as to how he identified them, in what way, because it might come up in other evidence.

President: Yes.

President: *(To the witness) Q.* Would you describe or explain how you knew they were Feldgendarmerie? *A.* They wore a chain around their necks with a big aluminium dial on the front with "Feldgendarmerie" wr[itten] right across the front, sir.

(*The witness withdraws.)*

Macdonald: Now, sir, the point that was raised with respect to where this grenade was said to have been worn or carried on the body of Metcalfe by Maj Learment; I think that in view of the fact that this evidence is not before the Court I ought to read again the relevant portions of Maj Learment's statement.

Judge Advocate: I think Maj Learment's evidence was entered.

Macdonald: It was not entered, but read.

Judge Advocate: All right.

Macdonald: I refer now to Exhibit No. 33 of the ***SHAEF Authie Report*** on Page 2, the second answer on that page, which reads as follows:

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"*Q.* Then what happened? *A.* We were overrun by tanks and infantry at roughly 1930 hours. After a short fight we were taken prisoner and a group of about 18 to 20 were taken to Buron where we were searched and at this time one of the men was shot for having a hand grenade stuck in his belt or in his blouse.

Q. Who was this soldier? *A.* Private Metcalfe, J."

Then referring to ***Maj Learment's affidavit***, rather I should say, his statement, which was read yesterday, given to the historical officer at Canadian Military HQ on 30 September and subsequently sworn to, he makes a somewhat different statement. In paragraph 7 of page 2, starting to read at the fourth sentence:

"*A.* – Everything, including field dressing and morphine were taken and it was during this search that one of the Germans saw a 36 grenade hanging on the belt of Pte. Metcalfe, J. who was standing next to him."

Then he described how Metcalfe was shot; so that his evidence has been somewhat different on these two occasions. Then, with respect to the location of Maj Learment to which the President referred as to where Maj Learment was. In the evidence which I read you yesterday from the *SHAEF Authie Report*, on page one, Exhibit No. 33, he gives these two map references:

"*Q.* Could you give us the precise location by map reference? *A.* The bulk of the company was at 984713 which, I believe, is south of Authie. By this time the tanks which were working with us began to withdraw rapidly. I took the carriers which I had under my command and moved to the vicinity of Buron, where I contacted the CO and we discussed the possibility of taking the vehicles and what men we had forward to Authie to either relieve or pick up the infantry. We attempted to do this and came under heavy fire, both mortar and 88's and were not able to proceed to Authie. I sent the carriers back to report to the CO and with what men I had left dug in at MR 993728."

Andrew: Sir, now that my friend has referred to Maj Learment's evidence, may I read now a portion of that evidence? It is dealing with this.

President: Yes.

Andrew: I am reading from Exhibit 33, the same Exhibit, on page 2. If I may explain that reading: Col Macdonald is asking Learment who the soldier was that shot Metcalfe.

"*Q.* Was Metcalfe killed? *A.* He did not die instantly. He lay on the ground for a bit and this guard then put his Schmeisser up to his head and fired three shots into his head.

Q. The German did this? *A.* The same chap did it all.

Q. Was he an NCO or a private? *A.* I could not tell. They wore camouflaged suits and showed no rank.

Q. Do you know what unit he belonged to? *A.* I know he definitely belonged to the Adolf Hitler division. The 21st Panzers I believe they were. In any event, they were Panzer Grenadier personnel.

Q. Why do you think so? *A.* Well, after we had gone back probably a few kilometres we met with Germans without camouflaged suits, and they all had the Adolf Hitler ribbon on their cuffs.

Q. What made you think they were the 21st Division? *A.* I found that out after I came back. That they were the 21st that were opposed to us."

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Macdonald: May I refer now to page 8 of Part one of the ***Court of Inquiry Report*** and read it for what it is worth? It is merely the statement of the SHAEF Court that went to Authie with this last witness, and you may consider it of no value at all. However, I will read it for what it may be worth. On page eight, paragraph 17:

"On 27 September 1944 the British and Canadian Members of the Court, accompanied by the witness L/Sergeant. S. Dudka and Lieut. R.E. Robichaud, RMR (Canadian) proceeded to Caen, Calvados, Normandy, in order to trace and test on the spot the accounts of the journey and incidents recorded in the evidence of L/Sgt. Dudka. Accordingly on 28 September 1944, the two Members, accompanied by L/Sgt Dudka and Lt R.E. Robichaud, as interpreter for French civilians, went to the village of Buron and, after inspecting the position where L/Sgt Dudka was captured followed the course of his subsequent journey via Authie, Ardenne, St. Germain, La Blanche-Herbe to Bretteville-sur-Odon. The Members of the Court were favourably impressed by the certainty with which L/Sgt Dudka was able, despite the destruction caused by subsequent fighting, to locate the incidents referred to in his evidence and, in particular, to guide the Members of the Court to the two graves at Bretteville-sur-Odon."

Judge Advocate: Col Macdonald, I think the last witness said something which a soldier or officer said to him regarding the conduct of the SS Division in Russia and I would like to have it on the record that the Court should not give any weight to that statement and that it is irrelevant as we are not concerned with the behaviour of the German Army in Russia.

Macdonald: Yes, I am sorry that came in and I have endeavoured to keep it out as far as possible from this case.

Seventh Witness for the Prosecution

F-49934 Pte Gordon Percy Talbot, North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name, rank and unit? *A.* My name is Gordon Percy Talbot, sir. My unit is North Nova Scotia Highlanders.

Q. Where is your home? *A.* Truro, Nova Scotia, sir.

Q. And were you serving with your unit in Normandy on 7 June 1944? *A.* Yes, sir. I was.

Q. Now with what Company were you serving on that day? *A.* I was attached to "C" Company, sir.

Q. And to which sub-unit did you normally belong? *A.* I belonged to the Intelligence Section, sir.

Q. And were you taken prisoner of war on that day? *A.* Yes, sir I was taken prisoner of war that day.

Q. Whereabouts were you captured? *A.* Just north of Buron, sir.

Q. And at about what time was that? *A.* Approximately six o'clock, sir.

Q. And where were you taken after your capture? *A.* To the first east and west road in Buron, sir.

Q. And what occurred there? *A.* We were lined up against the building, sir, and searched.

Q. And what was the nature of this search? *A.* Well, first of all, sir, the first thing that was taken from me was my watch and pay book etc., from my pockets.

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Q. And was anything else taken from you? *A.* No, sir – just that.

Q. That is what? *A.* Well, my pay book, the stuff that I had on me that was in my pockets and my jacket.

Q. And did you turn this over quite freely to them or did they have difficulty in getting it from you? *A.* The only difficulty they had, sir, was taking an emergency ration out of my jacket pocket which was on the inside...

Q. And then did you keep your hands up above your head from then on? *A.* When I took the rations out of my pocket, and gave them to him, sir, I put my hands up again, sir.

Q. Now, did you observe what was occurring with respect to any of the other prisoners? *A.* During the course of searching, sir, a man down to my right approximately two or three men down, there was a shot coming from there. Immediately the shot was fired I glanced right and my attention was drawn to a man standing in the middle of the road with a pistol pointing in the general direction from where the shot seemed to come from, sir. I noticed a man fall out of line, sir, to the ground and start to roll towards me. When he was on the ground, I noticed that his hands were holding his mid-section. He rolled down towards me until he was just about beside me, sir. This, of course, was out in front. When he reached about where I was standing – between me and the man who was beside me on my right – he lay there moving around in agony and moaning for – oh, about a minute, I suppose, sir, and a German soldier with a Schmeisser who had been following this man down as he rolled stood over him for a few seconds there and then he touched the trigger and gave him a short burst from the Schmeisser, sir. The man stopped moving and lay still. I heard no more sounds from him. Immediately after this the men who were with me – the other prisoners, were moved across to the other side of the road. As I explained before this German soldier was having trouble getting my emergency ration out of my pocket so I had been left there while he finished what he had been doing. After that I, too, then was moved across the road. This placed me on the right hand side of the line facing north. While we were standing there the German soldiers started to move out into the centre of the road still facing us. Just as they started to move a mortar bomb landed about ten yards from me down to my right. It burst alongside a tank, knocking three or four German soldiers who were standing around – knocked them down. One of these soldiers who had been knocked down got up in a crouching position, drew his pistol, and started towards us. The intention seemed quite obvious to make us pay for what had happened. I watched him while he took a few steps towards us and all of a sudden he stopped and brought his pistol down and started to turn back. Then I heard a shout up at the other end of the line in German and I looked up and these men were standing in the middle of the road covering us with their weapons. My first impression was that they had intended to shoot us. This man from whom the shout came appeared to be an officer or an NCO. He appeared to come from around a building to the left. The German soldiers began to shift about uneasily while this man came right up to them and appeared to be reprimanding them for something they had done. Immediately after he despatched, I believe, two of them [moved] away from there and motioned for the three remaining men to march us back behind the lines. Then we moved off towards Authie.

Q. Now, how many were there in your party of prisoners there? *A.* Approximately twelve, sir.

Q. How long altogether do you think this search took? *A.* Approximately fifteen minutes, sir.

Q. Now, were you at the time, nervous and perhaps a trifle excited? *A.* Not excited, sir. I was a trifle nervous.

Q. I presume your nervousness increased after what you had seen happen to Metcalfe? *A.* Not a great deal, sir. It definitely at the time of the shooting didn't and at the time it just didn't seem to mean much

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to me. I didn't really become nervous or seem to realize the seriousness of the thing until we had just about reached the Chapel. Then I began to feel a little scared then, sir.

Q. Now, as you went down from Buron and through Authie, will you describe any other things which you saw on your way of which you think we should be told? *A.* I was then forward man, sir. I was leading the column actually. Coming through Authie we came up to a soldier of the North Nova Scotia Highlanders who was lying in the road to the left. He had been wounded in the left shoulder – a bullet wound in the shoulder. There were two German guards standing over him, one with a rifle and one with a Schmeisser. There was a Red Cross man from the Armoured Corps bending over him. We halted immediately beside this wounded man, and two of us, myself and L/Cpl Pace, were motioned by the German guards to try to pick the man up. In trying to pick him up we could see that the man was in great pain. We tried to get him into a comfortable position but the guards didn't seem to want to waste time with him. Then they made us get back into line, this time into the rear. The Red Cross man hesitated to go on but they gave him a push back into line. This left me the third man from the rear. Behind me immediately was L/Cpl Pace and behind L/Cpl Pace immediately was the Red Cross man. Almost immediately we left this wounded man, we turned a corner to the left. I suppose I had gone a distance of about 30 feet and I heard a burst of Schmeisser coming from about the spot where the wounded man had been left with these two German soldiers. It gave me a small start and I glanced sideways as much as I dared and I noticed very dark shadows belonging to us jutting out on a slight angle forward. I noticed there [were] just still two men behind me. I diverted my eyes forward again and had taken possibly two or three steps when another burst of a Schmeisser was sounded right at my back. I went a few more paces before I dared to glance sideways again to see what had happened. The only thing I could get any information from was behind was from these shadows as I before mentioned and this time there was only one shadow behind me. When we came to a fence, to climb over we broke rank slightly to get over this fence and I noticed that there was only L/Cpl Pace behind me and a German soldier with a Schmeisser about ten feet behind.

Q. Now, to get back to that a bit. Are you quite certain that the stretcher bearer from the Armoured Corps fell in and marched off with you when you left the wounded man? *A.* I saw them give him a motion – like push his arm to go into line. He was like us. He didn't know whether he should follow or stay with the wounded man. He definitely fell in at the end though.

Q. Now, how far was it from the point where you heard the second burst of machine pistol fire at your immediate rear from that point to the fence where you observed that the stretcher bearer was not with you? *A.* That is hard to say, sir – possibly twenty yards.

Q. What sort of a fence was this? *A.* A wire two-strand fence I believe, sir.

Q. How do you know that this Armoured Corps chap was a stretcher bearer? *A.* He was wearing a wide white band on his arm with "Red Cross" on it.

Q. Did you recognize the wounded man? *A.* I recognized him as being a man from my Regiment whom I had seen around before, sir, quite often.

Q. I take it you didn't know him by name? *A.* I didn't know him by name.

Q. Now, to what place were you taken from Authie? *A.* From there we were taken to the Chapel Ardenne.

Q. How were the troops dressed who originally captured you and searched you in Buron? *A.* They were dressed in camouflage outfits, sir, including their helmets.

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Q. Now did some of the troops who were in Buron and who had taken part in the capture and searching of you conduct you all the way through to Ardenne? *A.* All the way, sir.

Q. And did you observe anything about the dress of the officers and men at the Abbaye? *A.* Yes. Some of the officers and men around there did not have camouflage suits on.

Q. Could you see any badges or regimental name or things of that sort on their uniforms to distinguish them? *A.* I didn't notice any regimental names, sir, but I did notice the lightning flashes.

Q. Now were things taken away from you at the Abbaye Ardenne? *A.* We were searched again, sir, but I had nothing personally taken away from me.

Q. Do you know whether any of the troops had their pay books taken away from them? *A.* Some of the men who had been there before us, earlier prisoners than we were, had pay books and items such as that taken off them.

Q. Where did you go when you left the Abbaye Ardenne? *A.* We went to a school house on the outskirts of Caen.

Q. And were any of the pay books produced to you there? *A.* The next day they called out names of men for pay books. I beg you pardon. There was a German soldier, I believe it was a corporal, came in with a small stack of pay books. He called out the names of the men on the pay books but most of these men were not there to receive them. They were given to their buddies who hoped to see them at a later date.

Q. And do you know any of your fellow soldiers who took any of these pay books for those who didn't happen to be there? *A.* I know that Sgt-Maj Mackie took one of the pay books. I am not sure of the name of the man whom the book belongs to.

Andrew: *(Begins cross-examination)* *Q.* In Buron, after you were taken prisoner, there was quite a bit of shelling, was there not? *A.* There was quite a bit of mortar fire falling in the southern end of the town.

Q. Now, there were quite a number of German soldiers passing up to the front, were there not? *A.* Yes.

Q. And there was quite a bit of firing, small arms fire? *A.* Yes, sir.

Q. And as a matter of fact you were in the battle area? *A.* Yes.

Q. So that when you were going back, from Buron back, you were still being shelled were you not? *A.* Between Authie and Buron we were sir.

Q. You didn't actually see this wounded man shot or you didn't see the second man behind you, the last man in the line, did you? *A.* No sir, I did not, but it seemed quite obvious that there were.

Q. But as far as seeing, you didn't see? *A.* No, I didn't.

Q. When you got to the Abbaye, were you treated as prisoners were treated at your own HQ? *A.* Speaking for the small group I was with, yes sir.

Q. Were you inside the Abbaye at all? *A.* No sir.

Q. Can you tell me, when these books were passed out to you back at Caen on the morning following your capture, the person who was handing out the books, did he know that McIntyre and the others were not there? *A.* Had he known, sir, I don't imagine he would have much purpose in passing them out.

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Q. And these books, I presume, had been sent down from the Abbaye to the school? *A.* I wouldn't know that sir.

Q. They were taken from you then at the Abbaye? *A.* They were taken from these men, sir.

President: *Q.* When you were taken prisoner to Buron you said that most of those people were dressed in camouflage suits. Were there any other types of dress in Buron? *A.* If there were, sir, I didn't notice.

Q. And as you came through Authie how were these people dressed who were standing over a wounded man? *A.* Same as Buron, sir, in camouflage.

Q. As you passed through Authie, did you see any German troops not wearing camouflage suits. *A.* No, sir. I didn't, and I don't remember seeing them.

Q. How long were you kept at the Abbaye? *A.* Approximately 15 to 20 minutes, sir. Not very long.

Q. And you went from there to the school house south and west of Caen under what sort of an escort? *A.* From the chapel or Abbaye we were taken over by German Provost. They escorted us down to the school house.

Q. How large a party were you? *A.* I'd say, sir, possibly 150 or 100.

Q. What was the size of the escort? *A.* I cannot say, sir.

Q. Well, guess. You have an impression, surely. *A.* I should say about ten, possibly.

(*The witness withdraws.)*

Macdonald: I should now like to read from the *SHAEF Authie Report*, Exhibit No. 31, ***Record of the Evidence of Lt J.L. Fairweather***.

"*Q.* What is your name, rank and unit? *A.* Jack Lee Fairweather, Lieut, North Nova Scotia Highlanders.

Q. Were you engaged with your unit in an operation against the enemy in the vicinity of Caen, Normandy, on 7 July last? *A.* I was.

Q. To what company were you attached at that time? *A.* "A" Company. ...

Q. What was the farthest point south that your Company reached? *A.* A point approximately MR 986718. ...

Q. Was that when you were first taken prisoner? *A.* Yes. They took weapons, steel helmets, anything they took a fancy to including my watch. Just before we were searched, one of my fellows, with his hands up, was shot at. He was standing on the road just ahead of me when he was shot at. He fell but got up again. He died about ten days later, I believe.

Q. What was the man's name? *A.* Taylor, sir. A Lance Corporal.

Q. Do you know why he was shot? *A.* The only possible reason I could see was because he looked over his shoulder.

Q. By whom was he shot? *A.* I didn't recognize the rank of the German soldier, sir.

Q. Was it by a guard or by someone else in the party? *A.* He was shot by one of the guards at a distance of 10 or 15 feet, with a pistol, possibly because he looked back over his shoulder.

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Q. Were his hands well up? *A.* Yes sir. ...

Q. Where were you taken from the place at which you were originally captured? *A.* We were marched from the place at which we had been originally captured to the main intersection in the village of Authie at MR 984713. I observed at that point a portion of a man's body right in the middle of the road. The body appeared to have been run over by a tank and the thigh and part of one leg had been separated from the rest of the body. The trunk and the balance of the body appeared to have been crushed. We were marched from Authie to the Abbaye at MR 997701 and we were kept there about two hours, during which time we were segregated as to officers and ORs.

Q. Were you searched or questioned there? *A.* They searched us there, took records of service books, etc., looked at them and gave them back. ...

Q. Were they the same type of troops who acted as your guards from the time you were captured until you were segregated at the Abbaye? *A.* Yes sir.

Q. From the Abbaye to the school house? *A.* I believe the German sergeant in charge of us after we left the Abbaye was a provost soldier."

Andrew: May I read a part from the top of page five sir?

"*Q.* Were you able to identify any of your captors or subsequent guards? *A.* Yes, sir. Our captors had 'Adolf Hitler' written on their left sleeve and the SS insignia on the right lapel of their collars.

Q. Were they the same type of troops who subsequently interrogated you? *A.* Yes sir.

Q. Were they the same type of troops who acted as your guards from the time you were captured until you were segregated at the Abbaye? *A.* Yes, sir."

President: The accused and escort will leave the room. The court will adjourn until two o'clock.

—

Macdonald: I would like sir at the outset of this afternoon to call an officer, a member of the Intelligence, to clarify the point that arose with regard to the normal dress as known to Intelligence of the Division. I should not like to be prevented from recalling the witness later on points of Intelligence.

President: Yes, that would certainly help the Court. *(To Andrew)* If you have no objections.

Andrew: No, I have no objections.

Eighth Witness for the Prosecution

Maj J.J. Stonborough, Intelligence Officer, 1 Canadian War Crimes Investigation Unit, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* I think that on a previous occasion you have identified yourself as Maj J.J. Stonborough, Intelligence Officer, 1 Canadian War Crimes Investigation Unit? *A.* I did, sir.

Q. Now what has been the nature of your Intelligence and interrogation experience in the Army? *A.* My Intelligence training began after the usual courses in 1943 – spring of 1943 and after the usual courses as I have said, I became attached to Canadian Army HQ as interrogator. I did a certain amount of interrogation there up to D-Day. After D-Day from the 7th of June until some time toward the end of

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June I interrogated some prisoners who were brought back from Normandy. I went to Normandy with HQ 2 Canadian Corps. I believe we landed the afternoon of 5th July 1944. I was OC of an interrogation team from that time on until shortly before Boulogne in the beginning of September. I went to hospital with jaundice. On my return to Army I was put in charge of the Counter-Intelligence documents of Canadian Army and I stayed with that unit in the capacity of OC Enemy Documents until the beginning of January 1945. In April of 1945 and up to June 1945 I was engaged in screening enemy prisoners of Counter-Intelligence nature out of the Wehrmacht in Holland. After that date, as from the eleventh of June, I became Intelligence Officer of Number 1 Canadian War Crimes Investigation Unit.

Q. Now since June 1945, have you in such capacity acted either as interpreter or interrogator in a very large number of examinations of enemy personnel contacted by that unit? *A.* I have sir.

Q. Now, will you describe the significance first of all of a band or ribbon bearing the name Adolf Hitler on the left forearm. *A.* That is what is known as a baendel, worn on the left forearm, about an inch wide. It is black with white lettering on it, generally bearing the name of the division in which a man is serving or has served.

Q. To what division does the Adolf Hitler refer? *A.* The Adolf Hitler if it were worn here *(Witness indicates left forearm)* would pertain to the Liebstandarte SS Adolf Hitler, which translated would be the personal bodyguard of Adolf Hitler. It is an SS Armoured Division. It is the senior division in the SS Armoured Divisions and it bears the name of Adolf Hitler. One could give a brief history of the Division but I do not wish to take up the Court's time. It is the senior regiment formed from approximately fifty men who had been entrusted as bodyguards, with guarding the Führer.

Q. Will you explain what the significance would be if prisoners were taken or enemy personnel were found in Normandy bearing the legend Adolf Hitler on the forearm of their sleeve? *A.* It must be understood that the 12th SS Panzer Division, the Hitler Youth, consisted of two Regiments, the 25th and 26th. I shall subsequently give a brief outline of this history. In the beginning, some of the officers and some of the instructors were pulled from the bodyguard. They were used to instruct the officers and NCOs and the recruits. They formed the 12th SS Panzer Division known as the Hitler Youth. Many of the people who served in Russia or elsewhere formed...the cadre upon which this division was built. If it interests the Court, after the defeat of Stalingrad, losses in the German army were very high. The Hitler Youth of Germany was composed of young Germans, the best of them, from – more or less from the age of ten to, I believe, the age of seventeen. The recognized youth leader in Germany offered Hitler a present, so to say, of a division of these Hitler Youth. This Division was to be known as the Hitler Youth Division. The Division was formed in August 1943 and the instructional cadre was taken from the Leibstandarte Adolf Hitler Division and from them was built up the 12th SS Panzer Division which formed the acorn, so to say, to the oak of the Division. The emblem of that Division was the acorn. On landing in Normandy the main people we ran into were the 21st Wehrmacht Panzer Division and other armoured divisions which, if we look at it from the way the Germans saw it, were on the right of the 12th, to the right of Caen, and in front of Caen was the 12th SS Division. In interrogating the accused he has given us –

Andrew: That is not evidence from this witness here, what the accused said at all. He is just telling –

Macdonald: I propose to refer to the SHAEF Report which contains the evidence of the accused and a map which he drew indicating the formations on every sector. Maj Stonborough is familiar with this from several other interrogations taken from the accused and we have at least three maps drawn by him –

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drawn by the accused with these things marked on them. Inasmuch as it is part of the SHAEF Report I should think it would be admissible –

Andrew: Not admissible that way though.

President: They are admissible in the form of documents, but not from him.

Macdonald: Well then, can I show him a map and ask him to indicate what the markings show?

Judge Advocate: No, I think you had better put it in as an exhibit...

Stonborough: To complete my testimony here sir, the SS Division, the 12th, had a cadre from the Leibstandarte, and it was the senior Division. In order to complete this, I did at one time interrogate a person who wore a little baendel with the name Hitler-Jugend on it.

Macdonald: *(Resuming the examination-in-chief) Q.* Now, just one further question. Do you know of any other SS formations in the Caen area in the month of June 1944? *A.* To the best of my personal knowledge there were no such formations there at that time. The Leibstandarte did come into the battle but I believe the first time was between the 8th and 14th of July when 2 Corps was in Camilly. I believe there was only one Regiment of them. I believe the town was Maltot. I think that was the first time we came across a member of the Hitler Bodyguard. And I don't think the other two Divisions which were subsequently met with were there at any time before the late part of June. A few prisoners were brought in from the American sector. At the beginning of June one can say that there was only one Panzer Division, Number 12 called Hitler Youth.

Andrew: *(Begins cross-examination) Q.* Maj Stonborough, can you tell me if on the 6th June 1944 in the area with which we are immediately concerned, the 21st Panzer Grenadier Regiment were engaged? *A.* The 21st Panzer Grenadier Regiment? I am practically certain not.

Q. Was there a 21st Panzer Grenadier Division? *A.* There was a 21st Panzer Division of the ordinary army. That unit was present.

Q. Now then, there was then, this 21st Panzer Regiment? *A.* There was.

Q. There were also some coastal units? *A.* Yes. Coastal units were there.

Q. I mean this area in front of you? *A.* No.

Q. Where were they? *A.* Without suitable preparation and restudying of maps, I would not want to commit myself. I would say that the coastal units were right on the coast.

Q. Around the airport at Carpiquet there were some troops, were there not, on the 6th? *A.* To the best of my knowledge there were some troops which, I believe, were flak ack ack positions on the airport.

Q. And can you give us any idea as to how the personnel of these coastal units were dressed? *A.* The coastal units which I saw as prisoners were dressed in the ordinary Wehrmacht style.

Q. Describe that unit will you? Was it a tunic or a blouse? *A.* The ordinary German uniform is a coat – everyone has seen them – with the words "Gott Mit Uns" "God is with us" on the belt; grey-green trousers, very often stuck into high, rather rough leather, black boots; and a steel helmet.

Q. How did the flak troops dress? *A.* To the best of my knowledge, at the moment, as the people have just described.

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Q. Do you know the dispositions of flak troops or coastal troops on the 6th of June 1944? *A.* I would prefer not to answer that except in broad outline. I would prefer to answer your question, sir, by what I know.

Q. Well, that is what I want, – what you know. *A.* There were three divisions which, from the German Commander's viewpoint, were the 21st Panzer Division on the right. That is a Wehrmacht or Army Unit of General Feuchtinger. In the middle, streaming up, was the SS Division No. 12, known as the Hitler-Jugend Division, an SS Armoured Division under Witt, and well out on the left, looking at it from the German Commander's point of view, the Tank Instructional Division or Panzer Lehr Division. These three formations were the main bodies of troops and during the first 48 or 72 hours these three formations were involved.

Q. The first troops that the Canadian Army hit on land, the beach-head, were the coastal defence troops; is that correct? *A.* Yes sir.

President: That is not correct. There was no Canadian Army at this time. This is all part of the 2nd British Army. These Canadian troops we are dealing with were under the command of the 1st British Corps. *(To the witness Stonborough) Q.* The first Canadian troops that landed hit the German coastal defence troops first and the first advance troops were driven back; is that correct? *A.* Yes sir.

Q. Do you know from your knowledge who the next troops were that the Canadians engaged? *A.* I do not feel competent to answer that question. I cannot at this time remember the exact sequence as to how the Canadian 3rd Division troops hit German units one after the other. It varied on different parts of their front and I believe that some troops made contact, – I believe that some Canadian troops made contact with the 21st Panzer Division; that is, the same straight Army, Wehrmacht, Division, before they made contact with the 12th SS Panzer Division, but that is merely my belief at this moment.

Q. Could it have been possible for personnel, SS instructors, or cadres in either the 21st Panzer Division or the Panzer Lehr Division to have been wearing this Adolf Hitler garb? *A.* I believe there is no possibility of that. It is definitely out of the question. Without endeavouring to outline the rather strained relationship between the SS and the ordinary Wehrmacht, without wishing to give all [that] is known to Intelligence personnel of the... [friction] between the Wehrmacht and the SS and the friction as to the fighting merits of their troops on that particular date, – and, the strain was very noticeable, one can say that no Leibstrandarte cadres were at any time, and, I believe I can say that quite categorically, employed by any Wehrmacht division as a cadre of instructors. There is one more thing, sir. I think one should describe the camouflage suit, camouflage helmet, jacket, and trousers worn by the SS. All who fought them [will] recall that they wore a jacket which had spots like a leopard. It looked dirty brown and purple, like faded heather, in a way, and was quite unmistakable. Many had them over their steel helmets. Not all, but many of them, wore blouses or smocks like our troops. They were very effective and looked more [dappled] than ours. They were a rather dirty brown colour under which the 12th SS, for some reason I have never been able to ascertain, wore a brownish shirt which may have well been their issue shirt in the old Hitler Youth days in civilian life. It was well known that they wore that. That particular type of camouflage suit could be seen a mile away in the PW cages and it was quite easy to pick SS out.

Macdonald: There is just one more question I would like to ask. When you speak of personnel from the Leibstandarte Adolf Hitler providing a training cadre for the 12th SS, do you mean by that that it was a small number of officers and NCOs or was it a substantial number? *A.* It seemed to us to be a substantial

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number of members but that is a question, I suppose, of definition. I would say every second or third one that one saw had that.

Q. That is, all the officers and NCOs? *A.* All the officers and NCOs and some privates who had served for longer terms.

President: *Q.* It has been brought out in evidence by a French witness that he observed considerable activity by a person dressed in what he described as a gabardine uniform and he referred to a long coat rather the colour of the panelling of this room. Is that a distinctive type of uniform that is familiar to you in your experience as an interrogator? *A.* No, sir. It isn't. I have never seen it. I did not hear the witness, and looking at the panelling of this room...

Q. Well, probably it is a little darker, he referred to it as a gabardine and he described it as being worn by a person with a belt, and a coat that came half way between his knee and his ankle and he wore his equipment underneath it because the person in question produced a pistol by opening the coat to get it out. *A.* I could imagine, and it is the only thing I can think of – we heard of them although I have never seen them – sniper suits. I cannot imagine what he is speaking of. The long coat and belt doesn't look like it and it is the trench coat that...

Q. It is definitely not a trench coat. *A.* I am very sorry, sir. I have no clue to that.

President: Well, thank you very much.

(*The witness withdraws.)*

Macdonald: There is just one reference with regard to the map which will be placed before the court, the reproduction, rather, of the map and it is at ***page 24, Exhibit No. 8, Supplementary SHAEF Report***. It gives the circumstances upon which the map was marked by the witness there, who is now the accused:

"*Q.* Will you now draw on this map the boundaries of the regiments in your division as they were established on the 9th of June? *A.* I have marked my own front with the boundary on my right with the 21st Division and the boundary on my left with the 26th Regiment."

Which gives us the right boundary of the division on the 9th of June. There will be other portions of the evidence of the accused read to explain the part of the 21st Division may have had in the early fighting.

Andrew: Sir, may I speak to my friend?

President: Yes. *(Lt-Col Andrew consults with Lt-Col Macdonald at Prosecution table.)*

Macdonald: My friend states he has no objection to the submission of this map, or a copy of it, as a part of the court proceedings, so we will have one prepared. In fact, if we can get enough copies we will have several prepared so that you can follow the evidence on that point...

Judge Advocate: Can the original go in as an exhibit?

Macdonald: Yes, sir. Now, on the point of the baendel, I should like to read from an examination held in connection with a different matter, and I will read this with my friend so he can check it with me to see that I am not misleading the court.

Judge Advocate: Is this the Supplementary Report?

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Macdonald: No. This was taken by the No. 1 Canadian War Crimes Investigation Unit by Col Campbell. He examined an officer by the name of ***Untersturmführer Karl Walter Becker*** of the Reconnaissance Battalion of the 12th SS Hitler-Jugend Division.

Judge Advocate: What is the date of that report, please.

Macdonald: The date of that examination is the 13th August 1945. The witness was examined by my friend Col Campbell on the 13th day of August 1945, at the London District Prisoner of War Cage, London.

"*Q.* Tell us your number, rank, name and unit? *A.* Untersturmführer Karl Walter Becker, 2nd Armoured Car Company, 12th Recce Unit, 12th SS Panzer Division, Hitler-Jugend.

Q. What happened to you then? *A.* Then I received leave and was sent to the SS Officer Cadet School in Bad Toelz near Munich.

Q. And when did you graduate from that school? *A.* On the 30th of May 1943.

Q. And what happened to you then? *A.* I went back to Reinforcement Unit Ellengen.

Q. And from there? *A.* In [July] 1943 I was sent to Belgium to the organization of the new Division, SS Hitler-Jugend.

Q. How long did you remain with the Hitler-Jugend then, on that occasion? *A.* I never left the Division but I went on a Divisional Course as an Instructor for Officer Cadets who were candidates in February 1944, coming from the Reconnaissance Battalion...

Q. Now was there such a thing as a Hitler-Jugend baendel? *A.* At that time there was definitely no baendel given to the Hitler-Jugend Division."

By reference... he is speaking of the 4th and 5th August 1944. To continue with that answer,

"I have since seen a newspaper that SS Divisions newly constituted in Germany in 1945 were issued with baendels but we didn't have [any] on up to the time of my capture.

Q. Is there any special reason why your division did not have one? *A.* For several reasons. They might not have had time to make these baendels in number but, I did see a trial baendel that was later rejected and was not used by the Division. The other reason is that the officers of the Hitler-Jugend Division were entitled to wear the Adolf Hitler baendel as members of the Corps [Leibstandarte Adolf Hitler] to which both the first Leibstandarte Adolf Hitler Division and the 12th SS Division, Hitler-Jugend, belonged.

Q. In other words all the officers of the 12th SS Division Hitler-Jugend were entitled to wear the Adolf Hitler baendel? *A.* Yes. They could have worn this baendel but there were many in our Division who wore from tradition the old baendel of their previous unit – for example the Totenkopf Division, the Viking Division or the Regiment Germania.

Q. A large number of the officers were, of course, originally in the Leibstandarte Adolf Hitler? *A.* Yes, a great part.

Q. And they would naturally wear the Leibstandarte Adolf Hitler baendel? *A.* Yes."

President: The Court will now adjourn for ten minutes.

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Macdonald: I should now like to read one of the ***affidavits of Capt Joseph Austin Trainor*** which appears in Book No. 1 dated 16 October 1945.

Judge Advocate: *(To Andrew)* Are you satisfied that this is the affidavit which has been mentioned?

Andrew: Right, sir.

Macdonald: Captain Joseph Austin Trainor having been duly sworn is interrogated by Major R.F. Barnes, HQ, M.D. No. 6 Halifax, N.S. and states as follows:

"1. My rank, name and unit is Captain Joseph Austin Trainor, North Nova Scotia Highlanders.

2. My home address is 231 Brunswick Street, Truro, Nova Scotia.

3. THAT, I joined the Canadian Army in July 1940 with the North Nova Scotia Highlanders and have remained with that unit ever since.

4. THAT, I arrived with my unit in Normandy on the 6th of June 1944.

5. THAT, on the 7th of June 1944, I was second in command "Able" Company of the North Nova Scotia Highlanders...

10. We had passed through Buron and we continued to advance in the direction of the Buron-Carpiquet Road and in an area about Authie.

11. It was then about 1400 hours and we could advance no further owing to enemy shellfire and tanks. Our objective was the Carpiquet airport.

12. At this point we became completely cut off from the remainder of the battalion by tanks on our right flank. We tried to get through on our 18 Set but it had been damaged by enemy action and we were unable to do so – I was with Company HQ.

13. We remained engaged until we were completely overwhelmed. The Bren gun on our Left Flank was out of action and the next thing I knew, the enemy personnel was upon up. They were SS Troops, as I identified them by the cap badges.

14. We were disarmed and taken out and lined up on the road in the vicinity of Authie. We were searched and everything taken from us – our money, cigarettes and personal effects, everything but our identity discs and our clothes. Our personal effects were never returned to us.

15. We were marched to L'Abbaye Ardenne. There were approximately fifteen of us consisting of other ranks, Major Rhodenizer, Lt J. Fairweather and myself. We were taken to the L'Abbaye about 1700 hours and we were lined up again and Maj Rhodenizer and myself were separated from the others. We were put into a separate building – a stable – and we remained there until about 2100 hours that night.

19. While we were being taken from the area in which we were captured I saw a number of German troops going about the area shooting at our wounded who were lying on the ground but I am unable to identify any of the Germans soldiers so engaged or the names of any of our men. The Germans were using automatic weapons.

20. During the march from Authie to L'Abbaye Ardenne, we were being hurried along by the Germans and some of our men were struck with rifle butts and there was a lot of promiscuous firing and a few minutes after leaving Authie area, I heard a distinct shot and I turned around and saw Corpo-

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ral C. Taylor of the North Nova Scotia Highlanders gripping the lower part of his abdomen. After we reached L'Abbaye I saw Taylor and found he had been wounded in the lower part of the abdomen. I do not know who shot him. This incident occurred west of the Caen to North Coast Railway.

Dated at Halifax, Nova Scotia, by J.A. Trainor, Capt."

Macdonald: And it is dated 25th of October 1945. Is there anything you wish to read from it?

Andrew: No.

Ninth Witness for the Prosecution

F-45174 Sgt McKay, W.L., North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your number, rank, name and unit? *A.* F-45174 Sgt. McKay, W.L., North Nova Scotia Highlanders.

Q. And were you serving with your unit in Normandy on the 7th of June 1944? *A.* Yes, sir.

Q. And were you taken prisoner on that day? *A.* Yes, sir.

Q. With what company were you serving? *A.* "A" Company.

Q. I believe that you subsequently escaped after your capture? *A.* Yes, sir.

Q. When did you escape? *A.* The 2nd of August.

Q. And then after sometime with the French population I believe you got back to a Canadian formation? *A.* Yes, sir.

Q. And then when did you rejoin your unit? *A.* In October.

Q. And have you served continuously with that unit through all the subsequent fighting? *A.* Yes, sir.

Q. Now, where were you with your company or when you were captured on the 7th of June? *A.* To the south of Authie.

Q. And with relation to the road running north and south from Authie to Franqueville where were you? *A.* On the east side of the road.

Q. And you have told us that you belonged to "A" Company. We have heard that that was the position that "C" Company were holding. Will you explain that? *A.* My platoon went up to reinforce "C" Company's positions.

Q. Now, prior to your capture had you been wounded? *A.* Yes.

Q. What were the nature and location of your wounds? *A.* Bullet wounds.

Q. In what part of your body were you wounded? *A.* The right arm and face.

Q. Will you describe the nature of each wound? *A.* The first went through the muscle of the right arm and the other one went straight through the face.

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Q. When you say straight through the face do you mean through each cheek? *A.* It went in at the side of my face and it went through and out the other.

Q. And were you temporarily rendered unconscious by reason of that wound? *A.* I "blacked out" shortly afterwards.

Q. And how long do you think that you were unconscious? *A.* Three or four minutes.

Q. Were you quite capable thereafter of moving about and walking? *A.* Yes, sir.

Q. And were you still able to talk though probably with difficulty? *A.* Yes, sir.

Q. Now, will you describe what happened after you were captured? *A.* After I was captured, sir, I was searched first thing.

Q. Will you describe first of all how your captors were dressed? *A.* The fellow who took me, he had a camouflage suit on.

Q. Will you go on then, please? *A.* With a kind of parachute wing over his left pocket on the side.

Judge Advocate: Parachute wing?

Macdonald: *(To witness) Q.* Now, do you mean a parachute wing or do you mean eagle wings or some kind of other wings? *A.* Just wings.

Q. You don't mean a parachute or anything that resembles that? *A.* No, sir. He had a wing over his left pocket.

Q. And what was done after your capture? *A.* I was searched. Everything was taken from me, and then I was turned over to a private and he started me back to the centre of the village.

Q. And you are speaking now of the centre of the village of Authie, are you? *A.* Yes, sir.

Q. Now, were you by yourself at this time? *A.* At this time, yes, sir.

Q. And were you in the charge of some German? *A.* Yes, sir.

Q. What was it, one or more guards? *A.* One.

Q. And what did he do with you when you got to the centre of the village of Authie? *A.* He put me in a doorway and he went in an alley-way.

Q. He put you in a doorway, you say, and he went in an alley-way? *A.* He ducked around a corner, and it seemed like an alleyway between the buildings.

Q. Were you then temporarily left unguarded? *A.* Yes, sir.

Q. How long were you unguarded? *A.* Five minutes or longer.

Q. Did you see anything happen while you were left in this doorway? *A.* Yes, sir. I seen seven men and this corporal I recognized as Cpl Davidson.

Q. Where were they with relation to yourself? *A.* They were across the street sitting down.

Q. How many feet or yards away from you? *A.* About three times the width of the road.

Q. So that I take it you were looking at them from somewhat of an angle? *A.* Yes, sir.

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Q. And you say you witnessed one of them as being Cpl Davidson? *A.* Yes, sir.

Q. And what were they doing sitting at the side of the road? *A.* When I first looked at them they were just sitting there and then later I seen two of them remove their steel helmets.

Q. Were they under guard while they were sitting there? *A.* Yes, sir.

Q. And how many were guarding them? *A.* Three.

Q. And how were these three Germans dressed? *A.* In camouflage suits, sir.

Q. Now, what next did you see? *A.* The first thing I heard firing, and then I seen some boys tipping over towards the road and a couple tipped backwards.

Q. Did you see who was doing the shooting? *A.* I could see the two guards standing on the road. I could see their guns fire.

Q. Did you see anything take place before the shooting started; that is, on the part of the guards? *A.* No, sir.

Q. Now, were the men sitting at the side of the road all members of your unit? *A.* They belonged to "C" Company.

Q. Did you recognize any other than Cpl Davidson? *A.* No, sir.

Q. How were they dressed? Were they wearing steel helmets? *A.* Just two had steel helmets on.

Q. And then I think you said something about two of them taking steel helmets off. What was that? *A.* There were just two of them bare-headed. The rest had steel helmets on.

Q. And did they leave these steel helmets on? *A.* No, sir. They took them off.

Q. When did they take them off? *A.* Just before I seen the shooting.

Q. Could you tell whether they were doing that on their own accord or whether they were being given orders to take them off? *A.* I could not tell, sir.

Q. What did they do with their helmets when they took them off? *A.* They let them fall behind them.

Q. Now, were they armed at this time? *A.* No, sir.

Q. Did you see any of them making any effort to escape? *A.* No, sir.

Q. Did you see any of them making any effort to shove in any manner? *A.* No, sir. They were just sitting there quite peaceful like.

Q. Where did the guards stand when you saw them firing? *A.* In about the centre of the road.

Q. And what happened to these prisoners when the shooting started? *A.* When I heard the shooting I seen them fall each way and they just laid there.

Q. And what was done with their bodies, if anything? *A.* The two fellows that tipped back, the guard at the rear end came along and pushed them back around into the edge of the road.

Q. Now, when you say they pushed them into the edge of the road do you mean that the bodies were pushed towards the centre of the road or away from the centre of the road? *A.* Towards the centre of the road.

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Q. Now, at that point and for some little distance is the road bounded on either side by buildings and walls or stone or masonry of some sort? *A.* There was a wall just along behind them.

Q. What was done with you when your guard returned? *A.* He came to the door and pointed the rifle down the road and made signs to me to keep going.

Q. And in which direction did he take you? *A.* North.

Q. And how far did he take you from the place where you had been standing in the doorway? *A.* Between two and three hundred yards.

Q. And did you pass these bodies as you went in that direction? *A.* No. I just come out just below them.

Q. Now, what did you find when you arrived at this place two or three hundred yards to the north? *A.* Some of the company were forming up.

Q. Did anything occur as you were approaching this group of prisoners? *A.* When I come pretty close to them I heard somebody say "There's Bill coming" and I seen L/Cpl Taylor grab his stomach and take a turn in the grass.

Q. Do you mean by that that he fell down? *A.* No, sir. He just made a circle into the ranks again.

Q. Did you see or hear anything to cause him to do this? *A.* No, sir.

Q. How far away from him were you at the time? *A.* Not very far, sir.

Q. Was there noise at the time from any source? *A.* No, sir.

Q. Are you generally known by the name of "Bill"? *A.* Yes, sir.

Q. Now, did you ever hear any explanation from any of your comrades who were there at the time as to why Taylor had done what you described?

Andrew: That is hearsay, but I am taking it for granted, Mr. Judge Advocate, that that is allowed in under the regulations. It is for the court to decide upon it.

Judge Advocate: Is there any question about that Col Macdonald?

Macdonald: I don't think so, sir. I think it must be taken for granted, in the first place, that hearsay is admissible, and, in the second place, is *res gestae* and is admissible on that basis and, in any event, there will be other evidence on the point.

Judge Advocate: I think it is admissible under the regulations.

Macdonald: Yes. I should say so.

Judge Advocate: Which part of the regulation can you suggest that it is under?

Macdonald: I would say Regulation 10, sub-section 1, which says that any evidence which the court may regard as helpful is admissible,... "May take into consideration any oral statement or any document appearing on the face of it to be authentic, provided that the statement or document appears to the court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial."

Judge Advocate: Yes.

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Witness: *A.* He said he was moving in the rank and he was shot.

Q. Did he tell you that himself? *A.* No, sir.

Q. Who told you? *A.* The Company Commander.

Q. Who was that? *A.* Maj Rhodenizer.

Q. Did you hear the shot yourself? *A.* Yes, sir.

Q. Now tell me, what eventually became of Taylor? *A.* Taylor stayed in the ranks and he was marched along with the rest of us until he got up to the place where I recognize now, the Abbaye, where we were loaded on carts.

Q. I believe that when you got to the Abbaye you yourself took some morphine, did you, or were you given some? *A.* Yes, sir.

Q. And then you say you were put on the cart? *A.* Yes, sir.

Q. Where did you get the morphine? *A.* From the stretcher-bearer.

Q. Was that one of your own stretcher-bearers? *A.* Yes, sir.

Q. And where were you taken then, from the Abbaye? *A.* The next thing I knew we were awakened up one time. We were going along the road somewhere and I wakened up and I was going along the road in a cart and the next morning I wakened up in this school.

Q. Do you know where the school was? *A.* No.

Q. Were you there with other members of your unit? *A.* Yes, sir.

Q. And what happened to you then? *A.* There was a French ambulance which come in and took us to hospital.

Q. Now, what kind of a hospital was it to which you were taken? *A.* It was sort of a big place. It was used for a hospital.

Q. Was it a German military hospital? *A.* No, French.

Q. Were there any German personnel there that you recognized as German? *A.* No, they were all French.

Q. From the time that you were wounded until you reached this French hospital, did you receive any medical attention at any time from any German personnel? *A.* No sir.

Q. Now, who else was taken to the hospital with you? *A.* Well, the worst wounded went in the first load. I happened to go in the second load. I seen Pte Richards there and L/Cpl Taylor.

Q. And is it that the Taylor that you have just been referring to as having been shot in the abdomen earlier in the day? *A.* Yes sir.

Q. What eventually happened with respect to Taylor? *A.* Some days later, I believe it was about the 9th June, one morning when the nurse came in, she pulled the blankets up and over the bed that Taylor was sleeping in. And later the bed was evacuated. ...

Q. Over the bed? *A.* Up over the body that was in the bed. Covered up the body that was in the bed.

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Q. And what did you understand had happened? *A.* Later the nurse returned and she said Taylor had died during the morning.

Q. Now, to go back to the spot where Taylor was wounded, will you tell us of anything else that occurred there, which you think the Court should be informed of? *A.* While my company commander was trying to give me morphine, I didn't agree with him so I was told to fall in to the ranks with the rest.

Q. Did you take any morphine? *A.* No sir.

Q. And was the first morphine that which you took at the Abbaye? *A.* Yes sir.

Q. All right now, will you come to anything else that occurred before you were moved off from this position? *A.* Just as I was turning around and talking to the company commander I think Cpl Arsenault, he grabbed his stomach and went down on his face. And later before I got up to the company I seen the same guard that was standing behind him, standing beside him with a pistol in his hand, and there was a shot fired and Arsenault straightened right out on the ground.

Q. Do you know what caused Cpl Arsenault to grab his stomach as you describe it, the first time? *A.* He had been shot through the stomach.

Q. Did you see the shot being fired? *A.* Not the one through the stomach.

Q. Did you see him shot again later with a pistol? *A.* Yes sir.

Q. Now, did you see in that position the bodies of any other North Nova Scotia Highlanders? *A.* I seen the body of Cpl McKinnon laying off a little piece from it.

Q. Do you know what his first name or initials are? *A.* I'm not sure but I think his initials are W.L. His name is Bill.

Q. Now, how were the guards dressed and who [was] in charge of you at this time and who you saw during the shooting? *A.* They had camouflage suits on.

Q. Did you see while you were there or while you were being moved to this position any German tanks? *A.* Yes. Before I moved out of the house there were two tanks come down from the south and one in from the east.

Q. In other words passing the road junction at the centre of the village of Authie? *A.* The two came straight down from the south and the other came from the east, going north.

Q. Now, while you were standing in this position north of Authie how were you standing? Had you been disarmed? *A.* Yes sir. We had been disarmed.

Q. And were you standing in a formed-up position, or formation? *A.* We were formed up in formation sir.

Q. In what position were your hands? *A.* I only had one hand. It was behind my head, sir.

Q. What about the others – the other prisoners? *A.* They all had their hands up.

Q. Now where were you taken after you left this particular position? *A.* We moved off up the road and we turned left – east and went to the Abbaye.

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Q. When you say you were moving up the road, do you mean in a southerly or northerly direction? *A.* South and swinging east.

Q. Then did you go through the village of Authie again? *A.* We just went through the centre where the crossroads – where the T-road is.

Q. Did you pass the place where you had been previously standing in the doorway? *A.* Just at the opposite side of the road as we passed.

Q. It would be on which side of the road as you were moving south? *A.* On the west side.

Q. Now, did you see, as you were moving through the village of Authie to the T-road, the bodies of Cpl Davidson and the other seven who you have described as having seen shot? *A.* Yes sir.

Q. Now were you able to recognize, when you went past this time, the body of Cpl Davidson? *A.* No sir. The face was turned down and the leg was off the body.

Q. From its general appearance what did you think had happened to it? *A.* A tank had run over it and tore it apart.

Q. I show you Exhibit T-18. Is this the T-road which you have described as the road at which you turned left? *A.* Yes sir.

Q. And was it near this T-road that you saw the bodies of the seven? *A.* Yes sir.

Q. And was it at this T-road that you saw the body – the crushed body of Cpl Davidson? *A.* Yes sir.

Q. And having turned east at this T-road where did you then go? *A.* We went up quite a piece, turning right, into a big wall and into a place where there was carts and hay where I was given morphine.

Q. And have you since discovered what the name of the place was to which you were taken? *A.* Since then I have found out that the place is the Abbaye.

Andrew: *(Begins cross-examination) Q.* Sergeant, you made these answers to some questions from my friend Col Macdonald previous to today. I refer now to Exhibit 34 to the *SHAEF Authie Report*. On page eight, the first question. The question was:

"*Q.* Were you able to identify any of the troops that took you prisoner? *A.* When I was looking at the Sergeant when he searched me there I saw a parachute and wings on the bottom of it. I took him to be a paratrooper.

Q. Were you able to identify the formation or unit to which the soldier belonged who killed Private Brown? *A.* Not right then but when we got back to where we could talk I heard it was the 21st outfit which had been in Africa and later rebuilt.

Q. Who said it was the 21st? *A.* Some of the boys, one fellow especially Sergeant Davis, who had been in Africa a spell himself...

Q. Did he recognize them or had he been told by someone else that they were the 21st people? *A.* I could not say, sir. We were asking what outfit they were because when we landed we had not much opposition and we wondered where all these fellows came from.

Q. Were the troops who shot the men sitting on the side of the road in the village of the same formation? *A.* As far as I know, yes.

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Q. And is there anything else that you would like to tell us? *A.* No, sir."

Is that correct – these answers? *A.* Yes, sir.

Q. Now, when you were taken prisoner, how were you treated by your captors? *A.* We didn't have any treatment, sir.

Q. It was just a normal surrender to this captor of yours – this German soldier? *A.* Yes, sir.

Q. Then after your capture, you went to the village of Authie and this guard of yours left you more or less on your own for a time; is that correct? *A.* Yes, sir.

Q. And did you not, during the absence of your guard, take shelter in the basement of the house where you had been standing in the doorway? *A.* No, sir. There was tanks coming and one thing and another and I just stepped back into the hall out of sight.

Q. Was there any shelling of the village of Authie at this time? *A.* No, sir.

Q. Did the same guard come back and get you in the doorway? *A.* Yes, sir.

Q. At no time were you handled roughly by that guard, were you? *A.* No, sir.

Q. What is – what was your feeling about this shooting of the seven Canadians in this way – do you think it was an individual action of these three men – just their dead – these guards to shoot those seven men? *A.* I couldn't see any other reason, sir.

Q. Because your guard treated you well for a captured prisoner, didn't he – you being a captured prisoner? *A.* Well, sir. After I was turned over to him I came across one of my buddies that was wounded in the leg and he refused to let me help him.

Q. And that was when you were captured and turned over to him? *A.* Yes, sir.

Q. And that was up in the battle, was it not? *A.* Well, not just – not in the battle. We were back a piece, sir.

Q. No firing? *A.* No, sir. Not there.

Q. When you arrived at the Abbaye, you went into a building, the Abbaye itself – correct? *A.* I couldn't say, sir. It was just a building with carts and stuff – a stone wall.

Q. And the prisoners, at the Abbaye at the same time you were, were treated as you treat prisoners at your own Battalion HQ. Is that not right? *A.* No, sir.

Q. Why? *A.* Prisoners we took, we treated as our own soldiers.

Q. Were you treated harshly at the Abbaye? *A.* I was just drove into a corner and told to lay down in the dirt.

Q. And there were other prisoners in there with you? *A.* Yes, sir.

Q. Did you see any Field Police – German Field Police at the Abbaye? *A.* No, sir.

(The Prosecutor declines to re-examine the witness.)

President: *(To witness)* Sergeant, I wonder if you could point out – I have a sketch here, a sort of plan of the village of Authie. I wonder if you could indicate on this sketch the doorway that you were standing in

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when you saw these seven men shot? The sketch is Exhibit T-9. *A.* I recognize this place, and a doorway about that building, sir.

Macdonald: The witness has indicated the place as immediately opposite the building marked with the letter 'A' on the opposite side of the road.

(The witness withdraws.)

Macdonald: I should like now to read from the evidence of ***M. Louis Marie recorded in the SHAEF Authie Report*** at Exhibit No. 15.

"M. Louis Marie is called and, having been duly sworn, is examined as follows:

Colonel Tombaugh: What is your full name? *A.* Louis Marie.

Q. Where do you live? *A.* Authie.

Q. How long have you lived there? *A.* I have lived there since 11 May 1941.

Q. What is your occupation? *A.* Stonemason.

Q. How old are you? *A.* I will be 24 in December.

Q. Where were you on 7th June last? *A.* In Authie.

Q. What were you doing there? *A.* Staying in my house; I could not go out.

Q. What troops were in occupation of the vicinity in Authie at that time? *A.* Up to 1 o'clock the Germans; after 1 o'clock up till up to 5 o'clock the Canadians.

Q. Then the Germans recaptured Authie? *A.* Yes, the Germans recaptured Authie...

Q. Did you see any of the bodies of the Canadians mistreated by Germans? *A.* I saw two bodies squashed by tanks, and the tanks went out of their way to squash the bodies.

Q. Did you have anything to do with the burying of Canadian dead? *A.* I dug the graves.

Q. How many bodies were buried there? *A.* Thirty-seven, the two that were squashed were buried there with the other thirty-five. It is impossible to identify those two.

Q. Did you assist in burying the 37 people? *A.* Yes."

Macdonald: The next witness is Cpl MacLeod.

President: Well, now, is his evidence fairly extensive?

Macdonald: I think his evidence will be, and there is another witness who is to give evidence with respect to the same matter and one witness whose evidence is to be read with respect to the same matter. It might be convenient to take them all together.

President: Then I think we will adjourn. The court will adjourn until ten o'clock tomorrow morning.

(At 1640 hours, the Court adjourned until 1000 hours on 13 December 1945.)

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13 December 1945

President: I declare the Court open...

Macdonald: The first three bits of evidence this morning, sir, which will be brought before the court have to do with the same incident. One of the witnesses to this incident will not be here, and because the evidence of this witness in some slight degree varies from the evidence of those witnesses who will be present, I am going to read the first so that in the event the court or my friend wish to cross-examine on the points of difference they will have the evidence before them to do so. That is the ***evidence of Private A. Doolan*** given to the No. 1 Canadian War Crimes Investigation Unit. ...

Judge Advocate: And the document is in the form of an affidavit?

Macdonald: No, it is in the form of an examination with questions and answers. ...

"*Q.* What is your name, rank, and unit? *A.* F. 32161 Pte A. Doolan, North Nova Scotia Highlanders.

Q. How old are you? *A.* Thirty-five.

Q. Where is your home? *A.* I am staying in Nova Scotia.

Q. Did you serve with your unit in Normandy in June 1944? *A.* Yes, sir.

Q. And were you taken prisoner at that time? *A.* Yes, sir. The second day... 7 June.

Q. To what company did you belong? *A.* "C" Company.

Q. Who was your Company Commander? *A.* Maj Learment...

Q. What sort of a field was it in which you were captured? Was it an open cultivated field, or was it an orchard, a plowed field, or what? *A.* It was an orchard, sir.

Q. And was the 13th Platoon the platoon in which Cpl McLeod was? *A.* Yes, sir.

Q. And were you captured at the same time he was? *A.* No, sir. There were three of us captured, but he fell in behind us.

Q. Who was captured when you were? *A.* There was stretcher bearer,... [J.H. Conrad]. *Q.* And who else? *A.* A tank corps fellow. I don't know him.

Q. And following your capture in the orchard Cpl McLeod, who had also been captured, joined your parade? *A.* Yes, sir.

Q. How many, then, were in your party? *A.* I can't say, sir, about ten or eleven.

Q. Will you tell us exactly what occurred from the time you were captured, up until the time Corporal McLeod was captured, and from then on? *A.* They took us prisoner and didn't take us very far until McLeod came in and when they took him prisoner they started shooting.

Q. Who did? *A.* This German...

Q. And how far did you get from the place you were captured until you joined Cpl McLeod? *A.* Not very far, sir, 300 yards.

Q. And then how far did you go after that up to the time the shooting commenced? *A.* It wasn't very far, sir, it was about fifty yards.

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Q. And did you have some guards marching you along? *A.* Yes, sir.

Q. How many guards? *A.* There was one there, sir.

Q. Just one? *A.* Yes, sir.

Q. And how were you carrying your hands; above your head? *A.* Yes, sir.

Q. Clasped over your helmets? *A.* Yes, sir.

Q. Were you wearing helmets, by the way? *A.* Yes, sir.

Q. You were still wearing helmets? *A.* Yes, sir.

Q. Now, describe exactly how this shooting occurred. *A.* I don't know, sir. I heard him firing, the guard.

Q. You heard him firing? *A.* Yes, sir, and I heard a fellow say, "Oh my God!" and I looked down and that was Orford. He was in the same company.

Q. Now, tell me the names of as many as you can who were in this group with you? You have already mentioned yourself, Conrad, a tank corps man, and a fellow named Orford. That is four, can you remember any others? *A.* Frank Arsenault, that's all I can remember."

Macdonald: I would like to point out here that this of course is not the same Arsenault who was referred to before in the testimony. *(Continues reading)*

"*Q.* When you were moving along were you moving in single file? *A.* Yes, sir.

Q. Who was the first man in the file? *A.* Conrad.

Q. Who was next to him? *A.* I was.

Q. And who was behind you? *A.* McLeod.

Q. And where was the tank man? *A.* I don't know where he went, sir.

Q. Where was Orford? *A.* He was about the fifth man behind.

Q. Counting from the front? *A.* Yes.

Q. Where was Arsenault? *A.* I couldn't say for sure. I know that he was with us. I seen him.

Q. When this shooting started were you walking at the time? *A.* Yes, sir.

Q. You had not halted? *A.* He halted us.

Q. And then what? *A.* The shooting started.

Q. And you say you did not see him shooting but you say he was the one who did it? *A.* Yes, sir. I am pretty sure. He was the only one who was there.

Q. Now, were you hit? *A.* No, sir.

Q. How was it you were not hit and others were? *A.* I don't know, sir.

Q. Did you duck or anything? *A.* No, sir.

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Q. Did you see anybody else duck? *A.* No, sir.

Q. Did you see anybody actually hit and fall to the ground? *A.* No, sir. I just heard this fellow say, "Oh, my God!" and it was Orford.

Q. And did you turn to the right or left when you halted to see what the halt was for, or did you continue to face the direction you were going? In other words, looking at the back of McLeod's head? *A.* Yes, sir. I looked around to see what was going on.

Q. And what did you see? *A.* Well, I seen the guard there and I turned around again and I heard the shot.

Q. I supposed you were a bit scared or alarmed by this? *A.* Yes, sir.

Q. So probably you are not quite clear as to what did happen? *A.* No, sir.

Q. Do you remember having seen a wounded man on the ground? *A.* No, sir.

Q. Did you see any others approaching as if to go into an attack when you were being taken away? *A.* German soldiers?

Q. Yes. *A.* Yes, sir.

Q. You did see some? *A.* Yes, sir.

Q. And were they coming up in skirmish or open field formation as if to attack? *A.* Yes, sir.

Q. And where were they at the time the shooting started? *A.* I don't know, sir...

Q. How many of you marched away? *A.* Three of us.

Q. What had happened to the rest? *A.* I don't know, sir.

Q. Didn't you look around to see? *A.* No, sir.

Q. How do you know they weren't following then? Who was the last man in the line? *A.* Cpl McLeod.

Q. And he was behind you, was he? *A.* Yes, sir.

Q. Now, we have had it from other witnesses, from Conrad and from McLeod, that the shooting started from troops who were approaching you? *A.* I was ahead of the shooting when it started.

Q. You were what? *A.* I was ahead of it when the shooting started.

Q. The shooting started from your rear? *A.* Yes, sir.

Q. And you did not look around to see what was going on? *A.* No, sir.

Q. McLeod seems very clear that the guard did not do any shooting and, in fact, was trying to stop it. McLeod was nearer to where the shooting was then than you were, was he not? *A.* Yes, sir.

Q. Now, after the shooting was finished where were you taken? *A.* We were taken and marched through a field and to a stable in a big building.

Q. Was there anything about the place that you would recognize or did you hear its name? *A.* No, sir.

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Q. I show you some photographs, Exhibits 'D,' 'E' and 'F' in the Jesionek evidence. Are you able to recognize any of those photographs? *A.* Yes, that building..."

Macdonald: That is the picture of a courtyard. I don't know whether those pictures are before you or not.

Judge Advocate: I don't know whether they are exhibits or not.

Macdonald: They will be put in as exhibits later today. If in the meantime you would like to look at them because they are part of the evidence to be brought out which will refer to Exhibits 'D,' 'E' and 'F.' *(Continuing reading of evidence)*

"*Q.* You are now looking at Exhibit 'F'? *A.* Yes, sir.

Q. Have you every seen anything like I am showing you know in Exhibit 'E'? *A.* Yes, sir."

Macdonald: Now 'E' is a picture of the chapel at the Ancienne Abbaye... *(Resuming reading of evidence)*

"*Q.* You do remember seeing that? *A.* I am not sure.

Q. Now, Cpl McLeod was with you wherever it was you were taken? *A.* Yes, sir.

Q. And so was Conrad? *A.* Yes, sir.

Q. Now, you were out in a stable, you say, in the first place? *A.* Yes, sir.

Q. How long were you there before you were taken any other place? *A.* About three quarters of an hour.

Q. And what happened while you were there? *A.* They took all the papers. They searched us.

Q. Who did that, the guard? *A.* The German officer.

Q. Did he take your pay book too? *A.* Yes, sir.

Q. And did you get your pay book back again? *A.* The next morning, sir.

Q. Where were you at the time you got it back? *A.* At some school house.

Q. And did you spend the night at that school house? *A.* Yes, sir.

Q. Who else did you see in the portion of the barn in which you were? Were any other prisoners brought in while you were there? *A.* Yes, sir.

Q. Who were they? *A.* Maj Learment, Sgt-Maj Mackie...

Q. And was that near this church or chapel that you were just looking at in the picture? *A.* That looks like the building we were in.

Q. You went into that building? *A.* Yes, sir.

Q. And what did you see in the building? *A.* There were two carts there with wounded on them.

Q. Two carts with wounded? *A.* Yes, sir...

Q. Now, you spoke of getting your pay book back the next day. Do you remember whether there were pay books for some prisoners who were not there? *A.* Yes, Cpl MacIntyre's pay book came in and he was not there.

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Q. They had a pay book for Cpl MacIntyre but he was not there to get his pay book? *A.* Yes.

Q. Why do you remember particular the case of Cpl MacIntyre? *A.* I remember they called his name.

Q. Did you know Cpl MacIntyre? *A.* Yes, sir."

Macdonald: Have you any parts you wish to read, Col Andrew?

Andrew: No, there are no parts.

TENTH WITNESS FOR THE PROSECUTION

F. 55346 Corporal Walter Terrence McLeod, North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your number, name, rank and unit? *A.* My number is F.55346, rank is Corporal, unit North Nova Scotia Highlanders, name Walter Terrence McLeod.

Q. Now, were you serving with your unit in Normandy on the 7 June 1944? *A.* I was, sir.

Q. And with what Company were you serving? *A.* "C" Company.

Q. And were you taken prisoner that day? *A.* I was, sir.

Q. Now, with respect to the village of Authie, where were you when you were captured? *A.* I was in the southern edge of the village of Authie.

Q. Now, how were the Germans dressed who took you prisoner? *A.* They were all dressed in camouflage uniform.

Q. And who was with you at the time you were captured? *A.* I was alone, sir.

Q. And then did you join the other prisoners? *A.* Yes, sir.

Q. How many other prisoners did you eventually join? *A.* Seven or eight, sir.

Q. And do you remember the names of any of these? *A.* I remember the names of two, sir.

Q. Who were they? *A.* L/Cpl Corporal Orford, and Pte [Frank] Arsenault...

Q. And were other prisoners added to your number at a later stage? *A.* Yes, sir.

Q. And how many? *A.* Three, sir.

Q. And did you know the names of any of them? *A.* Two of them, sir – Pte [A. Doolan] and Pte Conrad.

Q. And what was Conrad's job in the Regiment? *A.* Stretcher-bearer, sir.

Q. So you say there were nine or so originally and then three more. I presume that made a total of twelve prisoners? *A.* Yes, sir.

Q. Now, when you say twelve I don't suppose you actually counted them, did you? *A.* No, sir.

Q. Is that your best estimate of the number? *A.* Yes, sir.

Q. Now, had you all been disarmed by this time? *A.* Yes, sir.

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Q. And how were you moving – in single file, in file or in any sort of formation? *A.* We were moving in single file, sir.

Q. Now, what was your position in this single file? *A.* I was fourth, sir.

Q. And who were the soldiers ahead of you? *A.* Pte Conrad, Pte Doolan and a Tank Corps fellow, sir – I don't know who it was.

Q. Now, is the order in which you have mentioned them the order in which they were in file counting from the front? *A.* Right, sir.

Q. Where was Pte Orford? *A.* He was right behind me, sir.

Q. And how about Pte Arsenault? *A.* He was perhaps two or three behind me, sir – I don't –

Q. Now, as were moving along in single file in this way in what position were your hands? *A.* Above our heads, sir.

Q. Will you describe everything that occurred as you were being moved away from the place of your original capture? *A.* Well, sir, we started to move towards a big grain field and we had to get over a little fence and as I was getting over the fence a German soldier gave me a kick in the backside. When we got over the fence we joined Pte Doolan and Arsenault. Then the Germans made us march and to make us go they hit Pte Doolan on the back with the butt of a rifle. Then we were marched perhaps 300 yards up towards this big field and we passed a German soldier laying down on the ground. He was wounded and was getting the attention of a medical orderly. He started hollering at us and we passed him and went another forty or fifty yards and we met a wave of advancing Germans and the German that seemed to be in the lead started hollering – I don't know what he was saying but was just hollering there and he pulled out a revolver – pistol and started shooting at us and at the same time or around approximately the same time this wounded soldier, he started shooting at us too with his rifle.

Q. Now what happened when the shooting started? Did they hit anybody? *A.* Yes, sir. The boys started falling and I was looking at the wounded fellow and then I was looking at the guy who was doing the shooting up front. A lot of our fellows fell down wounded and when he came up to L/Cpl Orford he grabbed me by the arm and then he was shot?

Q. Now, who grabbed you by the arm? *A.* L/Cpl Orford, sir.

Q. Now, describe the shooting of Orford? *A.* L/Cpl Orford grabbed me by the arm, sir, and he hollered, "Oh, mother, don't" and then it seemed to me like he grabbed his tummy and he sank down on the ground.

Q. Who was it that shot Orford, was he the German who had been approaching you from the other direction and who drew his pistol and had started the shooting? *A.* Yes, sir.

Q. Now, what did you do? *A.* Well, sir, he pointed at me and I dove on the ground and then after that there was no more firing and by that time Conrad and Doolan were moving about 10 feet so I joined them.

Q. What happened to the other nine people who had previously been in your group of prisoners, did they follow along as well? *A.* No sir, I never saw them afterwards.

Q. And you, of course, mean by that that you have not seen Orford or Arsenault since that time? *A.* No sir.

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Q. And did you look around to see what had happened to them? *A.* I didn't look around but when I got up they were all lying on the ground.

Q. And you then continued along, just three of you, did you? *A.* Yes.

Q. And did you have a guard with you? *A.* Yes.

Q. How many? *A.* One.

Q. Had you had just one guard from the beginning? *A.* No sir, two.

Q. What happened to the second guard, when did he disappear? *A.* Well, I never saw him from the time the shooting started.

Q. Now, can you describe the appearance of the German who you describe as having drawn his pistol and having done some of the shooting and particularly the shooting of L/Cpl Orford? *A.* No sir, I believe he was an officer or an NCO because he seemed to be out in front of the advancing troops and with glasses. He seemed to look different to me than the rest, he seemed to have more white or something around his collar than the rest of them.

Q. Now, to what place were you taken after this shooting had occurred? *A.* We were marched up to a great grain field, we were marched into a big town there sir and we stopped in the centre of the town by the tram tracks and it seemed to me that our guard was trying to find out the way to take us. He asked two or three German soldiers questions, he was talking to them at least for a while and we marched down the main street, turned left and we walked up a hill and we met another German soldier and then we went right to the Ardenne Abbaye.

Q. What was done with you there? *A.* They put us into a stable or a barn of some kind.

Q. What time of the day would this be when you arrived at the Abbaye? *A.* Somewhere around six o'clock in the evening sir.

Q. Did you see any other prisoners at the Abbaye? *A.* Yes sir, about the time we got there there was a tank corps officer, and two ORs came in about the same time we did. Later we were joined by Maj Rhodenizer, Capt Trainor, Cpl Sceeles, Pte Kelly.

Q. Now, when you first got to the Abbaye, were there many other prisoners there at the time? *A.* No.

Q. While you were there in this stall, did you see any other prisoners? *A.* Yes sir, we could watch the prisoners going by our door.

Q. Do you remember anyone in particular? *A.* Yes sir, I saw quite a few of our battalion and quite a few of our company and then I saw Sgt Bowner, and then Cpl MacIntyre and Lieut Veness.

Q. Any other prisoners? *A.* I seen quite a few but I don't remember them.

Q. Now, you have spoken of Cpl McIntyre, did you know Cpl MacIntyre? *A.* Yes sir.

Q. How well did you know him? *A.* Very good friend of mine.

Q. How long had you known him? *A.* Four years.

Q. What is his Regimental number? *A.* F55009.

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Q. Now, when you first saw Cpl MacIntyre, what was he doing? *A.* He was a prisoner, sir, him and two other fellows; they passed our door and were gone about twenty minutes and then passed going back.

Q. And were they under guard at the time? *A.* Yes.

Q. Now, did you recognize any of the other two who were with Cpl MacIntyre? *A.* I believe one was Pte Moore. I don't know who the other fellow was.

Q. And is Moore of your unit? *A.* Yes.

Q. Have you ever seen either MacIntyre or Moore since that time? *A.* No.

Q. Now, how long altogether did you stay at the Abbaye? *A.* Approximately two hours, perhaps more.

Q. While you were there were your pay books taken from you? *A.* My book wasn't, sir, but the other prisoners' were.

Q. And were these pay books returned at any time? *A.* Yes sir.

Q. When were they returned? *A.* Next morning, sir, in the school.

Q. And where were you at the time? *A.* In the school house outside of Caen.

Q. Was that a school house in which you had spent the night? *A.* Yes.

Q. Now, did you observe the distribution of these pay books? *A.* Yes sir.

Q. And were they all distributed? *A.* No sir, there were some of the fellows that were not there to receive them.

Q. And do you remember any of them who were not there to receive their pay books? *A.* Only Cpl MacIntyre.

Q. And why did you remember especially that his was not returned? *A.* Well sir, after I seen him at the Abbaye as prisoner I expected to see him later and when his name was called out and he wasn't there I noticed it.

Q. Had you been looking for him especially? *A.* Yes.

Q. Why? *A.* Because he was a good friend of mine.

Q. Now, you were eventually released, I believe, as a prisoner of war on the 1st of May 1945? *A.* Yes.

Q. And since that time have been returned to Canada? *A.* Yes sir.

Q. And have you been demobilized? *A.* Yes.

Q. So that you are a civilian attending this trial voluntarily to give evidence? *A.* Yes.

Andrew: *(Begins cross-examination) Q.* When you were joined by the other prisoners, when you started to march back, you said you passed through a grain field, is that correct? *A.* Yes.

Q. The country through which you were passing was cultivated ground, was it not? *A.* After the shooting?

Q. Before the shooting, what was the ground like? *A.* Pretty level sir.

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Q. Were there hedges and rows of trees between the fields and along the roads? *A.* The field I am talking about is at the back of the yard and there was a hedge between the yard and the field.

Q. And there was some obstruction of view, was there not, between you; that is the field of prisoners and the advancing German troops? *A.* I don't understand that one sir.

Q. There was some hedges or tall grass between you, the field of prisoners and the advancing German troops? *A.* No sir.

Q. Before they reached you, that is the advancing German troops, before they reached your immediate vicinity, there had been some obstruction of view, had there not? *A.* Yes.

Q. I want to refer to your examination – by Col Macdonald on the 8th day of August 1945 at Ottawa, and I refer to question 42,

"*Q.* And did you hold your hands above your heads or clasp them over your heads? *A.* Above sir, because I remember we had them just about our heads later on when we were walking, and we passed a tank and an officer got out of the tank and made the guards have us clasp our hands over our heads."

Is that correct, your answer there? Did you say that? *A.* I don't remember saying anything like that.

Q. I refer now to the German Officer or NCO whom you met advancing and who started shooting at your fellow prisoners. Can you describe how he was dressed? *A.* No sir.

Q. Did he have a camouflage blouse on? *A.* No sir.

Q. He did not? *A.* No.

Q. Did the other soldiers with him have a camouflage blouse on? *A.* I don't remember sir.

Q. Now, then, your guard at this time, did he do anything to stop the shooting? *A.* The guard that was out in front, sir, he didn't do anything, he was hollering a lot, it seemed to me he was trying to stop the shooting.

Q. When you were going through this grain field did you meet advancing German troops? *A.* Yes sir.

Q. And may I suggest to you that the German troops, officer, who started shooting at you did so just after he left the grain field? *A.* Yes sir, just on the edge.

Q. And, therefore, as you were moving over open ground as you told me, he was moving through the grain field? *A.* Yes sir.

Q. And therefore, again his view would be obstructed by the high grain, is that correct? *A.* I don't believe the ground would stop his view sir.

Q. May I say this to you in order to be fair, you didn't know whether it would obstruct his view or not? *A.* At the time of the shooting, sir, I am sure it didn't.

Q. Was there any shell fire coming down in the area in which you were prior to meeting these advancing German soldiers? *A.* You mean before we were captured, or after?

Q. After you were captured, before you met the advancing German soldiers? *A.* I don't remember, sir.

Q. Is it fair to say there might have been? *A.* Yes, there could have been.

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Macdonald: *(Re-examines) Q.* How far away from you was the officer standing who shot Orford? *A.* I'd say about 25 or 30 feet sir.

President: *(To the witness) Q.* You mentioned a wounded German soldier lying on the ground who used his rifle and fired at this group of prisoners. Can you describe how he was dressed? *A.* No sir, I am sorry, I can't.

(*The witness withdraws.)*

(At 1100 hours on 13 December 1945, the court adjourned until 1110 hours on the same day.)

Eleventh Witness for the Prosecution

F.76107, Private J.A. Conrad, North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your number, name, rank and unit? *A.* My number is F.76107, Pte Conrad, J.A., North Nova Scotia Highlanders.

Q. And were you serving with your unit in Normandy on the 7th of June 1944? *A.* Yes sir.

Q. With what sub-unit were you serving? *A.* Thirteenth platoon, "C" Company sir.

Q. Was your normal occupation a stretcher-bearer? *A.* Yes sir.

Q. And were you taken prisoner on that day? *A.* I was taken prisoner on the 7th of June.

Q. What time of day was it when you were captured? *A.* About three o'clock sir.

Q. And were you with "C" Company at the time you were captured? *A.* Yes sir.

Q. And where were they with relation to the village of Authie? *A.* On the road running north and south, sir. We were at the left of that – south of that.

Q. How were your captors dressed? *A.* Camouflage sir.

Q. What others were taken prisoner at the same time that you were? *A.* Pte A. Doolan and a tank corps man.

Q. And what was done with you after your capture? *A.* When they came up sir, I put my hands up and came round a little hole in the wall. They gave us a rough search, took us down around the wall and marched us about a hundred yards away. We were joined by Cpl MacLeod with eight others.

Q. So how many would that make in the ground of prisoners? *A.* About twelve in all sir.

Q. And what was done with you then? *A.* We were marched on about four hundred yards more sir.

Q. Now, how were you moving at that time, in what formation? *A.* Single file sir.

Q. And in what position were your hands? *A.* Over our heads sir.

Q. And had you been disarmed? *A.* No sir, I had no arms. I was a stretcher-bearer.

Q. Had the other prisoners been disarmed, to the best of your knowledge? *A.* The others, sir, were.

Q. Now, what was your position in this single file of twelve? *A.* I was the lead man, sir.

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Q. And who was behind you? *A.* Pte A. Doolan.

Q. And do you know who was behind him? *A.* The tank corps fellow.

Q. And do you know who was behind him? *A.* Cpl MacLeod.

Q. Do you know any of the others in the party? *A.* L/Cpl Orford and Arsenault.

Q. Do you know where they were in the file? *A.* I couldn't be sure, sir.

Q. They were following along, I presume at least, behind MacLeod? *A.* Yes sir.

Q. Now, how many guards did you have? *A.* Two guards sir.

Q. And how were they dressed? *A.* Camouflage.

Q. Now, did anything occur as you were being moved away from this area? *A.* Yes sir. As we were passing a wounded German a stretcher-bearer was working on him sir, and at the road we turned east again – turned east instead of marching. The second wave of a counter-attack was coming. The lead man opened fire on the group.

Q. Now, how far had you moved along this road after you came out of the field? *A.* Just straightened out on the road sir.

Q. And how far was this from the place where MacLeod and the others had joined you? *A.* Approximately four hundred yards sir.

Q. Now can you describe the nature of this shooting? *A.* When the shooting started sir, I turned around to my right. There was a German soldier there and he was firing. The rear guard had his rifle pointed towards the ground and looked to be working the bolt. After the shooting started the men commenced falling and I noticed Orford and Arsenault among them. Cpl MacLeod had ducked down. I wanted to stop and Pte Doolan nudged me in the knee and he said to keep marching.

Q. And did you respond to that suggestion by moving ahead? *A.* Yes sir.

Q. And how many of you then continued along? *A.* MacLeod joined us – the only one of the group.

Q. Do you know what happened to the other nine? *A.* They were shot down, sir, when moving off.

Q. Have you seen either Orford or Arsenault since that time? *A.* No sir.

Q. Will you describe, if you can, the appearance of this German soldier who had been firing on you? *A.* No sir. He was dressed in a camouflage uniform.

Q. Could you tell anything about his rank? *A.* No sir.

Q. You say that he was leading the others – or in front of them as the troops were coming along? *A.* He would be the leading man sir.

Q. Now, was he on the road or in the field? *A.* He was on the edge of the road sir.

Q. And did you have a reasonably good view of him? *A.* Yes sir.

Q. How far was he from you or, let us say, from Orford at the time of the shooting? *A.* About twenty feet from me, sir.

Q. Now, where were you taken after that? *A.* Taken to a monastery, sir.

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Q. Have you any idea what time it was when you reached the monastery? *A.* Near twelve o'clock sir.

Q. Were there many other prisoners when you reached there? *A.* A tank corps officer and two other ranks, sir.

Q. And where were you taken at the monastery, do you remember? *A.* Up into a stable of some sort.

Q. What made you think it was a monastery? *A.* A big church there sir – a big church.

Q. I show you now a picture. Is that a picture of the church you saw at the time? *A.* It was not broken up like that sir.

Q. I show you now another picture which will be entered eventually in the evidence. I believe it is the same building but undamaged. Does that look like it? *A.* That looks like the same one, sir...

Q. How long did you stay at the monastery? *A.* We stayed about an hour and a half, sir.

Q. Now, during that time that you were there, did you see any other members of your unit? *A.* There was quite a number (that) passed, sir.

Q. Were your pay books taken away from you while you were there? *A.* They were taken from us in the stable.

Q. And did you get them back again? *A.* We got them back the next morning in the school sir.

Q. And was that the school where you spent the night? *A.* Yes sir.

Q. Whereabouts was it? *A.* It seemed to be on the outskirts of Caen sir.

Q. Do you remember, were you present when the pay books were distributed? *A.* Yes sir.

Q. Do you remember whether they were all given out? *A.* Some names called out sir, who were not there to get their pay books.

Q. Do you remember the names of any for whom there were pay books but who were absent? *A.* No, sir. I don't remember.

Q. How long did you remain a prisoner? *A.* Two months, sir.

Q. And how did you eventually get back? *A.* I was recaptured by the Americans, sir, in Rennes, sir.

Q. And were you acting there as a hospital orderly? *A.* Yes, sir.

Q. Have you since been returned to Canada? *A.* No, sir.

Q. Are you still on duty overseas? *A.* Yes, sir.

Q. And have you been serving with your unit since that time? *A.* Yes, sir.

Q. When did you rejoin the unit? *A.* The first of October a year ago, sir.

Q. And have (you) been serving with it since then? *A.* Yes, sir.

Q. And through the fighting in which your unit has participated since the 1st of October? *A.* Yes, sir.

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Andrew: *(Begins cross-examination)* *Q.* Conrad, when you were in the line, in file, with the prisoners when you were marching back and you turned east on a road; you remember your evidence regarding that just a moment ago? *A.* Yes, sir.

Q. Was that a slightly sunken road? *A.* No, sir. It didn't seem to be sunken.

Q. Were there grain fields on both sides of the road? *A.* There was grain fields on the right hand side, sir.

Q. What was on the left hand side? *A.* It wasn't grain, sir. There was just grass there.

Q. May I suggest that there was rough grass and bushes? *A.* There were no bushes there, sir, not to my recollection.

Q. Fairly tall grass though? *A.* It didn't seem to be very tall grass to me.

Q. Were there any soldiers on the left-hand side of the road? *A.* Not on the left-hand side of the road.

Q. Now, on the right-hand side of the road there was grain and there was a hedge; is that correct? *A.* There was grain but there was no hedge, sir.

Q. The field on the right was slightly elevated above the level of the road, was it not? *A.* No sir, it wasn't elevated.

Q. But there was this grain? *A.* Yes, sir.

Q. Right. Now, I am informed that the file of prisoners that you were in met the advancing Germans, one of whom shot at you just at the edge of this grain field; is that correct? *A.* Yes, sir.

Q. And you could not see the advancing Germans until they were practically on you; is that not correct? *A.* We saw them just when we got on the road, sir.

Q. And you told in your evidence that it was just after you got on the road that you met the Germans; is that not right? *A.* Yes, sir.

Q. Well, therefore, you didn't see the Germans until you got right on the road, just turned on the road? *A.* That is when I noticed them, sir.

Q. Yes, and it is possible that this is the first time they saw you too, is that not correct? *A.* It could have been, sir.

Q. Now, at the time was there firing going on by any troops in that area? *A.* No, sir.

Q. Was there firing going on, not in your immediate vicinity, but round about? *A.* There was no handy fire going on.

Q. What do you mean by 'handy'? That means right beside you, correct? *A.* The advancing wave of Germans were ahead about 700 yards then.

Q. Was there any shelling in your immediate area? *A.* Not to my knowledge, sir.

Q. Are you positive about that? *A.* I cannot be positive, sir, there was no shelling, sir, but I didn't notice any shelling at all.

Q. I am going to refer to Exhibit No. 35 to *SHAEF Authie Report*, which is your interrogation, I understand, which was taken last September [by Lt-Col Macdonald], or a year ago last September... I am

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reading from page 3, the sixth question, and, as a word of explanation this question is referring to the type of weapon this file of prisoners was shot at with; referring to a weapon in the hands of the Germans.

"*Q.* Was there quite a lot of shooting? *A.* Quite a lot, machine gun.

Q. Do you mean by machine gun, one similar to our Bren gun? *A.* A Schmeisser, something like our Thompson."

This is the part I want to refer particularly to the witness:

"I was pretty nervous at the time and did not take much notice."

Q. Do you remember giving that answer? *A.* Yes, sir.

Q. Is that correct? *A.* Yes, sir.

Q. Well, then, it is fair to say, is it not, that there might have been firing and shooting round about you which you did not notice because of your nervousness? *A.* No, sir. I don't think so.

Q. You don't think so? *A. (No audible answer.)*

Q. We have been informed by the witness, MacLeod, that the guard who was in front of you appeared to be trying to stop the shooting. What do you say to that? *A.* He was hollering, sir.

Q. Did he appear to be surprised at the sudden appearance of these German soldiers? *A.* I was watching the fellows during the shooting, sir.

Q. We have been informed that the wounded man lying on the ground was shooting at your file of prisoners? *A.* I didn't see that, sir.

Q. Did you see the wounded man on the ground? *A.* Yes. I saw him as we were going past.

Q. Did you see a rifle in his hand? *A.* Not at that time, sir.

Q. Did you actually see the guard at the rear of your file of prisoners shooting any of your friends, comrades? *A.* No, sir. He had the rifle pointing at me and was working the bolt.

Q. Did you hear his rifle firing? *A.* No, sir.

Andrew: That is all. Thank you, sir.

Macdonald: *(Begins re-examination)* Just to make sure there is no misunderstanding of the portion of the witness's previous evidence, that was read, I would like to read the preceding questions (from the interrogation report). At the bottom of page 2:

"*Q.* What happened? *A.* They just left 2 standing, myself and Doolan. Corporal Walter McLeod ducked down when they started and they shot a tank corps fellow ahead of him – the fellow who had been with us first.

Q. What was your position in this single file? *A.* I was the first one, then Doolan, then the tank corps man. And then Cpl McLeod.

Q. And then after Cpl McLeod? *A.* I could not tell the order.

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Q. What you are saying is that all of these men were shot except yourself and Doolan, and McLeod who ducked down? *A.* Yes. There were just two of us standing. I could not see if they were killed or not.

Q. Was there quite a lot of shooting? *A.* Quite a lot, machine gun.

Q. A Schmeisser, something like our Thompson. I was pretty nervous." And so on.

I just wanted to clarify that it was not general firing in the area that he referred to.

Judge Advocate: You might ask (the witness) if that is correct.

Macdonald: *Q.* Do you remember being asked those questions and making those answers? *A.* Yes, sir.

Q. And were the answers given by you at that time correct? *A.* Yes, sir.

President: *(To the witness)* These advancing troops, the leader of which opened fire with a pistol. Will you describe their dress? *A.* To my knowledge he had a machine gun and was dressed in a camouflage uniform.

Q. And what was the dress of the other people? *A.* They were dressed in camouflage uniforms, sir.

(*The witness withdraws.)*

Judge Advocate: With regard to the last witness. His evidence didn't appear in any of the abstracts, did it?

Macdonald: I think probably it is referred to in one of the supplementary ones. We were going to read his previous evidence and then we found he was available and we brought him here. That is my recollection of the situation.

Judge Advocate: Colonel Andrew, if there is any evidence or a witness that you did not expect and anticipate, that is if you had no notice that he would be called as to the evidence he would give, you may be in the position that you wish to ask for an adjournment before you cross-examine such a witness. In other words, if you are taken by surprise with respect to any evidence you might require an adjournment.

Andrew: Yes, I quite understand, but I get each day, or the night before, at least, the list of witnesses to be called the next day.

Macdonald: Yes, my friend has had the evidence of that last witness contained in the *Authie Report*, and, so far as the next witness is concerned, we served notice that his evidence would be read, and also thought perhaps it would be better to bring him here too. Now, with respect to this witness he is not going to give evidence with respect to the shooting of other prisoners; he is one himself who was shot and he is being brought in to give us the background of the picture as one who was injured on the occasion.

TWELFTH WITNESS FOR THE PROSECUTION

F.87703, Private Ralph J. Richards, North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your number, name...? *A.* My number is F.87703, Ralph J. Richards.

Q. And where is your home? *A.* New Glasgow, Nova Scotia.

Q. And were you serving with your unit in Normandy on the 7 June 1944? *A.* Yes, sir.

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Q. And with what Company were you serving? *A.* 'A' Company, sir.

Q. And were you taken prisoner that day? *A.* I was taken prisoner June 7th.

Q. And were you with your company at the time you were captured? *A.* Yes, sir.

Q. What time of the day were you captured? *A.* I would say it was about three o'clock, sir.

Q. Now, with relation to the village of Authie, where were you taken prisoner? *A.* I was taken prisoner down at the, – just at the back of Authie.

Q. Now, by the back of Authie do you mean the south or north end of it? *A.* The north end, sir.

Q. With respect to the beach, for example, was it on the far side from the beach of Authie or was it on the nearest side? *A.* On the nearest side.

Q. Now, will you describe what happened after your capture? *A.* Well, after I was captured, sir, these Germans came up and we had nothing else to do but drop our weapons so we walked. I was the last fellow down at that edge so I walked, I went down to the end of the hedge and there was a road there, and I was still wearing my steel helmet and so when I got to the end of the road, the end of the hedge, this German soldier made motions to me to take off my steel helmet.

Q. All right. Will you go on? *A.* So I took my steel helmet off and I threw it on the ground, and he made motions to clasp my hands behind my head so when I got about...

Q. Did you do that? *A.* Yes, sir. So I walked up the road about 30 yards and then I was hit.

Q. You were hit by what? *A.* By a bullet.

Q. In what part of the body were you hit? *A.* The left chest.

Q. Did this bullet enter your body from the rear or from the front? *A.* From the rear, sir.

Q. And what part of your body, have you found out since, did this bullet penetrate? *A.* Through the lung, sir.

Q. And what happened after you were hit? *A.* Well, after I was hit, sir, I fell to my knees and I turned around and he still had his rifle – this German soldier still had his rifle up to his shoulder.

Q. And was this the same soldier who had previously indicated to you that he wanted you to remove your helmet? *A.* Yes, sir.

Q. Now, where were you being taken as you moved along this road? Did you see any other prisoners? *A.* Well, after I got hit, sir, my company commander, Maj Rhodenizer, he was the first one up to me. He said, "It is all right, Ralph, it's got you through the lung."

Q. Did you feel quite that optimistic about it? *A.* No, I didn't, sir.

Q. Now, do you remember the dress that this guard was wearing or the soldier who you believed fired at you? *A.* Well, it was kind of greenish, sir.

Q. And what do you mean, kind of greenish? Will you describe it a little more? *A.* Well, I didn't take particular notice of the clothes he was wearing, sir. I just glanced at him.

Q. Well, when you say it was a greenish colour do you mean it was a greenish coloured uniform such as an ordinary green German uniform? *A.* Yes, sir. It was just greenish, sir.

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Q. What kind of helmet, – or, was he wearing a helmet? *A.* No, sir. He was wearing a kind of greenish hat, sir. With a peak on it.

Q. And what sort of weapon did he fire at you? *A.* A rifle, sir.

Q. Now, were there other prisoners on the road at the time? *A.* There were other prisoners walking way up from me, sir.

Q. How far away were they? *A.* Thirty or forty yards.

Q. And were they out in the road or where were they? *A.* The fellow I seen were on the road, sir.

Q. And what happened to you after you were hit and fell to your knees and your company commander spoke to you? *A.* Well, after Maj Rhodenizer came up to me, sir, this German soldier whom I still believe was an officer or NCO, he came across the road and he told Maj Rhodenizer to move on.

Q. Now, is the German to whom you have just referred to, the one who originally shot you, or is this a different one? *A.* It is a different one, sir.

Q. And did Maj Rhodenizer then have to leave? *A.* Yes, sir. He left then, sir.

Q. Well, what did you do? *A.* Well, I didn't do anything then, sir. This German, he made some kind of motions and hollered something and two fellows came down from up above and they put two field dressings on my wounds.

Q. Who put the field dressings on you? *A.* It was our own fellows, sir.

Q. And I believe as a consequence of your injuries you are not too accurate in your recollections of what occurred afterwards? *A.* Yes, sir.

Q. And you were eventually, with their assistance, taken somewhere else? *A.* Yes, to the Abbaye, sir.

Q. And then from there you were taken on a cart to some other place? *A.* To a small school house.

Q. Now, do you remember anything about the dress of this chap you thought was an officer or NCO who sent Maj Rhodenizer away? *A.* No, just that he looked a little neater than the rest of them and my experience in the Army led me to believe that he was an officer or an NCO, sir.

Q. And I believe that you remained a prisoner of war then until what time? *A.* Till August 7th [1944], sir.

Q. And were you then returned to Canada? *A.* No, I was not, sir. I spent quite a few months in the hospital in England.

Q. And I believe you have not yet completely recovered from your injury? *A.* No, sir.

Andrew: *(Begins cross-examination) Q.* Private Richards, you made mention of walking along a hedge to the end and meeting this German soldier who told you to take your helmet off – correct? *A.* Correct, sir.

Q. At that time was there a battle going on around about you? *A.* No, at that time there was not much firing going on right where we were at.

Q. There was firing going on, not perhaps in your immediate vicinity but around the town, was there not? *A.* Yes, there was.

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Q. And there were quite a number of German troops milling around in your immediate area were there not? *A.* Yes, there were fellows that were walking other prisoners away.

Q. Did you see anyone else get shot besides yourself? *A.* No, I did not, sir.

Q. This German officer that came along when you and Maj Rhodenizer were together, did he call for the stretcher-bearers to attend to you? *A.* Yes, he did.

Q. Then did this German officer or NCO say anything to the man you say shot you? *A.* No, he did not.

Q. But the man didn't fire again after the officer or NCO arrived? *A.* No, he did not.

Q. The man who shot you – Do you remember him giving you any order after you put your helmet into the ditch? *A.* Just that he made motions to clasp my hands behind my head.

Q. Did he say anything to you? *A.* Well, he was jibbering something in German there. I don't know what he was talking about.

Q. I refer to the ***evidence you gave Col Macdonald on the 29th day of June 1945*** at Ottawa...

"*Q.* Do you remember him giving any order to you after you flipped your helmet into the ditch? *A.* There was a lot of hollering going on but I couldn't understand it.

Q. Did it sound like an order? *A.* There was so much noise I couldn't understand it."

Do you remember those questions and making those answers? *A.* Yes.

Q. And they are correct, are they not? *A.* Yes, they are, sir – correct.

Q. I understand that after you were wounded you were carried by four men to the main party of the prisoners. Is that correct? *A.* No, it is not.

Q. Well, who carried you or how did you get to the main body of the prisoners? *A.* I was helped along by two of our own soldiers.

Q. And when they arrived at the main body of your comrades who were prisoners you were placed on a bank or on the grass? *A.* On the bank, sir.

Q. And you were very thirsty – correct? *A.* Correct, sir.

Q. And a German soldier gave you water? *A.* Yes, sir.

Q. And you were taken to the Abbaye and then went to the schoolhouse. Is that correct? *A.* That is right, sir.

Q. And at the schoolhouse you were given medical treatment? *A.* The next morning.

Q. By the Germans? *A.* By the Germans – by whom I believe were Germans.

Q. Coming back to this question of the man who told you to flip your helmet off. How did you come to be moving down the road away from him? *A.* You mean when I passed, sir?

Q. Yes. *A.* I was just walking down the road, sir, that was all.

Q. Well, then that hollering he was doing might have been an order for you to stop with him, correct? *A.* I don't know, sir.

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Macdonald: *(Begins re-examination)* *Q.* Do you remember being asked the question immediately after the ones that my friend read to you?

"*Q.* Do you remember him giving an order to you after you flipped your helmet into the ditch? *A.* There was a lot of hollering going on but I couldn't understand it.

Q. Did it sound like an order? *A.* There was so much noise that I couldn't understand it."

And do you remember being asked this question and making this answer?

"*Q.* Did you take it he was talking to you? *A.* No, I was too far away."

Q. Do you remember that question being asked to you and giving that answer? *A.* Yes, I remember that question, sir...

Q. Now, did you think he was talking to you or what was it all about? *A.* Yes, he was speaking to me and making motions to remove my steel helmet.

Q. Now, why did you go along the road? *A.* Well, the rest of the fellows up ahead were on the road, sir, and he made motions for me to go up the road.

Q. Now who were the... two other persons who assisted you to the Ancienne Abbaye? *A.* They were my cousin, Johnny Richards, and Alex Fraser, both from the same Company.

Q. Now, you have said that Maj Rhodenizer who came to assist you when you were wounded was sent away by this German officer? *A.* Yes, he was, sir.

Q. And it was after he rejoined the other prisoners that the two of your own men came along to give you assistance? *A.* That was after he left, sir.

Q. In what language did the German officer ask for stretcher-bearers? *A.* In German, sir.

Q. How did you come to the conclusion that he was asking for stretcher-bears? *A.* Well, I was fixed up afterwards, sir. After he said something in German there was two fellows came down and fixed me up.

Q. You mean after Maj Rhodenizer rejoined the prisoners and the German officer said something in German then some stretcher-bearers came and fixed you up? *A.* Yes, sir.

Q. And you are fair enough to give the German officer credit for having sent them down. Is that correct? *A.* Yes sir.

Q. Did you receive any medical assistance from the Germans at the Abbaye? *A.* No, none at all, sir.

Q. And when did you receive your first medical assistance at the school house? *A.* The next morning... I have no idea what time it was, sir. It was early in the morning some time.

Q. And then you were taken to hospital? *A.* Yes, I was taken to hospital by ambulance.

Q. Was this a German Military ambulance or hospital? *A.* No. It was a French ambulance and they took me to a French hospital.

President: When you were shot and you fell to your knees and you say you looked around and this German had you covered with his rifle. Is that so? *A.* Yes, that's right, sir. He was still pointing his rifle at me.

Q. How far away was he at that moment? *A.* About thirty yards, sir.

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Q. Now, did this officer who appeared at that time give him a direct order to stop? *A.* No he didn't, sir. There was just Maj Rhodenizer there and he had said something to him and then he left.

Q. What direction did these two officers come from? *A.* Well, Maj Rhodenizer had come from the back, sir, when I had left and the other officer, he was coming towards me...

President: Court will adjourn until two o'clock.

(*The witness withdraws.)*

Thirteenth Witness for the Prosecution

F-45140 Corporal John Robert Bell Campbell, North Nova Scotia Highlanders, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your number, name, rank and unit? *A.* My number is F-45140, my rank is Corporal, name Campbell, John Robert Bell.

Q. And what is your unit? *A.* My unit is the North Nova Scotia Highlanders.

Q. And were you serving with your unit in Normandy on the 7 June 1944? *A.* Yes, sir.

Q. With what Company? *A.* "A" Company.

Q. Now, before you left England, that is before D-Day, had you been briefed at all as to what enemy formations you were likely to encounter? *A.* Yes, sir, we were briefed and told what units we were liable to engage.

Q. What units were you told that you might encounter? *A.* We were told, sir, that we might encounter the 21st Panzer Division.

Q. And after your landing, do you know if your unit actually encountered any enemy of that formation? *A.* Among some of the first troops we encountered, I believe, were from the 21st Division.

Q. And was that on the 6th or 7th of June? *A.* The afternoon of the 6th, sir.

Q. Were these identifications made, do you know, from the prisoners who were captured? *A.* Yes sir.

Q. Now, were you yourself taken prisoner on the 7th? *A.* Yes sir.

Q. Where were you at the time you were captured? *A.* We were just north of Authie.

Q. How far from the nearest buildings of the village of Authie? *A.* Approximately 100 yards, sir.

Q. Now, did you observe the manner in which the troops were dressed who captured you? *A.* Yes sir, the troops wore camouflage uniforms; the camouflage on them were very prominent spots.

Q. What were the predominant colours of that camouflage uniform? *A.* Some of the spots were dark green; as for the other ones I don't quite remember sir.

Q. What was the apparent age of most of these troops? *A.* I would say that the average age was 19 or 20.

Q. Now will you tell us, please, what happened from the time of your capture? *A.* After we were captured we proceeded in an easterly direction towards the road running between Buron and Authie.

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Then, as I approached the road that ran through Authie, I seen three NCOs from my Company shot. The first one that I seen was some distance in front of me; his rank and name was L/Cpl Taylor.

Q. Now, was Taylor a member of your section or platoon? *A.* Yes, Taylor was my second-in-command of the section. The next NCO I seen shot was Cpl McKinnon. He fell forward and laid on his face quite still. Within a moment or so after he was shot I heard another shot and Cpl Arsenault fell forward on his face. When he fell forward on the ground the German soldier came up with a rifle, pointed it at the back of his head, and pulled the trigger.

Q. Was Arsenault, as a consequence of this, shot a second time? *A.* Yes sir.

Q. And the second shot struck what part of his body? *A.* I would say the base of the skull, sir. It was down low on the back of the head.

Q. Now, at the time Taylor was shot what was the situation generally? Was Taylor by this time, for instance, disarmed? *A.* Yes sir.

Q. And in what position did he have his hands? *A.* His hands were raised above his head.

Q. And where was he standing? *A.* He wasn't standing, he was going forward to a group that were formed up to be marched away.

Q. And what about Cpl McKinnon, where was he at the time he was shot? *A.* Cpl McKinnon was also proceeding down the road to the group that was forming up.

Q. And was he carrying arms? *A.* No sir. His hands were also above his head.

Q. Now, Cpl Arsenault, will you tell us about his shooting? *A.* Cpl Arsenault was following a short distance behind Cpl McKinnon.

Q. And was he carrying arms at this time? *A.* No sir. His hands were also above his head.

Q. Did you see the soldiers who shot any of these three men? *A.* I seen the soldier that shot Cpl Arsenault.

Q. And how far from Cpl Arsenault was he when he shot him? *A.* About three feet, sir.

Q. And how was he dressed? *A.* He was dressed in a camouflage uniform.

Q. Now, when you describe Cpl McKinnon and L/Cpl Taylor as having been shot, have you any idea by whom they were shot? *A.* They were shot by advancing German troops.

Q. Now, when you say advancing, where were they advancing? *A.* They were advancing up the west side of the road toward Buron.

Q. Was there any fighting going on in the area in which you and these prisoners were at the time? *A.* No, sir.

Q. And how many prisoners were there further along the road; that is in the group towards which you were walking? *A.* Between 20 and 30 I would say sir.

Q. Could you see any reasonable cause or justification for this shooting? *A.* I seen no cause or reason whatsoever.

Q. Was anyone making any effort to escape or resist? *A.* No, sir.

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Q. Now, what was done with your group of prisoners eventually? *A.* When we were gathered up we were searched, then formed into a party. From there on they proceeded to march us to the chapel or Abbaye [Ardenne]...

Q. As you went through the village of Authie, did you see the bodies of any Canadians? *A.* Yes sir, as we moved down through the village at the turn we turned left to go to the Abbaye, I seen approximately a section, I would say seven or eight.

Q. And did you recognize any of these bodies? *A.* Yes, there was a body on the turn – which I recognized as Cpl Davidson's.

Q. Now, about what time was it when you reached the Abbaye? *A.* I can only give an approximate answer to that; between five and six.

Q. Now in an affidavit which you gave you referred to the hour of your capture as 2100 hours. In view of what you have just said, are you correctly reported? *A.* The time you have there is definitely a mistake.

Q. And what time do you place the hour of your capture? *A.* Approximately five o'clock sir.

Q. Now, will you tell us what occurred at the Abbaye while you were there? *A.* While we were at the Abbaye three or four German Military Police came in, and they asked for ten volunteers. I tried to ask them what they wanted the volunteers for. They either did not understand me or did not want to tell. When none volunteered they went about the men in the Abbaye and selected at random ten men. Two of these men I remember: one of them was Private Moss, the other one was Private McKinnon. I did not see these men again.

Q. Have you ever seen them again? *A.* No sir.

Q. Now, what was Pte McKinnon's first name? *A.* We called him Swampy; that might have been a nickname.

Q. Now, when you say that these were Military Police who came and asked for these volunteers, how did you form that opinion? *A.* They wore a metal disk on their chest. At each side there was a chain attached which went around their neck, and afterwards I was told by one that it was the German Military Police.

Q. Now, were these officers and NCOs or were they private soldiers? *A.* I took one of them to be either an unter-officer or an officer.

Q. How did you form that opinion? *A.* Because he wore a dark, shiny coat, which looked like a rain coat. Since that time, I have seen such coats worn by German officers.

Q. And did he also wear about his neck this chain and plate that you have described? *A.* Yes sir.

Q. Can you describe him in further detail; for instance, how old a man would he be? *A.* I would say 35, sir.

Q. Is there anything else about his appearance that you remember? *A.* Nothing, except that he seemed to be in charge.

Q. No, while you were at the Abbaye were your pay books taken away from you? *A.* Yes sir.

Q. And did you get them back again? *A.* The pay books were returned to us the next morning.

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Q. Where were you when they were returned to you? *A.* In a school house in Caen.

Q. And were they able to distribute all the pay books that they had there for men of your unit? *A.* No, sir. I noticed about ten pay books that they could not find the owners of.

Q. And do you remember the names of any of those who were not there to receive their pay books? *A.* Yes sir. Moss and [Swampy] McKinnon...

Q. Now, among the group of prisoners that were taken from the village of Authie to the Abbaye, were there any who were wounded? *A.* Yes sir.

Q. Did you see them receive any medical assistance at any time from any German personnel? *A.* No sir. Any medical treatment was by our own boys.

Q. And what about the school house? *A.* In the school house the next morning, the French Red Cross people did what they could. There were a few in the morning that were removed to a hospital and the remainder went in the afternoon.

Q. Were they removed to the hospital by German or French personnel? *A.* French, sir.

Q. Did you see any German personnel assisting wounded at the Bretteville school house? *A.* No sir, not that I recognized as German.

Andrew: *(Begins cross-examination)* I am going to refer to a ***sworn statement of Cpl Campbell*** sworn at Halifax, Nova Scotia on the twelfth day of September 1945...

Judge Advocate: *(To witness Campbell)* You remember that document, do you? *A.* Yes sir.

Andrew: *(Resuming cross-examination) Q.* I am going to read paragraph eleven, first affidavit:

"At the time of my capture and after that there was no possibility of escaping, due to the fact that we were surrounded and the place was alive with German infantry coming forward as well as our own escorts...

I don't know what enemy troops captured me. They were wearing camouflage coveralls which covered identifying marks with the exception of the SS badge on their collars. We had received previous information that the formation opposing us was the 21st SS Panzer Division [sic]. After I was captured I and other Canadian prisoners were marched out individually on to the road north of the village. When we got on to the road we turned south and were made to double along the road towards the centre of the village. At this time there was a number of SS troops coming north on the road and these were armed with sub-machine guns – MP 40s – and a few with rifles. Practically all of these were carrying pistols of some sort or other in addition to the rifles and sub-machine guns. Many of them were carrying an MP 40 in one hand and a pistol in the other. And they were firing random shots at the prisoners coming down the road. Three of the men in my company were hit at this time. Lance Corporal Arsenault and Corporal McKinnon died immediately while Lance Corporal Taylor, who was second-in-command of my section was wounded."

Are these two paragraphs as I have read them correct? *A.* Yes, sir.

Q. Well then, Corporal, Arsenault and McKinnon died immediately, correct? *A.* Yes sir.

Q. And is it not a fact that at that time there was fighting going on to the north of the village? *A.* At that time there might have been fighting going on in Buron, not in the vicinity of Authie.

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Q. Were there still small pockets of Canadian troops about Authie that had not been cleaned up yet? *A.* Not to my knowledge.

Q. After you reached the main body of prisoners in Authie, did other Canadian prisoners come in? *A.* Other prisoners were following me down the road.

Q. Would it be fair to say that the Germans were still conducting mopping-up operations? *A.* No sir, not in Authie.

Q. On the outskirts of Authie? *A.* Not to my knowledge, sir.

Q. Is it fair to say then, that their might have been? *A.* Not on the outskirts of Authie.

Q. Close to Authie? *A.* As far away as Buron.

Q. Now, your escort was subject to these random shots also, was it not? *A.* No.

Q. Where were the guards or escorts? *A.* The guards that were with us were spread out at intervals along the road.

Q. In the column of prisoners? *A.* No.

Q. Were they marching with you, or stationary? *A.* Standing still, sir.

Q. Therefore, you had no definite escort with you, marching? *A.* They were acting as guards watching from a stationary position.

Q. Would you say that from their position they had been placed there just to guard prisoners from Buron back? *A.* No sir. I wouldn't say they were placed there just to guard prisoners.

Q. Is it not a fact that you were coming back as a column of prisoners through advancing troops without an escort? *A.* No sir, these guards were watching us.

Q. Is it not a fact that they were part of the advancing troops but watched you as you passed to see that you went back? *A.* Well, they were the troops that captured us. They formed a guard for us to pass down through.

Q. Now, I read from paragraph fourteen of the said sworn statement:

"Although the German treatment of our prisoners was hard I saw no further evidence," that is referring to the previous evidence, "of further atrocities."

Do you remember making that statement? *A.* Yes sir.

Q. Is that correct? *A.* Yes sir.

Q. When you were at the Abbaye you have told us about the field Police Officer with the shiny black raincoat. Did you see any other German officers around the Abbaye when you were there? *A.* I didn't recognize any, sir.

Q. During the fighting, did you recognize as part of the fighting troops any officers? *A.* I recognized no German officers.

Q. What would you say was the largest single formation that attacked you – your immediate position on the afternoon of the 7th? *A.* I can only estimate that sir. The vicinity I was in and captured at, I would

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say there was three hundred men came in on us. That is men that came right in on us. There were others.

Q. And it is possible – quite possible that there would be officers among these three hundred men? *A.* It is quite possible that there would be sir.

Q. And from your observation and what you have formed in your mind would it be correct to say that the officers were dressed similar to the men? *A.* Yes sir.

Macdonald: *(Begins re-examination) Q.* Now, these advancing troops which you have been describing and your own column of prisoners. Did you pass each other on the same road? *A.* The German troops that were advancing, the majority of them were off to the right of the road, that is coming in from the north.

Q. You mean, by that, the west side of the road? *A.* The west side of the road sir.

Q. And how far would they be from the column of prisoners? *A.* The column of prisoners was on the road itself. Some of these Germans were on the road but the majority of them just along the edge of the road, on the grass along the edge of the road.

Q. And was that the relative position in which the German troops were with respect to the prisoners at the time the shooting of these three prisoners occurred? *A.* Yes sir.

Q. Was there anything very random about the second shot that was fired at Arsenault? *A.* No sir. The German that fired the last shot at Arsenault deliberately walked across the road and pointed his pistol at his head and pulled the trigger.

Q. And was Arsenault at that time a wounded prisoner? *A.* Yes sir.

Q. Does that fit into your conception of a mopping up operation? *A.* No sir.

President: *(To witness Campbell)* At the school house that morning after you were captured, was the distribution of these pay books made before or after the wounded prisoners were taken away by the French Red Cross? *A.* Before sir.

Q. At the Abbaye on the evening of the 7th when volunteers were called for and they selected ten people at random, were these ten people who were selected immediately removed from the main body of prisoners? *A.* I seen three of these men, sir, taken by the shoulder lapel and shoved out of the Abbaye. I didn't take notice of the rest they were taking out. At the time I was occupied, trying to fix up L/Cpl Taylor. There was just the three men I seen taken out right away.

Q. Did you see these three men the next morning at the school house? *A.* I didn't sir, and I have not seen them since.

Q. You have stated that a German soldier stepped across the road and at about a range of three feet fired a shot into Cpl Arsenault's head. Was that German soldier one of your captors or was he one of the advancing troops coming towards you? *A.* He was one of the advancing troops, sir.

(*The witness withdraws.)*

Macdonald: I should like now sir, to read the Court Exhibit number forty-eight from the *SHAEF Authie Report*; the ***record of the evidence of Pipe-Major R.M. Stone***...

"*Lt-Col Macdonald: Q.* What is your full name, number, rank and unit? *A.* Pipe Major Ross Mitchell Stone, F-49636.

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Q. And your unit? *A.* North Nova Scotia Highlanders.

Q. You were Pipe Major in that unit during July last? *A.* Yes sir.

Q. Did you go to Authie early in the month of July on the orders of the second-in-command of your unit for the purpose of identifying and burying certain men of your unit that had been killed in action? *A.* Yes sir.

Q. Do you remember what date it was you went to Authie for the purpose? *A.* July 17th, sir... At the time I identified the bodies I made a list of the names in a small book which I carried in my pocket. From this list I later made up a report which should be on file in the Battalion Orderly Room and in preparation for my evidence here today I made a copy of what I had written down and have it here with me. *(Witness removes sheet from his note book and it is entered in the proceedings as Exhibit 'O'.)"*

Macdonald: Now, with reference to the exhibit itself, there is one which you may observe is an exact copy of the exhibit, but he shows twenty-seven identified as North Nova Scotia Highlanders, I think that should be twenty-six in order to bring out the correct total.

Sir. With respect to the next witness, Capt Bluteau. He is a Records Officer from the CMHQ and I thought it might now be a convenient stage for him to put in documentary evidence with respect to the prisoners killed in the vicinity of Authie, but I would like to recall him later with respect to those who were killed at the Abbaye.

Fourteenth Witness for the Prosecution

Captain Maurice Bluteau, Officer in charge, Casualty Wing, Records, CMHQ, being duly sworn, is examined by the Assistant-Prosecutor Lt-Col C.S. Campbell:

Campbell: *Q.* In the month of October 1945, in your official capacity, did you have occasion to compile some data with respect to a list of personnel supplied to you by No. 1 Canadian War Crimes Investigation Unit? *A.* I did, sir.

Q. I show you a document. Will you identify it, please? *A.* That is one of the documents that I compiled, sir. That is a list of names of Canadian personnel in the army who were deceased amongst the Authie group on the 7th of June 1944.

Q. Does that particular record that you have there show them killed or just missing? *A.* Missing, sir.

Campbell: I would like to tender this as an exhibit.

Judge Advocate: That will be Exhibit "T-21".

Campbell: *(Resuming) Q.* I show you another document. Does that bear your signature? *A.* Yes, sir.

Q. And what does it show? *A.* It shows the original report from 21st Army Group and the change of status to "Presumed killed on the 7th of June 1944" and the official status, "Presumed killed" or "Killed," sir.

Q. Does that record correspond with the same personnel shown in the Exhibit, "T-21"? *A.* It does, sir.

Campbell: I would like to tender that now as, I believe "T-22." ...

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Campbell: *(Resuming) Q.* Does Exhibit "T-22," which you have just seen, contain the authority upon which each of those entries was made in your records? *A.* Right, sir.

(The Defending Officer Declines to cross-examine.)...

(The witness withdraws.)

Fifteenth Witness for the Prosecution

Lt-Col Clarence Sutherland Campbell, Officer Commanding, UK Detachment, No. 1 Canadian War Crimes Investigation Unit:

Macdonald: *Q.* What is your name, rank and unit? *A.* Campbell, Clarence Sutherland, Lt-Col, Officer Commanding, UK Detachment, No. 1 Canadian War Crimes Investigation Unit.

Q. Did you in your capacity as an officer of the War Crimes Investigation Unit go to France for the purpose of making certain examinations on the ground in the vicinity of the Ancient Abbaye Ardenne? *A.* I did.

Q. And did you in the course of that take certain photographs and have certain plans and sketches prepared? *A.* I did.

Q. Will you explain to the court, please, exactly what you did, and explain the documents which I shall now ask you to have entered as exhibits? *A.* Yes. I went to the Abbaye Ardenne early in July 1945, and I obtained from the family Vico who live in the Abbaye a document which contained what appeared to be quite an accurate plan of the Abbaye. That plan I brought back with me to England and had it enlarged to the scale of 16 metres to the inch. Subsequently I took the plans back with me to the Abbaye Ardenne in early October and I checked it carefully against the features of the buildings and other relevant material right on the ground. At that time I identified the ground shown in certain photographs which had already been taken and I took a large number of other pictures at the same time. They have been prepared in sets and I have them here now...

Q. Now, I show you the first one, Col Campbell. What is that? *A.* That is a photograph of the front court yard in the Abbaye Ardenne.

Judge Advocate: That will be Exhibit "T-23."

Macdonald: *(Resuming) Q.* I now show you another photograph, what is that? *A.* That is another view of the front court yard in the Abbaye Ardenne, which has been already entered as Exhibit "F" to the evidence of Sturmmann Jesionek. *(To the court)...*

Macdonald: All, I take it, except the ones we are now doing?

Campbell: Yes.

Judge Advocate: That will be Exhibit "T-24."

Q. And these photograph which I am now showing you? *A.* That is another view of the front courtyard in the Abbaye Ardenne from a slightly different angle (Exhibit "T-25"). That was a picture supplied to me by the family Vico who resided at the Abbaye Ardenne. It was an original and shows, I believe, the Abbaye as it was shortly before the invasion. [Exhibit "T-26"] is a photograph showing the Abbaye Ardenne, the chapel itself in its present condition... *[The witness continues to identify and de-*

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scribe Exhibits T-27 through Exhibit T-37: photographs of the Abbaye, its passageways and the small park from different directions as well as pictures of Madame Godet's house in Authie]

President: The court will now adjourn for ten minutes.

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President: I now declare the court open.

Macdonald: I might say, sir, at this stage, so the Court will understand the course that the prosecution are pursuing, that we propose at a later stage to establish in the evidence that the Abbaye Ardenne was on that 7th of June established as Headquarters of the 25th Panzer Grenadier Regiment commanded at the time by the accused. I now propose to read the evidence given to No. 1 Canadian War Crimes Investigation Unit on the 13th November 1945 by ***T/Sgt Siegmund Stern of the US Army***. The evidence was given to myself and my learned friend Capt Plourde ... *(Reads Exhibit T-38.)*

"*Q.* What is your name, grade and serial number? *A.* Number 32423347, T/4 Siegmund Stern, US Army.

Q. How old are you? *A.* Thirty-three, sir.

Q. Where is your home? *A.* New York City.

Q. What is your civilian occupation? *A.* My civilian occupation was, before I entered the services, caviar packer.

Q. And where were you born? *A.* Germany, sir.

Q. And how long did you live in Germany prior to going to the United States? *A.* Up to my twenty-third or twenty-fourth birthday.

Q. And did you receive your education in Germany? *A.* Yes, but I also received education in the States...

Q. And how were you employed in Germany before you went to the United States? *A.* I had my own business, sir.

Q. What type of business? *A.* I was a cattle dealer.

Q. And in what part of Germany did you live? *A.* In the vicinity of Frankfurt, near Friedberg.

Q. And did you spend most of your life in Germany in that vicinity? *A.* Yes sir...

Q. In what year did you go to the United States? *A.* 15th of October 1936.

Q. What has been your military service with the United States Army? *A.* My whole career, sir?

Q. Yes, briefly. *A.* First I received my basic training at Fort Bragg, North Carolina, then I went to 768 Military Police, Fort Ontario, New York. I stayed with that 768 until inactivation of the same unit and was transferred to Fort Coster, Michigan, to 161 Prisoner of War Processing Company.

Q. On what date did the latter transfer occur, roughly the month and year? *A.* Christmas 1943.

Q. Will you go on then, please? *A.* I trained at Fort Coster with this same unit and came overseas with the same unit and we came here to England in July 1944. We went to France, I think it was August, and then to Rennes, France. There we processed prisoners of war and we stayed there until April

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1945, I think it was April. These dates I couldn't say positively – it is rather difficult to remember the exact dates.

Q. Quite, but give them to me as correctly as you can. *A.* Yes sir. We went in April 1945 to Chartres, France.

Q. What was there at Chartres? *A.* A prisoner of war enclosure, Number 14. We processed prisoners of war there and we also processed prisoners of war officers in Vowes.

Q. Now, that would take us up until the latter part of April? *A.* That is right sir.

Q. When you speak of "processing prisoners of war" will you explain what that means? *A.* A prisoner of war was processed in the following manner. They came in in big bunches, by the thousands, and they were first searched and then the money was taken away from them and they received a receipt for the money and then they were interrogated merely for their own benefit.

Q. What do you mean by "for their own benefit"? *A.* They had to give their names and the names of their nearest relatives and the address, when and where they were born, what unit they belonged to, and there was a form called 2-1 which I filled out in the course of questioning the prisoners...

Q. And was this form completed when the prisoner was first interrogated by you? *A.* That is right sir, with the exception of fingerprinting which I didn't do and, also – and the number given, that was the job of another section.

Q. Yes. Now, I am somewhat familiar with these forms myself and will you correct me if I am wrong when I say that that form contains almost exclusively the items which you have just mentioned as the points on which you first questioned the prisoner, in other words his name, rank, number, his unit if you are able to obtain it, his home address, next of kin and age? *A.* That is correct sir.

Q. Now, were prisoners interrogated again for any other purpose as a part of your normal processing? *A.* I don't know, sir, whether I should reveal this, I mean this is not my job and I should not reveal this even though it is – we are Allied Nations. I don't see why I should answer all these questions, I hope you see my point. I don't know whether I should reveal anything about US Army procedures. If I was a civilian I could answer these questions but I am still under the jurisdiction of the US Army.

Q. Well, you were sent here by the US Army for this purpose? *A.* I was sir.

Q. Well, then, do you think they would have sent you if they weren't willing to have you tell the circumstances connected with the obtaining of a statement from a particular prisoner about whom we are concerned? *A.* Yes sir, I agree on that.

Q. If you prefer it, if it will save you from embarrassment, I will confine my questioning to what occurred in connection with the questioning of the particular prisoner about whom we are concerned. *A.* That I would rather do.

Q. Now, in your work of processing, were you in charge of interrogations yourself or were you assisting some officer in the carrying out of interrogations? *A.* I was ordered to take over M.I.S., which stands for Military Intelligence Service, at that particular camp in Chartres and I was placed under the jurisdiction of the Post Intelligence Officer. In other words, I had to work on these cases and he signed his name to it. But this was not – I am not the official M.I.S., I wasn't trained for that job, I only took it over because there was nobody else.

Q. And had you had that responsibility prior to the time that you went to Chartres? *A.* No sir...

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Q. Now, yesterday you were taken to the London District Prisoner of War Cage and there met a prisoner of war? *A.* Yes sir.

Q. Did you recognize that prisoner? *A.* Yes sir.

Q. Who was he? *A.* I wouldn't have remembered his name but I recognized him as a prisoner whom I interrogated.

Q. Where? *A.* Chartres, France.

Q. And when was that interrogation made? *A.* If I remember right, during the month of April [1945].

Q. And did this particular prisoner give you a statement at the time you interrogated him? *A.* Yes sir.

Q. Will you tell us, please, from the beginning, exactly how that statement came to be made to you? *A.* I couldn't say definitely and straight forward that it happened just this way but I know – I don't remember it quite clearly. We used to have these prisoners come in and some of them said "I have something to say" and I listened to them and when I found it worthwhile I had them make a statement which I wrote and translated into English and sent on to higher headquarters.

Q. Now, will you tell us then, to the best of your recollection, all that you remember about this particular prisoner? When did you first see him, under what circumstances, everything until you saw the last of him? *A.* As far as I can remember this fellow claimed to be a Pole and we used to segregate Poles from the other prisoners as Allied Nationals. I think he came to me and said "I have something to say" or "I have a statement to make," something like that. So I listened to him and that is the way it came about and he wrote it down; if I can remember right I gave him another German prisoner to help him make that statement because he wasn't perfect in German. I wrote the statement, had it typed out and I translated it into English and sent it on to higher headquarters.

Q. Now, I suppose that in the course of your work prior to this, and also subsequently at Chartres, you had to interrogate a very large number of prisoners? *A.* Yes sir.

Q. And is it by reason of that fact that your recollection of all the detail concerned with the interrogation of this particular prisoner is not so clear now? *A.* Partly yes.

Q. Now, when you say that you think he came to make a statement to you, do you remember the circumstances connected with that? *A.* I cannot remember whether it was on account of reporting him as an Allied national or if he came to me voluntarily.

Q. Do you remember whether he was questioned by you as a matter of routine in the completion of your form 2-1? *A.* No, he was not. He was processed by somebody else, not by me.

Q. At your camp? *A.* I don't know. I don't remember.

Q. In other words, the recollection which you now have of your first encounter with this prisoner was that he came to you for the purpose of making some statement? *A.* I wouldn't say definitely. Whether he came in as claiming to be an Allied National or wanting to make a statement I cannot remember.

Q. Well, tell us then, was the statement which you obtained from him obtained as a consequence of your examination of him or by reason of information which he volunteered to you? *A.* By reason of voluntary information to me.

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Q. Now, I show you a statement marked Exhibit "B1" in German, with a signature at the bottom "Jesionek Jan," do you recognize that? *A.* Yes sir."

Macdonald: I think at this time the statements of Sturmann Jesionek referred to in the examination of T-4 Stern be entered as one exhibit. *[Entered as Exhibit T-39]*

Macdonald: At this stage, sir, I might state that Exhibit T-39 is made up of a statement on a greenish coloured piece of paper and marked Exhibit B-1 referred to in the examination of Jesionek Jan by T/4 S. Stern, typewritten and bearing the signature Jesionek, Jan, and the No. 31G 2901422, and attached to that a plan drawn with a pencil marked Exhibit "C" referred to in the examination of Jesionek by Stern and bearing the signature of myself and a piece of white paper with what purports to be a translation of the original statement given by Jesionek to Stern 32423347 161 MP PWP Co. Now, I should say that this statement will be referred to at considerable length because on the face of it there are numerous inaccuracies in the translation. The first, and most obvious one, is the reference to the 18th June while the original in the German language shows it as the 8th June.

Judge Advocate: As to the statement of Jesionek's; is he going to be called as a witness?

Macdonald: Yes, tomorrow.

Judge Advocate: But are you also putting in a statement made by him?

Macdonald: Yes, his original statement.

Andrew: I think it would be helpful to the court, as well as the Defence, if the errors in the translation be pointed out now.

Macdonald: I don't know that I am sufficiently expert to point them out except this very obvious one as to the dates. Then again, the statement itself is not in accordance with the evidence which will be given by the witness himself and one of the principal reasons for reading the evidence of this Sgt Stern was to determine his capacity to translate the document.

Judge Advocate: Well, the original German statement is there, is it?

Macdonald: Yes, I have no objection in that being interpreted. I think because of the importance of it, however, that it might be one that perhaps should be prepared for tomorrow.

President: Yes, that would probably work better. Give the interpreter some time to work on it.

Macdonald: *(Continues to read Exhibit T-38 to the court):*

"Q. What is the statement? *A.* This statement was typed by one of the German clerks.

Q. Is this the statement that was given to you by the particular German prisoner that you saw yesterday? *A.* Yes sir.

Q. This particular prisoner wrote this statement down? *A.* Yes sir.

Q. And who put it into type? *A.* Another prisoner.

Q. And was this other prisoner who typed this statement out a German prisoner of war in the camp whom you employed in a clerical capacity? *A.* Yes sir.

Q. Now, is this signature at the bottom the signature of the German prisoner who gave you the statement? *A.* Yes sir.

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Q. I now show you a sketch which is marked Exhibit "C." By whom was that sketch prepared and when, if you know? *A.* This sketch was prepared by the prisoner.

Q. By the prisoner Jesionek? *A.* Yes sir, Jesionek.

Q. And the translation, the writing in ink, was done by the prisoner clerk? *A.* Yes sir.

Q. Fine, and was this drawing prepared at the time the statement "B1" was prepared? *A.* I think it was a few days later.

Q. Was it prepared in connection with the general preparation of the statement that Jesionek was giving you? *A.* Yes sir.

Q. Now, I show you another typewritten statement which I will mark for identification purposes Exhibit "B2." Will you tell me what that is? *A.* This was the original that I sent to higher headquarters.

Q. Yes, now is that your signature at the bottom left hand corner? *A.* Yes sir.

Q. And is that your translation of Exhibit "B1"? *A.* Yes, that is my translation into English... To the best of my knowledge, yes sir.

Q. Now, to the best of your knowledge were any threats employed with respect to Jesionek to induce him to make this statement? *A.* No sir. If one... sometimes soldiers came in and threatened prisoners saying "you are an S.S. man and..." that didn't mean anything and as far as this prisoner was concerned he didn't have to make a statement, he was not forced to make a statement.

Q. Now, the prisoner has said himself that in the course of his first conversation with you or with another Sergeant that another American soldier came into the room, looked at his pay book and said, "Ah! You are an S.S. man, we are going to hang you." Do you remember that incident? *A.* No sir. I don't remember it.

Q. Was any inducement held out to Jesionek to make the statement, was any promise of any kind made to him? *A.* As far as I know, no.

Q. Would you have known if such a promise had been made? *A.* If I would have made it I would have known.

Q. Was there anyone else in your Headquarters who, to the best of your knowledge, had any conversation with Jesionek and might have made such a promise to him? *A.* I am not inclined to believe that sir.

Q. Well now, can you be more definite than that. You are familiar with the officers who were at your Headquarters and who had contact with the prisoner. Do you care to commit yourself any further than that? *A.* There couldn't be. This statement was not made under any force or under any inducement as far as I am concerned.

Q. Yes, well now we are satisfied that you had nothing to do with the making of the statement from the point of view of employing threats or promises. Can you speak for any other of the officers or NCOs at your Headquarters? *A.* They might have come in once in a while and threatened "You are an S.S. man ...," it is possible, but this was not to be taken seriously.

Q. It mightn't be taken seriously by you but it might be taken seriously by the prisoner? *A.* That I couldn't say.

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Q. What officers and NCOs at your Headquarters spoke German besides yourself? *A.* As far as I can remember there was one fellow who spoke German who was working at the same office.

Q. What was his rank? *A.* He was a Private [First Class]...

Q. Do you know whether he had anything to do with Jesionek at any time? *A.* I couldn't answer this question definitely yes or no, sir. It is impossible.

Q. Well, tell me the best you can. *A.* I don't think so.

Q. Now, was there any officer or NCO at your Headquarters who spoke Polish? *A.* Not as far as I know sir.

Q. Do you remember whether, in the course of making his statement, Jesionek said anything to you about the statement being accurate or otherwise? *A.* No sir, I don't.

Q. Is it possible that he might have? *A.* Yes sir.

Q. What was done with these statements and papers after you received them from Jesionek? *A.* They were forwarded to higher headquarters.

Q. And what was your higher headquarters? *A.* Sometimes we used to send these statements to the Judge Advocate General's Section and sometimes the Provost Marshal and sometimes the Prisoner of War Division, so I cannot quite recall where we sent this one.

Q. Now, what became of Jesionek? *A.* After he gave me that statement, sometime, I cannot remember how much later, he was shipped out as an Allied National.

Q. And was he shipped along with other soldiers or was he shipped by himself? *A.* As far as I know we never shipped a single prisoner.

Q. Do you know of your own knowledge the circumstances connected with his shipment out. *A.* No sir. But I could tell you the... shipping procedure at that time. I couldn't say anything about this particular prisoner. We were told that all Allied Nationals were to be segregated from the others and shipped out to a Commission. In that case it was a Polish Commission and there they were interrogated again. From there I wouldn't know what the procedure was. Our Prison Headquarters used to get orders from the Provost Marshal from Paris that these particular prisoners were to be shipped out.

Q. And I believe, Sergeant, that you are the one who brought this statement of Jesionek's to my attention when I happened to be at the Chartres Prisoner of War Camp with the SHAEF Court of Inquiry on another investigation? *A.* Yes sir.

Q. And is it correct that on that occasion inquiry was made as to Jesionek's whereabouts and it was discovered that he had been shipped out of the camp that very morning? *A.* As far as I can remember I inquired about his shipment at the office and I was told at that time that he was shipped out that very morning. I think you went to the higher headquarters at Chartres and you found out where he went to as far as I can remember.

Q. And I take it that you haven't seen Jesionek from the time he left the camp until you saw him yesterday? *A.* No sir.

Q. Now, I want to read you an answer which was given to a Canadian War Crimes Investigation Team by Jesionek on the 3rd of October 1945:

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Q. "Now, will you tell us as nearly as you can everything you said and everything the Sergeant said prior to the time that this other American came in and spoke about hanging the SS?" *A.* "I came in and showed him my pay book whereupon he remarked that I was in the SS, which I confirmed, and he asked, "With what Division did you serve?" and then he asked "In which regiment are you?" and then he asked "Who was the commander of your regiment?" I said it was Meyer and once I had mentioned the name I quickly gave him the story – I had begun to tell the story, then came in the second American and he said that I was going to be hung and then I carried on with my story. And then the Sergeant said "As there are so many more to be interrogated you can go now but I will order you back in a few days." On the next day I had to go there again and I told him the story again and he made notes, and then there was a prisoner of war there who was an interpreter. And then the prisoner of war interpreter wrote out in German what the American sergeant had put down in English. Afterwards I was given it to read through. Then I had to sign it."

Can you say whether that is, to the best of your recollection, a true story of what occurred? *A.* I wouldn't answer definitely if it was the exact procedure. I couldn't say, it is impossible for me sir.

Q. Is it possibly true? *A.* Yes sir.

Q. Is it probable? *A.* It is probable.

Captain F.R. Plourde: (Begins cross-examination) Q. Why are you so reluctant to tell us of your methods of interrogation of prisoners of war? *A.* Because I don't want to say anything that isn't true and that I cannot remember quite clearly. I don't want to say anything that is not within the facts.

Q. Would it be because you were not in a position to see and to know all that was going on in your unit? *A.* As far as that goes I could discuss the methods being used by the US Army openly. We didn't use any third degree methods if you want to get that straight.

Q. What would have happened to a Polish soldier in the SS Panzer Division if he hadn't been friendly or cooperative with you? I mean, would he have received treatment as a German war prisoner or as a National friend, Allied National? *A.* If he violated any of the rules which are laid down in a prisoner of war camp he would have been punished for it. These rules are set down by the prison commandant and if he would have done anything against the rules he would have been punished.

Q. By that you mean he would have been treated as an ordinary prisoner of war? *A.* Yes, the same as any prisoner of war.

Q. But, being friendly and cooperative with you, he was then listed as an Allied National and sent on to Polish Liaison Officers? *A.* Even if he would have violated rules he would have been sent on anyway.

Q. Why was that? *A.* Because we received an order that all Allied Nationals were to be segregated from the others and shipped out and even if he would have violated rules he would have been punished for it and still would have been shipped out.

Q. And you shipped them out to the Polish; in the case of this man he was shipped out to the Polish Liaison Officers? *A.* I think he was sir.

Q. And when he was shipped out to them, had you sent any report along with him, or documents; did you send the whole docket of the man? *A.* Well, sir, I had nothing to do with the shipping of prisoners but we forwarded the statement to higher headquarters before he was shipped out.

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Q. Did you ever see any of your staff threaten prisoners of war? *A.* No sir. Threaten... I mean, one came in and said "You are an S.S...," or so, this happened, but I have not. We didn't employ third degree methods.

Q. About how many prisoners of war did you interrogate in a day, on average? *A.* Sometimes we used to have two hundred. For example, an order came out that all French prisoners of war would be shipped out and we determined to the best of our knowledge who was French or any other Allied National. We gave an order that all prisoners of war that claimed to be Allied Nationals report to the office. Some days it was a hundred, some days two hundred, I even interrogated four to five hundred a day with the assistance of two other fellows.

Q. Did you actually see Jesionek sign this statement, Exhibit "B1"? *A.* Yes, I saw him sign it.

Q. You say you can type? *A.* Yes sir.

Q. Was your usual procedure to type the statement while the prisoner was making it? *A.* That all depended sir. If I had the help of that prisoner of war clerk I made him do the typing in German, than I translated it into English and he also typed the letters in English.

Q. What procedure was followed in this case? *A.* If I clearly remember, this fellow came in and wanted to make a statement and the next day, or the day after, I called him and I gave him another prisoner of war to help him write it out in the original with pencil because he wasn't perfect in German and after that the prisoner of war clerk typed it in German copied from the original and I translated the statement into English. If I remember clearly, the prisoner of war clerk typed it also in English.

Q. About that original that was written in pencil, why wasn't that kept? *A.* I couldn't say any reason why it wasn't kept. Probably it didn't look so good and there were so many corrections I think.

Q. Yes, but with your training you should have known that all original documents are more precious than typewritten copies or translations. Your training must have told you that. *A.* I might have made a mistake.

Q. Do you agree with me that the original pencilled statement written by the man himself, even though with a lot of corrections and not looking so neat, would be better than this (indicating typewritten copy)? *A.* Yes, but if I remember right he didn't even write the original, the other prisoner of war wrote it in German.

Q. Therefore, Jesionek's German wasn't so good, wasn't very good? *A.* He wasn't perfect, sir, that I noticed.

Q. Could he write himself at all? *A.* I couldn't remember sir.

Q. He signed his name? *A.* His name he signed of course. I saw him sign his name.

Q. You have here on Exhibit "B2" your signature and you have typed down "Interrogation and translation by Siegmund Stern." Do you mean by that that you actually yourself interrogated Jesionek? *A.* Yes sir, I did. The interrogation consisted of what unit he was, and I looked over his Soldbuch and then I followed the usual course of questions.

Q. But what I am trying to get at is that don't you think that statement "Interrogation and translation by Siegmund Stern" would lead a person who wouldn't be familiar with the way the statement was taken or by whom... it would lead that person to believe that you actually got the statement from Je-

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sionek yourself whilst all the time it was taken by another German prisoner of war and all you did was take it from the prisoner of war and translate it into English? *A.* No sir! I interrogated the prisoner first and when I know of the result of this interrogation I told him to make a statement and this statement was made with the help of the German prisoner of war.

Q. But were you present and could you hear it when it was being made with the help of the German prisoner of war? *A.* I couldn't remember sir. Whenever we take a statement or make an interrogation we would put our names and unit on the bottom of the statements. This was an order from my commanding officer. If I wouldn't have interrogated the prisoner I never would have gotten the statement. Is that correct?

Q. Yes, but what I am trying to get at is the statement that the German prisoner of war wrote down... was that statement exactly the same statement that Jesionek made to him? Can you swear that it was if you were not present or if you did not hear it? *A.* No, I couldn't say.

Q. That is all.

Lt-Col Macdonald: (Begins re-examination) Q. Are you connected in any way with the Judge Advocate General's Branch of the American Army or of the War Crimes Section of that Branch? *A.* Not until recently when I received the order to proceed to Wiesbaden to report to the War Crimes Commission.

Q. When was that? *A.* About the 26th or 27th of October.

Q. And were you, during the month of April 1945, in any way connected with the Judge Advocate General's Branch or the War Crimes Section of it? *A.* Only to the extent that I received order from the officers who signed this letter to the Judge Advocate General of the War Crimes Branch.

Q. But you are not part of that? *A.* No sir.

Q. And was it any part of your duty at that time to investigate war crimes? *A.* We were told so, yes sir. We were told to watch out for possible war criminals.

Q. What, however, was your main duty? *A.* My main duty was screening prisoners of war at that time.

Q. Yes, screening prisoners of war, and what else? *A.* That was about my main duty.

Q. And would you say a little more detail exactly what you mean by "screening." That is usually a well understood military term but so as there will be no doubt about it in the mind of anyone not familiar with this term as used in the American Army will you explain what you mean by "screening"? *A.* The definition of screening as far as my duty is concerned was to segregate prisoners of war into a few categories, namely Allied Nationals, protected personnel, Volkstrum, S.S., Anti-Nazi, and ordinary prisoners of war.

Q. And was it in the course of doing this work that this particular information came to your attention and, as a consequence, the statement prepared which you have identified today, namely Exhibit "B," "C" and "B2"? *A.* Yes sir, because when I heard the name Meyer mentioned I paid particular attention to the case.

Q. It was our desire, Sergeant, to have you attend at the trial of Brigadeführer Meyer to give the evidence personally which you have now given to us and this arrangement to take your evidence in this way has been made, as you understand, because of the fact that you are being repatriated before the

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28th of November and it is to assist you in being returned to your country so that you will not be delayed on account of this trial. *A.* Yes sir. I have no definite orders yet sir, but the way it looks I will be gone before that day.

Q. Yes, I have been told by your superiors that it is likely that you will be leaving for home before the date of this trial and that is the reason we are doing this in the way we have. If, by any chance, you have not left for home are you willing to appear at the trial and give evidence at that time? *A.* If it doesn't mean a delay in any way to my shipping home I am willing to attend the trial.

The interrogation is at this point adjourned to enable the Court Reporter to read back to the witness the evidence just given by him. This having been completed, the witness is then questioned by Lt-Col Macdonald as follows:

Q. I understand, Sergeant, that you wished this evidence read back to you so that you could be sure that you were correctly reported and that you now have been engaged in doing this along with the court reporter. Is that correct? *A.* Yes sir.

Q. Do you find that you are correctly reported? *A.* Yes sir.

(The witness withdraws.)

Macdonald: And this is certified as being correct. Now, the next witness will be Jesionek himself.

President: The accused and escort may withdraw. The court will adjourn until 10 o'clock tomorrow morning.

(At 1630 hours the Court adjourned until 1000 hours on 14 December 1945.)

14 December 1945

President: I declare the court open. ...

Sixteenth Witness for the Prosecution

PW 31G2901422, SS Sturmmann Jan Jesionek, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name? *A.* Jesionek, Jan.

Q. And what is your rank? *A.* SS Sturmmann.

Q. When were you taken prisoner? *A.* On the 30th of March of this year.

Q. Where were you born? *A.* In Bismarck Hutte, Upper Silesia.

Q. And in what country is that? *A.* In Poland.

Q. And how old are you now? *A.* Now I am 19 years.

Q. When were you 19? *A.* On the 25th of November.

Q. And what were you doing prior to your joining the Waffen SS? *A.* I was a learner in a fine steel factory.

Q. What sort of work were you doing in that factory? *A.* I was commercial apprentice and worked in the office.

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Q. Now, incidentally, will you tell what the uniform is that you are wearing, and where you got it? *A.* It is a naval uniform and I received it from the Red Cross in England.

Q. Now, were you a member of the Hitler Youth? *A.* Yes.

Q. And when did you join the Waffen SS? *A.* On the 10th of August 1943.

Q. And did you join the Waffen SS voluntarily? *A.* No.

Q. What were the circumstances in which you involuntarily joined, then? *A.* In this factory where I worked there was a Youth Warden in charge of all apprentices. He called a Youth Meeting and SS Officers were present at that. They first gave an address and afterwards they asked who wanted to volunteer. There were from about 200 men only four who volunteered. Afterwards they said to us that we had 15 minutes to think it over and after 15 minutes a further two presented themselves. Afterwards they ordered us all to fall in. They made us fall in and everyone who was a certain height and of Nordic race was selected and sent into another room. There we were medically examined and, without having to sign for it, a temporary pass was placed in one's hand. As I arrived home with this piece of paper my mother was very much surprised by it and then I went to make enquiries at the Army Command Post there whether there was some sort of way out in order to shake it off, but the Major who was in charge there at the Post said that was no longer possible; whereupon my mother wrote to an army formation south-east in Breslau... with a request for a deferment, that I was only 16? years old. Thereupon, without sending us a reply, they sent us an acceptance slip on which it was written that a person who had this slip could no longer get a deferment, and three weeks later I was called up. Once I had already served three weeks at the SS a reply came from Breslau to my home on which was written "As the acceptance has already been completed a deferment of your son, Jan, is no longer possible but we would like you to write us your reasons against the Waffen SS," whereupon my mother did not write anymore.

Q. Now, had your father gotten into any trouble prior to the time that you were inducted in the SS? *A.* He was imprisoned.

Q. What for? *A.* My father was a co-founder of the Polish League, "Sokol," and he was photographed in many Polish pictures. At first the Germans left him alone but a neighbour's wife, she was German and her husband had served in the German Free Corps, – one day she greeted him in the street with "Heil Hitler," whereupon my father replied in Polish, "Zin Dobre," which means "Good morning," and a few days after that he was taken.

Q. Now, how long did he remain in prison? *A.* Approximately four months.

Q. Now, when you say that it was your mother that wrote to the Waffen SS when you were called up, you are previously reported as having said it was your father. Is that a mistake? *A.* Yes. It is an error. My father was in prison at the time and I was called up for the SS.

Q. Now, where were you sent after you had been taken into the Waffen SS? *A.* At first we were sent to Brunn in Czechoslovakia. There we were given our clothing. We received our pay book and we had to write a brief history of our life and from there we were sent to Beverloo to the Hitler-Jugend (HJ) Division.

Q. That is the 12th SS Panzer Division (Hitler-Jugend) that you are speaking of? *A.* Yes sir.

Q. And Beverloo; where was that? *A.* Situated in Belgium.

Q. How long did you remain in Beverloo? *A.* Until approximately April 1944.

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Q. Where did you go from Beverloo? *A.* From Beverloo we went to Montague.

Q. And from Montague where did you go? *A.* From Montague we went over to France to Le Sap.

Q. Now, to what battalion or company were you sent when you were at Beverloo? *A.* At first I was with the 9th Company and afterwards Hauptsturmführer Ritzert selected men from all companies and then I came to the 15th Company.

Q. Now what kind of a company is the 15th Company? *A.* The 15th Company was the Reconnaissance Company.

Q. And did that Company operate normally with one of the battalions or was it directly under the Regimental HQ? *A.* It was directly attached to the Regiment.

Q. And who was your regimental commander at that time? *A.* At that time it was Standartenführer Meyer.

Q. And did he remain as Regimental Commander until you were wounded? *A.* Yes.

Q. And when were you wounded? *A.* I was wounded on the 9th of June 1944.

Q. Now, who was your original Company Commander? *A.* HSS Ritzert.

Q. And who succeeded him? *A.* His successor was Hauptmann Baederkel.

Q. And this was the gentleman, I believe, who was wounded, was he not? *A.* Yes. He went out in an amphibious car and fished in the canal with hand-grenades, and thereupon he lost his leg.

Q. And after that who succeeded him? *A.* As a substitute, the acting commander was Untersturmführer Fuss.

Q. Did HSS Ritzert remain as the Company Chef? *A.* Yes.

Q. And Fuss, then, would be the Company Fuhrer? *A.* Yes.

Q. And then who succeeded Ritzert as Company Commander or Company Chef? *A.* His successor was Haupsturmführer von Buettner.

Q. And when did von Buettner succeed Ritzert? *A.* It was when we had to come to Le Sap.

Q. Now, how long before the invasion was that? *A.* Approximately a month.

Q. And how had von Buettner been employed prior to his appointment as your Company Commander? *A.* He was Adjutant of Standartenführer Meyer.

Q. And for what period of time had he been Adjutant? *A.* I think from the very beginning in Beverloo.

Q. Now, who was your Stabscharführer during your period at Beverloo and at Montague? *A.* Haupscarführer Hagetorn.

Q. And is that rank frequently referred to in the German Army as a Spiess? *A.* Yes.

Q. Now, how were you employed in your company? *A.* I was driver.

Q. Now, by that do you mean the driver of a vehicle? *A.* Yes.

Q. And did you take any courses? *A.* Yes. In Beverloo I took a course for motorcycles and then in Le Sap I took a course for amphibious cars and in Weimer I took a course for trucks.

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Q. Now, in what platoon were you during most of the time you were in this company? *A.* In the fourth platoon.

Q. And did that platoon have any particular duties? *A.* Yes. HSS Ritzert, he had invented a new kind of pre-firing school and the 4th Platoon was a demonstration platoon. Once in France we gave a demonstration before General Guderian, and once in Beverloo we gave one, and in Bergen near Celle we also gave one.

Q. Now, by reason of that fact, was this particular platoon sometimes away from the rest of the regiment? *A.* Yes.

Q. And by reason of these courses that you were attending were you, in addition, sometimes away from your company? *A.* Yes.

Q. Now, while you were at Montague what was the practice with respect to reading orders to your company? *A.* On Sunday mornings in the cinema sometimes orders were read in Montague and sometimes also weekdays in the evening by the handing out of orders.

Q. Do you mean by the handing out of orders, the giving of orders verbally or passing around? *A.* No. It was read out.

Q. And who would read these orders? *A.* Either "Spiess" Hagetorn did that or a platoon commander.

Q. And what sort of orders would the Spiess give you? *A.* During the day when we were out in the field the Spiess would go through the rooms and take notes and in the evening he would speak of our cleanliness and things found not in order and so forth.

Q. Now, did he sometimes read orders to you? *A.* Yes. Sometimes our company or regimental orders were read out.

Q. And sometimes he read company or regimental orders to you, is that what you are saying? *A.* Yes.

Q. Now, do you remember him reading to you on any occasion any so-called secret orders? *A.* Yes. Once in Montague we had, all of us to sign some order.

Q. Now, do you remember what was in the order? *A.* No.

Q. Now, did your Regimental Commander sometimes address you? *A.* Yes.

Q. And did he address you very effectively when he did?... He was a good speaker, was he? *A.* Yes.

Q. Do you know a man named Torbanisch? *A.* Yes.

Q. Was he in your company? *A.* Yes, he was in my company and in my platoon, the 4th platoon.

Q. What eventually happened to him? *A.* As we were driving from Montague over to Le Sap he vanished from the company.

Q. And have you seen him since that time? *A.* No.

Q. Now, when von Buettner took over command of your company; do you remember that particular occasion? *A.* Yes, it was in Le Sap on the football field.

Q. And who was present on that occasion? *A.* Standartenführer Meyer, HSS von Buettner, HSS Ritzert, and the entire company.

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Q. What occurred on that occasion? *A.* At that time, by Standartenführer Meyer the company was handed over from HSS Ritzert to HSS von Buettner.

Q. And did Standartenführer Meyer address the company? *A.* Yes. He spoke a few times...

Q. When you say he spoke many times do you mean on this occasion or on other occasions? *A.* He spoke on other occasions.

Q. Now, do you remember any of the things he said... on this particular occasion that he spoke to you? *A.* He said that he was now giving this Company to his very best officer. Then he said that we would now soon go into action. At that time the reprisal – V weapons – had not yet come out. Then he said that we, on the reprisal, should not imagine a weapon which would produce wonders but we ourselves should make the reprisals on English prisoners of war.

Q. Now, what did you understand by the remark that you should make the reprisals against the English prisoners of war? *A.* That no prisoners are to be taken and they are to be shot.

Q. Now, did you discuss this with any of your other comrades? *A.* Yes. As we came back to our rooms we discussed that. Many said that an enemy who has weapons no more is no enemy. I too was of this opinion.

Q. Now, did you at any time receive any instructions from your Company Commander, von Buettner, with respect to the taking of prisoners? *A.* Yes, it was in Le Sap in a school. It was about Whitsun[2] 1944 approximately. There was a Company instruction by the HSS von Buettner and he said, "May the others do what they please; our Company takes no prisoners."

Q. And who were present on that occasion? *A.* The entire company was present.

Q. Now, when did your Company move towards Normandy – I mean move up in the Caen area? *A.* Two o'clock in the –

Andrew: Mr. President, I must ask my friend to refrain from asking leading questions. I allowed a certain amount of leeway when they were not detrimental. He asked just now "When did you move to Caen?" That could be phrased "Where did you move to then?" I will have to ask that or I will be forced to continually object.

Macdonald: I might say that I had not the remotest notion that that would be objectionable.

Andrew: Well, it is a leading question.

Macdonald: Well, actually we are in agreement that this formation was in the Caen area.

President: *(To Macdonald)* Well, cut out the argument and just try to get at this in a little more roundabout way.

Macdonald: Very good, sir. *(Resuming examination) Q.* Where did your Company move after Le Sap? *A.* As the invasion started we moved from Le Sap to Normandy.

Q. And when did you move? *A.* On the morning of the 6th of June.

Q. And to what place did your Company move? *A.* In the direction of Caen.

Q. Now, will you say briefly just exactly what your Company did on the 6th of June? *A.* We came up to near Caen and in the next night (6th to the 7th) we had to safeguard or secure the road from Caen to Bretteville on the left side...

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Q. And what did you do on the 7th of June? *A.* From the regiment we always made reconnaissance patrols.

Q. And was there a battle that day? *A.* Yes, near Authie.

Q. Did you take part in that battle yourself? *A.* No.

Q. Why was that? *A.* Other battalions were in action there.

Q. Now, where were you the following day, the 8th June? *A.* On the morning of the 8th of June I was at Regimental HQ.

Q. Where was that? *A.* It was near Authie in Ardenne in an old Monastery.

Q. Now, will you look at that map and see if you can tell where it was? *A.* Yes. *(The witness points out L'Ancienne Abbaye Ardenne in the square 9970 in the map in Exhibit T-2 Caen Sheet 7F/1.)*

Q. Now, what were you doing at the Regimental HQ on the morning of the 8th of June? *A.* I previously drove an amphibious car and it was shot up on the way from Le Sap to Caen by low-flying planes. Then from Regiment HQ I drove recces in other cars with other platoons and in the morning of the 8th we drove out on a reconnaissance and drove right onto our own mines whereupon I was given a motorcycle by a platoon commander. I was to be a [Dispatch Rider] but the motorcycle too was not in workable condition. Hence, I could do nothing.

Q. Now, where was your motorcycle at the time? *A.* It was along the road in front of Regimental HQ.

Q. Did you see anything that morning which was of interest to you? *A.* Yes, I saw seven Canadian soldiers, who had been taken prisoner, led to Regimental HQ.

Q. Were they under guard? *A.* Yes, there were two sentries with them.

Q. And how were these sentries dressed? *A.* They both had camouflage suits.

Q. Now, into what part of the Abbaye premises were the prisoners brought? *A.* They were taken into a stable which lies, when one comes into the Abbaye, on the right. They were taken there.

Q. Now, I show you a picture, Exhibit T-23. Can you tell me what that is? *A.* That is the entry to the Regimental HQ.

Q. And is that the entrance to which you were referring as the one through which the prisoners were brought? *A.* Yes.

Q. Now, I show you another photograph, Exhibit T-25. What is that? *A.* Here is the entrance to the stable where the prisoners were led.

Q. Will you mark an "X" beside the doorway that you have just pointed out? Just mark it above there so it will show. And that is the stall into which the prisoners were taken? *A.* Yes. *(Witness marks "X")...*

Macdonald: *(To the Court)* The place marked as the stall is second from the passageway.

Macdonald: *(Resuming examination) Q.* After they had been put in the stall what was done? *A.* One of the guards asked me, "Where is the Regimental Commander?" and I wanted to wash myself there and as my washing material was in the chapel in one of the cars I said to him, "Come along with me; perhaps he is in the chapel."

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Q. How was it that your schwimmwagen was in the chapel? *A.* There were English planes around and the vehicles were put in there.

Q. And how long before that had these vehicles been moved into the chapel? *A.* Perhaps fifteen or twenty minutes before.

Q. And who had issued the orders to put the vehicles in there? *A.* Standartenführer Meyer.

Q. Now, when you went to the chapel with these sentries or guards, what occurred at the chapel? *A.* The guard saw Standartenführer Meyer and announced to him the seven Canadian prisoners of war, whereupon Meyer said: "What should we do with these prisoners? They only eat up our rations." Thereafter he spoke to one of the officers who stood about him.

Q. Could you hear what he was saying to the officer? *A.* No, I couldn't hear that. He spoke in half-tones to this officer and afterwards he said for all those who were in the chapel: "In future no more prisoners are to be taken."

Q. Now, when you say he said that for the others in the chapel, what do you mean by that? *A.* For those who were still in the chapel.

Q. And who was in the chapel at the time? *A.* A few drivers and a few officers.

Q. And where were these officers standing? *A.* Near Meyer.

Q. Do you know who the officer was that he spoke to in a tone that you couldn't hear? *A.* No, I didn't know him.

Q. Now, what happened after that? *A.* Then the officer left with the one guard in the direction towards the stable where the Canadians were in.

Q. What were you doing at this time? *A.* I took out my towel and soap and wanted to wash myself.

Q. Where did you go to do that? *A.* I first wanted to wash myself at the pump which stands at the entrance to the garden and a little pond.

Q. Now, will you mark on Exhibit T-25 where that pump is? Just put a little "1" beside it – "1X." *A. (Witness marks "1X")...*

Macdonald: *(To the Court)* By the passageway.

Macdonald: *(Resuming examination) Q.* Now, will you mark the same spot on Exhibit T-24 and in the same way? *A. (Witness marks "1X")...*

Q. Now, did you go to that pump? *A.* I wanted to walk up there but I was chased away by an Untersturmführer.

Q. What did you do? *A.* I went to the schaff which stood there approximately in the middle and there I washed my hands.

Q. Now, will you mark that schaff on Exhibit T-24? I show you Exhibit T-24. Are you shown in this particular photograph? Is that a picture of you? *A.* Yes.

Q. Are you standing in that photograph in the place where you washed your hands? *A.* Yes.

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Q. Now, what did you see while you were there in the courtyard? *A.* I saw how the officer interrogated individual Canadians.

Q. Now, what officer are you referring to? *A.* The one with whom Meyer had talked in the chapel.

Q. Now, will you describe his appearance? *A.* He was fairly tall, had boots on – riding breeches and tunic, and he was an obersturmführer or a hauptsturmführer.

Q. And how was he built? *A.* He was fairly thin.

Q. Do you know what his name was? *A.* No.

Q. Now, will you describe this interrogation which occurred of the Canadian prisoners? *A.* I saw how the officer talked to some of them and I saw how one Canadian there came to tears whereupon the officer laughed sneeringly.

Q. When did you observe these tears come to the eyes of one of these men? Was it before, during or after the interrogation by the officers? *A.* Towards the end.

Q. And what was the officer's manner towards these prisoners? *A.* Sometimes he burst out laughing.

Q. And were the prisoners sharing the joke and the merriment with him? *A.* No, they didn't laugh with him.

Q. In what language did he speak to them? *A.* He spoke English to them.

Q. Did you understand what he was saying to them? *A.* No.

Q. Now, what occurred after this? *A.* I saw the obersturmführer take the papers off the prisoners. Then individually they had to go through the entry which leads to the park.

Q. What had happened to the original guards who had brought these prisoners to the Headquarters? *A.* One I recognized. He stood as a sentry at the entrance to the park.

Q. What about the other? *A.* I couldn't say whether the other was also there as a sentry or whether that was another man.

Q. Was there anybody guarding the prisoners in the stall in which they had been placed? *A.* Yes, there was a guard in the front.

Q. Now, was this one of the regimental guards or was it one of those who had come in with the prisoners? *A.* I couldn't say that precisely.

Q. When you say that the prisoners went down towards the passageway to the park, will you explain exactly what occurred? *A.* One name was called out and they had to walk the way there from the entry to the stable to the entry to the park.

Q. Now, will you mark on lines exactly the course the prisoners took to the park. Now, while you are doing it will you also indicate where the two guards or sentries were standing at this time. Make that X-3 and, where the guard was standing, X-4. *A. (Witness marks the exhibit so)...*

Q. I show you now Exhibit T-31, what does that show? *A.* I stand there on the spot where the second guard stood.

Q. And is that the passageway through to the park? *A.* Yes.

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Q. Now, will you mark on there as well with the dotted line the course that the prisoners took into the park? *A. (Witness complies.)*

Q. What happened as the prisoners went into the passageway, could you tell? *A.* To the right there was a little door and some of the prisoners went to go through that door and then the guard instructed them to proceed into the park.

Q. Will you go on? *A.* Then they entered into the park; there stood the Unterscharführer.

Q. Now, how do you know the Unterscharführer was standing there? *A.* I saw him previously go in there and after the prisoners had been shot I saw him as he reloaded and put the safety hatch on the pistol.

Q. Now, will you describe what occurred or what you know about things? *A.* Then the prisoners had to make a left turn in the park, and always a shot occurred.

Q. Now, where were you at the time the shooting occurred, where were you standing? *A.* I went from the cement pool to the stable to see the Canadian prisoners. I heard the shots.

Q. Do you know if the prisoners had any idea of what was happening? *A.* I think they knew exactly that they were being shot because as they came out individually they grasped each other's hand, shook each other by the hand.

Q. You say the prisoners came out individually? *A.* Yes.

Q. And as you saw each prisoner go out and eventually go into the passageway and disappear, what happened in each case? *A.* There was a shot every time.

Q. And did you hear any other sounds? *A.* Yes, sometimes I heard a scream.

Q. And how many shots were fired altogether? *A.* Might be about ten shots.

Q. Now, what did you do after the last of these prisoners had disappeared and apparently been shot? *A.* Then I went to the pump.

Q. I show you Exhibit T-30. Does that show the pump to which you are referring? *A.* Yes.

Q. Now, will you tell me what you saw there? *A.* Then I saw the Unterscharführer unload his pistol as he walked out.

Q. Will you tell me where he was standing at the time you observed him reloading or unloading his pistol? *A.* As the entrance goes into the park, he stood right in the front.

Q. I show you T30 again. Will you say if you can indicate on that photograph where he was standing? *A.* He stood there, where this soldier is standing.

Q. Now, did you go into the park at any time? *A.* Yes, as the Unterscharführer had gone out I went into the park and I saw, six metres to the left of where the Unterscharführer stood, seven Canadian dead bodies.

Q. Now, I show you T-34, what does that picture show? *A.* I am pointing to the place where the dead Canadians were lying.

Q. Now, what does T-32 show? *A.* That is from the park looking to the Regimental HQ to the entrance there.

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Q. That looks back into the courtyard, does it? *A.* Yes.

Q. Now, what is T-29? *A.* That picture shows the entrance to the park.

Q. Taken from a little further away? *A.* Yes.

Q. Now, what is T-33? *A.* Those are the graves where the Canadians are buried and I stand on the spot where they were lying dead and one of the American soldiers stands where the Unterscharführer was standing.

Q. Now, who was this Unterscharführer who you saw in the park with the pistol? *A.* I did not know him.

Q. Had you ever seen him before? *A.* Yes, I saw him on the 8th June, in the morning, early.

Q. Where? *A.* At Regimental HQ; he was driving around on his motorbike.

Q. And was this before the prisoners were brought in? *A.* Yes.

Q. How long before? *A.* Approximately four to five hours.

Q. How was he dressed? *A.* He had on a camouflage jacket and camouflage trousers made of Italian tent cloth.

Q. Now, is there some distinction or difference in the type of camouflage uniform that was issued to you? *A.* Yes, there were old types of camouflage jackets and the ones that we had, the suits were mainly made up of Italian tent material.

Q. Well, now, you have referred to his trousers as having been made of that material; was his jacket made also of that material or of some other? *A.* No, his camouflage jacket was a German one and was to be tied together.

Q. How could you tell that he was an Unterscharführer? *A.* He had his collar outside over his camouflage smock and I saw it from the braid.

Q. Now, will you describe his general appearance? *A.* He was quite powerfully built, approximately one metre, seventy-five centimetres tall. He had a light coloured face, his complexion was light.

Q. How old a man would he be? *A.* Might be 25 years approximately.

Q. Now, I show you T-26 and T-27. What are those pictures? *A.* That is the chapel in which Standartenführer Meyer was.

Q. Was any use made of the towers which appear in T-26? *A.* I can't say.

Q. Now, what does T-28 show? *A.* That is the inside of the chapel.

Q. Now, can you say generally where Meyer was standing at the time you heard him say what you have just related? *A.* Meyer stood left front, and here on the right were the amphibious cars, and here I stood.

Q. Now, how far were you in metres from Meyer at the time you heard him say the things which you have just related? *A.* Five to six metres.

Q. And did you know Meyer? *A.* Yes.

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Q. He had been your Regimental Commander since August in Beverloo, had he? *A.* I saw him in Beverloo often.

Q. Was the light in the chapel good? *A.* Yes, it was in the day time.

Q. And are you familiar with Standartenführer Meyer's voice? *A.* Yes.

Q. Is there any possibility then that you heard any other officer than Meyer make the statement that you have just told us? *A.* No, it was Meyer.

Q. Now, was Standartenführer Meyer a strict or an easy disciplinarian? *A.* He was a strict one.

Q. Were there other soldiers standing around at the time that this shooting occurred? *A.* Yes.

Q. Where were they standing? *A.* They were inside of the Regimental HQ and after it happened many of them were over in the park and saw the dead Canadians. In that park an English food cannister had dropped and, as nearly all were hungry, many went to that food cannister to eat.

Q. And did all these people who went into the park go in at the time you did? *A.* With me afterwards two went in.

Q. And why did you go in? *A.* Because we were hungry and we wanted to eat.

Q. And did you see the bodies at that time? *A.* Yes, all of us saw it and we all made a big semi-circle around because the whole place was full of blood.

Q. And had any of these others, who went into the park with you, been in the same courtyard where you were, where you were washing your hands? *A.* Yes, a few of them were.

Q. And had they had the same opportunity to observe and hear the things that you did? *A.* Yes.

Q. That is, of course, as far as the shooting is concerned? *A.* Yes.

Q. Do you know what happened to the bodies? *A.* No, I do not know that. I was wounded during the night from the 8th to the 9th.

Q. Now, you say you were wounded on the night of the 8th/9th; was that in the course of a combined tank and infantry attack on Bretteville L'Orgueilleuse? *A.* Yes.

Q. And then did you go to the hospital thereafter? *A.* Yes.

Q. And how long were you in hospital? *A.* Approximately three months.

Q. And where did you go from there? *A.* Then I went to Arnhem, and from Arnhem they sent me to the Tank Recce Replacement Unit in Paderborn.

Q. And where did you go from there? *A.* I was there until the 30th March and on the 30th March I went to the American lines.

Q. Where were you at that particular time? *A.* I was very near Paderborn, in Borthen. I was there assigned as runner-orderly to Regimental HQ.

Q. And when were you first interrogated after your capture? *A.* I was once interrogated in Namur in Belgium. That was done by a Polish Major. From there I came to Chartres and there I was, for the first time, really interrogated.

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Q. Now, will you tell about that interrogation? *A.* I came to the interrogator. There were a few of us. At that camp there were Poles in a special enclosure and this enclosure was at that time being interrogated. As I came up I said to the American Sergeant that I wished to make a report, thereupon he took me to a table and I began to tell him about the occurrence in Normandy. In the meantime another American Sergeant had come in, he saw my pay book on the table, and he said, "You are from the SS, you all are going to be hung up," and the Sergeant wrote all that down.

Q. You mean the Sergeant wrote down what you were telling him? *A.* Yes, what I said, and then this Sergeant handed it to a German Prisoner of War to put in the typewriter. Then he gave it to me to read through and I signed it. I said to him, brought it to his attention, that things might not be quite so as it is a year since that has happened. He said you will have an opportunity later to make corrections.

Q. Now, I show you Exhibit T-39, what is that? *A.* That is what was written in Chartres.

Q. And is that your signature? *A.* Yes.

Q. I show you a sketch that is attached to it. What is that? *A.* That is a drawing of Regimental HQ, that I made.

Q. And this drawing was prepared a year after you had been there, is that correct? *A.* Yes.

Q. Now, are there any corrections, is there anything that is wrong about that sketch? *A.* Yes, the water pump, I placed that wrong. It really belongs at the corner entrance to the park.

Q. And the place where you have the water pump is actually where the concrete pool is, is it not? *A.* Yes.

Q. Is there anything else? *A.* Yes, there is a chapel missing.

Q. Now, I want you to look at the statement which you made at that time and tell me if there are any inaccuracies in that. *A.* Yes. It says that I brought the seven English soldiers to the Regimental HQ. That is not correct. And likewise it says I... reported the prisoners to the Regimental Commander. That is not correct. Then it states here that he gave the order that the prisoners be shot to the Ordannanz Offizier. That I did not hear. I only heard Meyer say, "What are we going to do with these prisoners? They only eat up our rations," and then I heard him say, "No prisoners more will be taken." That is everything.

Q. Now, to go back to the question of this officer; what happened to the officer after he had interrogated the prisoners, or what did he do? *A.* He went back to the chapel.

Q. Following the making of this statement, were you moved from Chartres? *A.* Yes. I was then taken to a Polish camp in Chalons and from there I was to go to the Polish Army in Italy.

Q. How long after you made this statement were you moved to Chalons? *A.* It was about two months after.

Q. And were you moved alone or were other Polish soldiers moved with you? *A.* There was a whole transport of us.

Q. How many, approximately? *A.* Might well be five hundred...

Q. And what happened to you at Chalons? *A.* We came up before a Polish Commission and were interrogated as to our nationality and citizenship and sent before a Medical Officer. On Wednesday we were going to Marseilles and on Monday I was brought back – fetched back rather – to Paris.

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Q. Do you know what you were going to Marseilles for? *A.* There in Marseilles we were to have a vacation and from Marseilles we were to have gone to Italy.

Q. What were you going to do in Italy? *A.* We were there to go to the Polish Army.

Q. So that if you had not been taken away at Marseilles and taken to Paris you would probably have reached the Polish Army. Is that correct? *A.* Yes.

Q. Now, when you were taken to Paris, I believe you were met by some Canadian officers; correct? *A.* Yes.

Q. And I was one of those officers, was I not? *A.* Yes.

Q. And then you were taken to Bayeux? *A.* Yes.

Q. And the following day you were taken out to Franqueville? *A.* Yes.

Q. And did you then direct us to various places? *A.* Yes. I led the officers to the Regimental HQ and pointed out to them things and where the dead bodies lay, and then I also pointed out things in Authie.

Q. And were photographs taken which you have seen today? *A.* Yes.

Q. Now you were driving in an automobile until you got to the Regimental HQ, were you not? *A.* Yes.

Q. And who was in the auto? *A.* The Lieutenant-Colonel and the Canadian Captain.

Q. And was the Canadian Captain speaking to you – was he the one with whom you spoke? In German? *A.* Yes.

Q. And did you tell him where to go so that the driver would know where to drive us? *A.* From the road which leads to Caen I recognized the towers of the Regimental HQ...

Q. And did you receive any help from anybody in finding the various places to which you took us? *A.* No. The Captain only told me the picture is slightly different now – a whole year has elapsed.

Q. Now, when you were in the village of Authie, some photographs were taken there, were they not? *A.* Yes.

Q. I will now show you Exhibit T-35. What does that show? *A.* Here, along the side of this house, there lay two or three dead Canadians.

Q. And when had you seen these Canadians here? *A.* It was on the afternoon of [June] the 8th. My comrade received an order to drive to Authie and to pick up an Unterscarführer who allegedly had stayed in Authie and to bring him back to Regimental HQ...

Q. Now, I show you Exhibit T-36. What does that show? *A.* That is the entry to the courtyard where I saw approximately four dead Canadians.

Q. And is this the doorway shown in T-35 right close to the spot you are pointing at? *A.* Yes.

Q. And what is shown on Exhibit T-37? *A.* That is also the Courtyard in which I saw five or six dead Canadians.

Q. Now, I show you Exhibit T-18. What is shown there? *A.* It is a road crossing and here on the crossroad I saw a Canadian soldier of whom only a leg was whole. Tanks had run over him.

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Q. And you are pointing at the spot with the letter 'N,' are you? *A.* Yes.

Q. Now, what else can you say about this photograph? *A.* It was here at this spot, at which I am pointing to, there were also dead Canadians.

Q. You are now pointing at the spot marked 'G-M.' Is that correct? *A.* Yes.

Q. Is that the same place that is shown on T-35? *A.* Yes.

Q. Now, from the day on which you were wounded, the 8th of June 1944, until you went back there with myself and others, had you at any time been in that area? *A.* No.

Q. I am now speaking of the Caen area, the Abbey Ardenne and Authie. *A.* Yes.

Q. Now, have you any particular grudge against Standartenführer Meyer? *A.* No.

Q. And why did you make this statement originally? *A.* I made the statement from a purely soldier or military point of view. In my eyes Meyer was no longer an officer.

Andrew: May we have an adjournment, sir, before the cross-examination, or do you want me to start right away?

President: Will you be very long?

Andrew: I will, sir, but it doesn't matter.

President: We will have an adjournment. Will the accused and the escort withdraw please.

Andrew: Sir, may I ask the court that the [witness] be not approached by anybody except his guard until after the cross-examination?...

President: Yes. How long do you want?

Andrew: About five or ten minutes...

(Court is Adjourned)

Andrew: *(Begins cross-examination) Q.* Jesionek, you have been shown Exhibit T-39. Will you tell me the circumstances connected with your making that statement? *A.* As I said, I was at the interrogation and had begun to tell it to the American Sergeant. I at that time was not fully a fluent German speaker, and the American Sergeant likewise. In the meantime a second American Sergeant came in and said "Those of the SS will all be strung up." Then I continued to tell my story.

Q. Are you sure that you told your story on that first day that you saw the American Sergeant? *A.* Yes.

Q. Did you not tell Col Macdonald on one of your interrogations that the threat of hanging did not bother the facts of your statement? *A.* Yes.

Q. And is it not a fact that you stated in one of your interrogations that you had decided in France to make that statement? *A.* No, I didn't decide that in France. I decided right away when I saw that, that at the next opportunity, if such an opportunity would be given, I would announce these facts.

Q. And therefore when you made that decision these facts remained in your mind clearly until the time you made that statement? *A.* Not totally.

Q. Most of them? *A.* Yes.

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Q. Then how is it that you said this morning that part of this statement is incorrect? *A.* One year had passed when this had happened and I did not have the thing quite straightened out in my head because the American Sergeant also had others to interrogate. The American Sergeant had gone too quick[ly].

Q. Is it not a fact that the facts as stated in the statement were not clear in your mind when they occurred? *A.* I saw it all quite clear in front of me when I was in Normandy with the Lieutenant-Colonel.

Q. When was that? *A.* It was after Whitsun of this year.

Q. And you have said that you did not report the prisoners as stated in the statement to Meyer who was standing in the chapel? *A.* Yes.

Q. And you state here in the statement that Meyer said, "Why do you bring prisoners to the rear? These murderers only eat up our rations." *A.* Meyer said, "What should one do with the prisoners, they only eat up our rations?"

Q. And therefore the words that you have stated here were incorrectly quoted as having been said by Meyer? *A.* As the American Sergeant gave me the threat that all of the SS were going to be strung up my thoughts did not react so correctly.

Q. And therefore you said things that were untrue; is that correct? *A.* No. That is not correct.

Q. Well, then, it is because of the threat that the American Sergeant made that you stated incorrect evidence in the statement; is that right? *A.* No. It is not correct. I had already begun to make my statement, but in the meantime he just came in.

Q. Is it not a fact that that statement was made several days after you first saw the American Sergeant? *A.* No. That is not correct.

Q. Now, this statement. You gave it to whom? *A.* I gave it to the first American Sergeant. He wrote it.

Q. I am informed that a German prisoner of war who was acting as clerk in the Sergeant's office wrote it. *A.* He afterwards from the American Sergeant wrote it into the machine,... typewriter.

Q. And was it written in English in the machine? *A.* Yes, and in German.

Q. Well, then, you have given in your previous interrogations that this statement was first read to you in English and then translated verbally into German. Is that correct? *A.* Yes. The Sergeant likely wrote it down in English and then the prisoner of war translated it. He spoke good English.

Q. Did you go back a second time to give your story to the Sergeant? *A.* How am I to understand "a second time"?

Q. Well, did you go back again about this statement to the Sergeant? *A.* Yes. He had me called the next day and asked whether I had anything further to report.

Q. And did he not read that statement the next day? *A.* No.

Q. Now, I want to read you from ***evidence given on the 3rd October 1945***, to my friend Col Macdonald at London.

Judge Advocate: *(To the witness Jesionek) Q.* You remember that occasion? *A.* Yes.

Andrew: *Q.* I will read you question 36 and the answer:

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"*Q.* Now, will you tell us nearly as you can everything you said and everything that the Sergeant said prior to the time that this other American came in and spoke about hanging the SS? *A.* I came in and showed him my pay book, whereupon he remarked that I was in the SS, which I confirmed, and he asked "With what division did you serve?" and then he asked "In which regiment are you?" and then he asked "Who was the commander of your regiment?" I said it was Meyer and once I had mentioned the name I quickly gave him the story – I had begun to tell the story then came in the second American and he said that I was going to be hung and then I carried on with my story. And then the Sergeant said "As there are so many more to be interrogated you can go back now but I will order you back in a few days." On the next day I had to go there again and he made notes, and then there was a prisoner of war there, interpreter, who wrote out in German what the American Sergeant had put down in English. Afterwards I was given it to read through. Then I had to sign it."

Did you make that answer? *A.* Yes. It is not correct that it was on the next day. It was on the same day and, as far as I now remember, I was ordered to go in the afternoon.

Q. In relation to the making of that statement there are not only incorrections in the statement but in the evidence about the statement. Is that a fact? *A.* I called it to the American Sergeant's attention that it was not all quite precisely so as pertaining to the details whereupon he replied to me that I would later on be able to correct it, but the basis, the kernel, *(By the interpreter: "Those are his words")* are exactly the same.

Q. What is the kernel of that statement? *A.* That I strongly suspected Meyer gave the officer the order to shoot the prisoners.

Q. And is not the whole thing something in your mind connected with Meyer? *A.* Such a story one cannot invent.

Q. Why all the errors? *A.* When a story has passed one year one cannot remember the details.

Q. Now, I want to point out to you something that goes beyond the details in the evidence that you gave to this court a moment ago about the making of that statement. You said that the American Sergeant threatened you with hanging; did you not? *A.* Yes, but not he to whom I told the story.

Q. How many more sergeants were there there? *A.* There were three rooms. Different ones came in.

Q. Now, the evidence you have given my friend this morning regarding your family was a little different from your first interrogation with Col Macdonald, wasn't it? *A.* I did not at first announce that my father was in prison.

Q. In the evidence you gave to my friend on the 28th day of May 1945; – do you remember giving the evidence? *A.* Yes.

Q. You state there in question 42:

"*Q.* Were you at any time given an opportunity to select the branch of the services to which you could belong? *A.* No. When I came back home and my father saw this SS Form which I had taken back he wrote to the SS in Breslau to obtain a release for me. The SS replied that it was impossible to release me because the call-up procedure was completed. They also asked why my father was against my being in the SS...

Q. What did your father reply to that request? *A.* My father did not reply because he was getting worried that the SS would take personal action against him and his family. Two weeks later I received my calling up orders."

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Judge Advocate: *Q.* Did you say that?

Andrew: *Q.* Did you make those answers? *A.* Yes, sir. But I remained silent to the Lieutenant-Colonel about the fact that my father was imprisoned not to arouse any suspicion that because of my father I sought revenge on Meyer.

Q. And therefore that answer to my friend, Col Macdonald, was not correct? *A.* No.

Q. And you made up that story about your father? *A.* What story?

Q. What I have read: That his father had written to the authorities in Breslau to get him out of the SS. *A.* My mother wrote that.

Q. So you say. *A.* Yes.

Q. Now, when was your father imprisoned? *A.* In June, 1943.

Q. And how did he get out of the prison? *A.* He was released, and he was told that he was lucky that his son by error got to the SS.

Q. What day was he released? *A.* It was in September [1943]. The day I do not know any more.

Q. You have told in your evidence this morning that at one time you were chosen from the 9th Company to go to the 15th Company? *A.* Yes.

Q. And you also said this morning that you were sent on numerous courses? *A.* Yes.

Q. And you also said this morning that the 15th Company was a demonstration company.

Macdonald: No. No. No. He didn't.

President: His platoon. Only his platoon.

Andrew: I am sorry. *(Resuming) Q.* You also said this morning that you belonged to the 4th Platoon? *A.* Yes.

Q. Of the 15th Company? *A.* Yes.

Q. And you said that this platoon had acted as a demonstration platoon? *A.* Yes.

Q. And I take it then that you belonged to a very smart platoon in the 15th Company? *A.* Yes.

Q. And I take it then that the soldiers in No.4 Platoon were all good soldiers; is that correct? *A.* Yes.

Q. And I take it that you were a good soldier too? *A.* Yes.

Q. And to be a good soldier you had to be willing to do your job? *A.* I had to, also.

Q. Why didn't the men outside 4 Platoon have to be good soldiers too? *A.* They were just as good soldiers as the 4th Platoon. The 15th Company was selected especially by HSS Ritzert.

Q. Were you ever sent on your NCO course? *A.* No.

Q. Were you even sent on a Junior Leaders' Course? *A.* No.

President: *(To Andrew)* I think this would be a good opportunity to make a break in the cross-examination.

Andrew: Yes, sir.

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President: The court will adjourn until 1400 hours.

—

President: I declare the Court open. *(Witness, SM Jesionek, Jan is recalled to the Witness Stand and reminded by the Judge Advocate, through the Interpreter, that he is still under oath.)*

Andrew: *(Continuing cross-examination) Q.* Jesionek, you have learned most of your German since you have been in the Army, have you not? *A.* Yes.

Q. And you knowledge of German words is limited, is it not? *A.* No, I can now correctly speak German.

Q. When you mean you can correctly speak German you mean that you can converse or rather carry on conversation with your comrades and the people you meet on the street. Is that correct? *A.* Yes.

Q. And you would class that as simple German conversation? *A.* Yes.

Q. Now, I refer you to the evidence you gave this morning regarding the speech which you said Meyer made at Le Sap. I am going to read from your interrogation on the 28 May 1945 by Col Macdonald. You said in a previous reference to this interrogation that you remembered it. Is that correct?... And I might ask you now, was this interrogation made after you had visited the Abbaye Ardenne with the Canadian officers? *A.* Yes.

Q. Referring to Meyer's Le Sap speech:

"*Q.* Can you remember the exact language that he used? *A.* As well as I can remember he said something running along the following lines: "We must not believe in a new weapon; we must look after the retaliation ourselves because our German cities have been destroyed. We must remember that the women and children have been destroyed." And he mentioned the fact that he was giving us a new company commander who had fought for a long time in Russia and that we could rely upon the new company commander. He gave the order that when officers ran away we had the right to shoot them."... "We would have to retaliate against the prisoners."

Q. What form did you understand that retaliation to take? *A.* We should have to look after the retaliation ourselves rather than believe in a new weapon."... "We should retaliate against the prisoners."

Q. Did he use the word 'prisoners'? *A.* He used 'Englishman' but his speech was so worded that it was understood that no prisoners were to be taken. The exact words I cannot remember."

Do you remember making these answers? *A.* Yes.

Q. Are they correct? *A.* Yes...

Q. Now, I want you to tell me as closely as you can the dates that you went on the motorcycle course and the various courses that you have mentioned in your evidence. *A.* The motorcycle course was in the middle of October and November 1943, in Belgium. The amphibious car course I took in Le Sap approximately one week after Easter 1944.

Q. For how long? *A.* It didn't last long – at the most one week.

Q. Would it be in April or May? *A.* It was still April.

Q. And I think you have mentioned in previous evidence that you had a course on trucks? *A.* Yes, I took that afterwards from the end of April 1944 to the middle of May 1944 in Weimar.

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Q. Well then, the amphibious car course couldn't have been in April could it? *A.* Yes, it was the beginning of April. When I was finished with it I was sent off to Weimar.

Q. Then, when you came back to the unit after the truck course, when did you work for the [Leibstandarte Adolf Hitler (LAD)]? *A.* In Montague I worked in the repair shop.

Q. For how long? *A.* Two or three weeks.

Q. And what month was that? *A.* It was shortly before we left for France.

Q. And were you attached or were you living with the personnel of the LAD? *A.* No.

Q. And then when did you start back again working with the Company? *A.* When we went to France to Le Sap I was together with the Company.

Q. And were you with 4 Platoon? *A.* Then I still was with 4 Platoon.

Q. And had you at that time anything to do with Regimental HQ? *A.* No.

Q. When did you first have anything to do with Regimental HQ? *A.* In Normandy on the 8th of June.

Q. And prior to that you had nothing whatsoever to do with Regimental HQ? *A.* No.

Q. Now, in your previous evidence you have said certain people belonged to Regimental HQ? *A.* Yes.

Q. And you have said that you have seen them there often? *A.* The motorcycle instruction school in Beverloo was situated near the Regiment *(Witness points)*. Here was the hall in which the motorcycle course took place and here was Regimental HQ.

Q. In other words they were fairly close together? *A.* Yes.

Q. And did you go into Regimental HQ? *A.* No.

Q. Then it is correct to say that you were familiar with people around Regimental HQ? *A.* One can't say that. By name no one would recognize me but possibly from seeing me.

Q. Now, on the 8th of June you said you were at Regimental HQ? *A.* Yes.

Q. And will you tell me your movements from the time you got up or the time you arrived at Headquarters on the 8th until 12 o'clock noon that day? *A.* We didn't sleep that night. We secured the road again.

Q. Which road is that? *A.* Here was lay *(Witness points to the Caen-Bayeux road 7F/1 on Exhibit T-2)*...

Q. You were there on the night of the 7th/8th June? *A.* Yes, and our amphibious cars were here in the neighbourhood of Regimental HQ and in the morning we all pulled together at Regimental HQ and then I was attached to the third platoon and we had to make recces in the direction of Cussy. That is where we ran onto our own mines. Three men were sent back to Regimental HQ. There was an untersturmführer with us also. He reported that to Standartenführer Meyer.

Q. Now, just stop there until we get some timings. What time did you go up in the neighbourhood, you said first, of Abbaye Ardenne? *A.* I cannot say any more precisely. It was early in the morning.

Q. Would you say it was six o'clock in the morning? *A.* Maybe, but I cannot confirm that.

Q. Well, you got to the area of the Abbaye, you say, and may I suggest that the area of the Abbaye was in a grain field? *A.* Yes.

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Q. A short distance away from the Abbaye? *A.* Yes.

Q. And your vehicles were in the grain field? *A.* No, they were on the other side. A road ran past there.

Q. Tell me approximately where the grain field is? *A.* The cornfield[3] is here in the direction of Cussy *(Witness points to map 7F/1 marked Exhibit T-2)*.

Andrew: Between Abbaye Ardenne and Cussy. The area is marked by half-circles showing the area north of Abbaye Ardenne between the Abbaye and Cussy. *(Continuing cross-examination) Q.* And may I suggest to you that it was from that area that you went on this recce you told me about? *A.* Yes.

Q. And therefore the Company was not in the Abbaye? *A.* Broadly speaking the Company was all the time at Regimental HQ because when we went on recces they pulled out individual platoons and sent them one and one there.

Q. Is it not correct to say that the order came from Regimental HQ giving the Recce Company its various tasks? *A.* Yes, they came from Regimental HQ. The 15th Company came under command of Meyer personally.

Q. And it doesn't necessarily follow that the Company was right at the Headquarters all the time? *A.* They didn't stay there all the time. It may be that different platoons were at one time away simultaneously on recces.

Q. On the morning of the 8th the Company was in the area you have just pointed out on the map? *A.* If you look at it from Caen, there is a road that goes past Ardenne in the direction of Authie and to the left of there were hedges and there stood the vehicle.

Q. Yes. And where were you when the Company was in the area you have pointed out on the map? *A.* I was also there.

Q. And what time did you come back from your recce? *A.* Might have been nine o'clock in the morning.

Q. And what time were the prisoners brought in? *A.* Towards noon, approximately.

Q. And you are fairly definite in these times, are you? *A.* Fairly certain, not... I cannot affirm that positively, there was such a mix-up there.

Q. Well, would you say it was the middle of the morning you came back from your recce? *A.* Yes, it may be.

Q. Now, I want to read from the evidence you gave on the 28th of May 1945 in Paris to Col Macdonald. Do you remember that time? *A.* Yes.

Q. You remember giving the answers to certain questions? *A.* Yes.

Q. I read from question 80:

"*Q.* What duties did you perform on the 8th? *A.* I had a motorcycle but it did not work properly. I was most of the time sitting with my motorcycle in a field north of Abbaye Ardenne hoping that somebody would come with tools to repair my motorcycle and it was there that I saw the first prisoner of war come in."

Do you remember that? *A.* Yes, and it is correct, the motorcycle was issued to me when we had returned from the recce during which we had run onto our own mines...

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Q. And that motorcycle was in the field north of the Abbaye? *A.* No, it stood here on the road which runs in the direction of Authie.

Q. Well, this position then in the field is not correct in your answer? *A.* It was in close proximity to the road, basically speaking it was in the field.

Q. I refer to evidence given on the 4th of October 1945. Do you remember giving evidence to Col Macdonald on the 4th of October in London? *A.* Yes.

Q. The question is referring to the officers who were with Meyer in the Abbaye on the morning of the 8th:

"*Q.* How were the other officers dressed? Did many officers wear the camouflage suit? *A.* As far as I can recall, no, other ranks did but the only officer of Regimental HQ that I can remember wearing the full combat was Buettner, my company commander. You see, my amphibious car had broken down and I was being put into different platoons for each different recce trip we made. One trip we made right down to the Abbaye Ardenne. We ran right into one of our own minefields and some more cars were knocked out and I think we also lost two men so we were sent right back to Headquarters and as I got back to Regimental HQ there was an attack by low flying planes and the vehicles that were still outside were ordered by Meyer to be put into the chapel and I was told to remain there with a motorcycle that was there."

Do you remember making these answers? *A.* Yes.

Q. Are they correct? *A.* They are correct.

Q. Therefore, the motorcycle wasn't on the road outside the Abbaye. *A.* We drove onto our own mines and we were too many men then because some of the vehicles were knocked out and those that were superfluous and one was wounded we were sent back to Ardenne and there on the other side, not on the side on which my motorcycle was, there were also vehicles from the direction of Cussy and then came low flying planes and then those vehicles that were standing there had to be brought in.

Q. (*Continuing):*

"Q. A motorcycle? *A.* But what I don't understand was that the motorcycle was bust too.

Q. Where was the motorcycle? *A.* The motorcycle was in some bushes on the other side of the road opposite the Regimental HQ."

Well, is that correct with the statement you made in your examination in May when you said that the motorcycle was in the field? *A.* The motorcycle stood in the field close to the road opposite the Regimental HQ.

Q. Well, I want to read to you from your interview on the 17th of October 1945 at London, England, when you were interrogated by Col Macdonald:

"*Q.* Do you know what happened to Meyer after you saw him in the chapel and the prisoners were shot? *A.* As we returned from our recce, low flying attacks by British planes began. Meyer immediately started shouting "get those cars away from there, put them into the chapel," and you see there were still agricultural implements of the peasant in the chapel and we first had to shove them well aside to get our cars in. About 10 or 15 minutes later the prisoners arrived. After I came away from the chapel with the officer and the guard, and the officer returned in the direction of the chapel, I don't know what became of Meyer. I did not see him again."

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Do you remember making that statement? *A.* I saw Meyer during the evening of the 8th during an attack on Bretteville.

Q. Now, fifteen minutes after the air attack the prisoners arrived, you have said? *A.* Yes, it may be that way, approximately.

Q. Is it correct to say that you are not quite sure of the events on the morning of the 8th? *A.* About the events I am certain, but not about the time.

Q. Before you pushed the cars into the chapel, what was in the chapel? *A.* Old peasant utensils and straw and hay.

Q. And what vehicles were outside in the courtyard of the Abbaye? *A.* In the courtyard there were only motorcycles.

Q. Well, what vehicles did you push into the Abbaye? *A.* The amphibious cars.

Q. Where were the amphibious cars before you pushed them into the Abbaye? *A.* They were in the neighbourhood of the chapel there where the cornfield began.

Q. Can you point out on the plan (Exhibit T-1) where the amphibious cars were before you put them in the Abbaye? *A.* Yes. Here was a wall..., here was an entrance..., here a field path went along the wall... and a number of amphibious cars stood here on the field path here, and here, in the courtyard, near the chapel, there were also some and the other vehicles stood here in the field... and my motorcycle stood here... and when low flying planes came we had to move the vehicles which stood here... and here [in the courtyard] on the path and they had to be taken into the chapel from this side here... and here in the chapel were some and here on the other side of the chapel there were also one or perhaps two...

Q. And the vehicle in which you had your washing material, was it in the chapel before the air attack? *A.* No.

Q. After the air attack? *A.* It was also standing outside and we had to put in the vehicles.

Q. Did you suffer any casualties from this attack? *A.* No.

Q. Was the Abbaye hit at all? *A.* No.

Q. Do you not think it would have been better to scatter the vehicles in the open ground by the field which you have marked on the plan? *A.* No. They were all camouflaged with green boughs or branches and they would have been noticeable in the cornfield.

Q. And were they separated some distance between each vehicle? *A.* Yes.

Q. Well, don't you think it was rather a peculiar order of the Brigadeführer to have to move into the chapel? *A.* It was not the Brigadeführer, it was the Standartenführer.

Q. The Standartenführer then – Standartenführer Meyer? *A.* At that time we did not have many vehicles more. And that is why they were being hidden from low-flying planes.

Q. The branches and boughs over then were not enough. Is that right? *A.* No.

Q. You were with your motorcycle when the prisoners came along? *A.* Yes.

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Q. And you mentioned in your ***evidence of the 28th of May 1945*** that you saw three or four guards coming with the prisoners and I will read you question 191:

"*Q.* On what day was this and at what time of the day? *A.* This was on the 8th of June some time before noon. There were three or four guards with the prisoners."

Now, in your evidence this morning, you stated that there were two guards. And you told us exactly in your own mind where the guards stood in the Abbaye. Do you remember making this answer which I have read? *A.* Yes.

Q. Is it right? *A.* No. It is not right. There were only two guards with them.

Q. Well, this evidence that you first gave was given on the 28th of May 1945, was it not? *A.* Yes.

Q. And it was after you had been to Ardenne Abbaye to look over the ground? *A.* Yes.

Q. And events were fairly fresh in your mind, having looked over the ground, were they not? *A.* Yes.

Q. Why didn't you mention the air attack in this evidence when you gave your story? *A.* These are minor matters that come to one's brain later.

Q. Now, you went to the Abbaye with the guard, you said? *A.* Yes.

Q. And the prisoners? *A.* Yes.

Q. And you took the guard to the chapel? *A.* Yes.

Q. And you said that you saw Meyer? *A.* Yes.

Q. And how was Meyer dressed? *A.* Meyer had a cap with a shield and if I am not mistaken he had a rubber coat on.

Q. Describe the rubber coat. *A.* It is one which all motorcycle drivers have in the army.

Q. And were there any other people dressed in long motorcycle coats in the Abbaye? *A.* Yes.

Q. Are you sure that Meyer was dressed in a long rubber coat? *A.* No, I am not certain of that.

Q. Well, I refer you to your ***evidence of the 3rd of October 1945*** given before Col Macdonald at London. Do you remember that occasion? *A.* Yes.

Q. And I will read you question 58:

"*Q.* Could you see him clearly? Referring to Meyer. *A.* As he said what are we to do with these prisoners, they only eat our food, then I saw him with my own eyes.

Q. How far away were you from him? *A.* At the most, seven or eight metres.

Q. How was he dressed? *A.* He wore a motorcycle rubber coat which goes down to the ankles.

Q. And what sort of cap or helmet? *A.* The round cap with the shiny black visor."

Do you remember making that answer? *A.* Yes.

Q. Is it correct? *A.* It is so if one is to know after one year. That is hard to say.

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Q. Well, if you had heard Meyer say certain things which you have given in evidence this morning, you must have the picture of him at the time he said these words in your mind. Isn't that right? *A.* Yes, that is correct. Yes, I saw him before my eyes but I can't say whether – perhaps he wore a pair of trousers. These are petty, minor matters.

Q. Well then, would you say he had a long black motorcycle coat on or was he dressed in an ordinary uniform? *A.* As I have said it seems to me as if he had worn a rubber coat.

Q. Yes. Now, am I correct in saying that the details – the details as you call them of the 8th of June in the morning, are not clear in your mind? *A.* That is not correct. It is hard to say, as I said before, what a man had on – whether he had gloves on at this moment. One doesn't look at such things.

Q. Without referring to it in your previous interrogations, do you remember telling Col Macdonald that your company commander von Buettner was with Meyer in the chapel that morning? *A.* Not quite.

Q. Do you remember giving ***evidence to Col Macdonald on the 29th of May 1945***, in Paris? *A.* Yes.

Q. I refer to question 197:

"*Q.* Did you see your Company Commander there? *A.* Yes."

I refer you to the ***evidence taken by Col Macdonald on the 17th day of October 1945*** in London. Do you remember that? *A.* Yes.

Q. You are correcting your previous evidence? *A.* Yes...

"*A.* I was wrongly reported if I said he was there because he was not. I saw him in the first Regimental HQ in the villa in that house thirty metres from the road fork described previously." *A.* Yes.

Q. Now, which is correct? *A.* The second statement is correct.

Q. Would you say that that is a minor detail as to whether or not von Buettner was with Meyer? *A.* It is not a trivial point; it is possible that I was misunderstood for I only saw Buettner in the villa.

Andrew: *(To the President)* I wish to be corrected on this sir. I am doing this from memory and I may be wrong and perhaps we can have it read back. *(Resuming cross-examination) Q.* I understood you said this morning that von Buettner was in the chapel with Meyer on the morning of the 8th. *A.* No. That is not correct. I did not say that.

Macdonald: The witness is quite correct on that point too.

Judge Advocate: You mean that he is correct, that he did not say that this morning?

Macdonald: When he had the evidence read back to him this morning he immediately noted the error and had it corrected. I am speaking of the earlier interrogation by myself.

Judge Advocate: Oh yes.

Andrew: *(Resuming cross-examination) Q.* Now, the officer who interrogated the prisoners on the morning of the 8th, how was he dressed? *A.* He had high boots, riding breeches, tunic and also such a round cap with shield.

Q. In that same evidence that I have referred to last, you make this answer to a question:

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"*A.* Last time that you questioned me I said that the officer who interrogated the seven prisoners wore a camouflage jacket. Since then I have thought it over very carefully and I now think that he wore no camouflage jacket but just ordinary army boots – high boots and a pair of riding trousers frequently worn by officers."

Now that is in the same evidence that you corrected the statement about Buettner. It is also in the same evidence that you gave your complete explanation about the air attack. How many times were you interrogated by Col Macdonald? *A.* It was – may have been five times.

Q. May I suggest that it is either seven or nine times? *A.* I didn't count it.

Q. And the interrogation started in May last and ended in October or November of this year. *A.* Yes.

Q. And before you were interrogated in May, you had a chance to see Ardenne Abbaye? *A.* Yes.

Q. And you had a chance up until September 5th, 1945, to get the complete picture of what happened at Ardenne Abbaye in your mind, did you not? *A.* Yes.

Q. Well then, in your evidence of September 5th, as I have already pointed out, you were still not very sure of what happened, were you? *A.* About what happened I was completely certain. It then occurred to me that the officer who went to the prisoners had a camouflage coat, smock, then I thought it over and I am quite certain that he did not have one.

Q. And that is since you gave your evidence in September last? *A.* Yes.

Q. What time did you start to get on the tanks for the attack on Bretteville on the afternoon of the 8th? *A.* It may have been six or seven o'clock.

Q. Had the company formed up in the assembly area before six or seven o'clock? *A.* There was a sort of slow rise in the direction of Bretteville and in this little hollow there, the tanks stood. I and my section leader and a few others from the third platoon went as a recce patrol down here to approximately where the hall stands.

Interpreter (Stonborough): The word he uses is "halle." I think he means hangar.

Andrew: *(Resuming cross-examination) Q.* What time did you go on that recce? *A.* It was perhaps an hour before we started on our attack. We were called back from where we were by our number.

Q. And what time did you go into Authie in the afternoon? *A.* It was about three or four o'clock.

Q. Is it not a fact that at three o'clock the company formed up in the assembly area? *A.* Not at three o'clock.

Q. Is it not a fact that tanks came up to meet the company about three o'clock? *A.* At three o'clock I saw no tanks. I saw one tank in Authie.

Q. And did you go into Authie after you came from your reconnaissance? *A.* No. Before. You meant the recce patrol to the halles, to the hangars?

Q. Yes. *A.* Before that I went over to Authie.

Macdonald: *(To interpreter Stonborough)* May I enquire whether that is a precise translation of the word. You spoke of "halle."

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Stonborough: Yes. "Halle" is a hall.

Macdonald: I am just wondering when you say hangars, you might be confusing that with aeroplane hangars?

President: It is on the edge of the Carpiquet aerodrome.

Macdonald: Well, I know the place quite well myself. *(The interpreter speaks to the witness in German.)*

Stonborough: Yes. Aeroplane halls that stood on little rises.

President: The disposal area.

Jesionek: *(Through the interpreter)* The trip to Authie and back did not take longer than 15 minutes.

Andrew: *(Resuming cross-examination) Q.* What were you riding in to Authie? *A.* An amphibious car, the driver of which was von der Burg.

Q. Now, it was in von der Burg's schwimmwagen that you had your towel and soap? *A.* No. I cannot say that precisely. The amphibious cars were so over-loaded that I couldn't have all my things on one amphibious car and had to distribute them.

Andrew: May I have the indulgence of the court for about two minutes while I get this here, sir? *(Andrew indicates documents on the defence counsel table.)* If we can have an adjournment, sir, I could look this up, if you see fit.

President: Yes. We will adjourn for ten minutes. The accused and escort will withdraw.

—

President: The court is re-opened. Bring the accused in...

Andrew: *(To the reporter)* Will you read the last question, please? *(The reporter complies.)*

Andrew: *(Resuming cross-examination) Q.* I refer to your ***examination taken by Col Macdonald in London on the 4th of October 1945***... You have said that you remember that occasion? *A.* Yes, sir.

Q. In question 31:

"*Q.* But your kit, you say, was in the schwimmwagen? *A.* My towel was over at the schwimmwagen and what I said yesterday was wrong. There were no trucks in the chapel, they were all schwimmwagen and then I had a kind of kit-bag in which was my towel and all my shaving kit, and as I had no car I gave it to my pal, von der Burg."

Do you remember making that answer? *A.* Yes.

Q. Is it correct? *A.* I cannot say exactly whether the laundry bag was on the car of von der Burg.

Andrew: *(To the interpreter)* Tell him that I am not talking about the laundry bag. I am talking about his towel.

Jesionek: *(Through the interpreter)* My towel was in this laundry bag.

Andrew: *(Resuming cross-examination) Q.* Then your towel was not in your kit-bag as you have given in this evidence I have read? *A.* I did not only have a laundry bag, I also had a big pack of kit and other private things. And I couldn't load that all on one schwimmwagen because in the rear: the back of the schwimmwagen there is an air cooling system that had to remain free and there was no room there

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to put everything on one vehicle. I cannot know whether I had my laundry bag, my kit-bag, on the car of von der Burg or whether I had my big pack or whether I had my great coat.

Q. Was it, then, von der Burg's schwimmwagen in the chapel that you went to? *A.* Yes.

Q. Well, then, the answer you gave that you weren't sure about where your kit was, was not correct? *A.* As it was, my washing utensils were on the schwimmwagen of von der Burg.

Q. Did you see any Feldgendarmerie at the chapel or at the Abbaye on the 8th June? *A.* No, sir.

Q. Would you say that there weren't any there on the 8th of June? *A.* That I would not say.

Q. You were in the courtyard of the Abbaye, were you not, on the morning of the 8th? *A.* Not all the time in there. I was also at the motorcycle which stood at the road in the field.

Q. How long were you with the motorcycle that stood on the road or in the field or in the bushes or whatever you said? How long were you there? *A.* That was from the moment that the motorcycle was assigned to me to the moment when the prisoners were brought.

Q. And that would be about fifteen minutes, wouldn't it, according to your evidence? *A.* Yes.

Q. And the rest of the time you were around the Abbaye, I take it? *A.* I was inside the square and I washed myself.

Q. And when you were inside the Abbaye or chapel did you see any Feldgendarmerie? *A.* No, I did not see any. I know how they looked.

Q. How to you recognize a Feldgendarmerie? *A.* In Germany they wore a plate on their chest here *(Indicating)* but whether they also wore them out at the front I do not know.

Q. If I suggested to you that there was Feldgendarmerie at the Abbaye on the 8th of June, would you deny it? *A.* I saw some Feldgendarmerie shortly before Caen on the night from the 6th to the 7th.

Q. Did you see any Feldgendarmerie on the 7th? *A.* No.

Q. Did you see any at the chapel or the Abbaye on the 7th? *A.* That I cannot say because I don't think that they wore that plate up front.

Q. I want to read you from ***28th of May evidence*** that you gave to Col Macdonald in Paris. You remember that occasion? *A.* Yes.

Q. Reading from:

"*Q.* Who was in charge of the Feldgendarmerie attached to the 25th Regimental HQ? *A.* I don't know. I did not see any Feldgendarmerie."

Do you remember that? *A.* Yes.

Q. Is that answer correct? *A.* Yes.

Q. Now I refer to your ***evidence of the 5th of September 1945***, taken by Col Macdonald at London, England. ...

"*Q.* Do you remember having seen any Feldgendarmerie at the 25th Regimental HQ on the 5th of June? *A.* Yes. On the night of the 7th/8th I saw a Feldgendarmerie."

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Do you remember that? *A.* The first question the Colonel asked me was "Did you see one on the 8th" and I answered that, and the next question was "Did you ever see one" and I answered that.

Q. I said "Did you see one on the 7th?" and his answer was that he saw one and mentioned something about Caen.

Interpreter (Stonborough): Well, he says that when the Colonel asked him the question... *[The interpreter speaks to the witness in German and then states in English] A.* The first question Col Macdonald asked me sounded as if he had asked me "Did you on the 8th see one?" and the second question sounded to me as if he were asking if I had ever seen one."

Andrew: *(Resuming cross-examination) Q.* At Regimental HQ, the last question was "at 25th Regimental HQ." You have given in your evidence that the Regimental HQ of the 25th Regiment was at Ardenne Abbaye on the 8th? *A.* Yes.

Q. And I asked if you had seen any Feldgendarmerie at Ardenne Abbaye on the 7th or the 8th. Two separate questions. *A.* I saw one in the night shortly before Caen because we lost our way with our amphibious car and we were stopped by Feldgendarmerie.

Q. When your answer to Col Macdonald, your answer to the last question that I read out, that you saw a Feldgendarmerie on the night of the 7th/8th of June at Regimental HQ, is incorrect? *A.* I didn't see him at Regimental HQ, I saw him shortly before Caen. There must be a misunderstanding.

Q. I would suggest to you that that is an additional detail that you did not bother to remember? *A.* I have said that what I have respectively heard or seen, and on the 8th of June I did not see a Feldgendarmerie at Regimental HQ.

Q. Now, you have given us the story of what Meyer said at the Abbaye on the morning of the 8th, correct? *A.* Yes.

Q. I am referring to the 28th of May 1945 evidence which you remember:

"*Q.* What did Meyer say? *A.* The exact words I don't remember but he said something along the following lines: "What can we do with these men; their only purpose is to eat our rations." By this time I had found my soap and towel and I went back towards the courtyard. As I was going out of the chapel I saw an officer who was standing with Meyer together with the guard. Together with Meyer were five or six other officers. One of these officers went to go with the guard towards the stall where the prisoners were. I can only assume that Meyer gave to the officer the orders to shoot the prisoners."

Now do you remember giving that answer? *A.* Yes, there is lacking there the part that he then said to all those assembled there that "in future no prisoners are to be taken." That was, by error, not written down.

Q. Am I correct in classing this as one of your errors in minor details? *A.* No, because the Lieutenant - Colonel here could be a witness himself to that.

Q. When did the Lieutenant-Colonel here suggest that, if at all – as a witness. Was he there?

Macdonald: I think if my friend will read the next session and the report of that particular occasion he will get the answer to the whole matter.

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Andrew: *(Resuming cross-examination) Q.* Why did you leave it out here? *A.* I said it precisely here.

Q. That is, you said it here and it was not recorded that no more prisoners were to be taken? *A.* I said that when we were in Ardenne and it was not noted down. I corrected it then because it had not been written down.

Macdonald: I think, Mr. President, that if this record is to be used against the witness then the parts that explain such apparent errors should also be referred to. This is dealt with in the very next interrogation and what the witness has said is entirely correct and I am calling a witness to establish that.

Andrew: *(Resuming cross-examination) Q.* Well, then, in the first sentence of this answer you say the exact words "I don't remember." Is that correct? *A.* Yes, I said that.

Q. Therefore, the words that have been used in all your evidence concerning Meyer are your own words and not his? *A.* No, by the exact words I mean that I perhaps did not put in the word "and" which Meyer used but the sense was, on the whole, as Meyer said it.

Lehmann (Brigadeführer Meyer's personal interpreter): Mr. President, there is a shade of meaning in the word for that, which I should like to have looked up. *(Interpreter looks up word in the German Dictionary)* "To take in, to comprehend, the act of grasping or comprehension" – "my comprehension," then, because before then I didn't learn the words by heart.

Andrew: *(Resuming cross-examination) Q.* And therefore it is correct to say that the words you have given are not Meyer's own words? *A.* I say they are correct. Perhaps the word "and" is missing. I couldn't say it was as precise as he said it.

Q. Well, therefore, if you can't say it was as precise as he said it, it is not the same sentence or phrase as he used? *A.* I say it was approximately so and that everyone who was there grasped it assuredly as this.

Q. Are those the exact words that Meyer said? *A.* Yes, there may be only the word "and" missing or a little introduction.

Q. Or a little change of a word here and there? *A.* No, what I said is right.

Q. Now, I have read to you, from that, the words of Meyer. I want to read to you what you say as to Meyer's words in another portion of your examination. You have said that the words you have given in your testimony, as Meyer's words, are exact except for the odd "and"? *A.* Yes.

Q. I refer to the evidence you gave in London to Col Macdonald on the 5th day of September 1945, and I am going to compare the words again in answer 59 with those that I have just read:

"*Q.* Now, Jesionek, will you repeat, word for word, everything that you can remember Meyer having said at the time the guard went to the chapel and reported that he had captured the prisoners. I want you to remember everything that you possibly can that Meyer said on that occasion? *A.* What should we do with these prisoners? They only eat our rations."

Your answer before, when you said they were the exact words, were:

"What can we do with these men; their only purpose is to eat our rations."

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I was asking you if they were the exact words of Meyer. Can you give me the exact words of Meyer now? *A.* It is the same meaning whether I say "What should we do with the prisoners; their purpose is to eat our rations" or if I say "What should we do with the prisoners; they only eat our rations."

Q. Now, I want to point out in that last answer I read that your words are "I seem to remember – 'What should we do with these prisoners? They only eat our rations'" and then you say "I seem to remember that he said that in the future no more prisoners would be taken. He said this at the time he was in the chapel." At the time you gave that evidence you were not quite sure as to what Meyer did say, were you? *A.* The sense I know but not the precise arrangement of words. If the Defending Officer was there he too, after one year, would not have known the precise language.

Q. I can assure you of that. Now, Jesionek, will you say that the words as you gave in this court room today as coming from Meyer on the morning of the 8th were the exact words that Meyer said on that occasion? *A.* As far as I know they are right.

Q. Are you sure? *A.* Yes.

Q. Positive – no doubt? *A.* Without a doubt that is the right meaning.

Q. Now, in one part of your interrogation you mention that on the 8th of June Meyer had a Russian driver. Do you remember when you made that statement? *A.* Yes.

Q. Is that correct that Meyer had a Russian driver on the 8th of June? *A.* Yes.

Q. Did he have a Russian driver on the 7th of June? *A.* That was his best driver and he always had him with him.

Q. Is it not correct that he had his Russian driver with him at some time in Belgium? *A.* Yes, he had him along in Belgium.

Q. And did you see that Russian driver on the 8th of June? *A.* Yes, I saw him as we drove to the attack in the evening.

Q. If I suggest to you that you are in error and the Russian driver was in Germany at the time what would you say? *A.* That would not be correct for there are a number of witnesses who could testify that he was killed during the attack.

Q. Do you know if you are confusing that driver with the German driver that Meyer used? *A.* No, because his Russian driver was universally called "Michael" and it was well known that Meyer liked him and that he was always there when Meyer was.

Q. Do you remember giving evidence this morning about the officer who interrogated the prisoners at the Abbaye? *A.* Yes.

Q. Do you remember you said that the officer laughed and sneered at the prisoners? *A.* Yes.

Q. That was correct? *A.* Yes.

Q. Now I refer you to your examination of the 5th of September 1945, which you say you remember, and these questions and the ones immediately preceding are referring to this officer. I will read:

"*Q.* What was his manner towards them *(Meaning the prisoners)*? Did he appear to be getting satisfactory answers to his questions? *A.* He laughed at times.

Q. Was his manner towards the prisoners threatening or friendly? *A.* He was rather friendly."

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Do you remember that? *A.* Yes, at that time I could not find the exact expression to express his attitudes towards the Canadians.

Q. You don't know German very well then, do you? *A.* I understand everything and I can also speak it.

Q. Well, then, you knew what you were saying on that day then? *A.* One, sometimes, does not find the correct expression. I was speaking on the road and there I could not give any word that just came into my mind.

Q. When you went out into the courtyard after being in the chapel on the morning of the 8th, did you see Meyer again? *A.* No, I only saw Meyer in the evening as we started off for our attack.

Q. Could Meyer have left the Abbaye after you saw him in the chapel without you seeing him again? *A.* Then he would have to have used the rear entrance to the monastery.

Q. On the morning of the 8th when you were out on your recce or standing in this field at the north of the Abbaye, which you have already pointed out, did you see Meyer? *A.* I don't know which recce?

Q. The recce that you told me you went out on and came back and there was an air attack. *A.* Ah! That one – then I only saw Meyer in the chapel. I also saw him outside when he called "All vehicles must be brought in."

Q. Did you see him out on the recce, that you mentioned that you were out on, on the morning of the 8th? *A.* I only drove in the direction of Cussy when we ran onto our mines.

Q. Was Meyer around the Abbaye before you went out on your recce on the morning of June 8th? *A.* Before that I was not at Regimental HQ. During the night we guarded something and in the morning we came up to Regimental HQ and then we had to get onto our vehicles and drove in that direction.

Q. That is in the direction of Cussy? *A.* Yes.

Q. I understood you to say that the vehicles were in a field – a grain field and also along the path. *A.* When we came back from the recce, then they were put along there on the field path.

Q. Where were they before the recce? *A.* They were on the other side at the entry where there were these hedges.

Q. And that is the area which you first pointed out on the map, is it not? *A.* Yes.

Q. Did you see any sign of any generals around on the morning of the 8th? *A.* No. I saw no general. We arrived there; we got on our vehicles and we drove off. I only saw Meyer once we came back from that recce.

Q. You have said to us that you were an unwilling member of the SS? *A.* Yes.

Q. And you were captured on the 30 March 1945? *A.* No, I was not captured; I went across.

Q. You deserted on the 30 of March 1945. Is that correct? *A.* Yes.

Q. If you were unwilling to remain with the SS, why didn't you desert before? *A.* I want to say something about that. The Germans were still at my home and if I at that time had run across and anyone had seen me, then I can guarantee that my father would never have come out of the concentration camp.

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Q. How did your father come to get out of the concentration camp? *A.* My father was not in a concentration camp; he was only in a prison.

Q. Is it not a fact that you asked to have your father released from prison? *A.* No.

Q. You never asked that? *A.* No, I never asked that – he was released because I had been taken to the SS.

Q. Did you ever have any punishment given you while you were with the 25th Regiment or the 15th Company? *A.* No, I received no punishment.

Q. Did some of your friends receive punishment, some of your Polish friends? *A.* No, only those who stole something or otherwise committed a crime.

Q. Weren't there a few of your Polish friends who were put in jail for stealing? *A.* No.

Macdonald: *(Begins re-examination)* First, I would like to read a few parts that may be relevant in view of my friend's examination. In the ***examination that was held in Paris on the 29th May***,... while speaking of this word about prisoners and retaliation and so on, he used the word "Englishmen," but his speech was such that it was to be understood that no prisoners were to be taken:

"*Q.* Was that the impression that your comrades got as well? *A.* Yes.

Q. That is that you were not to take the English prisoners? *A.* Yes.

Q. Did you discuss it with your comrades and did they say that is what they thought as well? *A.* Yes, later when we came into the room this matter was then discussed.

Q. What did your comrades think about this order? *A.* Some said that an enemy without weapons was no longer an enemy.

Q. Did your comrades think that this was a good order which they would like to carry out? *A.* The majority did not think so."

Now I turn to the examination held on the 5th September 1945:

"*Q.* What was the officer laughing about at the time he was interrogating the prisoners? *A.* I don't know exactly why but it could be that the prisoners didn't answer his questions.

Q. Well, would he be laughing, then, because he was pleased, or because of something he intended to do? *A. (No audible answer.)*

Q. Let us put it this way: was his laugh a pleasant, pleased laugh, or was it one of derision at the prisoners? *A.* I would say it was a rather forced laugh. It was not a normal, pleasant laugh.

Q. Were the prisoners laughing also? *A.* No.

Q. In one case you say it appeared that one of them had been crying? *A.* Yes.

Q. Did you take it from this or anything else you saw that the prisoners, when they were talking to the officer, knew what was intended to be done with them? *A.* It could be."

Then he goes on... in the evidence given on the 29th May 1945 to tell about the orders given by von Buettner:

"*A.* In Le Sap we had company instruction and several subjects were discussed during which the company commander von Buettner said that when we go into action no prisoners of war would be

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taken. He also read some news about new English recce cars with great speed which were able to go backwards as well as forwards; and that the English artillery has so many guns that it can allow itself to shoot with several troops against one single section."

Now, on the ***examination held on the 6th June*** in London, which was the first one held in England:

"*Q.* On a previous day you related having seen the execution of seven Allied prisoners on the 8th June 1944? *A.* Yes.

Q. Did you hear on that day, or at any later time, any orders issued with respect to prisoners by Kurt Meyer? *A.* I heard no orders as regards prisoners except that Kurt Meyer said that in the future no prisoners would be taken.

Q. When did Meyer say that? *A.* After the seven prisoners had been brought in by the guard, Meyer said that no prisoners would be taken in future.

Q. Where was Meyer when he made that statement? *A.* He was in the chapel or the church that I have previously shown.

Q. To whom did he make that statement? *A.* He said that to all that were in the room including the guard who had brought the prisoners in.

Q. Was the statement then made in the presence of the guard who, you told us, went to the chapel with you? *A.* Yes, to this guard.

Q. When you were telling us about this the other day there is no record that you mentioned this and said that the commander talked to the officers in a low voice after having said 'what could we do with these men, their only purpose is to eat our rations'? *A.* Yes, after the Standartenführer had talked in a low voice to the officers around him he turned to all assembled and said 'no prisoners will be taken.'

Q. Will you repeat as nearly as you can remember, the precise words that Kurt Meyer used? *A.* In the first place he said in a loud tone, 'what shall we do with these prisoners who only eat our rations.' Then he said in a low voice to the officers around him; I could not hear any of this. Then he said for all those in the room, 'in the future no prisoners will be taken.'"

And then the witness was cross-examined by Maj F.C. Fraser, who was Assistant Examiner and who cross-examined on that very point, and I read:

"*Q.* Do you remember being questioned as to what took place at that time in the chapel, the other day? *A.* Yes.

Q. I wish to direct your attention to the evidence which you previously gave..:"

And then he reads what my friend did today, and to continue:

"*A.* As far as I know I did say it.

Q. You say, do you, that your evidence is not correctly reported in the transcript I have just read if it does not contain a reference to this statement? *A.* No, it is not correctly written if it does not contain a sentence by Meyer.

Q. To what sentence do you refer? *A.* The sentence which came after the conversation with the officer which was "in the future no prisoners will be taken. "

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Macdonald: For the purposes of the record and in fairness to the witness may I say that my recollection agrees with that of the witness. The interpreter did on the previous examination add further evidence which the witness volunteered with respect to something which Meyer stated and this was not followed up at the time. Through some misunderstanding the court reporter failed to record this evidence. My recollection was that the witness said that the statement was made by Meyer at the time in the chapel before the witness, the officer and the guard left. It was because this evidence did not appear in the transcript that I resumed the examination today just on that point. And to further clarify it I have called the interpreter here who will be the next witness called.

Macdonald: *(Resuming re-examination) Q.* Do you remember the names of any of your comrades who were in the courtyard at the time the shooting took place? *A.* Yes, Kajerski, Kotzik, then Von der Berg, and then numerous others of whom I do not know the names.

Q. Do you remember the names of two or more who went with you to look at the bodies? *A.* Yes, these were Kajerski and Kotzik.

Q. And if it were possible to locate them could they confirm all that you have said? *A.* Yes, they could.

Q. They were present and had the opportunity to hear and see things that you did, is that correct? *A.* No, not everything, they heard the shooting alright and then saw the seven Canadians and perhaps also the Unterscharführer who did it, but whether they were in the chapel, that I cannot say.

Q. Did you have some other members of your family in the German Army? *A.* Three half-brothers of mine.

Q. Were they in the Wehrmacht? *A.* Yes, and one was with the Flak.

Q. How many drivers, to your knowledge, did Meyer have? *A.* Perhaps three.

Q. Do you know them by name? *A.* No.

Q. Do you know what nationality they were? *A.* The other two were surely German.

Q. And do you remember having seen Michael, particularly on the 8th June? *A.* In the evening, as we started for the attack, there I saw him. Then it was told to me that he had been killed.

Q. You were wounded yourself that night, were you not? *A.* Yes.

Q. And did you return to your unit afterwards? *A.* No, I came to Paris and from Paris to Bad Salzhausen and from Bad Salzhausen I came to a Tank Recce NCO Training Unit.

Q. So that whatever you did hear about Meyer's driver being killed you heard after being wounded? *A.* No, the report of Meyer's driver's death came right at the beginning of the attack.

Q. Who told you about that? *A.* I can't remember their names, people of the 15th Company.

Q. Did you see Michael's body yourself? *A.* No.

President: *Q.* When you were at the Abbaye on the 8th, did you see any other Canadian prisoners besides those which (sic) were shot? *A.* Yes, before we drove to Authie to pick up that Unterscharführer I saw three or four Canadians who were led to the Regimental HQ. Of these, two were medical personnel and one was wounded.

Q. Now, this officer who talked to these seven men before they were shot, was he dressed in SS or Wehrmacht uniform? *A.* SS uniform.

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Q. And the Unterscharführer who did the shooting, how was he dressed? *A.* He had a camouflage smock which was tied on with strings. He wore camouflage trousers made of Italian tent material and he had a steel helmet on.

Q. Was he SS? *A.* Yes.

(*The witness withdraws.)*

President: The accused and escort may withdraw. The Court will adjourn until 10 o'clock tomorrow morning.

(At 1700 hours the Court adjourned until 1000 hours on 15 December 1945)

—

President: I declare the Court open...

Macdonald: I should like it first, sir, to have Maj Stonborough certify as to the translation of the document that was put in as ***Jesionek's original statement***. I think the Court will see the differences, such as they are, when Maj Stonborough reads his own translation as I read the other. The changes are not very substantial. There are one or two which I think should be brought to the Court's attention, starting at the statement itself. I might also say that this translation has been shown to Capt Lehmann and he tells me that it is a satisfactory literal translation. Starting at the first paragraph, I will read the first paragraph of Sgt Stern's translation and then Maj Stonborough will read the first paragraph of his translation.

"In the morning of June the eighteenth 1944, I escorted seven English soldiers which were taken prisoners by the fifteenth Reconnaissance Company of the twenty-fifth Regiment, SS Division, Hitlerjugend, back to our CP. CP was located in the vicinity of Bretteville near Caen."

Stonborough: "On the morning of the 8th June 1944, I brought seven English soldiers who were captured by the fifteenth Recce Company of the Twenty-fifth Regiment, SS Division Hitlerjugend to the Regimental HQ. This Regimental HQ was in the neighbourhood of Bretteville near Caen, France."

Macdonald: Regimental HQ is a correct translation, is it?

Stonborough: Yes sir.

Macdonald: "As I reported the above prisoners the Regimental Commander he hollered at me and asked me 'Why do you bring prisoners to the rear, those murderers only eat off our rations.'"

Stonborough: "Announced the prisoners to the Regimental Commander whereupon he shouted at me and asked 'Why do you bring the prisoners to the rear, the murderers do nothing but eat up our rations.'"

Macdonald: "Immediately, after he gave the order to the Executive Officer to have the prisoners shot."

Stonborough: "Afterwards he gave the Ordonnanz Offizier the order that the prisoners are to be shot."

Macdonald: I would like to point out that the Ordonnanz Offizier is a liaison officer or a junior staff officer, and in the American Army he is second-in-command of a unit.

Macdonald: *(Continuing reading the statement)* "I myself received the order to return to my unit, because there was a water pump in the yard, I washed up before I left."

Stonborough: "I myself received the order to return to my company. As in the courtyard there was a water pump and I, before doing so, washed myself."

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Macdonald: "As I was standing near the water pump I saw the following."

Stonborough: "As I was at the water pump I saw the following."

Macdonald: "An Unteroffizier of the SS Hitler-Jugend whose name is not known to me, went into a barn, where the prisoners were kept then. He took all papers from the prisoners there."

Stonborough: "An NCO (Unter Offizier) of the SS Hitler-Jugend whose name is unknown to me took all papers off the prisoners in a stable."

Macdonald: "After that the prisoners were sent, one by one, through an opening which is leading to a park. Every-time a prisoner passed that opening, he was shot from behind."

Stonborough: "Afterwards the prisoners were sent individually through an opening which led to a park. Each time a prisoner went through the opening he was shot from behind."

Macdonald: "When the shooting was over I convinced myself of the cruelties, which were committed on those seven prisoners by looking at their dead bodies."

Stonborough: "When the shooting was finished I convinced myself of the atrocities that were committed on the seven prisoners in that I looked at the bodies."...

Macdonald: "Later around I heard that Meyer's policy always was not to bring back any prisoners."

Stonborough: "Later on I moreover heard that Meyer was always intent on bringing back no prisoners."

Judge Advocate: You have read a translation of the first page of Exhibit T-39?

Macdonald: That's right. May I enter this now as an exhibit?

Judge Advocate: That will be T-40.

Seventeenth Witness for the Prosecution

Capt R.J. Pootmans, formerly Intelligence Officer, Headquarters 3 Canadian Infantry Division, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name, rank and unit? *A.* My name is Pootmans, R.J. My rank is Captain. My last appointment in the field was Intelligence Officer, Headquarters 3 Canadian Infantry Division.

Q. Where were you born, Capt Pootmans? *A.* In Regina, Saskatchewan.

Q. And have you lived on the continent of Europe? *A.* Yes sir, in Belgium, Brussels.

Q. And do you speak German? *A.* Yes sir.

Q. I believe that you returned to Canada and were demobilized and had entered as a student of McGill University, and have come here voluntarily to give evidence? *A.* That is correct, except that I was within a few hours of being [demobilized].

Q. You were not quite demobilized then? *A.* No sir.

Q. Now, did you on the 26th of May last accompany me and another officer, Maj Fraser, and others to Bayeux, Normandy? *A.* That is correct. I was sent back by my division to assist in the interrogation of a German prisoner.

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Q. Now, who were the others in that party? *A.* There was a court reporter,... a German prisoner by the name of Jesionek, an American guard and a couple of drivers.

Q. That is in addition to Maj Fraser and myself? *A.* That's right sir.

Q. Now, did any of the party other than yourself, to the best of your knowledge, speak German? *A.* No sir.

Q. And were you therefore the only person who had any conversation with the prisoner Jesionek? *A.* Right sir.

Q. Do you remember that on the morning of the 27th of May, that was Sunday morning, we went to the vicinity of Franqueville? *A.* That is correct. That is we went – we drove along to the highway and on the prisoner's suggestion we turned left along the road in the general direction of Authie.

Q. Who was in the car in which you were driving? *A.* Jesionek was sitting beside me, there was a driver and yourself.

Q. Now, as you were driving towards Authie, did Jesionek have any conversation with you? *A.* Yes. In the distance he spotted the building which he described as his Regimental HQ.

Q. And did we later go to that building? *A.* Yes. We first went to Authie and then went to that building.

Q. And what was the building? *A.* It was, I believe, the Ancienne Abbaye d'Ardenne.

Q. While we were at Authie, did the prisoner indicate anything there? *A.* Yes. He indicated a number of places where he had seen some Canadian bodies during the fighting.

Q. And did you at that time, or later in the day, take some photographs of the places he indicated? *A.* Yes sir.

Q. I now show you exhibits T-35, T-36 and T-37. Are these the photographs which you took? *A.* Yes sir.

Q. And then, when we went to the Abbaye, will you describe what occurred there? *A.* Jesionek, having pointed the place through which the [Canadian prisoners] entered into the Abbaye.

Q. I would like you to look at this photograph, Exhibit T-23. What does that show with respect to what you are now describing? *A.* That is the inside of the courtyard of the Abbaye.

Q. Is that the gateway through which we drove that morning? *A.* That's right.

Q. Is it through that gateway that the prisoner described the prisoners having been brought? *A.* That's right. Then having entered the courtyard the prisoner, that is Jesionek, pointed out various places where he had seen the Canadian prisoners.

Judge Advocate: Where he said he had seen them.

Pootmans: Yes sir... And began to describe the whole episode chronologically, exactly where he was, where the various German sentries were and indicating the road, or path rather, followed by the Canadians. During this I myself took a number of photographs.

Q. I now show you exhibits T-24, T-25, T-27, T-31, T-33, and T-34. Are these photographs that you took at the time? *A.* Yes sir.

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Q. Now, taking them in order – T-24. What is the significance of that picture? *A.* That is the pond where Jesionek was when he saw the prisoners.

Q. And he is there standing where he said he was at the time? *A.* Yes.

Q. And T-25? *A.* This photograph shows the stall where the Canadian prisoners were kept, the path they followed and the passageway towards the garden where they were shot.

Q. Now, which of these various doorways lead to the stall into which he said the prisoners were placed? *A.* The second one, where the cross is.

Q. And T-31? *A.* The prisoner there stands in the position of one of the German sentries in the passageway leading towards the garden.

Q. And now what is T-27? *A.* T-27 is a photograph of the chapel. That is the place which was described by Jesionek as being at the time the headquarters; that is at least where Meyer stood together with some of his staff and a number of persons belonging to the headquarters.

Q. And did he take up a position in the Abbaye in which Meyer was standing or did he indicate where Meyer was standing in the chapel? *A.* Yes. Jesionek gave a detailed description of the Abbaye – of the chapel rather – as it was, showing the position occupied by Meyer, where the schwimmwagen – the amphibious jeep or whatever it was, was, where he stood himself, and where a number of other officers and orderlies were.

Q. Now, did you take some more photographs around the Abbaye? *A.* Yes. After we had met some of the French people who were living around there who, we later found out, had discovered some bodies in the garden. They accompanied us to the garden and claimed that they had some bodies removed from that place. Incidentally, the place which they indicated was very close to the place shown by Jesionek as the spot where the Canadians had been shot.

Q. And now I show you Exhibit T-34. What is that? *A.* That is Jesionek pointing to the place where he saw the seven bodies.

Judge Advocate: Where he said he saw them.

Pootmans: Yes.

Macdonald: *(Resuming examination) Q.* I now show you T-33. What is that photograph? *A.* That photograph represents various members of the party standing in positions where bodies were found and removed.

Judge Advocate: According to the information you have received.

Pootmans: Well, yes.

Macdonald: *(Resuming examination) Q.* Now, in the afternoon, I believe, the evidence of the French persons that you have been speaking of, was taken and you acted as French interpreter at that time? *A.* That is correct, sir.

Q. And then the following morning at Bayeux we took the evidence of Jesionek and you acted as German interpreter on that occasion? *A.* That's right, sir.

Q. And we returned to Paris late that day and the following morning we took further evidence from Jesionek again on which you acted as interpreter? *A.* That's right, sir.

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Q. Now, did Jesionek tell you while you were at the Abbaye what language Meyer had used with respect to the seven Canadian prisoners? *A.* You mean what expressions he used?

Q. Yes. *A.* Yes sir.

Q. Will you repeat what he told you at that time? *A.* When the prisoners, the seven prisoners had been introduced, he mentioned after a while "what should we do with those prisoners? They only serve to eat our rations."

Judge Advocate: Who said that?

Macdonald: Meyer said those words?

Andrew: No. Jesionek said them.

Macdonald: *(Resuming examination) Q.* Is that what Jesionek told you at the Abbaye that Meyer had said? *A.* That's right. "And then later he mentioned in a loud voice, in future no prisoners will be taken." That is, Jesionek said that Kurt Meyer had said these words.

Q. Now, do you remember the ***occasion that Jesionek was examined*** at the Caserne Mortier in Paris? *A.* Yes sir.

Q. And do you remember that he was asked at that time this question:

"*Q.* What did Meyer say? *A.* The exact words I don't remember but he said something along the following lines – 'what could we do with these men? Their only purpose is to eat our rations.' By this time I had found my soap and towel and I went back towards the courtyard. As I was coming out of the chapel I saw an officer was standing with Meyer together with a guard. Together with Meyer were five or six officers."

Judge Advocate: Col Macdonald, this is your witness. You are now going to read him something that is part of an interrogation that he took?

Macdonald: That is right.

Judge Advocate: Why cannot that go in separately? All he has got to do is – you should read out those portions of the document that are admissable –

Macdonald: That is what I am doing. I am pursuing the plan that you suggested, that the question and answer should be read to the witness, and then he should be asked whether he remembers having given – having been asked that question and having given that answer. My learned friend brought this question up, and I am endeavouring, as I said yesterday, to deal with it.

Judge Advocate: Well, perhaps I misled you in the early stages. If you are going to ask the Court to allow you to treat this witness as hostile because he is giving evidence which is contrary to evidence which he has given before, you could put in his previous statement and then make your application.

Macdonald: Well, this particular evidence was all given through this particular witness. I don't know what Jesionek gave on this particular occasion, neither does the court reporter. Capt Pootmans is the only one who knows.

Andrew: That is not what was stated yesterday by my learned friend. He said that he heard what was said and that the omission had been made and now he is saying that Capt Pootmans is the only one who knows.

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Macdonald: I can only get my information from Capt Pootmans and he is the only one who heard the language in German and that is the closest we can get. I find out what he said through Capt Pootmans but I don't know what it was.

Judge Advocate: Capt Pootmans is here now and can give evidence as to what was said in the witness box, instead of having it all read to him. Now, if he cannot remember all that he said at that time then you can put in the document as part of the prosecution separately and apart from this examination. That surely would be the correct procedure.

Macdonald: Well, we are trying to keep these documents out, as a matter of fact.

Judge Advocate: After this witness is disposed of, you only need to read those parts of the document which you wish to put in and which are relevant.

Macdonald: That is exactly what I am doing.

Judge Advocate: If you have finished with the witness, you can put the document in.

Macdonald: I have not finished. I am going to read it and ask him if he can remember hearing it, and if the answer is correctly recorded.

Judge Advocate: If it is not really accurate he should give in evidence from the box that conversation as he remembers it; otherwise you are leading him.

Macdonald: I cannot see how it is leading if he is going to be asked to comment generally on it. He could give any answer he likes to it.

Judge Advocate: You have led him, you say to him in effect, "This was said at this time, was it not?" and he will say "Yes." We are trying to avoid a leading question. You can put it all in as a document or he can give his evidence without reference to the document. You can ask him now what was said at that time and he will give what he remembers.

Macdonald: It has already been put in twice.

Judge Advocate: Why put it in again? *(To Andrew)* Do you object?

Andrew: Yes, I do because this man did not make that statement. He only interpreted it. If this was the evidence of Pootmans then he could read it to him and say "Did you make that statement?" But, this is not the evidence of Pootmans and therefore should go in separately. He is placing words in somebody else's mouth, and that is not right.

Macdonald: I don't know then how one would go about correcting a typographical error if one occurred in the record and it came up in the course of subsequent proceedings.

Judge Advocate: *(To Macdonald)* I don't see why you should read this to the witness.

Macdonald: How am I to direct his attention to the matter we want him to comment on? I don't think we can ask him to remember everything that was said in the course of an interrogation taking a couple of hours.

Judge Advocate: If there is some particular point then you can direct your attention to it without leading, and ask him what was said and he can tell you without it being read to him.

Macdonald: I am quite willing to go at it any way you like, but I thought I was going about it the way you laid down.

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Judge Advocate: You must have misunderstood. If you want to apply to treat the witness as hostile you may base your application on previous contrary evidence of a witness.

Macdonald: *(Resuming examination)* Well, then, we will put it this way:

Q. Do you remember that morning that Jesionek was questioned as to what Meyer had said in the chapel with respect to the taking of the prisoners? *A.* Yes, sir.

Q. And do you remember what answer he gave? *A.* Yes. I remember part of it. It referred to the words that Jesionek had heard Meyer mention in the chapel, namely "In future no prisoners will be taken."

Q. Now, was that part of the answer which Jesionek gave to me in Paris when that question was asked him? *A.* That was part of the answer.

Q. And that was on the 29th of May when the evidence was taken? *A.* I remember it was a Tuesday. I think that was the date.

Andrew: *(Begins cross-examination) Q.* Capt Pootmans, in the witness Jesionek's interrogations, he says that a Canadian officer oriented him when he arrived at the Abbaye.

Macdonald: No, he did not say that. I am sorry. He did not say when he was at the Abbaye a Canadian officer oriented him.

President: Who is alleged to have said that?

Andrew: Jesionek.

President: No, he did not say that.

Andrew: In his interrogation, sir.

Macdonald: I think you should refer specifically to it. He did not mention the Abbaye.

Andrew: *(Continuing cross-examination) Q.* I will place it this way Capt Pootmans, so there won't be any argument about it. When you went into the area, Jesionek, in one of his interrogations, says that a Canadian officer oriented him. Do you remember that incident? *A.* The matter is quite simple. When we got close to the Abbaye, Jesionek was asked where were the Canadian prisoners who had gone into the Abbaye, and he pointed towards the main doorway I have indicated. Then the car drove right into the courtyard. We got out of the car and Jesionek was asked to describe what had happened, and he then pointed to these various places, because I don't believe that either Col Macdonald or myself knew about them, and therefore we couldn't direct him there...

Q. What did he mean when he said "oriented"? Did anybody give him any direction? *A.* I imagine he meant when we drove along the highway from Bayeux to Caen. But I must say in all fairness that the day before, when we were going to Bayeux, Jesionek was asked in the car whether he recognized any of these roads. Although he looked for hours and hours through the window of the car, he didn't recognize them. I must make it clear that we were coming on another road at that time.

Q. How many interrogations of Jesionek did you attend? *A.* The first ones, that is, through the last week of May 1945, and then as I was being repatriated I happened to be in London and I saw him for a short time while in London while he was being interrogated.

Q. Just twice? *A.* That's right.

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Q. And the first interrogation was quite a lengthy interrogation, the one in May? *A.* Yes, sir. It lasted two or three days.

Q. Now, at the Abbaye, when you were there with Jesionek, you have given evidence of certain words that he said relating to Meyer; is that correct? *A.* That's right, sir.

Q. Do you remember any other distinct words that Jesionek said on that occasion? *A.* Do you mean during the whole interrogation?

Q. No. No, I mean at the Abbaye. I was referring to the Abbaye; any distinct words? *A.* Well, do you mean specific words?

Q. Absolutely specific words, similar to what you have already given. *A.* Yes. I could give a whole string of it.

Q. Then, from May till now, you remember the conversation that Jesionek carried on at the Abbaye very well? *A.* Reasonably well, because he gave a very vivid and lively description and that part of it stuck reasonably well in my mind.

Q. One of the parts that sticks vividly in your mind is that part relating to Meyer in the chapel, is it not? *A.* No, I must say that the most vivid part was when he described the appearance of the prisoners coming out of the cell and also the way they were shot?

Q. And he was able to describe the incidents in the Abbaye on June 8th relating to Meyer, at the time you were with him? *A.* Yes.

Q. At that first interrogation of Jesionek, he had seen the Abbaye previously. Was he very clear as to what occurred in the Abbaye? I am referring to your first interrogation. *A.* Yes. He was surprisingly clear in that.

Q. And accurate? *A.* And accurate.

Q. And he was certain of what he was saying when he gave his evidence? *A.* Well, he gave his evidence quietly and in a thoughtful manner but on no occasion did I have any chance to find any flaw in it or anything that was incorrect as far as I could see.

Q. I mean his answers were given fluently and precisely as he was thinking? I mean there was no hesitation about them? *A.* That is correct.

Macdonald: *(Begins re-examination) Q.* Now, was any assistance given to Jesionek, of any description, in finding villages or Regimental HQ or anything else? *A.* No, sir.

Q. And was it left entirely to him to direct, through you, where the driver should take us? *A.* Yes. That is correct. Your very words were that he could go wherever he wanted.

(*The witness withdraws.)*

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EIGHTEENTH WITNESS FOR THE PROSECUTION

Madame Francine Vico, Abbaye Ardenne near Caen, France, being duly sworn, is examined by the Assistant Prosecutor, Lt-Col C.S. Campbell:

Q. Madame Vico, will you tell us your full name, please? *A.* Madame Vico, Francine.

Q. And where do you live? *A.* At the Abbaye of Ardenne.

Q. And how long have you lived there? *A.* Twenty-two years.

Q. Were you residing at the Abbaye Ardenne at the time of the invasion last year on the 6th of June 1944? *A.* No.

Q. Where were you then? *A.* At Bayeux.

Q. How did it happen that you were not living at the Abbaye Ardenne at that time? *A.* Because I had been arrested by the Gestapo, along with my husband. When I left prison I found that the Germans had requisitioned my house.

Q. And when did you get out of prison? When were you released from prison by the Gestapo? *A.* In the month of February 1944.

Q. And did you visit the Abbaye from time to time before the invasion, after your release from prison? *A.* Yes.

Q. How frequently? *A.* Once a week.

Q. Now, after the invasion, what was the first time you returned to the Abbaye Ardenne? *A.* On July the 10th.

Q. And did you live there from then on? *A.* No.

Q. When did you return for the purpose of residing there permanently? *A.* In the month of August.

Q. Can you tell us more precisely when it was in August? *A.* At the beginning of the month of August. I do not remember exactly.

Q. You are well acquainted with the Abbaye Ardenne and the buildings there? *A.* Very well.

Q. Would you understand a plan of the Abbaye if it were shown to you? *A.* Yes.

Q. I show you a plan of the Abbaye Ardenne, Exhibit T-1. Will you indicate, please, where you presently reside and where you have resided since the 1st of August 1944? *A.* Here *(Indicating)*.

Q. Will you mark these rooms with a "V," please?... *A. (The witness Vico complies.)*

Q. Where was your house before the invasion? *A.* Here *(Indicating)*.

Q. Just mark that with the letter "H," please. And please mark these two rooms up here and the house where you formerly resided. *A. (The witness complies.)*...

Q. Now, will you indicate the portion of the Abbaye which belongs to your husband and where you have resided for the last 22 years? What portion of the Abbaye grounds belong to your family? *A. (The witness indicated on Exhibit T-1.)*...

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Q. Now, at the northwest edge of the Abbaye there is indicated a large number of trees. What is that? It is really at the west end of the Abbaye, I should have said. The Abbaye is set diagonally. *A.* There... some tall trees, some smaller trees, and some undergrowth.

Q. And what was it used for by your family? *A.* It was a place which was not in use.

Q. Now, when you returned to the Abbaye in August, I suppose there were many evidences of the war? *A.* Yes.

Q. And what indications were there of the previous occupation of the area by German troops?

Andrew: She hasn't said anything about that. That is a leading question.

Campbell: *(Resuming examination) Q.* What were the indications of the area being occupied by any troops?

Andrew: She has not said that it has been occupied. I object. "Who was it occupied by?" or something like that.

Campbell: *(Resuming examination) Q.* All right, we will leave that. After your return to the Abbaye were there any Canadian officers or other ranks who called to see you there? *A.* Yes.

Q. Who were they? *A.* A few officers with a Canadian sergeant with whom we talked a little.

Q. And what was their business with you? What did they come to see you about? *A.* They were walking about the yard and during the course of the conversation the Canadian sergeant said that about forty of his friends had been massacred there.

Q. Did he indicate where that had taken place? *A.* No.

Q. When was he there? *A.* During the month of September [1944].

Q. Now, did you find any evidence of graves or anything of that character in your park? *A.* No.

Q. What was the first time you had any knowledge that there were any graves in the park? *A.* In the month of January [1945].

Q. Will you tell the court the circumstances under which that grave was found? *A.* During the month of December my son Jean Marie gathered together all the branches that were covering the ground in the little park. The ground, therefore, appeared bare. During the month of January my son Michel, age fifteen, was playing in the park. He began to dig in one spot on the grass. After a moment he found a bone which seemed to be a human jaw. He immediately came to fetch me. I saw the spot.

Q. Will you mark on the plan, Exhibit T-1, the place where you found the first grave with the letter "A"? *A. (Witness markes the location.)*

Q. What was done about that grave? *A.* First of all, my son Jean Marie came also. He also observed that there was a body. Afterwards my son covered up the grave again and Michel placed a cross on it.

Q. Was this reported? *A.* Yes.

Q. To whom? *A.* To the Civil Affairs in Caen.

Q. And what happened as a result of your report? *A.* On the 8th of February the proper services came to pick up the bodies.

Q. And they took the bodies away, did they? *A.* Yes.

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Q. Do you know how many bodies were in that grave? *A.* I witnessed the taking up of the bodies from the bottom of the park. I seemed to observe that there were five or six bodies but I am unable to give exact figures.

Q. Did you find any other graves in that park? *A.* Yes.

Q. And when was the next grave discovered? *A.* I discovered it myself at the beginning of March.

Q. And will you indicate on the plan Exhibit T-1 where that grave was with the letter "B"? *A.* Here...

Q. And was that grave reported also? *A.* Yes.

Q. And what happened as a result of that report? *A.* We were some time before seeing anybody.

Q. What did happen? *A.* A friend from Caen, M. Ormonde, came to visit us. This friend spoke and wrote English. We asked him to look after this matter for us.

Q. Well, what eventually happened? *A.* A few days later a Polish officer, whom I though came from the camp at Cormel, came, looked at the spot, and replaced the wooden cross with a metal cross.

Q. Did you find any other graves in that park? *A.* Yes.

Q. Under what circumstances was the next grave found? *A.* My son Jacques, twenty-three years of age, who was in the Leclair Division, came on leave. I spoke to him about what I had discovered. One day in mid-April approximately he went for a walk in the park. He knew the ground very well. He seemed to notice that there had been some sinking of the ground in the alley. He dug at that spot and after a moment he also found a body.

Q. Did you see that grave? *A.* Yes, I saw it immediately.

Q. Will you mark on the plan Exhibit T-1 the location of that grave with the letter "C"? *A.* Here...

Q. Now, were any other graves found in the park? *A.* Yes.

Q. Where were they? *A.* Next.

Q. Will you mark where they were found please, the first with the letter "D"? *A.* Here...

Q. When was the final grave found? *A.* During the first days of May.

Q. Will you mark on the plan, Exhibit T-1, with the letter "E" and show us where the fifth grave was found? *A.* Here...

Q. Now, from the time that you returned to the Abbaye on the 1st of August down to the time the first grave was found, was there any sign or evidence of any grave in the park that you could see? *A.* No.

Q. Were there any crosses? *A.* No.

Q. Or mounds of any kind? *A.* No.

Q. Did you look for any graves after the first one was found? *A.* Yes.

Q. And when did that search take place? *A.* Myself during the month of March.

Q. Now, during that period from the time you returned to the Abbaye down to the time when the final grave was found were you in the park frequently or just once or twice? *A.* Yes.

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Q. Can you tell the court whether there was any evidence of an effort to conceal the evidence of the graves there? *A.* I can say that you had to know the ground to be able to notice there was anything unusual.

Q. Well, what was it that you saw that indicated some effort to conceal the graves? *A.* At that time I didn't know anything about it. As I was walking I noticed in the centre of the lawn, in the middle, that there were flowers growing there which were not there originally, that were originally on the edge of the lawn.

Q. Anything else? *A.* The ground had sunk a little. Later when grave "E" was discovered I noticed that on the flower bed there, there was a tree missing. This tree had been planted by my children.

Q. Now, were you present when these graves were lifted? *A.* I was present at the removal of graves "B," "D" and "E."

Q. And how many bodies were taken away, do you know? *A.* I went there twice while the work was being carried out. I was at the entrance to the park. I saw several bodies laid side by side. My son Jean Marie told me that there had been eleven.

Q. Was grave "C" not lifted at that time? *A.* No.

Q. When was it lifted? *A.* I was not present at the taking away of the body.

Q. Now, is there anything else that was found at the Abbaye after you returned about which you think the Court should be told? *A.* Yes.

Q. Will you tell us about it please? *A.* My sixth son Michel brought me, while I was at home one day, two clubs.

Q. What kind of clubs were they? *A.* These clubs were approximately 55 centimetres in length.

Q. How big were they? *A.* At the bigger end about 50 millimetres and at the other end perhaps 30.

Q. Now, what did you notice about these clubs particularly? *A.* Yes, I noticed that one had bloodstains upon it, thick stains.

Q. Do you know where those clubs were found? *A.* The children told me they had been found here.

Q. Will you mark that place with the letter "F" please. *A. (Witness complies.)*

Q. Now, did both of these clubs have bloodstains on them? *A.* No.

Q. Just the one? *A.* Just one.

Q. What happened to these clubs? *A.* The children brought them back to the house.

Q. And what did you do with them? *A.* They were kept in the house approximately a month, or a month and a half perhaps.

Q. And what became of them? *A.* One day, while there were some changes being made, they disappeared. I thought that they had been put by mistake into the fire.

Andrew: *(Begins cross-examination) Q.* Before you went back to live at the Abbaye there had been Canadian or British troops living there, is that right? *A.* Yes.

(*The witness withdraws.)*

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(At 1140 hours the Court adjourned until 1150 hours the same day.)

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President: I declare the Court open...

NINETEENTH WITNESS FOR THE PROSECUTION

M. Jean Marie Vico of Ancienne Abbaye Ardenne, Normandy, France, being duly sworn, is examined by the Assistant Prosecutor, Lt-Col C.S. Campbell:

Q. What is your full name? *A.* Vico, Jean Marie.

Q. And where do you live? *A.* Abbaye of Ardenne.

Q. How long have you lived there? *A.* Since about twenty years.

Q. Were you at the Abbaye Ardenne at the time of the invasion on June 6th, 1944? *A.* No.

Q. When did you first return to the Abbaye Ardenne? *A.* On July 19th.

Q. And did you reside there from that time until now? *A.* I went between Bayeux and Ardenne from that date until the beginning of August and on the 1st of August we moved in for good.

Q. Now, when you returned in July your house had been pretty badly smashed up, I understand, and most of the property had been pretty well shelled? *A.* Yes.

Q. What evidence of previous occupation, if any, did you find in the Abbaye on your return? *A.* We found traces, or signs, of fighting and of the passage of Germans.

Q. Did you find any papers of any kind there? *A.* Yes.

Q. And what was done with these papers that you found? *A.* I gave them to some British or Canadian officers.

Q. I show you a green sheet of paper. What is that, if you know? *A.* It is a sheet of paper that I found next to a shelter which seemed to be a first aid shelter.

Q. Will you indicate on the plan *(Exhibit T-1)* where it was that you found that piece of paper. Just mark it on with the letter "G." *A. (Witness complies.) (Green sheet of paper found by the witness,... is entered as Exhibit T-41...)*

Q. After your return to the Abbaye to live, did you have occasion to be in the small part at the western end of the Abbaye grounds? *A.* Yes.

Q. What were you doing there? *A.* First of all, it was a spot where you passed through; secondly, I worked making bundles of firewood out of the branches that were lying on the ground.

Q. How did the branches come to be on the ground, do you know? *A.* It was because of the firing, because of the fighting.

Q. Now, how frequently were you in the park? *A.* I do not know, you went through the park several times a day.

Q. And how long did you work there cleaning up the branches and so on? *A.* Approximately three weeks.

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Q. And when was that? *A.* Around December.

Q. During that time did you see any evidence of any graves or crosses or mounds of any kind indicating a grave? *A.* No, absolutely nothing.

Q. Were any graves actually found there? *A.* Later.

Q. When was the first grave found? *A.* At the beginning of January 1945.

Q. Can you indicate on the plan T-1 where the first grave was found? *A.* Here... *(Indicates grave "A".)*

Q. Was this grave opened and the bodies removed? *A.* Not the first time.

Q. What do you mean by that? *A.* We first of all uncovered it, then about a month later, three weeks to a month, a British or Canadian officer, I am not sure, came to fetch the bodies.

Q. And how did you know it was a grave? *A.* Because we found bodies, or at least we found one body.

Q. Was the body moved by you or anyone who was with you at the time? *A.* No, we just made a small hole, I suppose you would call it a chimney; we found some flesh and bones, a jaw, then we immediately closed up the hole and left the graves alone.

Q. Were you present when this grave was lifted by the Allied troops, Canadian officer? *A.* No, as far as this grave is concerned, no. I arrived in the evening.

Q. Now, were other graves found in the small park? *A.* Yes.

Q. How many? *A.* Four others.

Q. And will you indicate on the plan T-1 where they were? *A. (Witness indicates the graves marked "B," "C," "D" and "E.")*

Q. Now, were you present at the time each one of these was discovered or immediately after it? *A.* Yes, I was present when the four other graves were discovered. As far as grave "C" is concerned, I arrived in the evening and I observed myself that my brother had discovered this grave.

Q. When these graves were discovered were they marked by you? *A.* Oh yes.

Q. How? *A.* By crosses that we made.

Q. Were you present when these bodies were removed from these four graves? *A.* Yes.

Q. Were the bodies all removed at the same time? *A.* No.

Q. How many were taken away? *A.* The first time six had been taken away. The second time eleven.

Q. And were you present when the grave "C" was lifted and the body taken away? *A.* I arrived in the evening. The grave had already been uncovered and I saw the body being taken away.

Q. Now, after the discovery of the first grave in the park, early in January, did you make any special search for graves there? *A.* Yes. The first grave had alarmed us.

Q. What did you do in the way of search? *A.* We made little holes in the places where we thought it likely that we might find graves.

Q. And you didn't discover any in that way? *A.* Yes.

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Q. Which one? *A.* Grave "B," with my mother. And the grave "D" my little brother started and I continued to work. And grave "E" with the French Gendarmes.

Q. Were any of these bodies moved by you? *A.* No.

Q. Now, did you discover anything else in the Abbaye grounds that you think the court ought to hear about? *A.* Yes.

Q. Will you tell me about it? *A.* What was most interesting, I suppose, was three clubs and an SS soldier, probably an NCO, above the entrance porch.

Q. Will you indicate to us on the plan where it was that you found the clubs? *A.* Here, *("F")* two clubs... and another here in the grass a few weeks later...

Q. What kind of clubs were these? *A.* They were made out of wood – oak.

Q. How big were they? *A.* At the thicker end about fifty-five millimetres in diameter, and the smaller end was about thirty-five.

Q. How long were they? *A.* The long part between fifty and fifty-five centimetres. They were all not of equal length.

Q. Now was there anything special about these clubs that you noticed? *A.* On one of them there were blood stains.

Q. What about the other two? *A.* On the others we didn't notice anything.

Q. Now, the one that had the blood on it, where was it? *A.* At the point "F" under some tiles.

Q. And the others, were they out in the open? *A.* The one of them was beside the first one, perhaps a little more uncovered. The other one was out in the open in the grass.

Q. And where was the body of the German soldier which you discovered? *A.* Just above the porch here.

Q. Will you mark that with the letter "K" please, a large "K"? Right over the entrance. *A. (Witness complies.)*

Q. When did you discover that body? *A.* About February perhaps.

Andrew: *(Begins cross-examination) Q.* After the Germans left the Abbaye, British or Canadians moved in, did they not? *A.* Yes.

Q. Was there any indication on the German NCO's body as to how he was killed? *A.* Yes. I believe it was from a shell fragment. He had a fractured skull.

Q. And did you find the body of a German officer anywhere in the Abbaye? *A.* No. I imagine this one here is a non-commissioned officer.

Q. Do you know of anybody who found the body of a German officer in any of the buildings in the Abbaye? *A.* There were graves with an officer in the bottom but I did not see anybody.

Q. Nobody found the body of another German in the buildings, is that correct? *A.* There is only this one.

(Prosecution declines to re-examine the witness.)

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President: *Q.* Monsieur Vico, did you notice anything out of the ordinary about any of the bodies which you saw? *A.* On the Canadian bodies?

Q. Yes. *A.* Yes.

Q. What? *A.* Traces of bullet wounds – holes in the head.

(*The witness withdraws.)*

TWENTIETH WITNESS FOR THE PROSECUTION

Capt P.S. Bell, 2 Canadian Graves Concentration Unit, being duly sworn, is examined by the Assistant Prosecutor, Lt-Col C.S. Campbell:

Q. What is your rank, name and unit? *A.* Capt Percy Stevens Bell, 2 Canadian Graves Concentration Unit.

Q. How long have you been employed as an officer at 2 Canadian Graves Concentration Unit? *A.* From the 19th of July 1944 until the 21st of November 1945.

Q. In what capacity? *A.* Concentration officer.

Q. Now, did you have occasion to concentrate bodies from the Abbaye Ardenne? *A.* Yes sir.

Q. Will you tell us how you happened to be there? *A.* I had received a report that there was an unknown Canadian officer buried in one of the yards of the Abbaye Ardenne and in endeavouring to find the grave I came upon a cross that appeared to have been erected by French civilians engraved "ici repose un soldat."

Q. Now, I show you a plan of the Abbaye – Exhibit T-1. Could you indicate to me, to the Court, the place where you found that cross? *A.* It would be in this small park in which the letter "A" is marked.

Q. Did you open the grave? *A.* After enquiring from Madame Vico who lived in the Abbaye Ardenne as to whether it was a French soldier's grave, she said she did not know but one of the men working around there had seen a boot and recognized it as a soldier's boot and I ordered that the grave be exhumed.

Q. What did you find? *A.* I found the bodies of six Canadian soldiers, sir.

Q. Would you describe to the Court the type of grave they were in and the positions they were in? *A.* There in a grave approximately two feet deep and four feet square. They were in two layers, three soldiers buried side-by-side with their heads facing towards the main buildings of the Abbaye and underneath them there were three soldiers with their heads in the opposite direction.

Q. Were they buried in blankets or how? *A.* No sir. They were just in their battledress and three of them had no boots on. The other three did.

Q. Did you notice anything particularly about this grave apart from the fact that there were such a large number (of bodies) in it? *A.* Well, the grave, sir, did not appear to be a burial by our own troops.

Q. Why do you say that? *A.* Well, up to that time I had concentrated several thousand Canadian soldiers and it was the first grave of that type that I had run across.

Q. Was there anything else about the bodies that you noticed that was unusual? *A.* Due to the fact that I at first thought there was only one soldier there and I did not know his identity, I was present and su-

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pervised and gave instructions that all due care be taken so that if there were identity with the body it would not be destroyed in the exhumation.

Q. Yes, carry on. *A.* We got the first body out and I examined the body – searching the clothing. There were no personal effects on the body. I found the identity disc. There were two on the body and in searching the body I noticed a wound at the back of the head which appeared to be a small calibre bullet wound.

Q. Yes? *A.* After we had got the first body out I saw that there were more bodies in the grave and we had them brought out one at a time, and I examined them and identified all but one and each of these bodies that were in the grave, I found that they all had head injuries which appeared to be bullet wounds.

Q. Did they have any personal effects on them at all? *A.* No sir.

Q. And how were they identified? *A.* I identified the number, rank and name by the two identity discs on the cord worn around the neck and their regiments by the shoulder flashes on their battledress.

Q. And what about the sixth one? *A.* The disc on the sixth one was very blurred, sir, and I did not want to blur it any further so I sent for our identification increment who deal with all unknowns, to come out to the place which they did after lunch and took dental charts and examined the body.

Q. Can you tell us who these six bodies belonged to? *A.* Yes sir.

Q. Have you got your original work sheets with you? *A.* Yes, sir. I also prepared a certified extract from the work sheet on these chaps who were there.

Campbell: With the indulgence of the Court I wish to enter this certified extract because the original documents belong to his unit. The certified extract bears his signature as being an extract from the records. *(Certified true extract from work sheets of Captain P.S. Bell entered as Exhibit T-42...)*

Witness Bell: *(Continuing the answer)* According to this document the five known bodies were: Trooper Gill, G.V. – CAC; Trooper Henry, T. – CAC; Trooper Bolt, K.J. – CAC; Private Doucette, C. – North Nova Scotia Highlanders. The other one is listed as 2GC/UNK/169.

Q. Were you able to discover subsequently whose body was 2GC/UNK/169? *A.* Yes. It was later identified as F-45209 Pte Ross, J.A., Canadian, United Church.

Q. That was taken from the identity disc, was it? *A.* Yes sir.

Q. Now, were you present when an autopsy was performed on these bodies? *A.* Yes sir.

Q. When and where? *A.* The autopsy was carried out on the 9th of June 1945 at Beny-sur-Mer Canadian Permanent Cemetery.

Q. Were you responsible for the exhumation and examination of the bodies for the benefit of the pathologist? *A.* Yes sir.

Q. And who was the pathologist? *A.* Lt-Col R.H. MacKeen.

Q. You referred earlier to searching for a body of an unknown Canadian officer. Did you find that grave? *A.* Yes sir.

Q. Would you mark on plan T-1, if you can, the place where the grave was found with the letter "L"? *A. (The witness complies.)*

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Q. That indicates it is close to a stone wall on the west side of Abbaye? *A.* Yes sir. It was about eight inches from the stone wall. I had the grave exhumed and all that I could find was that it was a lieutenant and he wore shoulder flashes of the Stormont, Dundas and Glengarry Highland Regiment.

Q. What was done with the body? *A.* Our identification increment examined the body and it was buried under the classification of 2GC/UNK/168.

Q. Had the body any personal effects on it? *A.* No, sir, there were no personal effects, no identity discs, and the body was in a very bad state of decomposition – practically down to just bone.

Q. And where was that body buried? *A.* The body was buried at Beny-sur-Mer, plot seven – row "F" – grave eleven.

(The Defending Officer, Lt-Col Andrew, declines to cross-examine the witness.)

(*The witness withdraws.)*

President: Will the accused and escort withdraw. The Court will adjourn until 2 o'clock.

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TWENTY-FIRST WITNESS FOR THE PROSECUTION

Lieut Roger Cloutier, No. 2 Canadian Graves Concentration Unit, being duly sworn, is examined by the Assistant Prosecutor, LT-Col C.S. Campbell (Maj Stonborough acting as German interpreter):

Q. What is your name, rank and unit? *A.* Lieut Roger Cloutier, No. 2 Canadian Graves Concentration Unit.

Q. How long have you been an officer of the 2 Canadian Graves Concentration Unit? *A.* I have been employed with this unit for about ten months.

Q. Were you employed with this unit in the month of May 1945? *A.* Yes, sir.

Q. And for how long before that? *A.* Since last February (1945).

Q. Now, in the course of your duties did you have occasion to concentrate certain bodies from the Abbaye Ardenne? *A.* Yes, sir.

Q. When was that? *A.* On the 7th of May 1945.

Q. I show you a plan, Exhibit "T-1." Can you tell me from that plan where the graves were that you exhumed and moved the bodies for permanent burial? *A.* Yes, sir.

Q. Will you just indicate on that plan where it was. *A.* The grave was located in a small park *(... at the west end of the grounds of the Abbaye Ardenne)*.

Q. How many graves did you find there? *A.* I found four graves.

Q. Did you lift all the bodies in these graves? *A.* I lifted the bodies from three graves and left the other one because I could not identify him.

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Q. How were you able to know that there were graves there? *A.* Because the graves were marked with wooden crosses. Three graves were marked with wooden crosses and one was marked with a steel cross.

Q. We have been told this morning that a Polish officer came and put up an iron cross in the small park on one of those graves. Have you any idea who that officer might be? *A.* Yes. It is the Polish officer from 3 Canadian Graves Registration Unit, Lieut Sikora.

Q. Now, will you tell the court what was done with respect to each one of these graves? *A.* Each grave was opened and at the first one we didn't know how many bodies were in this grave. We lifted up the first body and identified it by the disc and wrapped it in a blanket and a concentration tag was put on it with his name and regimental number.

Q. Now, will you, by reference to the plan there, if you can, indicate how many bodies you got from each of those graves? *A.* From the grave marked with the letter "E" I found four bodies.

Q. Will you tell us about that grave and the method of burial? *A.* Well, the grave was just about the size – large enough for one man. It was about two feet deep and we found four bodies in it. It seemed to me they had just been pushed in because some were lying on their back or on their side or on their stomach.

Q. Were there any blankets around these bodies? *A.* No, sir.

Q. Now, you have told us about one grave. Will you tell us about the rest? *A.* The second grave marked with the letter "C" contained one body and that is the grave – that is the body that we could not identify.

Q. Was that body removed? *A.* No, the body was not removed.

Q. Was it moved at all? *A.* Not at all.

Q. And you say you were unable to locate the disk? *A.* No. We could not find the disc where it was supposed to be, in its proper place, around his neck or under his tunic.

Q. Will you tell us about one of the other graves? *A.* The grave marked with the letter "D," two bodies were found in that grave.

Q. How did you find the bodies in that grave; or how were they buried? *A.* There were two bodies in that grave and they had no blankets and they were side by side. And the last grave we found is marked with the letter "B." Five bodies were found in that grave.

Q. And how were they placed in the grave? *A.* Well, it seemed that they had just been pushed in. They had their heads all in the same direction, some on their side or on their back or on their stomach, or one on top of the other.

Q. How many bodies did you remove altogether from those three graves? *A.* Eleven bodies.

Q. Did you have any occasion to notice the nature of the injuries which might have caused their death? *A.* I did later when the bodies were exhumed by Col MacKeen. I was present then.

Q. You didn't pay any particular attention to the injuries at that time? *A.* Not then, sir.

Q. Now, what was done with these bodies? *A.* The bodies were concentrated in Bretteville-sur-Laize Canadian Permanent Military Cemetery.

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Q. Now, have you got your original work sheets, or records there? *A.* Yes, sir.

Q. And have you prepared an abstract from them covering the eleven bodies which you have just described? *A.* Yes, sir.

Q. You have certified here *(Indicating document)* with your signature that this is a true extract from your official records? *A.* Yes, sir.

Campbell: With the indulgence of the court may we put in this abstract rather than put in the original as an exhibit.

Judge Advocate: It will be Exhibit "T-43."...

Campbell: *(Resuming examination) Q.* Now, this extract shows that the following bodies were lifted by you and removed to the Bretteville-sur-Laize Cemetery and placed in the graves which are numbered here: "Lt. Windsor, T.A.L.; Pte. Millar, G.E.; Pte. Doherty, W.M.; L/Cpl MacIntyre, J.F.; Tpr Philip, H.; Pte. Macdonald, H.A.; Tpr Lockhead, R.; Pte. Moore, R.; Pte. Crowe, I.L." Is that correct? *A.* Yes, sir.

Q. Did you personally supervise the exhumation and the burial of these bodies? *A.* Yes, sir.

Q. What was done with respect to the "unknown" that you were unable to identify? *A.* I placed a registration cross on his grave with a tape marked as an "unknown" Canadian soldier.

Q. Now, did you have further official information about that grave? *A.* Yes, sir. Later on we were advised by the British Concentration Unit that they had concentrated the body in a British Cemetery and that they had identified him as Pte. McKeil.

Q. Were you present at the time the autopsy was performed by Lt-Col MacKeen at the Bretteville-sur-Laize Cemetery? *A.* Yes, sir.

Q. When did that occur? *A.* It was around the 9th of June, 1945.

Q. And what was your part in that autopsy? *A.* I was responsible for the exhumation and the reburial of the body.

(The Defending Officer declines to cross-examine.)

(The witness withdraws.)

TWENTY-SECOND WITNESS FOR THE PROSECUTION

Capt Norman Wallace, 39 Graves Concentration Unit (British Army), being duly sworn, is examined by the Assistant Prosecutor, Lt-Col C.S. Campbell:

Q. What is your name, rank and unit? *A.* I am N. Wallace of 39 Graves Concentration Unit.

Q. That is a British Unit? *A.* A British unit, yes.

Q. And in what capacity do you serve in that unit? *A.* I am "B" Section Concentration Officer.

Q. And where was your unit stationed in the month of May 1945? *A.* In Bayeux, sir.

Q. And, in the course of your duties, did you have occasion to concentrate a body or bodies in the vicinity of Abbaye Ardenne? *A.* Yes, sir.

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Q. And, in more particular, on the 25th of May of this year? *A.* Yes, sir.

Q. Where precisely was that grave? *A.* At the spot marked "C" on the plan *(T-1)*.

Q. How were you able to find the grave? *A.* I found a pre-fabricated metal cross with a tape across the front and written in English "Unknown Soldier." This is a usual registration cross.

Q. Now, was the grave opened and the body removed by you? *A.* Yes, sir.

Q. Will you describe the grave, please? *A.* The grave was shallow; I would say between one foot to eighteen inches in depth. It was oval in shape and I should say, in length, about four feet, six inches.

Q. Now, will you describe the position of the body and the condition of the body? *A.* The soldier in the grave was doubled up in a curious position. He was lying on his right side with his hands above his head. His knees were also doubled up towards his stomach. The body was badly decomposed.

Q. Now, when you say the body was badly decomposed, I do not suppose you want to offer any advice as to how long the body had been in the grave? *A.* Well, I should say, from experience, about one year, sir.

Q. Was there any evidence that the body had been moved previously? *A.* No sir, none whatsoever.

Q. How do you arrive at that conclusion? *A.* Well, if a grave is opened and a body moved, the action of the air on the body tends to make it decompose a lot quicker than is usual. In this case, however, the head was still attached by tendons to the body and, therefore, in my opinion, it could not have been moved formerly.

Q. How were you able to identify the body? *A.* I found two discs, the red and the green ones, imbedded in the right side of the neck.

Q. And what did the discs indicate? *A.* The discs read: "F-50175 McKiel, H.L.," and he is a private in the Canadian Army.

Q. Did you prepare a concentration report for your superiors? *A.* I did, sir.

Q. Have you prepared a copy or an abstract from that report? *A.* Yes, sir.

Q. Is that your signature *(Indicating document)*? *A.* Yes, sir.

Judge Advocate: That will be Exhibit "T-44."...

Campbell: *(Resuming examination) Q.* Now, did you notice anything about whether there were any injuries to the body? *A.* Yes, sir. The French civilians had told me before I went to concentrate this body that he had been shot in the head. I therefore paid particular attention, but I cannot remember any marks on the head; but he did have a wound in the left shoulder.

Q. And how was this indicated? *A.* He had a field dressing on it.

Q. Was there any evidence of any injury to the head at all? *A.* Well, the lower jaw was missing, sir, and I searched around and I couldn't find it.

Q. And what was done with the body? *A.* The body was concentrated to the Ryes British Cemetery in plot 2, row "D," grave 1.

(The Defending Officer declines to cross-examine.)

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(The witness withdraws.)

Macdonald: The next witness, sir, is a pathologist, Col MacKeen, who will give evidence with respect to the examinations he made on these bodies and with the consent of my friend Col Andrew I would like to ask the permission of the court to read his previous testimony. I think we will get it before the Court quicker that way and it is not in dispute to any great extent.

President: Now, when you read this you will have to pause and give an opportunity for the interpreter to interpret it.

Macdonald: Well, these documents have been in possession of my friend.

President: I know but there are German civilians at the back of the Court who have been following this thing.

Macdonald: Very good, sir.

Interpreter (Stonborough): Sir, many of the medical terms are very difficult and at any rate I am not competent to state what they are. If I can summarize or make a comprehensive statement.

President: That will be all right.

Macdonald: I don't know what is keeping the witness. He was warned to be here at 2:15. Perhaps, then, I will read another affidavit, one of Mills, "***Affidavit of Ex-Private John Garvis Mills***, sworn at the City of Toronto on 14 November 1945, before James Lloyd Downey, a notary public:"

"I, ex-private John Garvis Mills, formerly permanently residing at the village of West Mount North, on the island of Cape Breton, in the province of Nova Scotia, and now residing at 369-A Yonge Street, in the City of Toronto,... concrete block manufacturer, make oath and say as follows:

1. I enlisted in the Canadian Army in December of 1942 and was allotted Regimental No. F-76341 and proceeded overseas and was taken on strength of the North Nova Scotia Highlanders, C.A., in October of 1943.

2. I was struck off strength of the Canadian Army on 22nd day of September 1945 from No.6 District Depot at Halifax, Nova Scotia, having returned to Canada from overseas on or about the 10th day of July 1945.

3. On D-Day 6th June 1944 I proceeded with my Unit, the North Nova Scotia Highlanders, from England in the invasion of Europe and landed in Normandy on said 6th June 1944 and on D plus 1 day, namely 7th June 1944, my unit had advanced in the following formation. B, C & D Companies were forward and my company, namely A Company, was in a reserve position, proceeding towards the village of Caen. The forward companies had been practically over run by the Germans, and in fact were practically wiped out and therefore we were practically surrounded and there were about 120 men out of A Company, including myself, captured by the enemy, who were S.S. Troops. This would be at about 1630 hours on said 7th June 1944. I do not remember the name of the place where we were captured.

4. After we were captured and taken as prisoners of war, the aforesaid group of 120 men were marched from there towards Ancient Abbaye Ardenne, a distance of about 1-1/2 miles. Out of this group there was a smaller group of between 8 and 10 men including myself and we were forced to push 3 disabled German motorcycles up the hill to Ancient Abbaye Ardenne.

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5. Pte James Moss, who was well known to me, was one of the prisoners of war included in the group of 120 men, and he and myself and the rest of the whole group of 120 men, all went into the Abbaye, which Abbaye was also being used as a Headquarters, and also as a stable.

6. At about 1700 hrs on the said 7th June 1944, and after we had gone into the Abbaye, the main body of prisoners had been formed up into 4 rows and we were coming up to join them. At that time a German NCO, a S.S. Trooper of the rank equivalent to Corporal, to whom I was very close, asked for 10 men and he did not give any reason for his request. I saw Pte James Moss at that time and he was very close to me because he was coming up to join the main group. The NCO picked on the men who had just come up to join the main group to form his group of ten, and I think Pte James Moss was one of the ten picked. I figured, in my mind, that these 10 men were wanted by the Germans for interrogation purposes. These 10 men were marched out and I never did see them again and I think that Pte James Moss was with them, but I am not positively certain. I, not liking the smell of things, purposely avoided being selected by this German NCO and was able to get away unnoticed and to join the main body of prisoners in the Abbaye and therefore was not selected.

10. I am unable to give the names of any of the 10 Canadian soldiers who were selected as aforesaid, except Pte James Moss, and as before state, I truly believe that Pte James Moss was one of the 10 Canadian soldiers selected, but I am not positively certain. I do know, however, that he disappeared at that time and I have never seen him since, and I truly believe that had he not been so selected, that I would have seen him, because we were close friends and he would have got in touch with me."

Macdonald: *(To Andrew)* Have you any questions?

Andrew: No, I have nothing.

Twenty-third Witness for the Prosecution

Lt-Col Robert Albert Haliburton MacKeen, RCAMC, formerly officer-in-command No. 1 Canadian Base Laboratory, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Q. What is your name and rank? *A.* Robert Albert Haliburton MacKeen, Lt-Col RCAMC.

Q. I believe, Col MacKeen, that you had been repatriated and were about to be demobilized in Canada? *A.* Yes.

Q. And have been brought back especially to give evidence at this trial? *A.* Yes.

Q. What was the last appointment which you held in the Canadian Army? *A.* Officer in charge of No. 1 Canadian Base Laboratory.

Q. And what are you special medical qualifications? *A.* Graduate of McGill University in 1924. I was an intern from three years in Montreal General Hospital. I then spent two years at the Mallory Institute in Boston specializing in Pathology. I then held the appointment of Assistant Professor of Pathology and Bacteriology at Dalhousie University in Halifax and in 1934 I became Provinicial Pathologist for the Province of New Brunswick.

Q. And were you holding that appointment at the time of your entry into the Canadian Army? *A.* I was.

Q. And did you hold any special certificates of qualification? *A.* I have the certificate from the American Board of Pathology as a Specialist in Pathology and since returning to Canada I have just learned that I have a certificate from the Royal College of Physicians and Surgeons of Canada.

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Q. And have you in the course of your employment as a civilian and also in the Army had occasion to make examinations of a large number of bodies for the purpose of determining the cause of death? *A.* Yes.

Q. How many of such examinations have you made during the course of your employment in the Army? *A.* About one hundred and thirty.

Q. Now, do you remember, Col MacKeen, giving evidence to Lt-Col J.H. Boraston and myself at Supreme Headquarters Allied Expeditionary Forces at Versailles on 8 October 1944? *A.* I do.

Q. And again on the 11th of October? *A.* Yes.

Q. I propose now to read to you the evidence which you gave at that time as it is recorded in the ***Report of the SHAEF Court of Inquiry*** respecting matters at Authie. Will you correct me if anything I read to you is not in accordance with your recollection of the facts or the evidence that you gave at that time? *A.* Yes.

Interpreter (Stonborough): I will summarize the whole thing, sir.

Judge Advocate: You are satisfied with that, are you, Col Andrew?

Andrew: Yes. I understand I have the right to cross-examination.

Judge Advocate: Otherwise the witness would have to give his own evidence.

Andrew: Yes, I understand.

Macdonald: Exhibit 53 to *SHAEF Authie Report*:

"Lt-Col Macdonald: You have already given evidence in this case, Col MacKeen, and you were qualified at that time as a pathologist? *A.* Yes.

Q. Did you, at the request of the Court, go to a village of Authie and examine the bodies of certain Canadian soldiers? *A.* Yes.

Q. When did you do this? *A.* On the 5th October 1944...

Q. We will take the first man whose body you were requested to examine, which was Pte Nichols? *A.* The first body to be examined was Pte W. Nichols, F-65694, identified by discs. It was in grave 29 in the row numbering from the grave nearest to the road...

Q. Is this the communal grave in which some 37 bodies are said to have been buried? *A.* Yes it is. The body was clothed in the usual uniform but the battle dress was not present. Head: the scalp was almost completely decomposed, but a few tags remained. The left side of the skull showed a fracture and portions of the bone were missing. The fracture involved the mastoid, the squamous portion of the temporal, the wing of the sphenoid and the orbital portions of the frontal bone. The brain was completely decomposed. Body: The skin of the chest, back and abdomen showed no bullet wounds. The internal organs were badly decomposed. There was severe laceration of the tissues of the right thigh and the skin and muscles were badly decomposed. There was a comminuted fracture of the right femur one inch above the adductor tubercle. Summary: Fracture of the skull, fracture of the right femur.

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Q. Would the injuries to the skull that you found be caused by a blunt or sharp instrument, or by bullets, or some other means? *A.* It is difficult to state what caused this fracture, as portions of bone had fallen out and thus vital evidence is lacking. I consider it unlikely that it could have been done by a sharp instrument alone, as some of the parts involved are among the densest portions of the skull. It could have been done by a blunt instrument.

Q. Could it have been caused by a number of bullets fired into the skull? *A.* Yes, but definite evidence of such is lacking.

Q. Was the injury to the right leg of such a character as to have made it difficult or impossible for the man to have walked? *A.* It would have made it practically impossible for him to have done more than hobble a few steps.

Q. Were you able to find any evidence from which you could say what caused the fracture of the right leg? *A.* No, because the skin and tissues were too badly decomposed. It might have been due to a single bullet or a mortar or shell fragment.

Macdonald: I should like to point out at this stage so that the Court will get the significance of this that it is suggested that this is the body of the man who was bayonetted in the square. There will be other evidence later on to show that he was in the vicinity at that time. (*Continuing to read...)*

"*Q.* Will you go on to the second body? *A.* The second body to be examined was that of Pte J.D. Hargreaves, G-52751 identified by disc. This body was in grave 24 of the series. Clothing: No battle dress blouse present, otherwise the clothing was as usual. Head: The eyes were decomposed but the orbital plate on the right side was smashed as though due to an exit wound. In the occiput, just above the external protuberance, there was an entrance bullet wound one-quarter inch diameter. The inner edge of this hole was on the midline, while the rest of the circumference was on the right side of the midline. The brain was completely decomposed. Body: No external wounds of chest, abdomen or back were found. Limbs: Right leg showed a comminuted fracture of the tibia fibula at the juncture of the upper and middle third. The soft tissues of the legs were almost completely decomposed. Summary: Small-calibre bullet wound of the head from the back, directed slightly upwards. Fracture of both lower legs.

Q. Is it possible that the bullet wounds could have been sustained by the man in a lying or prostrate position? *A.* You mean the one in the head?

Q. Yes. *A.* Yes, if he was lying on his stomach.

Q. Did you find any evidence as to whether this shot had been fired at a close or distant range? *A.* It is probable that it was fired from short range as it penetrated the skull and came out the other side.

Q. Was there any other evidence of it having been fired at close range? *A.* No.

Q. Was the bone shattered at all? *A.* Not the occipital bone where the bullet entered, but the orbital portion of the frontal bone was broken outwards but as it is thin it does not signify to the same extent.

Q. Is it possible that the injuries to both legs could have been sustained from the same missile? *A.* Yes. The fact that they were both fractured at nearly the same level would suggest that to me.

Q. Were you able to form any opinion as to the type of missile? *A.* No, because the evidence of entry of the missile is missing.

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Q. Would the man have been able to walk with these injuries to his legs? *A.* No.

Q. Is it possible that there may have been other injuries to his legs? *A.* There may have been other wounds in the soft tissues, evidence of which was lacking at the time of examination due to the extent of decomposition.

Q. Could these injuries to the legs have been caused by a bullet? *A.* Yes.

Q. Could they have been caused by a shell or mortar fragment? *A.* Yes.

Q. Will you go on to the next body? *A.* The third body to be examined was that of Private L. Brown, F.55789, identified by disc in the respirator. Clothing: Full battle dress was present and it showed the flashes of the North Nova Scotia Highlanders... Summary: Multiple stab wounds in the chest and abdomen, lacerations of the heart, lungs and intestines.

Macdonald: Is the evidence which you have given with respect to the three bodies correct? *A.* Yes.

Macdonald: Now we turn to page 5 of exhibit 53:

"The fourth body was that of Pte J.B. Murray, F. 60127. Battle dress was complete and the shoulder flashes were those of the North Nova Scotia Highlanders. No identity disc was found... Summary: Small-calibre bullet wound in the right arm, fracture of the humerus, multiple fractures of the skull.

Q. Were the fractures to the skull consistent with their having been caused by small arms fire? *A.* They could have been caused by small arms fire if the skull had been hit in several places, with resultant multiple fracture and fragmentation of bone, which would result in falling-out of the bone when decomposition of the scalp became advanced.

Q. Had the wounds in the arm been dressed? *A.* No.

Q. We will go on to the next body. *A.* The fifth body was that of Private A. Julian, F.55226, identified by discs... There was a wound 1/2 inch in diameter on the superior aspect of the right shoulder. There was a comminuted fracture of the head of the humerus, and an exit wound in the axilla. Summary: Bullet wound in the right shoulder, fracture of the humerus, shell wound of the skull."

Macdonald: Now, is the evidence which I have just read with respect to these last two bodies, Murray and Julian, correct? *A.* Yes.

Macdonald: *(Continuing to read)*

"Lt-Col Macdonald: Was there any evidence that the wound in the right arm had been dressed? *A.* No.

Q. Did you find any shell fragments? *A.* No.

Q. Did you not think it should have been present if this injury had been due to a shell fragment? *A.* The portion of bone was not present; it came out of the skull. It is quite possible that the portion of shell fragment may have come out at the same time.

Q. Is it possible that glancing bullets might have caused such an injury? *A.* I do not think it is probable.

Q. Or that a number of bullets fired from an automatic weapon might have caused it? *A.* No, because I would have expected to find exit wounds or a missile itself.

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The sixth body was that of Pte D.D.G. Orford, F.26412, identified by disc. It was found in grave 13 of the series. Clothing: The battle dress was complete and showed the shoulder flashes of the North Nova Scotia Highlanders. Head: The scalp was completely destroyed, and the top of the cranium completely disintegrated; many pieces of bone were missing. The brain was decomposed. Body: No wounds detected in the chest, back or abdomen. Limbs: No wounds detected. Summary: Multiple fractures of the skull.

Q. How might these fractures have been caused? *A.* It is possible for them to have been caused by several sub-machine gun bullets in the skull, causing fragmentation of the bone and loss of the bony fragments when the scalp became decomposed. It is also possible for them to have been caused by mortar bomb or shell. The definite evidence as to the cause is lacking because neither the scalp is present to show bullet holes or lacerations, nor is there available bony evidence of bullets or shell fragments.

The seventh body was that of Pte J. Metcalfe, North Nova Scotia Highlanders. This was found in the grave at the temporary Canadian Military Cemetery Beny-sur-Mer, Normandy. The grave was about 3-1/2 feet deep and the body, which was wrapped in blankets, was very badly decomposed. Clothing: The battle dress was complete, the shoulder flashes were those of the North Nova Scotia Highlanders. Identity disc was present. The clothing shows evidence of rotting and is torn. No bullet wounds could be identified as such. Head: There was complete disintegration of the bony structure of the head. It would appear probable that there were multiple fractures of the skull, and that due to handling, burial and decomposition of the scalp, fragments of bone had become lost, had fallen out. Body: The skin of the chest, back and abdomen was practically completely decomposed. No evidence of wounds was found. Internal organs were badly decomposed, but no wounds were found. Summary: Multiple fracture of the skull.

Q. How might these fractures of the skull have been caused? *A.* In the same way I have described in the last case.

Lt-Col Boraston: Could you say whether the state of the body made it impossible for the body to be subjected to sub-machine gun fire at close range before death? Could you say whether, after your examination of the body in the state in which it was found, a sub-machine gun could have fired a number of rounds into the abdomen without leaving some evidence which would have been apparent to you? *A.* Decomposition was extensive, but I think that had such a burst of fire occurred there would have been some evidence of it."

Macdonald: In the next evidence you will find reference to certain photographs and I would like to have these before the court. *(Photographs handed to Judge Advocate.)*

Judge Advocate: They will be Exhibits T-45 to T-57 inclusive...

Macdonald: Now, Colonel, do you remember giving evidence to Maj Fraser and myself at Canadian Military Headquarters on the 21st day of June last? *A.* Yes.

Judge Advocate: This general reference to evidence of that nature is evidence taken by No. 1 Canadian War Crimes Investigation Unit, is it not?

Macdonald: Yes. *(To witness)* I will read the evidence which you gave at that time...

"*Q.* Did you at the request of 1 Canadian War Crimes Investigation Unit go to Calvados, Normandy, France for the purpose of examining certain bodies which you were requested to examine for that purpose? *A.* I did.

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Q. And for the purpose of carrying out this work were you attached to No. 2 Canadian Graves Concentration Unit at Cormelles? *A.* I was.

Q. Will you tell us how you carried out this task? *A.* The names of the 17 bodies which were to be examined were supplied by Capt Bell and Lieut Cloutier of No. 2 Canadian Graves Concentration Unit. The other bodies examined were by the instructions of Lt-Col B.J.S. Macdonald.

Q. And how did you know where to look for the bodies of the first 17? *A.* Through information supplied by Capt Bell and Lieut Cloutier.

Q. Will you give me the names which were supplied to you by these two officers and the locations which they gave you for each grave? *A.* Both Capt Bell and Lieut Cloutier were present at the exhumations and indicated each grave. Identifications of the bodies were made from identity discs on the bodies and also from the markers erected on each grave. I will deal with each body individually giving the name with each as I describe it.

Q. Where did you examine these bodies? *A.* The first 11 bodies were exhumed and examined at Bretteville-sur-Laize,...

Q. Will you proceed then Colonel and tell us what you found with respect to the first of these bodies which you examined? *A.* First body was that of L/Cpl McIntyre, J.F., F55009. The body was identified by identity disc. The body was relatively well preserved, the skin was intact over the trunk and as far as the extremities. There was some decomposition of the skin of the neck and face. There was no evidence of wounds or abnormalities of the trunk or limbs. Head – there was a bullet wound 1/4" in diameter in the occipital bone at the base and to the right. It was directed upwards and to the left and the exit wound was through the left orbit. I took a photograph of the skull of this body.

Lt-Col Macdonald: The photograph will be entered as Exhibit "M" *(Exhibit T-45 before the Court.)* Will you say what the photograph Exhibit "M" shows? *A.* The photograph is not particularly clear but it shows a director inserted into the entrance wound to the left of the number card being held in the photograph with the figure 1 on it.

Q. What, in your opinion, was the cause of death in this case? *A.* Small calibre bullet wound into the skull and through the brain.

Q. Continue please. *A.* Second body was that of Lieut Windsor, identified by disc. The body was relatively well preserved... There was a bullet wound in the lower third of the left thigh from the lateral to the medial side. There was a splinter of the femur but no compound fracture. There were no other wounds of the trunk or limbs. Skull and neck: There was a small calibre bullet wound 1/4" in diameter in the mid-line of the neck just below the occipital protruberance, the second and third vertabrae were fractured...

Q. You are referring now to the head wound I presume? *A.* Yes.

Lt-Col Macdonald: The photograph will be entered as Exhibit "N" *(Exhibit T-46 before the Court.)*. What was the cause of death? *A.* A small calibre bullet wound in the neck with fracture of the cervical vertabrae.

Q. Would the bullet wound in the left thigh have been such as to make it impossible for this officer to walk? *A.* I think not. It was a very slight splintering; the splinter was no larger than the size of an ordinary wooden match.

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Q. Could you tell us whether there was both an entrance and an exit wound? *A.* No, the... decomposition of the tissues of the neck had destroyed the evidence of an exit wound.

Q. Do you know whether the wound you saw was an entrance or an exit wound? *A.* An entrance wound.

Q. Now, what is the basis of your opinion? *A.* The clean cut appearance of the wound and its size and shape.

Q. If there is a clean bullet wound can you tell which is the exit and which is the entrance wound? *A.* Yes.

Q. Generally speaking? *A.* The exit wound is larger. It is irregular in shape and the tissues at the point of exit are generally more ragged.

Q. Were the tissues of this body in sufficiently good condition to examine them with any degree of assurance? *A.* Yes.

Q. But as you were unable to examine any exit wound you would not have any basis of comparison? *A.* The judgement is made on experience.

Q. Yes, but it would be on the judgement basis but in the present case you were not able to compare the relevant size and shape of the exit wound in this particular body? *A.* No, I wasn't."

Macdonald: Is that evidence correct, Col MacKeen? *A.* Yes.

Macdonald: *(Continuing to read the evidence)*

"*Lt-Col Macdonald*: *Q.* Continue please. *A.* Third body was that of Private Millar, G.E., C100130. Identified by disc. Body was relatively well preserved... Head: There was a wound in the left temporal bone 1/4" in diameter... The bullet wound is no longer circular as fragments had fallen out in the handling at the periphery of the wound.

Maj Fraser cross-examines: Were you able to see one wound or two wounds? *A.* There is the entrance bullet wound as describe and then there is the disintegration of the skull also as described.

Q. Might the wounds that are shown in this photograph be sustained in any other way? *A.* Yes – at this stage following so long after death, and the body having been handled several times, the bone disintegration may be due to the handling of the body. These particular wounds may also be due to shell fragments or they may have been due to a blunt instrument. There is, however, definite evidence as I have indicated of a bullet wound in the left temporal bone.

Q. And are you able to say whether the bullet wound in the left temporal bone is an exit wound or entrance one? *A.* I believe it is an entrance wound.

Q. On what do you base that opinion? *A.* The shape and size and clean-cut appearance.

Q. From your examination would you be able to form a definite opinion as to the range from which the wound was inflicted? *A.* No.

Q. So that so far as you are concerned it might have been a bullet wound received from a bullet that had been fired from a very considerable distance? *A.* Yes. The disintegration of the front bone may represent the result of an exit wound with fragmentation of the bone and, following decomposition, loss of fragments of bone during the handling of the body.

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Q. Would it not also be possible that the entrance wound caused certain fragmentation in the bones of the head and that subsequently, in the process of decomposition and handling, that these parts were lost? *A.* The parts adjacent to the entrance wound, yes, it is possible.

The fourth body was that of Pte Doherty, WM, F.40898, identified by disc. The body was relatively well preserved... Head: The skin and scalp were completely decomposed. There is marked disintegration of the bones of the skull. The major part of the parietal, frontal and temporal bones are missing. In the face there is a fracture and disintegration of both maxilla and fracture and disintegration of both zygona.

Lt-Col Macdonald: Q. What was the cause of death? *A.* The marked disintegration of the skull, the lack of wounds in any other part of the body, would suggest that the cause of death was a head injury.

Q. And is it your opinion that this was the cause of death in this case? *A.* Yes.

Q. Is there anything by which you can state any conclusion as to the type of injury this might have been? *A.* Multiple small calibre bullet wounds of the skull causing marked disintegration of the bony structure may have caused this. The disintegration of the bones of the face cannot be accounted for on the grounds of decomposition. The injuries to the bones of the face may have been due to a blunt instrument or to injuries in the handling of the body or to shell fragments.

Q. Have you a picture of this case? *A.* No.

Maj Fraser cross-examines: Q. Would it be fair to say then that so far as your examination goes you attribute death to head injuries of some sort because there is no sign of any other injuries to cause death? *A.* Yes.

Q. Carrying it one step further you are not able to say... how these head injuries were inflicted? *A.* No sir.

Q. With respect to the head injuries so far as your examination is concerned, all you could say is that there had been head injuries and you could not tell the cause; in fact, they might have come from almost innumerable causes? *A.* Yes.

Lt-Col Macdonald: Is there any means by which you can determine in this particular case whether the wounds were sustained before or after death? *A.* No.

Fifth body was that of Trooper Philip, H., B.134704, identified by identity disc. The body is relatively well preserved... There are no wounds of the body or limbs. Head: there is disintegration on the left side of the skull and fracture of the nasal bones, maxilla and mandible...

Q. What was the cause of death? *A.* Head injuries.

Q. And is there any means by which you can tell what caused these injuries? *A.* No."

Macdonald: That appears as Exhibit T-48 before the Court... *(Continues reading testimony)*

"*Maj Fraser cross-examines*: Could you tell whether the injuries had been inflicted before or after death? *A.* No.

Q. And did your examination eliminate the possibility of the deceased having died from natural causes such as heart attack and the body having suffered head injuries subsequently? *A.* No, but there is no evidence in the organ of gross disease although the organs were not in the best state of preservation."

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Macdonald: *Q.* Is that evidence correct, Colonel? *A.* Yes.

Macdonald: *(Continuing to read from* ***investigation dated 21 June 1945****)*:

"Sixth body was that of Private McNaughton, G.R., F.52169, identified by disc. The body was relatively well preserved,... and there were no wounds of the trunk or limbs. There was a field dressing around the neck but there was no evidence of a wound to be seen due to the decomposition. It would appear that the wound was superficial. Head: there was a wound a quarter inch in diameter in the occipital and 1-1/2 inches to the left of the mid-line directed upwards towards the right. There was a second wound in the right orbit. This was an exit wound.

Q. What was the nature of the first wound? *A.* It would say it was a small calibre bullet wound.

Q. And what was the cause of death? *A.* A bullet wound in the skull penetrating the brain and right eye. I took a photograph of this which shows the exit wound in the orbit...

Maj Fraser cross-examines: On what basis did you reach your opinion as to which was the entrance and which was the exit wound? *A.* The entrance wound was clean cut, is the proper size and shape. The exit wound – the bones were broken outwards and had the irregular jagged appearance.

Q. In the case of McNaughton were you able to say whether these head injuries were inflicted before or after death? *A.* No.

Q. And, assuming for the moment that the injuries were caused by a bullet wound, would you be able to say whether it was from a bullet coming from a long range or a short one? *A.* With the disintegration that it caused at its exit it would appear that it was from a relatively short range.

Q. Now, just what do you mean, that it was not caused from a bullet almost spent? *A.* Yes.

Q. Might it have been anything up to 500 yards? *A.* I think that depends on the nature of the weapon.

Q. Assume for the moment it is a rifle. *A.* Extreme.

Q. If the wound was inflicted by a bullet from a rifle you would say that it would be from a bullet fired not more than 500 yards? *A.* Less than 500 yards.

Q. What would you say was the outside limit? *A.* I should think 500 yards would be the outside.

Q. So that, so far as your examination disclosed, if it was from a rifle bullet it might be from a point-blank range up to a range of 500 yards? *A.* I would think that if it was fired from a rifle it was probably fired at more than point-blank range.

Lt-Col Macdonald: If the bullet fired had been from a Schmeisser or Tommy gun or Sten gun would what you have just said hold good? *A.* No, sir.

Q. What difference would that make? *A.* The range at which the bullet was fired would be I think less than the limits I have said for a rifle.

Q. In other words, in a case where you find both an entrance and an exit wound there would be considerable shattering of the bone at the exit wound. There is evidence the bullet struck the skull at the time that it was travelling at a high velocity, is there not? *A.* Yes.

Seventh body was that of Pte Mont, T.E., F.50297, identified by disc. Body: relatively well preserved... No evidence of wounds in the trunk or extremities. Head: disintegration at the top of the skull

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with the loss of most of the occipital and left parietal bone. There is no evidence of bullet wounds or the nature of the wounding force. Cause of death: head injuries...

Maj Fraser cross-examines: You said that the cause of death was head injuries. Would it be correct to say that in this case also that your examination would not eliminate the possibility of the deceased having died from natural causes and the head having been injured afterwards? *A.* That is correct.

Lt-Col Macdonald: Were you able to find the slightest evidence anywhere on this man's body to indicate that he had died from natural causes? *A.* No.

Eighth body was that of Pte McDonald, H.A., F.5361, identified by disc. Body relatively well preserved... No evidence of wounds in the trunk or extremities. Head: There was a small calibre bullet wound 1/4 inch in diameter right above the orbit. Exit wound was through the right temporal bone...

Q. What was the cause of death? *A.* Bullet wound of skull, penetration of the brain and fracture at the site of exit.

Maj Fraser cross-examines: In this case also your examination did not eliminate the possibility of death occurring from natural causes and the wound being incurred after death? *A.* No.

Q. How large was the wound you described as the exit wound? *A.* One and a half inches by two inches.

Ninth body was that of Pte Crowe, I.L., F.56043, identified by disc. Body relatively well preserved. ... No evidence of wounds in the trunk or limbs. Head: There was a marked disintegration of the bones of the head. Only a portion of the left frontal and left temporal bones remained. Cause of death: head injuries. It is impossible to state the nature of the wounding force.

Maj Fraser cross-examines: In this case also your examination would not eliminate the possibility of death occurring from natural causes and also in this case there was nothing on which you could base an opinion as to how the injuries had been suffered or of what kind? *A.* No.

Tenth body was that of Pte Moore, R., F.40528.

Lt-Col Macdonald: I noticed that the number given to us by Lieut Cloutier shows the number F.40527. *A.* The number that I have recorded is from a disc which was taken off, washed and dried before recording... Body relatively well preserved... There were no wounds on the trunk or limbs. Head: missing...

Q. Was there any indication as to what happened to the head? *A.* No, the [cervical] vertebrae were missing, also the fifth, sixth and seventh. One explanation of the head missing is that the vertebrae were damaged and due to decomposition the head had fallen off some time after death."...

Macdonald: *Q.* Is the evidence I have just read correct, Colonel? *A.* Yes...

Macdonald: *(Continuing to read evidence)*

"*Maj Fraser cross-examines:* Then I take it so far as your examination is concerned you are not able to express any definite opinion on how or when the head came to be missing? *A.* I believe that the head would not have come off had there not been a wound of the vertebrae or at the base of the skull. Condition of the body was such and decomposition was so far advanced that the head would have come off due to the ordinary process of decomposition.

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Q. So that in your opinion there must have been some injuries either to the head or the spinal column to account for the condition in which you found the body? *A.* Yes.

Q. But you are not able to say what the character of that injury was and whether it occurred before or after death? *A.* No.

Eleventh body was that of Trooper Lockhead, R., D.46464, identified by disc. Body relatively well preserved... Head: There was a small calibre bullet wound to the right of the mid-line of the occipital parietal bones. Portions of the frontal bone, the left parietal bones are missing...

Lt-Col Macdonald: This photograph will be entered as Exhibit "T-52." *(Exhibit T-52 before the Court.)*

Q. What was the cause of death? *A.* Small calibre bullet wound in the head and brain.

Maj Fraser cross-examines: In this case also your examination would not eliminate the possibility of the deceased having died from natural causes and having received head injuries subsequently? *A.* No.

Q. And from your examination could you express any opinion as to the range from which the bullet causing the wound had been fired? *A.* I do not believe it was point-blank but it is hard to state what the range would have been. It would be dependent on the weapon.

Q. But in your opinion, based on your examination, would you say it was from more than point-blank range? *A.* I think it would depend upon the weapon used...

Lt-Col Macdonald: And did this conclude your examination of the first eleven at Bretteville-sur-Laize? *A.* Yes...

Macdonald: *Q.* Is that evidence correct so far, Colonel? *A.* Yes.

Andrew: Before my friend goes on, could we have an intermission?

President: Yes, I think it would be advisable. The accused and escort will withdraw. The Court will adjourn for ten minutes.

—

Macdonald: *(Continuing to read from Question 89...)*

"*Q.* Will you describe the first body [at Beny-sur-Mer] which you examined? *A.* This body was said to be that of an unknown Canadian soldier. An identity disc found with the body was printed as follows: F45209 Pte Ross, J.A... The body was relatively well preserved... Head: Marked disintegration of the skull. On the left side of the skull there was an almost complete loss of the bony structure.

Q. And the cause of death in this case? *A.* Head injuries – nature of the wounding force is unknown.

Maj Fraser cross-examines: Q. In this case also your examination would not eliminate the possibility of death from natural causes and the subsequent injuries to the head? *A.* No.

Q. I take it the disintegration of the skull was so great that you were not able to tell either the character of the injuries that had been originally suffered or the wounding force? *A.* No.

Thirteenth body was that of Tpr Bolt, [J.E.], B48881. Identified by disc. Body was relatively well preserved, skin intact on trunk and limbs. There were no wounds on the trunk or limbs. Head: There

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[were] head injuries, and the nature of the wounding force is unknown... *(Photograph entered as Exhibit T-53 before the Court.)*

Q. In this case also your examination did not eliminate the possibility of death from natural causes and the subsequent injuries to the head? *A.* No.

Q. Also as in the last case the disintegration was too great that you were not able to tell precisely what head injuries had been suffered? *A.* Yes.

Q. By the same token you could not tell when these injuries were suffered? *A.* No.

Fourteenth body was that of Pte Keeping, R, F56474, identified by disc. Body relatively well preserved... Cause of death – head injuries... *(Photograph entered as as Exhibit T-54 before the Court.)*

Maj Fraser cross-examines: Q. And in this case also your examination did not eliminate the possibilities of death by natural causes with subsequent head injuries? *A.* No.

Q. Also I take it from your examination you could not tell either the precise extent of the original head injuries or how and when they were inflicted? *A.* No.

Fifteenth body was that of Tpr Gill, GV, C38307, identified by disc. The body relatively well preserved... *(Photograph entered as Exhibit T-55 before the Court.)* Cause of death, head injuries – wounding force unknown.

Fraser cross-examines: Q. And in this case also your examination did not eliminate the possibilities of death by natural causes with subsequent head injuries? *A.* No.

Q. Also I take it from your examination you could not tell either the precise extent of the original head injuries or how and when they were inflicted? *A.* No."

Macdonald: Is this evidence so far as I have read it, Col MacKeen, correct? *A.* Yes.

(Macdonald resumes the reading of the evidence.)

Sixteenth body was that of Tpr Henry, T, F30843, identified by disc. The body relatively well preserved... Cause of death – small calibre bullet wound in the head and brain...

Lt-Col Macdonald: This [photograph] will be entered as Exhibit "X." *(Exhibit T-56 before the court.)...*

Fraser cross examines: In this case also your examination did not eliminate the possibility that the deceased had died from natural causes and that the body had subsequently received head injuries?... So that in this case again you are not able to say before or after death these injuries occurred? *A.* No.

Q. And there are really two injuries or states of injury. *A.* Yes.

Q. One which is apparently from a bullet and the other may have been from the handling and from a blunt instrument? *A.* Yes.

Q. Now you are not able to say anything about an exit wound? *A.* The exit wound may be assumed to be the area where there is a loss of bone on the right side of the head.

Q. And the other wound you describe as a bullet wound – it would be the entrance wound? *A.* Yes.

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Seventeenth body was that of Pte. Doucette, C.F55317, identified by disc. The body relatively well preserved... Cause of death – bullet wound through right orbit and brain...

Maj Fraser cross examines: In this case also I take it your examination did not eliminate the possibility that the deceased dying from natural causes and receiving subsequent head injuries? *A.* No.

Q. This bullet wound that you refer to, it was the front part of the head. Were you able to form an opinion as to whether this was an entrance or exit wound? *A.* Entrance wound.

Q. Assuming that your opinion is correct that it was a bullet wound, would it have been fired from the front? *A.* Yes.

Q. Were you able to find the exit hole? *A.* No.

Q. Could you find the bullet? *A.* No.

Q. Then from your examination you were not able to find any exit wound or anything that would indicate place of exit? *A.* No.

Q. And would you say from your examination that the bullet either should have been in the body or else have fallen out the same way it came? *A.* Yes...

Q. Can you account for that in any way? *A.* No, but I have seen a revolver bullet fired probably not more than 2" from the skull just above the eye where the bullet failed to make an exit and was lying in the back of the head in the vicinity of the brain and had apparently been diverted from its course and ran around the inside of the skull...

Q. But let us assume for the moment that the bullet in question came from an army weapon with a standard charge. Would it not be correct to say that if it failed to make an exit wound after having only penetrated a bone about 1/8" that the reasonable conclusion (was) that it was an almost spent bullet? *A.* Yes, and on the other hand, we do not know the gun, type or kind, nor the nature of the bullet.

Q. In your examination of bodies where there is evidence that the cause of death had been a bullet wound to the head – have you in many cases failed to find an exit wound? *A.* No.

Macdonald: Now, are the questions and answers that I have read so far, Col MacKeen, accurate and true? *A.* I believe so.

Q. Now, I wish you would pay particular attention to the questions and answers which I now read to you..." With respect to these 17 bodies generally, did you in any case find any other explanation for death than either a bullet or other wounds of the head and neck?" Is that correct?... *A.* Yes. That is correct.

Macdonald: *(Continuing)*

"*Q.* Did you make identifications in all cases from identity discs which you found on the bodies? *A.* Yes.

Q. Were there any cases in which there (was) more than one identity disc present? *A.* Yes.

Q. Do you know precisely how many there would be with two identity discs? *A.* No.

Q. Approximately how many? *A.* I would say nine or ten, (possibly) more.

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Q. In your opinion in how many of these cases is their positive proof that death was likely the result of a bullet wound? *A.* 8 cases.

(The witness withdraws.)

Macdonald: Now, one further question, Col MacKeen. In cases where there is no evidence of bullet wounds, that is nine cases in this particular group, what are the possible causes of the wounds would you say? *A.* You are referring to the wounds of the head, fractures, and bony disintegration?

Q. Yes. *A.* There are several possible causes. First of all, it must be remembered that these examinations were done one year approximately after death, that the bodies had been moved at least once, some of them twice, and that in the digging and the handling there could be considerable damage done to the bones of the face and even to the bones of the top of the skull itself, so that this is a possibility. The fractures and disintegration of the skull and facial bones might also be due to a blunt instrument. They might also have been caused by shell fragments and in those cases where large areas of the skull are missing it is possible that the condition could be due to multiple small-calibre bullet wounds. In this latter possibility the evidence that it could have been small-calibre bullets has been lost or is lost because the bones themselves are not present. The injuries to the facial bones speaking generally would be more likely to be due to the handling of the bodies or a force applied with a blunt instrument.

Q. Now, when you speak of a blunt instrument, would a rifle butt be the type of blunt instrument which could produce the injuries you describe? *A.* Yes.

Q. Would a club perhaps 2 feet long and 2 inches in diameter produce such a result? *A.* Yes.

Q. Would a heavy army boot applied by way of a kick or stamp produce such a result? *A.* Yes.

(The Defending Officer declines to cross-examine.)

(The witness withdraws.)

TWENTY-FOURTH WITNESS FOR THE PROSECUTION

Capt Benjamin Bernard Wagman, No. 22 Canadian General Hospital, RCAMC, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald as follows:

Macdonald: *Q.* What is your full name, rank and unit? *A.* Capt Benjamin Bernard Wagman, Royal Canadian Army Medical Corps, at present attached to No. 22 Canadian General Hospital...

Q. Captain Wagman, do you remember giving evidence to Col Campbell on the 20th of July last? *A.* Yes sir, I do.

Q. I am going to read to you now what purports to be a record of that examination and I want you to correct me if anything I read is not in accordance with your recollection of the evidence of the facts themselves. *A.* Right, sir...

"*Q.* What is your rank, name and unit? *A.* Capt B.B. Wagman, RCAMC, and I am attached for duty to No. 2 Canadian Graves Concentration Unit.

Q. What are your duties at this unit? *A.* I am in charge of a Special Increment to No. 2 Canadian Graves Concentration Unit designed to investigate the identity of unknown Canadian soldiers.

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Q. What are your professional qualifications? *A.* Physician and surgeon. Qualified at the University of Toronto in 1941. Did one year's rotating internship at Pittsfield, Mass., USA, during which time I had considerable experience in autopsy work.

Q. In the course of your duties here did you have occasion to investigate the identity of an unknown soldier found in the l'Ancienne Abbaye d'Ardenne near Caen, Calvados? *A.* Yes. I was directed to perform an autopsy on a body taken from the Ancient Abbey of Ardenne... which had been reburied in Ryes British Permanent Military Cemetery.

Q. Were you present when this body was exhumed? *A.* Yes.

Q. When? *A.* 14 July 1945.

Q. As a result of the examination and autopsy, what was your report? *A.* The general condition of the body was an advanced state of decomposition. The skin, soft tissues and muscles were entirely decomposed in a jelly-like mass. The long bones were present and showed no evidence of fracture. The pelvis and thoracic cage showed no evidence of fracture. The left scapula was fractured into many pieces. On this latter area a shell dressing had been applied. The skull was present but the portion below the orbits on both sides was missing. On the right side the missing portion extended to the mastoid process.

Q. Was there any evidence of wounds other than the fractured scapula? *A.* No. The shirt had a hole which coincided with the scapula wound. There were several ragged tears in the battledress trousers in the pelvic area but no corresponding wounds were in evidence.

Q. Was there any means of identification on the body? *A.* Yes. Both discs were found among the remains.

Q. What particulars did the discs disclose? *A.* "F-50175 Pte McKeil H L – Cdn." Religion could not be determined.

Q. Can you give any opinion as to the agency which caused the fracture of the scapula? *A.* No.

Q. Can you give an opinion as to the probable cause of death? *A.* No.

(Signed) "C.S. Campbell" Major

Q. Were you asked these questions and did you make these answers? *A.* Yes, sir.

Q. Now, I am going to ask you one or two questions, Capt Wagman. From the fact that the scapula which, according to my understanding of medical terms means the shoulder blade, because of that injury and the fact that a field dressing had been applied to it, could you come to any opinion as to whether or not that would had probably or possibly caused death? *A.* Well, in my opinion any method of creating such a fracture could very easily enter into thoracic cage and produce death by complication of the lungs or respiratory system.

Q. Now, would it be a fair assumption that if a shell dressing had been applied to this wound that the wound had probably not caused instant death? *A.* That is true.

Q. And would it be possible for a person who had been injured, not fatally, but in that portion of his body, to have walked? *A.* Yes, it is possible for him to walk but I doubt very much if he would walk very far.

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Q. If he had the assistance of a couple of persons I suppose he could walk further; that is only common sense? *A.* Yes.

Q. Now, the injuries which you saw to the skull, could they have caused death? *A.* Yes, the injuries at the time of examination, if they had been inflicted before death, those would have caused immediate death.

Q. Did you see any evidence of a bullet wound (in the head)? *A.* No, I did not.

Q. What could have caused the injuries that you observed on the head? *A.* The injuries could have been caused either before or after death. Now, if they had been caused before death, they could have been caused by a blunt instrument or a high explosive or bullets and the possibility of this occurring is greater than that of the injuries being produced after death.

Q. Now, with reference to what you have said about a blunt instrument, would a rifle butt be such an instrument? *A.* Yes, it would.

Q. And could it have produced the injuries you saw on this particular skull? *A.* Yes, it is quite possible, sir.

Q. And could a club about 2 feet long and about 2 inches in diameter have produced those injuries? *A.* They could have if it had been applied forcibly and for a considerable length of time.

Q. And could a heavy army boot applied in the form of a kick or a stamp have produced such a result? *A.* Yes, under the same circumstances it is quite possible.

Q. I presume you mean it depended a great deal on the amount of force applied? *A.* Yes, if the head was on the ground and the boot was applied downwards it is quite possible it could have caused that injury.

(The Defending Officer declines to cross-examine.)

(At 1655 hours, the Court adjourned until 1000 hours on 17 December 1945.)

17 December 1945

President: I declare the Court open...

Macdonald: I have been asked, sir, by Lt-Col MacKeen, who appeared as a witness last week, to request permission of the Court for his return to Canada. I have been speaking to Col Andrew about it and he has no objection. I do not anticipate that there will be any need of Col MacKeen being recalled as a witness.

Judge Advocate: Will Col MacKeen be required to give evidence in connection with the 2nd Charge Sheet?

Macdonald: It was my intention simply to read the report of the SHAEF Court of Inquiry and I have advised Col Andrew to that effect.

President: No, I do not think that we need him here.

Macdonald: Thank you, sir. Now, last week we were discussing a map of the Caen area showing the tactical dispositions of the 25th Panzer Grenadier Regiment on the 9th of June and, with the consent of the Counsel for the accused, it was agreed that the map, as appearing in the SHAEF Report, should be

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submitted as an Exhibit. The map had been prepared and I think you each have a copy at the present time. I would now like to enter it as an Exhibit.

Judge Advocate: That will be Exhibit "T-58." *(Map of the Caen Area showing the dispositions of 25th Panzer Grenadier Regiment on 9th June 1945 is marked Exhibit T-58...)*

Macdonald: I should like at the outset this morning, to read to the Court an ***affidavit of Ex-Lieut Ian A. MacLean***... The Defence have a copy.

Judge Advocate: Is that part of an investigation by No. 1 Canadian War Crimes Investigation Unit?

Macdonald: Yes, sir. I will now read this affidavit.

"I, Ian A. MacLean, Ex-Lieutenant of the Canadian Army, now residing at 1586 Pine Avenue West, Montreal, being duly sworn on the Holy Bible, do depose and say:

I enlisted as a trooper with the Canadian Army on September 22nd, 1941, at No. 4 District Depot, Canadian Army. I was commissioned as 2nd Lieutenant in Brockville in September 1942 and did my advance training at A.9 Camp Borden of the Canadian Armoured Corps. I went overseas in February 1943, as Royal Canadian Armoured Corps reinforcement officer. Two weeks after I arrived in England I was posted to the Sherbrooke Fusiliers Regiment stationed at Headley Down.

I went to France on D-Day and landed in Normandy about 0930 hours at Bernieres-sur-Mer. My troop was working in support of the North Nova Scotia Regiment and our objective was the airport at Carpiquet. We advanced as far as Franqueville two miles west of Carpiquet where my tank was knocked out and brewed. At that time I was working with the assault company of the North Nova Scotia Regiment. The rest of the Regiment was about one-half mile behind when I realized that we were surrounded. We started to crawl back to the main forces of the 9th Brigade. In the meantime, the Germans counter-attacked, forming a pincer movement. I was with Troopers Thistle, Steer and Dagenais and also Sgt Wilson, when we were captured by the German 12th S.S. Panzer. We were taken to [the Ancienne] Abbaye which was about three miles north of the place where my tanks were knocked out. It was then approximately 1430 hours in the afternoon.

Later on, about one hour later, seven officers and about sixty ORs of the North Nova Scotia Regiment joined us at this Abbaye around 1730 hours in the afternoon. The Germans marched us to the Town of Caen and we were taken in a group to the German interrogation centre where they asked us to fill out what they alleged to be Red Cross forms but everybody refused to fill these forms out. We just gave name and rank. After interrogation we were taken to an old school house.

After having been questioned, the Germans would not allow us to talk to the ORs. The officers who were questioned with me were Maj Rhodenizer, Maj Learment, Capt Trainor, Lieut Fairweather, Lieut Venesse, Lieut Campbell, and Lieut Smith, all from the North Nova Scotia Regiment. Whilst we were in the Monastery we were separated from the ORs, and I don't know of any prisoners of my group being selected and separated from the rest of us. While we were being interrogated the Germans searched us and took our record of service books. The next day in the school house the above mentioned who was interpreter brought back with him a bundle of record of service books; amongst them I found the book that belonged to Lieut Tom Windsor of my regiment, but Lieut Windsor was never with us and I never saw him since. When I came back this April he was still missing and I believe now reported dead.

While in the Abbaye we were never spoken to by an German officer but were handled entirely by a German Sergeant Major, an elderly chap with grey hair. He also was in the Adolf Hitler S.S. Panzer

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Division. The Abbaye struck me at the time as being Divisional HQ and all staff personnel seemed to have originally been with the Adolf Hitler division but were obviously attached to the 12th Panzer division."

Macdonald: The next is a translation of an ***affidavit of Marcel J. Dagenais***. With respect to this witness, he had been sent for and will probably reach here about Wednesday. The ship in which he is coming is due in England today, but I will probably conclude the case for the Prosecution today so that he will be too late for that, but if Col Andrew wishes him for cross-examination, after his arrival, I have no objection. In the meantime I should like to read his affidavit...

"I, the under-signed, Marcel J. Dagenais (D-46600), ex-soldier of the Canadian Army and member of the Sherbrooke Fusiliers living now at number 7559 Henri-Julien, Montreal, having been duly sworn on the Holy Bible, state:

I crossed to France to fight, the day of invasion, that is to say, on 6 June 1944. We landed at Bernieres-sur-Mer. I was in a tank commanded by Lieut Tom Windsor. The other troopers who accompanied me were Roger Lockhead, Philip and Bolt. Our troop acted as support to the North Nova Scotia Regiment, and our task was to take the airfield at Carpiquet.

We went up to the outskirts of Franqueville about two miles to the west of Carpiquet. As our tank was heavily shelled, Lieut Windsor told us to abandon it. All five of us left our tank and crossed a field where we were able to hide in a ditch for three hours. Around 2.30 hours, as the Germans had practically surrounded us, we were obliged to give up.

We were made prisoner all five together. We were marched about ? mile up to about 50 feet from an old church made of yellow brick. This church was nearly entirely destroyed, and only the four walls remained. Another thing, this old church was being used as a tank harbour, and as a parking lot for reinforcement trucks. At every moment new trucks and tanks were being called for. About 50 feet from this church, Lieut Windsor and the 3 other members of my tank were searched also another English prisoner whose name I do not know and who belonged to the North Nova Scotia Regiment. They took everything we had on us, and only left our uniform.

They took us one by one forward about a dozen feet to ask us our name, our regimental number and the name of our unit. I was about 10 feet away when they questioned Lieut Windsor. There were 3 German Privates and a young Sergeant Major. I do not know what was asked of him, but I remember that Lieut Windsor answered that he had only three words to say to them: his name, his rank and his number, when all at once the Sergeant Major slapped Lieut Windsor. This young Sergeant Major spoke several words in English and passably in French. On seeing my service book he realized that I was French Canadian. He separated me from the others and brought me with the English soldier of the North Nova Scotia Regiment into the old church of yellow brick, of which I have spoken. Arriving at this church, I was put with the other English soldier in a staff car, and (we) were brought to the interior of the city of Caen, to Headquarters of the Gestapo.

These Headquarters were situated in a house of stone, of two stories, facing a school where we passed the following three days. I did not see any other prisoners of war at these Headquarters. I was alone with the other English soldier... We were brought one at a time into a small room where there were a dozen German officers. Most of these officers spoke French, as they questioned me one by one in French.

I was questioned for 1? to 2 hours. During the first hour I was not spoken to about the army. I was asked my father's name, my mother's name, and whether I had any brothers and sisters, etc., and

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then the other soldier who was with me was brought in. I then left. After one-half hour I was brought back, to try and make me give the details of the new 17-pounder which we had on our tanks. As I did not want to speak, I was brought out again and told that I would be questioned later on. I waited outside escorted by a guard, when about one hundred prisoners passed in the street.

The officer commanding these prisoners asked me to join the ranks of our prisoners, and I was brought to the other side of the street into a school where we stayed three days.

In this group of one hundred prisoners I again saw Lieut Ian A. MacLean of my regiment, also Thissel, Fred Steer and Hathgate, also several others of the North Nova Scotia Regiment.

Lieut Windsor was not of this group and I asked Lieut MacLean where he was. He told me that he was a prisoner, as he asked me if I had seen him. I told him that I had seen Lieut Windsor together with the prisoners from my tank for the last time in a field where we were searched (near) the old church of yellow brick. I have never seen Lieut Windsor or the other soldiers who were with me in the field, again."

"During the time we were brought from the place where we hid up to the place where we were searched, I saw several German soldiers shoot and kill our soldiers who were wounded and could not walk. I saw also, when I was asked to join the group of one hundred prisoners who were marching from the old school in Caen, a German truck strike two Canadian prisoners who were in the back of the group. It was easy to see that the driver of this truck struck them on purpose. Both died immediately. I do not know the names of these soldiers, but they were 2 privates of the North Nova Scotia Regiment. I have no knowledge that the Germans killed other prisoners of war."

Macdonald: Now I will read from the ***record of the evidence of Ernest Peters, Private of the North Nova Scotia Highlanders***, given to No 1 Canadian War Crimes Investigation Unit on the 28th day of June 1945 at Ottawa...

"*Q.* What is your number, rank, name, and unit? *A.* No. F-2907 Private Peters, E., North Nova Scotia Highlanders.

Q. Where is your home? *A.* Down in Cape Breton, sir.

Q. How old are you? *A.* Twenty-four, sir.

Q. What is your present status in the army, your employment? *A.* I am just an infantryman, sir. A plain rifleman.

Q. Are you supposed to be on leave now? *A.* I am on furlough, yes, sir.

Q. Were you serving with your unit in Normandy on the 7th June 1944? *A.* I was, sir. I was captured on the 7th June...

Q. With what company were you serving at your time of capture? *A.* "C" Company.

Q. Who was your company commander? *A.* Maj Learment.

Q. Who was your platoon commander? *A.* Lieut Langley.

Q. What was your job? *A.* I was No. 2 on the Bren (gun).

Q. And who was your Section Commander? *A. (No audible answer.)*

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Q. Was it a Section Bren gun or was it an additional Platoon Bren gun? *A.* I think it was Cpl Davidson, sir.

Q. Who was No. 1 on the Bren? *A.* A guy by the name of Nichols.

Q. What was his first name? *A.* I don't think I can remember that.

Q. Was he a private? *A.* He was a private, yes, sir.

Q. Now, were you captured in a village or in open country? *A.* In a village, sir...

Q. We want to find out if you yourself saw anything, or, if you didn't, if you heard of any story which you believe to be true of which you saw some proof. *A.* The only thing was a man lying in the street near me but I believe he was dead. He was dead. The Jerries came up and put a bullet through his head but I believe he was dead at the time they put a bullet through his head...

Q. And do you know who this man was? *A.* No, sir. I couldn't recognize him. His head was turned the opposite direction.

Q. And you say some German shot him in the head? *A.* Yes sir.

Q. And was he making any movement at all? *A.* No, sir. Not before they shot him. He wasn't moving.

Q. How far away was he from you? *A.* I would say about twenty feet away, sir.

Q. Twenty feet? That is only the width of this room? *A.* Yes, sir.

Q. Was it an ordinary street, or was it on the side of the road or on the grass? *A.* It was on the main street of the village, sir. This man must have been dead because...

Q. Well, what was the object of shooting him if he was dead? *A.* Perhaps just to try and frighten us to bring our morale down.

Q. Were there others there who saw this? *A.* No, sir...

Q. I find it difficult to understand the reason you have given for the shooting of this man that you think was dead. You have said that you were the only Allied soldier present at the time and have suggested that it was done to get the morale of the Canadian soldiers. Surely this couldn't be done just to have this effect upon yourself? How long had you been sitting there after your capture before this shooting occurred? *A.* I was there about half an hour, sir.

Q. And during the whole period of that half hour had you been constantly within a distance of twenty feet of this soldier who was later shot? *A.* Yes, sir.

Q. During that time had you seen any movement whatsoever or any sign he was still alive? *A.* No, sir.

Q. Had you made any effort during the half hour to find out definitely whether he was alive or not? *A.* No, sir.

Q. Were you under guard during the whole period of this half hour? *A.* Yes, sir.

Q. How many Germans were there guarding you? *A.* Well, sir, they were going back and forward and there were a couple of them standing around there by the side of the street.

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Q. And was it one of these that shot the other soldier? *A.* Well, sir, as far as I could see there were just about ten of them who came down there and started talking away and that was at the time he got shot.

Q. And he was shot by one of this larger group? *A.* One of these ten men.

Q. And did you see them actually shoot the Canadian soldier? *A.* Yes, sir.

Q. And was he shot by one man or more than one man? *A.* One, sir.

Q. How many shots were fired? *A.* One shot, sir.

Q. And did you see any movement take place insofar as the body of the Canadian soldier was concerned at the time or following the shooting? *A.* Do you mean after the shooting, sir?

Q. I mean when the German shot the Canadian soldier did you see any reaction insofar as his body was concerned? *A.* No, sir.

Q. The shot wasn't followed by any movement of his arms or limbs? *A.* No sir. He was shot in the head and the only thing is his head moved.

Q. His head moved? *A.* Yes, when the bullet went through it.

Q. Well, was the movement due to the impact of the bullet or due to some independent movement of the body? *A.* It must have been from the bullet, sir."

Andrew: *Reading questions 71 and 72 (From the record of evidence)*:

"*Q.* You have no evidence of any cases when it was reported to you that prisoners had been mistreated? *A.* No, sir. I heard rumours...

Q. Pardon? *A.* We heard a lot of rumours but most of them are all lies. You can't believe all you hear."

Judge Advocate: Col Macdonald, that is evidence of a subject not in these charges, is it not?

Macdonald: Yes sir.

Judge Advocate: And your justification for bringing in evidence of a further shooting is Regulation 10(4)?

Macdonald: Yes sir, and it does show the character of the fighting and the attitude of the Germans toward prisoners, and even towards dead bodies, and is (of) some value in determining the attitude of the German troops. I think I should now connect what I have read with what Col Andrew had read. *Reading from Question 73*:

"*Q.* How do you know they are all lies? *A.* Some folks say it is not right and others say it is. I couldn't make a statement on that. You have to see it with your own eyes.

Q. Pardon? *A.* If you never saw it with your own eyes it is pretty hard to make a statement on it."

Macdonald: I would like now to read the ***deposition of Andre Huard*** of the Abbaye Ardenne. I have a certified true translation of this deposition and a plan of the Abbaye Ardenne which is Exhibit "A" to the original deposition. I would like to tender these three documents as an Exhibit.

Judge Advocate: That will be Exhibit "T-59."...

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Campbell: *(Reading Deposition)* "Statement of Andre Huard of Abbaye Ardenne, near Caen, Calvados, France, taken at the premises of Monsieur Huard at Abbaye Ardenne,... 2nd day of October 1945,...

1. I am Andre Huard, farmer, of Abbaye Ardenne..., and I am thirty-nine years of age. At the time of the invasion on 6 June 1944 I was residing at my home in the Abbaye Ardenne with my wife and family. We lived in the portion of the Abbaye marked "R" on the plan Exhibit "A."

2. Some time during the night 6/7 June 1944 a large number of SS troops came to the Abbaye. Most of them were dressed in camouflage jackets and trousers but not the officers who were in dress uniform. They had their vehicles parked in the grounds around the chapel. About 8 or 9 o'clock in the morning of the 7th of June 1944 an officer came to my place and told me that we would have to move immediately as they required my house for a Headquarters. It was not possible to move away completely on account of the small children and the livestock, so we moved over into some other buildings nearby marked "L" on the plan. During the day many officers and soldiers came to my house and circulated in the courtyard in front, also in chapel, and in the grounds of the Abbaye. There were small amphibious cars, motorcycles, and motorcycles with side-cars which were parked inside the Abbaye itself.

3. Sometime it was necessary for my wife and I to go to our house for articles of clothing for the children and for food and some personal photographs. During these visits I saw that they had radio sets in the main room of my house and there were many officers there. An officer and a sentry kept watch from the tower at the north end of the chapel and they had telephone communication down to the ground. Later in the day some senior officers, I do not know their ranks, came to my house, including one who was referred to as "Commander." He had a large black German shepherd dog which followed him very closely all the time.

4. I kept out of sight as much as possible because the Germans tried to get me to load and unload ammunition.

5. Some time between 5 and 6 o'clock in the afternoon on the 7th of June 1944 I saw in the courtyard in front of the chapel, and in the area marked "M" on the plan, a large number of Canadian soldiers. In my opinion there were about one hundred and fifty. Many of them wore brown berets with a red "pom-pom" on the top of it. When I first saw them a German captain was trying to find out of there were any of the prisoners who spoke German. This German captain was the commandant of the jail at Caen, whose name I do not know. He then conducted a search of the prisoners taking away from them all their papers, wallets, money, and putting them in a large box. About two hours later I saw these soldiers marched out, by the German guards, through my main gate marked "X' on the plan and down the road towards Caen. The prisoners were pulling two large two-wheeled farm carts and two buggies, both containing Canadian wounded prisoners. I do not know if all of the prisoners went who had been in the courtyard earlier but it seemed to me to be numerous. I did not see any other prisoners that day.

6. On the next two days I saw some prisoners in small groups of three to five in the courtyard. They were in (the) charge of German guards and just seemed to be waiting around. I do not know where they went as I did not go out much, so as to avoid being put to work by the Germans.

7. On the 6th, 7th, 8th and 9th of June 1944, Monsieur Louis Lachevre's son Daniel came to where I was living to get milk. He came around six o'clock each evening.

8. The Germans seemed to want us to leave and once I was bitten by the black dog belonging to the officer which had been set on me several times. Finally on the 9th of June 1944, they put some kind

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of explosive at the entrance to the place where we were living and put a sign up indicating that it was "dangerous." As we had no other place to stay at the Abbaye, I took my family away that day.

9. When I returned, the chapel and part of my buildings had been very badly smashed up by the shelling. I learned that the equipment of the Headquarters had been moved to the house of Monsieur Lachevre marked "G" on the plan, some time after I left. I did not return until the 23rd of August 1944."

Macdonald: The next witness to be called, sir, among other things which he will give in evidence, will lay the foundation upon which we intend to establish a further atrocity which occurred at this Regimental HQ. I warned my friend of our intention to do that, and he had told me that he will oppose it, so I though perhaps it would be better to raise the point at this time before we get into the evidence.

Andrew: Sir, this morning, just before the Court opened, I was handed an extract from a War Diary and other papers, together with a statement purporting to be evidence of somebody regarding the death of an officer; an officer presumed dead. The presumption of death is that he died on or about the 16th of June. Now there is nothing in the charges whatsoever dealing with any atrocity around the 16th of June. This evidence had nothing what ever to do with the matters before the Court. It is not part of the *res gestae* in this case. If my friend is producing it as part of the *res gestae*, in that it is similar acts, I do not think it is in the interests of justice, because it is something absolutely different – a new charge altogether; unless my friend wishes to lay it as a new charge. I am sorry I have not had access to my legal library. I obtained all I could from CFN. Rules of Procedure 86(D) to the Army Act read as follows: "The court may call or re-call any witness at any time before the finding, if they consider that it is necessary in the interests of justice," and footnote 4, which I shall read, says "The power given under this provision of calling or re-calling a witness should only be exercised in exceptional circumstances; e.g., where it appears for the first time from the evidence given at the trial that a person who has not been called either by the prosecutor or on behalf of the defence was present at, and probably witnessed, the occurrence which forms the subject of the charge which is being tried."

I say that this evidence which is being produced now is not that of a witness to the alleged atrocity. It is circumstantial and, as I said, this matter forms no part of the charge sheet at all. The matter has taken the defence by surprise and if my friend desires to bring this before the Court he should do so on an additional charge sheet.

Macdonald: I will ask Lt-Col Dean to answer the argument on behalf of the prosecution.

Dean: May it please the court, the prosecution does regret that it has been unable to given the Defence greater notice of their intention to call this evidence. Full confirmation of the facts came to the prosecution only yesterday, and the defence was informed as soon as possible. If the Defence feels it has been taken by surprise, their proper course is, of course, to ask for an adjournment to prepare their cross-examination. With respect to the admissibility of this evidence, the ordinary rules of admissibility are changed somewhat by Privy Council Order 5831 and with respect to this evidence it has been made admissible by the provisions of paragraph 10, sub-section 4, which reads as follows:

> *"Where there is evidence that more than one crime has been committed by members of a formation, unit, body, or group while under command of a single commander, the court may receive that evidence as prima facie evidence of the responsibility of the commander for those crimes."*

It is quite clear from that sub-section that the commander of a formation could be charged with the responsibility for a war crime, and that evidence could be adduced before the Court to show that his formation, while under his command, committed a series of offences in order to establish a *prima facie*

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case of his responsibility for the offences with which he is charged. There is no suggestion that the commander must be charged with each of the individual offences. Were it not for the provisions of that Privy Council Order, the Prosecution could not disagree with the contention of the Defence, but it is clear from that, that this evidence is admissible, that paragraph having been passed with the specific intention of making it admissible. We submit that if the court were to exclude such evidence they would be acting contrary to the spirit of these Regulations which are designed to make admissible any evidence that may be helpful to the Court in arriving at a just decision.

Judge Advocate: Should you not have given your argument first and then the Defence reply to it?

Dean: With the greatest respect, sir, I could not give an argument until it has been made by the Defence and the grounds upon which it is being made are quite clear.

Judge Advocate: *(To Andrew)* Have you any answer to make.

Andrew: No, other than what I have already stated.

Judge Advocate: I think Regulation 10(4) does alter the general law to a very great extent. There is another aspect to the case and that is fairness to the accused, and I would suppose that if it is intended by the prosecution to adduce evidence of another atrocity, which would be admissible under the provisions of Regulation 10(4), that the evidence should appear in the abstract or that due notice should be given by the prosecution so that the defence is in a position of answering that particular allegation. Was this particular alleged crime referred to in the abstract of evidence.

Macdonald: No sir, it was not. The Defence was notified as soon as the facts were fully established yesterday.

Andrew: This morning.

Dean: The present argument is to the admissibility. If the Defence has been taken by surprise, I am empowered to say that we do not object to him asking for an adjournment. His proper procedure, I suggest, is to ask for an adjournment.

Andrew: It is for the Court to say whether this evidence is admissible. I want to impress on the Court that if one notices the charges here, they set out definite dates. There is nothing in any charge which says anything about the 16th of June. It is not only a question of surprise but it is introducing something different – something absolutely new. I have had four weeks to prepare this case and my friend has had fifteen months. Now I have to prepare a defence for this next charge.

Judge Advocate: That was my point.

Andrew: Yes, quite.

Dean: I have not made it quite clear. This is not another charge, it is evidence which is being used to prove the charges which have already been laid.

President: The court will adjourn to consider the motion...

—

President: I declare the court open... Now, the court has decided that, provided the Prosecution can establish the fact that the accused was the responsible commander at the time or on the date which this incident is alleged to have occurred, that we will be prepared to listen to the evidence. Now, for the purpose of assembling that evidence we must give the prosecution the opportunity to get their witnesses together.

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Therefore, we will adjourn the Court until two o'clock this afternoon. The accused and escort may withdraw.

—

President: I declare the Court open...

Macdonald: Before proceeding this afternoon, sir, I wish to bring to the attention of the Court the possibility of a further legal snag which may arise in the course of this evidence. I can establish from the evidence, I think, that Meyer did not take over command of the division until noon on the 17th of June and therefore the things we are about to discuss occurred during the course of his command of the Regiment. There may be evidence that will suggest, either by reason of confusion on the part of the witness, or by reason of the true facts, that some of these shootings occurred after Meyer has assumed command of the Division, in other words, during the regimental command of Milius. I have pointed out the possibility of that to my friend and, before we proceed to call evidence, he may wish to comment on that. In case there may be some objection to the introduction of the evidence, I am going to ask my assistant, Lt-Col Dean, to continue to argument of this morning.

Andrew: The evidence, as it has been submitted to me sir, shows that this so-called atrocity occurred on the 17th... Now, at this time it is hard to just say when Meyer did actually take over command of the division. I think the Court will see from the evidence itself that there is a great deal of doubt as to when this atrocity actually did occur. Now, if Meyer was in command of the division at the time it occurred, I say then it is absolutely apart from anything on the first charge sheet that has been submitted to the Court, because in every one of the charges, acts alleged to have occurred while he was commander of the 25th Panzer Grenadier Regiment. Every one refers to that. Now, if my friend produces this evidence, it may be shown that Meyer was commanding the division. If so, I say it is absolutely outside the first charge sheet altogether, wherein he is accused of crimes as commander of the 25th Panzer Grenadier Regiment. The second charge sheet has been kept separate from the first by reason of that fact. I think this evidence should also be kept separate because he is not charged as divisional commander. This is going to lead to a lot of confusion of the whole issue which is raised by the five charges on the first charge sheet.

Dean: May it please the Court, in view of the remarks made the President before the adjournment and in view of the evidence which we anticipate, we can see a possibility of this evidence being ruled inadmissible, after it is in, the Prosecution does not think it is proper or fair to the accused to have this evidence before the ruling as to admissibility. I will give you general terms what the evidence will be. May I have your permission to do that, sir?

President: The ruling was that you were to establish the fact that the accused was commanding, the responsible commander at the time that these incidents occurred, and then, having established that fact, then we were to make up our minds as to whether the evidence was admissible.

Dean: Sir, you will recall that the objection was made in Court before Lunch. There was no suggestion by the Defence that the accused was not Regimental Commander at that time, therefore I did not touch on the question as to whether it would be necessary to prove whether he was Regimental Commander or not. With the permission of the Court I should like to present evidence on that as well as to suggest to the Court that the evidence we intend to call will enable you to decide whether he was Regimental Commander. We do wish to bring that before the Court.

President: Can you produce evidence that the accused was Regimental Commander at the time of these incidents?

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Dean: Yes sir.

President: Will you go ahead and produce that evidence?

Macdonald: There will also be evidence before the Court that the accused was not Regimental Commander. There may be contradictory evidence on that.

President: Well then, we will have to make up our minds on that subject.

Judge Advocate: If there is contradictory evidence – contradiction on that point, is there any other submission you were going to make with respect to the admissibility of the proposed evidence?

Dean: Yes, if the Court considers that the accused was not Regimental Commander at the time, then the Prosecution will submit that the evidence is admissible, even though the accused was not Regimental Commander at that time.

President: You want to leave that argument until later?

Dean: If you wish.

Twenty-fifth Witness for the Prosecution

Obersturmführer Meitzel, Ordannanz Offizier, 12th SS Panzer Division, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* Do you feel quite competent to give your evidence in English? *A.* Yes sir.

Q. What is your name, rank and unit? *A.* Obersturmführer Meitzel, First Lieut, Ordannanz Offizier of the 12th SS Panzer Division... *(The questions and answers are translated into German.)*

Q. How were you employed on the 7th of June 1944? *A.* I arrived at Division HQ the 7th of June, about eight AM.

Q. What was your appointment at the time – what was your job? *A.* I was First Ordannanz Offizier in the 12th SS Panzer Division.

Q. And how long did you continue to hold that appointment? *A.* To the 15th of July 1944.

Q. Now, can you tell the Court on what date Brigadeführer Kurt Meyer became Commander of the 12 SS Panzer Division, Hitler-Jugend? *A.* On the 17th of June 1944, about noon.

Macdonald: This witness may be required to give evidence on other matters, but I presume if he is required he may be recalled. This is all the evidence at this time on this particular question.

Andrew: No questions.

(*The witness withdraws.)*

President: Have you got somebody else to testify on this particular subject as to date?

Macdonald: Yes sir.

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TWENTY-SIXTH WITNESS FOR THE PROSECUTION

Obersturmführer Bergmann, 12th SS Panzer Division, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald, through the Interpreter, Capt J.W. Henley:

Macdonald: *Q.* What is your name, rank and unit? *A.* Kurt Bergmann, Obersturmführer, 12th SS Division, Adjutant in the Third Battalion.

Q. And were you Adjutant of the Third Battalion of the 25th Panzer Grenadier Regiment on the 7th of June 1944? *A.* Yes sir.

Q. And who was your Battalion Commander? *A.* My commander was Obersturmbannführer Milius.

Q. When did he cease to be your Battalion Commander? *A.* It was ten days after the beginning of the invasion.

Q. That would make it either the 16th or 17th of June. Are you able to say specifically which of these dates it was? *A.* I can't say exactly. I can only say about ten days after the beginning of the invasion.

Q. Has the precise date of this been the matter of some concern and discussion among you and other officers of the Division? *A.* No.

Q. Are there other officers of your Division who are not able to say precisely when this change in command took place? *A.* I don't know.

Q. Have you discussed the matter with any of the other officers? *A.* No.

Andrew: No questions.

(The witness withdraws.)

Macdonald: This is another witness who may have to be recalled. There are two or three officers with whom I have discussed this question. They are not immediately available. There has been discussion amongst the Prisoner of War officers about it, and they have generally agreed among themselves that the 17th was the date. The first witness called was the one at Divisional HQ at the time.

Andrew: I would ask the Court to disregard my friend's remarks as to what has gone on outside the Court Room.

Macdonald: I can call these other officers if desired.

President: What is the date of this alleged incident?

Macdonald: The incident occurred in this way sir. I don't want to give all the facts –

President: Could you just tell us the date?

Macdonald: There were two incidents – one in the early morning of the 17th of June and another in the late afternoon of the same day. The victims of this atrocity were missing at three o'clock on the morning of the 17th on a patrol and the evidence discloses that they reached Regimental HQ on the early morning of that day. If Meyer was still in command of the Regiment he would be there until noon of that day. There is some question as to the occasion of the afternoon.

President: I think we are justified in going ahead with hearing this evidence. Does the Defence want an adjournment on the ground that –

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Andrew: No, sir.

TWENTY-SEVENTH WITNESS FOR THE PROSECUTION

Daniel Lachevre, Clecy, Calvados, France, being duly sworn, is examined by the Assistant Prosecutor, Lt-Col C.S. Campbell:

Campbell: *Q.* What is your name? *A.* Daniel Lachevre.

Q. How old are you? *A.* Sixteen.

Q. And where do you live? *A.* Clecy, Calvados.

Q. Where were you living on the 6th of June 1944? *A.* At the Abbaye of Ardenne.

Q. Did your family live there at that time? *A.* Yes.

Q. How long did your family remain at the Abbaye, after the invasion? *A.* Approximately ten days.

Q. Till about the 16th of June, then? *A.* Yes.

Q. I show you Exhibit T-1 – a plan of the Abbaye Ardenne. Do you recognize what is shown on that plan? *A.* Yes.

Q. Will you indicate to us, please, where your family lived? *A.* Here.

Q. Would you mark it with the letter "N"? *A. (The witness complies.)*...

Q. After the invasion, did any troops come to the Abbaye Ardenne? *A.* Yes. The 7th of June there were German troops that came to the Abbaye of Ardenne.

Q. What time of day did they arrive? *A.* In the morning but I don't know at what time.

Q. Now, how were these troops dressed? *A.* They were in camouflage.

Q. And about how many were there, or do you know? *A.* About two or three hundred.

Q. Did you see any officers amongst them? *A.* Yes.

Q. How were they dressed? *A.* They were in camouflage but they had caps on and epaulettes.

Q. What kind of troops were they? *A.* SS Troops.

Q. How do you know that? *A.* It was a German SS soldier who spoke French who explained to us that the new troops were SS troops.

Q. Was this the first day that they arrived that you got this explanation? *A.* Yes.

Q. Did you see any Canadian troops there that day at the Abbaye? *A.* It was in the evening as I was going to get some milk (that) I saw the troops in front of the chapel.

Q. How do you know they were Canadian troops? *A.* Because they had "Canada" on their shoulders.

Q. And where did you see them? Can you show us on the plan? *A.* They were here *["O" on plan]*...

Q. Now, how many altogether were there? *A.* There were about 100 of them.

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Q. And were they armed or what were they doing there? *A.* They were sitting down guarded by a German soldier.

Q. Now, I believe you said you were going to get the milk at the time when you saw them? *A.* Yes.

Q. And where did you go to get the milk? *A.* I went to fetch the milk here *(Drawing a "P")*...

Q. Now, will you indicate the route by which you went from your home to the place where you got the milk? *A. (The witness complies.)*...

Q. Now, who did you get the milk from? *A.* At Monsieur Huard's.

Q. Now, where did Monsieur Huard live? *A.* Here *(Marking the place with the letter "R")*.

Q. Was Monsieur Huard at his own place? *A.* When I went to get the milk?

Q. Yes, that is when. *A.* The German had made him move out to here *(Indicating "P")*.

Q. Now, did you see any German officers when you made that trip? *A.* Yes. I saw some German officers... where Monsieur Huard previously lived.

Q. How were they dressed? *A.* They were dressed with long greycoats with "SS" on the collar and they wore caps.

Q. What kind of caps do you mean? *A.* Caps with stiff, black visors.

Q. Now, what became of the Canadian soldiers that you saw in front of the Abbaye, – or, in front of the chapel? *A.* In the evening around seven or eight o'clock I saw two groups of these Canadian soldiers going in the direction of Monsieur Vico's chateau.

Q. Will you indicate on the plan, please, where you were standing when you saw this happening?... *A. (The witness complies.)*...

Q. Now will you point out on the map and mark with small dotted lines the course which those two groups of troops took?... *A. (The witness complies.)*...

Q. How many troops were in each of these groups? *A.* There were approximately twenty-five in each.

Q. And how were they guarded? *A.* By five or six SS soldiers wearing camouflage uniforms and carrying machine-carbines.

Q. And were the two groups right together, or were they separate? *A.* A few metres distance from each other.

Q. And where did they go? *A.* In Monsieur Vico's chateau.

Q. Did you watch them all the way? *A.* Yes.

Q. And did they all go in the house? *A.* Yes.

Q. Including the guards? *A.* Yes, yes.

Q. Now, did you ever see those troops again? *A.* No.

Q. Now, in those two groups were those all the troops who had been in front of the chapel taken to the Vico house? *A.* No.

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Q. What became of the rest of them? *A.* The other group went from here along here and went out through the door here *(Indicating path and the gateway adjacent to the house through which they went with "S")*...

Q. And where did those troops go to? *A.* Towards the Carpiquet aerodrome.

Q. Now, did all of the Canadians that were at the headquarters that day leave by that gateway? *A.* They all left through here *(Indicating the point "S")*.

Q. Now, did they all march away or were some of them transported in vehicles? *A.* All those that were in the chapel all left on foot.

Q. Now, in the next day or two after this large number of Canadian troops were there, did you see any other Canadians in the headquarters or in the Abbaye area? *A.* No.

Q. Were you in the courtyard in front of the chapel every day? *A.* I went through every evening to go and fetch the milk.

Q. Now, I think you have told us already that your family left your home about the 16th of June? *A.* Yes.

Q. When did you return to your home? *A.* On the 14th of July.

Q. How do you know it was the 14th of July? *A.* Because it was at the liberation.

Q. You mean the liberation of the Abbaye and Caen or Bastille Day or what? *A.* The Bastille Day.

Q. Now, when you returned to the headquarters was there any military equipment left in your home? *A.* Yes.

Q. What was it? *A.* Shirts, coats, boots; everything lying all over the place.

Q. Was there any other equipment there besides what you have described to us? *A.* No. They had dug an underground passage here and set up a telephone exchange, but that is all.

Q. Was the telephone exchange in the house, or where was it? *A.* Yes *[At point "N"]*.

Q. Now, was there any digging done around your house when you returned, or, had any digging been done around your house when you had gone? *A.* They had just dug underground shelters, trenches here *(Indicating the rear of the house marked "N")*.

Q. And was there any outside entrance to the basement of your house? *A.* Yes, here *(Indicating point immediately south of the house marked "N")*.

Q. Now, after your return, did you see any Canadian graves there? *A.* Yes.

Q. When did you see them? *A.* At the beginning of Bastille Day when I came back.

Q. And where were those graves? *A.* There were these here *(Witness indicates where word "wall" appears...)*.

Q. Were any other graves there, Canadian graves? *A.* Later I saw a Canadian officer that the Canadians had buried here *(Witness points to the point marked "L")*.

Q. Now, had he been buried when you first saw that grave? *A.* Yes. They were burying him.

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Q. They were burying him then. What day was that? *A.* It was about the 17th of July.

Q. And how did you know that it was a Canadian officer? *A.* The Canadians had told me that they had found a Canadian officer.

Q. And was a cross erected to mark the place? *A.* Yes.

Andrew: *(Begins cross-examination) Q.* When you went to get the milk did you stay very long in the Abbaye courtyard? *A.* No, about a quarter of an hour.

Q. You are not able to say then whether or not the Canadian soldiers who went to Mme Vico's house came out again later? *A.* No.

Q. Have you any brothers and sisters? *A.* Yes.

Q. Younger brothers and sisters? *A.* Yes.

Q. And is it not correct that the Germans allowed your father and mother to stay at the Abbaye because of your small brothers and sisters? *A.* Yes.

Q. And... the Germans allowed your father and mother to take household furniture out of the old place into the new one too? *A.* No; they allowed us only one bundle of clothes.

Q. M. Huard says that they allowed him to get some clothing and personal effects from his house. Do you know anything about that? *A.* I do not know.

Q. You live within the Abbaye grounds do you not? *A.* Yes.

Q. And is it not true that you did not see anything out of the ordinary while you lived at the Abbaye or in the Abbaye grounds? *A.* No.

(*The witness withdraws.)*

Fourteenth Witness for the Prosecution (Recalled)

Capt M. Bluteau, Officer in Charge Casualty Wing, Canadian Records, Canadian Military Headquarters, London, England, being recalled, is reminded that he is still under oath and is examined by the Assistant Prosecutor, Lt-Col Campbell:

Campbell: *Q.* Capt Bluteau, the last time you gave evidence you indicated that you were Officer in Charge of Casualty Wing, Canadian Records, Canadian Military Headquarters? *A.* Yes.

Q. And in the course of your duties did you compile some data with respect to a group of names of Canadian soldiers supplied to you by No 1 Canadian War Crimes Investigation Unit? *A.* Yes sir.

Q. I show you the document. What is that? *A.* This is the first identification of a casualty among Canadian Army personnel.

Q. And what is the information which is shown on that record? *A.* Missing, sir.

Q. On what date? *A.* On the 7th of June 1944.

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Q. And does that contain an abstract of the records as shown and the authority for the records at your office? *A.* Yes – "2 Ech 21 Army Group." *(List of eighteen Canadian soldiers whose bodies were found in the small park of the Abbaye Ardenne is entered as Exhibit T-60...)*

Q. I show you a second document. Was that prepared by you? *A.* Yes, sir.

Q. What does it show? *A.* This is the original report "Change of Status or Present Status" of the same persons.

Q. I direct your attention to a special note which you have attached with respect to one soldier?... *A.* Pte Moss, James Albert, F.45209, North Nova Scotia Highlanders.

Q. Do you know any more about the soldier since that time? *A.* No, sir. *(Change of Status or Present Status Report is entered as Exhibit T-61...)*

Q. Are you able to show from your records the correct correlation there is between the number F.45209 with some soldier of the Canadian Army and what the correct name is which is associated with that number? *A.* Right, sir. Records in possession of Canadian Military Headquarters show that the number F.45209 refers to Pte Moss, J.A., North Nova Scotia Highlanders.

Q. Could anyone else have the same number? *A.* No, sir.

Q. I show you another document. What is that? *A.* This is a report of Casualties related to L/Cpl Arsenault and Cpl MacKinnon as received at Canadian Military Headquarters, Acton.

Q. And what do they show? *A.* They show "Killed in Action 7 June 1944." *(Report of Casualties related to L/Cpl Arsenault and Cpl MacKinnon is entered as Exhibit T-62...)*

Q. Now, in your capacity as Officer in Charge of Records, are you responsible for the recording and, if possible, the identifying of unknown personnel? *A.* Yes, sir.

Q. Have you have your attention directed to a certain unknown "2GC Unknown N.168"? *A.* Yes, sir.

Q. And as a result of your research as Officer in Charge of Records are you able to identify that body? *A.* Yes, sir, as the body of one Lieut F. Williams, Stormont, Dundas & Glengarry Highlanders.

Q. Have you got the original records with you, indicating how that conclusion was arrived at? *A.* Yes. First – because the unknown's regimental shoulder flashes are those of the S.D.&G. Highlanders. The unknown had Lieut's pips on his epaulets; thirdly, the cross-marking states that the marginally noted was a Glengarry officer killed in action 1944; fourth, Lieut Williams was the only officer of the S.D.&G. Highlanders killed in action or presumed killed in action in this area for whom no burial return has been as yet received, a check, sir, as shown by extracts from the War Diary.

Q. Have you prepared from the original files in your possession copies of the relevant material supporting this decision? *A.* Yes, sir.

Campbell: *(To the Court)* Now, with the indulgence of the Court I would like to put a copy of the original in. The reason is that [this] is an original Record's file, sir, and it would not be available for their use if filed in these proceedings.

Campbell: *(Resuming examination) Q.* Are these correct? *A.* Yes, I have verified them. *(... Records File referring to identification of unknown body as that of Lieut F. Williams together with extracts from War Diary of S.D.&G. Highlanders is entered as Exhibit T-63.)...*

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Campbell: *(Resuming examination)* Now, have you been able to obtain from your office in the limited time available any information about L/Cpl Pollard? *A.* Not yet, sir.

Campbell: *(To the Court)* If that should become available may this witness be recalled for the purpose of giving that evidence?

President: Yes.

(The Defending Officer declines to cross-examine this witness.)

(The witness withdraws.)

President: Court will adjourn for ten minutes.

—

President: I declare the Court open...

Campbell: Supplementary to the evidence given by Capt Bluteau, I would like now to given in evidence a report of the Deputy Director of Dental Surgery, C.M.H.Q, with respect to the unknown body 2GC/UNK/169 verifying that it compares and is sufficiently close to the dental chart of F.45209 Pte Moss, J.A. so that he can give it as his opinion that the dental charts were taken of the same mouth. I do not think it is necessary to read this exhibit but would like it entered as an Exhibit.

Judge Advocate: That will be Exhibit T-64...

President: Well, now, this all has reference to Pte Moss.

Campbell: Yes, sir, that is the identification of him as being one and the same person as 2GC/UNK/169.

TWENTY-SIXTH WITNESS FOR THE PROSECUTION (RECALLED)

PW 31G11791, Untersturmführer Kurt Bergmann, 12th SS Panzer Division, Hitler-Jugend, having been reminded of his former oath, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* You told us before that your rank was Untersturmführer and that you were Adjutant of the III Battalion, 25th Panzer Grenadier Regiment? *A.* Yes, sir, Colonel.

Q. And when were you taken prisoner? *A.* On the 9th July 1944 I was taken prisoner.

Q. Where were you at the time? *A.* I was north of Buron.

Q. And were you still Adjutant of your Battalion at that time? *A.* Yes sir, I was still Adjutant.

Q. And who was your Battalion Commander at that time? *A.* Hauptmann Steger.

Q. For what period of time has he been your Battalion Commander? *A.* Hauptmann Steger had already been from 8 to 10 days Battalion Commander.

Q. And between the time that Milius was your Battalion Commander and Steger took over the Battalion, who acted as Battalion Commander? *A.* In the interval Oberleutnant Fritsche, Commander of the 9th Company, was Battalion Commander.

Q. How many former members of the Wehrmacht did you have as officers in your Battalion on the 7th June? *A.* On the 7th June we had three officers of the Wehrmacht.

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Q. And how many... of your officers were SS? *A.* There were about 13 or 14 SS Officers.

Q. Do you remember giving evidence before me at Alva, Oklahoma, on the 21st and 23rd July, and later in London on the 3rd and 28th October? *A.* Yes sir.

Q. And is this your signature on these documents I am showing you? *A.* Yes sir.

Q. Now, did your Battalion take part in the fighting on the 7th June 1944? *A.* Yes sir.

Q. Will you describe tactically the nature of the fighting that took place that day? *A.* We attacked the English from Caen towards the sea.

Q. And what units took part in the attack? *A.* As far as is known to me, 25th Regiment.

Q. Did all three Battalions of that Regiment take part in that attack? *A.* Yes sir.

Q. And what were the dispositions of the three Battalions for the purpose of that attack? *A.* I am familiar only with my Battalion.

Q. All right then, what was the axis of advance of your Battalion for that attack? *A.* The Battalion drew up a position of preparedness for the purpose of this attack north of the road Caen-Bayeux.

Q. And what was your objective? *A.* The objective of the Regiment was St. Aubin.

Q. And what was the objective of your Battalion? *A.* That was coordinated with the objective of the Regiment.

Q. Where did you eventually get to in the course of your attack that day? *A.* We took the place Buron.

Q. And did some of your troops go through the village of Authie? *A.* I saw none.

Q. Did you go through the village of Authie yourself? *A.* No...

Q. Now, will you describe the road that you personally took to reach Buron? *A.* The Battalion attack took place about 1400 to 1430 hours. The Battalion HQ was situated about 80 metres north of the road Caen-Bayeux. I had received an order from Obersturmbannführer Milius at about three o'clock to move the Battalion HQ to a road intersection Authie-Buron together with a road which leads there from the east.

Q. And did you there see your Battalion Commander? *A.* On this road I saw him very briefly.

Q. Did you at any time that afternoon find it necessary to go to Regimental HQ? I am speaking now of the 25th Panzer Grenadier Regiment Headquarters. *A.* Yes, at about 4.30 I was at the Regimental HQ.

Q. Where was that? *A.* It was in the Castle Ardenne.

Q. And did you see there your Regimental Commander? *A.* Yes sir. I saw Standartenführer Meyer.

Q. In what part of the Ardenne buildings did you find him? *A.* Standartenführer Meyer was in a dwelling building according to my idea.

Q. Are you familiar with the Chapel and buildings there? *A.* No, it is not known to me.

Q. I show you [a] plan of the Abbaye buildings; can you indicate on that plan where it was you saw Standartenführer Meyer? *A.* I believe it was in this building. *(Witness points to building "R" adjoining the chapel.)*

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Q. Were there other officers there with the Regimental Commander? *A.* Yes sir. The Adjutant and the Ordannanz Offizier were there.

Q. Who was the Adjutant of the Regiment at that time? *A.* It was Obersturmführer Schuemann.

Q. And for what period prior to that time had he been Adjutant? *A.* Obersturmführer Schuemann was – he came in May according to my idea...

Q. And how long did he remain Adjutant? *A.* Shortly after the invasion he was relieved.

Q. And did you know [when] your Battalion Commander Milius took over command of the Regiment, what time that would be? *A.* Milius took over the Regiment about ten days after the invasion.

Q. And when was Schuemann relieved, as Adjutant? *A.* The exact point of time I am unable to say.

Q. Who succeeded him as Adjutant? *A.* His successor was Untersturmführer Breiholz.

Q. Had Untersturmführer Breiholz been your assistant and Ordannanz Offizier of your Battalion? *A.* Yes sir.

Q. Do you know why Schuemann was relieved of his appointment? *A.* No...

Q. Do you know whether he was liked by Milius? *A.* No. I do not know.

Q. Now, were there many prisoners taken by your Battalion after the 10th of June? *A.* No...

Q. And did you take many prisoners for the period of the next month? *A.* No. On the 9th of July I had already been taken prisoner.

Q. Yes. From the 10th of June to the 9th of July, had your Battalion taken very many enemy prisoners? *A.* In this interval we took only three prisoners.

Q. Yes. Will you tell us about these three prisoners, where they were taken and under what circumstances? *A.* On one occasion two prisoners were taken. They were wounded. And one prisoner later; in my opinion he was a Signalman.

Q. Will you tell us about the two who were taken who were wounded? When was that? *A.* The exact time of the capture I am unable to say.

Q. Can you say it approximately as to what week in the month, or possibly the day it might have been? *A.* As far as I can recall it was in the middle of the month of June.

Q. And did you see the prisoners yourself? *A.* I did not see the two wounded ones.

Q. From whom did you receive your report of them? *A.* I received the report the next morning from... the section commander of my signal section.

Q. And what did he tell you about the taking of these prisoners? *A.* He told me that the two wounded Canadians had been taken prisoner. These had been taken by the ninth company to the Battalion HQ.

Q. And what time of the day or night had they been taken prisoner? *A.* As far as I can recall three o'clock at night.

Q. And they were brought back to your Battalion HQ? *A.* Yes, sir, and then were taken thereafter to the Battalion First Aid Post.

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Q. And where was the Battalion First Aid Post? *A.* I don't know exactly whether the name was Cussy or Cushie. *(When shown a map, the witness picked out the location and announced the name as Cussy.)*

Q. And where were they taken from Cussy? *A.* From Cussy they were taken to Regimental HQ.

Q. Did you receive any orders, as Adjutant of the Third Battalion, from the Regimental Commander subsequent to the 7th of June with respect to the treatment of prisoners of war? *A.* As far as I can recall three days after the beginning of the invasion there was an Order from the Intelligence Service in which we were reminded that prisoners should be dispatched quickly to the Division.

Q. And what were you told was the reason for that quick dispatch to Division? *A.* For strategic reasons.

Q. Will you say what you mean by "Strategic Reasons"? *A.* In order to determine what opponents – what enemy – what units were opposite us.

Q. Now, you served for what period of time under Standartenführer Meyer? *A.* From the end of February to the 9th of July I served under Standartenführer Meyer.

Q. Was he strict or easy –

Judge Advocate: That is not fair, is it? You must not lead him.

Andrew: What was your opinion of – or -

Macdonald: I have asked this same question before and there was no objection. I was going to give him alternatives and ask him –

Judge Advocate: You were going to give him alternatives, I see, but would it not be better if you just –

Macdonald: *(Resuming examination-in-chief)* What was your experience of Meyer as a disciplinarian? *A.* During the time I was Adjutant I received many orders from Meyer which had to do with the discipline of the troops. These orders impressed me personally very much because from them I learned a great deal. The form of these orders was, in the first place, "I order this and that" and then came a justification therefore, and "because that is the case I therefore order such and such."

Q. Now, did Standartenführer Meyer enforce his orders? *A.* Yes, sir. He enforced them.

Q. Could you describe the state of discipline in your regiment? *A.* I know of my own Battalion. The other Battalion Commanders were known to me. They were known as good officers.

Q. Was there good or bad discipline in your Battalion? *A.* I believe no, there was good discpline.

Q. Can you indicate on the map where Nine Company of your Battalion was at the time these prisoners were taken? *A.* Which prisoners, if I may ask?

Q. The two wounded prisoners. *A.* There was the Ninth Company in this sector.

Macdonald: The witness draws an arc on Exhibit T-2 from roughly MR 982728 to [988731]. *A.* Not quite so far, at this end was the Tenth Company...

Q. Was it reported to you whether either of the (two) prisoners captured were officers? *A.* No, it was not said to me.

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Andrew: I might explain, sir, that some of these German witnesses will be called for the defence so I will confine my cross-examination purely to the examination-in-chief. *(Begins cross-examination)*

Q. You said that Schuemann was discharged as Adjutant of the 25th Regiment? *A.* Yes sir.

Q. Was that before or after Milius took over command? *A.* As far as I can recall Milius took over the Regiment and at that time Breiholz was already Adjutant.

Judge Advocate: Col Andrew, if you do not cross-examine and call him as a defence witness, you won't be able to cross-examine him then.

Andrew: I quite agree. There are some points I do not want to cross-examine him on. I want it to come out as part of the defence.

Judge Advocate: He will then be your witness.

Andrew: My witness and subject to cross-examination by the Prosecutor.

Judge Advocate: You are satisfied with that?

Macdonald: Yes. I am satisfied.

Twenty-eighth Witness for the Prosecution

SS Mann Hermann Sue, 25th Regiment, 12th SS Panzer Division, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* Would you prefer to give your evidence in English or in German? *A.* In German, sir.

Q. What is your name, rank and unit? *A.* Hermann Sue SS Mann, 25th Regiment, 12th SS Panzer Division.

Q. Where and when were you taken prisoner? *A.* On the 9th of July... in Buron.

Q. With what unit were you serving at that time? *A.* The 25th Grenadier Regiment.

Q. And with what Battalion and what Regiment were you serving on the 7th of June 1944? *A.* With the same unit.

Q. But with what Battalion of the Regiment? *A.* The third Battalion.

Q. And were you with them when they moved to Normandy? *A.* Yes sir.

Q. And did you go up into the forward position with them on the 7th of June? *A.* No.

Q. When did you join your unit in the line? *A.* For the first time on the 12th of June.

Q. Now, do you remember giving evidence to... Maj Campbell on the 7th of August? In London? *A.* Yes sir.

Q. And on the 27th of September, to me at London? *A.* Yes sir.

Q. And is this your signature? *A.* Yes sir.

Q. Now, what duties did you perform with your Battalion when you eventually joined it on the 12th of June? *A.* [Dispatch Rider] from Battalion HQ to Regimental HQ.

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Q. And where was Regimental HQ at that time? *A.* In Abbaye Ardenne about five hundred metres from Cussy.

Q. And while you were with your Battalion did you see any prisoners? *A.* Yes sir.

Q. When was that? *A.* The first time on the 7th of June I saw five prisoners along the road from Caen to St. Germain who were being led to Caen.

Q. And did you see any at your Battalion HQ– 3rd Battalion HQ? *A.* Yes sir, a wounded prisoner.

Q. And when did you see that prisoner? *A.* Early in the morning about six o'clock.

Q. What date? *A.* It must have been the 16th or 17th of June.

Q. Now, what happened to that prisoner? *A.* He was brought back to Regimental HQ.

Q. And did you in the course of that day have to go to Regimental HQ as a [Dispatch Rider]? *A.* Yes sir.

Q. What time of the day was it that you went there? *A.* Between four and five o'clock.

Q. And did you observe anything interesting while you were there? *A.* Yes sir.

Q. Will you describe it? *A.* As I drove up to the entrance to the Regimental HQ, and came near to the Regimental – the house of the Headquarters, I heard one or more shots and the echo was so strong I could not determine how many there were, and in front of the Regimental HQ was standing a guard. I asked him what these shootings could mean so far behind the line. He answered me "Perhaps it is a prisoner has been shot who would make no statements."

Q. Now, will you show me on this... plan of the Abbaye Ardenne, where you were when you heard this shot being fired? *A.* I came along this road from Cussy and turned here into the Abbaye and drove farther along here and it was just about here that I heard the shots...

Q. Do you know what force the wounded man belonged, that you saw at Battalion HQ? *A.* To a Canadian Brigade. I don't know which one.

Q. Yes. Now, can you tell me in what manner of speech this sentry or postern gave you his answer in response to your question? Can you describe it? *A.* Yes. He said that in such a way as if it were something that everyday happened.

Andrew: *(Begins cross-examination) Q.* This headquarters that you have marked on the chart with "AA"; do you know what was inside that Headquarters? *A.* Yes sir.

Q. What was in there? *A.* Yes. There was a bunker under the ground where there was a telephone exchange.

Q. Were there many people around that headquarters? *A.* In the headquarters itself I have only seen two or three officers of whom I only knew one and that was the Adjutant.

Q. Did you ever go inside the chapel yard from the chapel there? *A.* No.

Q. And you were going towards, if I understood you rightly, going towards this headquarters when you heard the shots, is that correct? *A.* No. I was sitting on my motorcycle when I heard these shots.

Q. Are you sure of that? *A.* Yes, sir.

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Q. Now, in your questions that you gave my friend Col Macdonald on the 7th of August 1945 – do you remember that occasion?

Macdonald: That was Maj Campbell, so that he may not get mixed up on it.

Andrew: To Maj Campbell, yes. I am sorry.

Sue: *(Through the Interpreter) A.* Yes.

Andrew: *(Continuing cross-examination)* When you were asked about that occasion your answer,... , was: "I only know what I have told you before about this case. Once when I was walking towards my motorcycle at Regimental HQ to drive off I heard a shot come from within the monastery" and then you go on to say asking the guard about it? *A.* Yes.

Q. Was that part I have read to your answer correct? *A.* Yes, sir.

Q. Do you remember the exact details of that occasion? *A.* I thought over everything very carefully after this interrogation and then came to the view that it had happened as I was still sitting on my motorcycle and not as I had previously said, that I had already come out of the Headquarters. That's all.

Q. And where was your motorcycle? *A.* As I have already said, I was sitting on my motorcycle where I had turned it off because it was forbidden to go in there with the motor on. Then I heard the shooting.

Q. And how far away would the Abbaye be from where you were? *A.* The Abbaye or the Regimental HQ?

Q. The Abbaye, the monastery as he calls it –

President: There is some confusion there. Do you mean the monastery or the chapel?

Andrew: The chapel, sir.

Sue: *(Through the Interpreter) A.* I could only see the tower of the chapel and that was perhaps forty metres to my left.

Andrew: *(Continuing) Q.* Do you call that the monastery, referring to the chapel here ...? *A.* Yes. There was a church standing there somewhere which I had already seen when I drove by.

Q. Was that the direction from which the sound of the shot came? *A.* No. The sound of the shooting to my opinion was here behind Regimental HQ.

Q. Well, then, when you said in your answer as I have read it that it came from within the monastery, was that not correct? *A.* When I say the cloister, the monastery, then I mean the entire building because the monastery cannot be confused with the chapel.

Q. Am I correct in saying that you mean the whole of this chart is the monastery? *A.* Yes, the whole.

Q. Now, then, can you tell me if you had any conversation with a guard, an English guard, in Colchester in England? *A.* Yes sir.

Q. What did he tell you? *A.* He told me at that time when he was in action in Normandy that they got the order to shoot every SS man they took prisoner.

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Q. And when you were taken prisoner to England, you being an SS man, were you fearful as to what might happen to you? *A.* Yes, I thought that over and asked myself the question why we had not been shot when we came into imprisonment.

Q. And was it on your mind while you were in prison – the early part of your time in prison in England; is that right? *A.* After I had heard from this English soldier that they had had the order to shoot SS men.

Q. Did you ever take prisoners yourself? *A.* No.

Macdonald: *(Beings re-examination) Q.* Now, when was it that you heard this remark from the English guard to which you have just referred? *A.* Shortly after the capitulation when all the soldiers in England had to work.

Q. When was that roughly? *A.* At the beginning of June [1945].

Q. And when were you taken prisoner? *A.* On the 9th of July 1944.

Q. In other words, a year before that? *A.* Yes, sir.

Q. And had you been mistreated in the meantime? *A.* No.

Q. And were there many of your comrades taken prisoner at the time you were? *A.* No. Only seven men.

Q. Have you seen many of your comrades from the SS as prisoners in prisoner of war camps? *A.* Only an Oberchardführer and one soldier. Then in London during interrogation and now here, my commander and adjutant.

(*The witness withdraws.)*

President: The accused and escort may withdraw. The court will adjourn until ten o'clock tomorrow morning.

(At 1645 hours the Court adjourned until 1000 hours on 18 December 1945.)

18 December 1945

President: I declare the Court open...

Twenty-ninth Witness for the Prosecution

Rottenführer Ewald Wetzel, Feldgendarmerie, attached 25 Panzer Grenadier Regiment, being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name, rank and number? *A.* My name is Ewald Wetzel, rank Rottenführer.

Q. When were you taken prisoner? *A.* On the 19th of August 1944.

Q. With what unit were you serving at that time? *A.* Feldgendarmerie.

Q. And to what unit or formation were you attached for that purpose? *A.* 25th Regiment.

Q. 25th Panzer Grenadier Regiment of the 12th SS Panzer Division (Hitler-Jugend)? *A.* Yes.

Q. Do you remember being examined by me on oath on 8 September 1945 at London? *A.* Yes.

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Q. And do you remember being examined again on 11 September 1945? *A.* Yes.

Q. And again later when you examined your evidence and made corrections? *A.* Yes.

Q. And is that your signature on these documents? *A.* Yes.

Q. Now, when did you go to the Headquarters of the 25th Panzer Grenadier Regiment? *A.* On the 7th of June [1944] in the evening between eight and nine o'clock.

Q. And where was the Headquarters at that time? *A.* In the Abbaye Ardenne.

Q. And did you have a number of vehicles with your Feldgendarmerie Section? *A.* Yes, we had two trucks.

Q. And were there any motorcycles? *A.* One motorcycle.

Q. And who was in charge of your Feldgendarmerie Section? *A.* Oberscharführer Guecker.

Q. And how many members were there in your Feldgendarmerie Section at Regimental HQ? *A.* Eleven men.

Q. Now, could you tell me by looking at this plan where you took up your position on the evening of the 7th of June... ? *A.* We came to the monastery from St. Germaine and then we fixed up our spot right here where one comes into the garden. Half an hour later we went around to the left and put ourselves on the left outside the wall.

Q. You mean by that that you eventually took up your location entirely outside the monastery area? *A.* Yes.

Q. So that you did not occupy any of these buildings in the monastery at all? *A.* No.

Q. Did you personally see any Canadian prisoners that night? *A.* No, that night I saw no prisoners.

Q. Now, where was the Regimental HQ itself established in the Abbaye Ardenne buildings? *A.* It was to the right of the church in the farmhouse. *(Witness points at building marked "R"... in Exhibit T-1.)*

Q. Now, was that Headquarters moved at some time? *A.* Later it moved into the house here to the right – into this house here *(Witness points to building immediately opposite the word "garage" near the building marked "N"...).*

Q. Would you recognize a picture of the building if you saw it? *A.* Yes.

Q. Does that look like the building *(Showing the witness photograph)*? *A.* Yes, that may be the building.

Q. Well, now that would appear to be at the end of the long building, not in the middle as the one you pointed one? *A.* The building which stood to the left of the chapel was ruined by shellfire; that was a kind of old ruin, and then came that house. Adjoining the shot-up house came the house in which was the Regimental HQ.

Q. And you say this is a picture of the Regimental HQ which I am now showing you? *A.* It may be.

Q. Well do you know? *A.* I don't know precisely. *(Picture of buildings in Abbaye grounds, is entered as Exhibit T-65...)*

Q. In any event the Regimental HQ was moved from its original position on the right of the chapel to a position down on the left of the chapel; that is towards the south-west? *A.* Yes.

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Q. And is the building marked "N" right next to the building which you have indicated as what you thought was Regimental HQ?

Andrew: That is a leading question and the thing is not correct at that if you look at the map.

Macdonald: You say the map is not correct?

Andrew: No, the statement you made to the witness in your leading question.

Macdonald: It is on the map. *(Resuming examination) Q.* Will you mark on this plan the building which you think was Regimental HQ? *A.* It may have been here.

Q. You have now put an "X" opposite the letter "N" on the exhibit. Now when the Regimental HQ was at the latter location did you see or here of any prisoners of war? *A.* Later I saw prisoners of war which I myself took back.

Q. Well, now, did you hear anything about any prisoners of war at that particular Headquarters which we have just indicated? *A.* No, I didn't hear of them.

Q. Did you hear of any unusual occurrences during the night in the middle of June? *A.* On the 17th or 18th of June a prisoner was shot.

Q. How do you know that? *A.* We slept next to our vehicles and the sentry who stood on guard between four and six in the morning, he said that he had heard shots. Whereupon in the morning Oberscharführer Guecker went to Regimental HQ and when he returned he said that a prisoner of war had been shot.

Q. Did he say anything more about what kind of prisoner of war or what his rank was or any other description of him? *A.* No, he didn't say that.

Andrew: *(Begins cross-examination) Q.* Do you remember being questioned by Col Macdonald on the 8 September 1945? *A.* Yes...

"*Q.* Well, now, Wetzel, on the 7th of June there were in the neighbourhood of seventy-five to one hundred prisoners brought to that Headquarters. What was the matter with you; were you sick or chloroformed? Did you not see those prisoners? *A.* I have seen no prisoners on the 7th, definitely not.

Q. What were you doing there? *A.* We were in the garden and were fixing our vehicles. We didn't get any farther.

Q. Did you see any prisoners on the 8th of June? *A.* No, I saw none on the 8th."

Do you remember making these answers? *A.* Yes.

Q. Are they correct? *A.* Yes.

Q. I want to read you Question 70:

"*Q.* And were a number of vehicles sheltered in this church (referring to the chapel)? *A.* I never saw vehicles in the church itself except that when supplies were brought the vehicles came in the church to distribute the supplies and then went out again but the regiment vehicles were on the south-west side of the church."

Do you remember making that answer? *A.* Yes.

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Q. Is it correct? *A.* Yes.

Q. Now, when you said "regimental vehicles," what vehicles did you mean? *A.* Radio cars and personnel cars stood there.

Q. Of the Regimental HQ personnel? *A.* Yes.

Q. Now, when prisoners were brought to Regimental HQ did the Feldgendarmerie take them over? *A.* Yes, then Oberscharführer Guecker was called to Regimental HQ and he brought the prisoners to our vehicles.

Q. And where did you take the prisoners from Regimental HQ? *A.* We took them back to Division.

Q. Was this the usual drill in the handling of prisoners? *A.* Yes.

Q. Will you describe, looking at the Chart here *(Exhibit T-1)*, the usual practice of handling prisoners at the Abbaye? When they were brought in what stages did they go through? *A.* Oberscharführer Guecker picked up the prisoners at Regimental HQ and brought the prisoners to our vehicles here.

Q. That is the south-east end of the chart of the Abbaye Ardenne in Exhibit T-1? *A.* Yes.

Q. And then were they taken back to Division HQ by you? *A.* Yes, then they were taken by us to Division.

Q. Do you remember when Milius took over command of the 25th Regiment? *A.* No, I don't know that precisely.

Q. Well, about how long after the invasion did he take over? *A.* A fortnight to three weeks afterwards when the Divisional Commander was killed.

Q. Now, I want you to listen to these questions from the same interrogation –

"*Q.* Now tell me what you know about the shooting of prisoners at this Headquarters? *A.* I heard from Guecker that one prisoner of war had been shot at the Headquarters."

Is that answer correct? *A.* Yes...

"*Q.* When did this occur? *A.* Approximately after three weeks."

Is that answer correct? *A.* Yes.

Q. Do you remember what date Regimental HQ was changed from the right of the chapel to the left of the chapel? *A.* It may have been after eight or fourteen days.

Macdonald: *(Begins re-examination) Q.* Now, was the Headquarters changed during the period of the command of Meyer or Milius? *A.* Meyer still commanded.

Q. Now, from whom did Oberscharführer Guecker get the prisoners at Regimental HQ? *A.* Either from the Adjutant or from the Commander himself.

Q. And if a prisoner was shot at Regimental HQ who do you think would issue the order for that?

President: We cannot have that.

Macdonald: *(Resuming re-examination)* Did Oberscharführer Guecker tell you who had ordered the execution of this prisoner you spoke of? *A.* No.

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Q. Who had authority to issue any such orders to your knowledge as a member of the Feldgendarmerie? *A.* The Regimental Commander or any one of the staff officers.

Andrew: There is just one question I would like the Court to ask: if this man knows of any such order being give – if he knows of any such order definitely being given?

President: *(To the witness)* Do you yourself know of any such order being given? *A.* No, I know nothing of that.

Q. You have said that the Regimental Commander or any one of his staff officers could give such an order. What makes you say that – what do you base it on? *A.* Because no other one can give that order.

Q. Can they give that order? *A.* Yes, they have commanding power.

Interpreter: "The power of command" or "commanding power" – perhaps a free translation would be "authority" for that word. That is a German semi-legal term.

(*The witness withdraws.)*

THIRTIETH WITNESS FOR THE PROSECUTION

Hauptmann Fritz Steger, 3rd Battalion, 25th Panzer Grenadier Regiment, 12th SS Division (Hitler-Jugend), being duly sworn, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* What is your name, rank and unit? *A.* Hauptmann Fritz Steger.

Q. When were you taken prisoner? *A.* 9th July 1944, near Buron.

Q. And with what unit were you serving at that time? *A.* I was with the 3rd Battalion, 25th Panzer Grenadier Regiment, 12th SS Division.

Q. And were you commanding the 3rd Battalion at that time? *A.* Yes sir, from the date of my arrival on the 1st of July 1944 to the day of my being captured.

Q. And had you served at some previous time with the 25th Panzer Grenadier Regiment? *A.* Yes sir. I was from the time I was attached there on 8th November 1943 to the beginning of May 1944. I was Instruction Officer at the 1st Battalion of 25th Panzer Grenadier Regiment.

Q. And are you a member of the SS or the Wehrmacht? *A.* I am a member of the Wehrmacht.

Q. And what decorations have you? *A.* I have the Knight's Cross of the Iron Cross, I have the Iron Cross First Class and Second Class.

Q. Now, do you remember giving evidence to Maj Griffin and Maj Carroll on oath on the 25th July 1945 at Concordia, Kansas? *A.* Yes sir.

Q. And do you remember giving evidence to me at London on the 6th October 1945? *A.* Yes sir.

Q. And again on the 28th October 1945? *A.* Yes sir.

Q. And is that your signature which I now show you? *A.* Yes sir.

Q. Now, I believe that at the time of the invasion you were away from your unit on a Battalion Commander's Course, were you not? *A.* Yes sir.

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Q. And when did you return? *A.* On the 30th June I came to the Regimental HQ... which had been Regimental HQ before the invasion.

Q. And was that in the course of your return to your unit in the line? *A.* I was recalled by telegram and took over on the 1st of July 1944 the battalion.

Q. Now, while you were at this Rear Regimental HQ, did you meet any officer of your Regiment? *A.* Yes sir. I met the Administrative Officer of the Regiment and the Technical Officer of the Regiment.

Q. Now, who was the Administrative Officer of the Regiment? *A.* Obersturmführer Huffendieck.

Q. And did you have any conversation with him with relation to the matter of prisoners of war? *A.* Yes sir.

Q. And what did he say to you about it? *A.* He said he heard that the shooting of prisoners at Regimental HQ was reported to have taken place.

Q. Did he say from whom he had heard that? *A.* No, he didn't say that.

Q. Do you know where he had heard it, did he mention that? *A.* No.

Q. Do you know whether, as Administrative Officer of the Regiment, it was part of his duty occasionally to go to the forward Headquarters of the Regiment? *A.* He practically daily had things to do at Regimental HQ and to receive his orders.

Q. Now, when you joined the 3rd Battalion of the 25th Regiment, did you have any conversation with anyone there with respect to the matter of prisoners of war? *A.* I only once spoke with an Oberscharführer, whose name I cannot quite precisely give you, it may have been Kneip or Quest, and him I asked whether he had heard anything of shootings. He answered he heard that shootings were reported to have taken place.

Q. Did he say where? *A.* At Regimental HQ.

Q. Now, what particular duty did Oberscharführer Kneip have? *A.* He was 6th Platoon Commander of the 3rd Battalion.

Q. And what about Quest? *A.* As far as I can remember Quest had the Anti-Tank Platoon.

Q. Now, what sort of shootings did they say had occurred at Regimental HQ? *A.* They didn't say that to me.

Q. Well, what was your inquiry to them then? *A.* I asked them whether they had heard anything of shootings.

Q. Shootings of whom or what? *A.* Of prisoners of war.

Q. And it was to that inquiry that they gave the answer you have just given me? *A.* Yes sir.

Andrew: No questions sir.

President: As a Battalion Commander did you have authority to order the shooting of prisoners of war? *A.* No sir.

(*The witness withdraws.)*

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TWENTY-FOURTH WITNESS FOR THE PROSECUTION

Capt B.B. Wagman, attached 22 Canadian General Hospital, having been reminded of his former oath, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* You are Capt Wagman who gave evidence in this Court before, I believe? *A.* Yes.

Q. And did you at the request of No.1 Canadian War Crimes Investigation Unit go recently to the Permanent Canadian Military Cemetery, Beny-sur-Mer, for the purpose of examining a body? *A.* Yes sir.

Q. When did you do this? *A.* On the 9th of December 1945.

Q. And where did you find the body which you were to examine? *A.* Beny-sur-Mer Military Cemetery,... and it was Plot 7, Row F, Grave No. 11.

Q. And will you tell us what you found on the examination of that body? *A.* The body was clothed in Canadian style battledress and Canadian style trousers. The battledress had two pips of a Lieutenant on the epaulets, the shoulder flashes of the Glengarians, Canada, and the light blue Divisional patch of the 3rd Canadian Division. The remains were in a complete state of decomposition, there was no skin or soft tissues present. The long bones were present and showed no signs of injury; the short bones were present and also showed no signs of injury. The complete skull was not present, the anterior portion of the skull being absent. The anterior portion consisted of the area from above the eye orbits to the base of the skull; this would include the face and the jaw.

Q. The face and both jaws? *A.* Yes sir. There was a portion of the lower jaw present; this was about an inch long and contained two teeth.

Q. Was there anything present which would suggest the possible cause of death? *A.* There was nothing which could be found which would suggest the cause of death.

Q. In your words, to put it this way, from your examination of the long and short bones of the body, that is as apart from the skull, you saw no breaks or fractures of any of these bones which could indicate the cause of death? *A.* No sir.

Q. Did you find injuries to the skull which, if they had occurred previous to death, might have been fatal? *A.* Yes sir.

Q. To you as a medical man, what does moaning by an injured person indicate? *A.* Moaning does indicate an injury sustained but in my opinion moaning would not occur immediately after a serious injury; it would be about 30 seconds after a serious injury was inflicted.

Q. Is moaning usually associated with a head injury? *A.* I do not think so.

Q. Can you say why that would be? *A.* Well, in a head injury there is a sudden shock and I think there would be no speech and no moaning.

Andrew: No questions sir.

(The witness withdraws.)

Macdonald: That, sir, completes the oral testimony of the prosecution. I have a number of things which I would like to read before closing, and with the permission of the Court I should like to read the interroga-

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tion of the first witness, Helzel. The examination was filed with the Court at that time. It is Exhibit T-4.

President: All right.

Macdonald: This is the ***record of evidence of Alfred Helzel***, SS Mann 15th Company, 25th Panzer Grenadier Regiment given... at Hull, Quebec, Canada on the 3rd of July 1945...

"*Q.* What is your name? *A.* Helzel, Alfred.

Q. What is your rank? *A.* Soldat (Mann).

Q. What is your prisoner of war number? *A.* A-443933.

Q. When were you taken prisoner? *A.* On the 11th June.

Q. Where? *A.* In Bretteville.

Q. With what unit were you serving? *A.* 15th Company of the 25th [Panzer Grenadier Regiment of the 12 Panzer Division (Hitler-Jugend)]...

Q. Were you employed prior to the time you joined the Army? *A.* I was at home on the farm.

Q. What education did you receive? *A.* Volkschule.

Q. Were you a member of the Hitler Youth? *A.* Yes, sir.

Q. Did you hold any rank in the Hitler Youth? *A.* I had no rank.

Q. When did you come into the... Waffen SS? *A.* 10th August 1943.

Q. Where were you first sent to commence your preliminary training? *A.* To Brunn.

Q. How long were you at Brunn? *A.* Four weeks.

Q. Where did you go then? *A.* From Brunn I went to Belgium to Beverloo.

Q. And how long were you at Beverloo? *A.* From the 9th September 1943 until the 14th or 15th of February 1944.

Q. Where did you go from there? *A.* From there we went to a small place called Montague, a small village approximately thirty-five kilometres from Beverloo.

Q. How long did you stay at Montague? *A.* From approximately the 15th until the 8th of April.

Q. Where did you go then? *A.* On the 8th of April we left for France for a small village near...

Q. Was it Le Sap? *A.* No.

Q. Was it L'Aigle? *A.* It was not L'Aigle. *(Witness indicates Gace on map.)*

Q. And did you go to Le Sap from there? *A.* Yes, the same day.

Q. How long were you at Le Sap? *A.* Until the invasion day. Invasion day morning we left...

Q. When did you become connected with the 15th Company? *A.* 12th September 1943, when it was formed.

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Q. Who was the original Company Commander? *A.* Obersturmführer Ritzart.

Q. And who succeeded him as Company Commander? *A.* His real successor was Hauptsturmführer Buettner, but in between they had a hauptmann from the Wehrmacht. The name of this hauptmann I cannot tell you. We only had him three weeks.

Q. Was his name Baederkerl? *A. (The witness writes out "Baderkerl.")*

Q. Was Baederkerl the one injured by a grenade when he was fishing? *A.* Yes, he was.

Q. Who commanded the Company in Normandy? *A.* Hauptsturmführer Buettner.

Q. Was he alive at the time you were captured? *A.* Two hours before me he was killed, before I was wounded.

Q. And when were you wounded? *A.* That I cannot say exactly whether it was still on the 8th or the beginning of the 9th, approximately around midnight.

Q. Did you see him killed yourself? *A.* Yes. I saw it.

Q. By what was he killed? *A.* He was stepping up on a tank; the tank received a direct hit from an anti-tank gun.

Q. Was this in the course of the night attack which you made on that day towards Villoneuve? *A.* It was on the attack on Bretteville. On the main road between these two villages, there he was killed. *(The witness points to a place on the Caen Sheet 7 F/1 MR 924718)*

Q. You are sure he wasn't just wounded? *A.* He was killed.

Q. Who was your Platoon Commander when you went first to Normandy? *A.* Untersturmführer Fuss.

Q. Who was your Stabscharführer while you were at Montague? *A.* Stabscharführer Hagetorn.

Q. When did he cease to be Stabscharführer? *A.* The day I cannot tell you precisely. It was the end of April or the beginning of May.

Q. And why did he lose his job? *A.* He defrauded Wehrmacht property.

Q. Do you know where he went after he left your Company? *A.* That I do not know.

Q. Do you know whether he was reduced in rank? *A.* That I cannot tell you.

Q. Who was your Regimental Commander from the time you joined the 15th Company? *A.* Standartenführer Meyer.

Q. When did he cease to be Regimental Commander? *A.* That I cannot tell you. By that time I became a prisoner.

Q. You were wounded on what day? *A.* On the 8th or the 9th, around midnight it must have been.

Q. What was the nature of your wound? *A.* Two splinters in the right upper arm, and six splinters in the right and left thighs.

Q. Were you taken to hospital following your wounding? *A.* After I was wounded I lay three days in the English lines until the English troops found me. My comrades couldn't take me back. I do not know whether my comrades themselves ever got back.

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Q. So that you were wounded at midnight 8-9 June and were captured on the 11th. Is that correct? *A.* In the afternoon at two or three o'clock.

Q. What kind of troops captured you? *A.* An English unit.

Q. Was this near Bretteville that you were captured? *A.* Directly in the village.

Q. Might it have been Canadians that captured you? *A.* So exactly I cannot say that.

Q. Have you any complaints of your treatment as prisoner? *A.* The treatment was correct.

Q. Were you given sufficient to eat? *A.* As long as I was in France the food was a bit bad. When I got to England it was very much better.

Q. How long have you been in this country, in Canada? *A.* Since the 11th September.

Q. And have you been at Prisoner of War Camp 132 since your arrival in this country? *A.* Yes, always.

Q. Now, was Standartenführer Meyer Regimental Commander, to the best of your knowledge, at the time you were wounded? *A.* Yes, then he was Regimental Commander.

Q. Where were the Headquarters of the Regiment at that time? *A.* It was at an estate or a little castle in the neighbourhood of Caen. *(Witness points at a spot on Caen sheet, MR 978713)*"

Macdonald: On this particular point the witness is in error. On a later examination he changes it. *(Continuing to read)*

"*Q.* Were you ever at that Headquarters yourself? *A.* The morning of the 8th we drove past it.

Q. Do you remember the appearance of that place? *A.* It looked old. It must have been an old castle. Inside I wasn't.

Q. Did you see anything that looked like a church or a church tower in connection with the castle? *A.* In the castle itself the castle tower. It could not have been a church tower.

Q. Did you stop at the Regimental HQ yourself at any time on the 7th, 8th or 9th of June? *A.* We came down that road and hit the main road [Caen-Bretteville road] and there we built an all-round defence, a hedge-hog position.

Q. What day was that? *A.* The 8th morning.

Q. What time of the day was it when you arrived in the vicinity of Caen on the 6th of June? *A.* In the afternoon between four and five o'clock.

Q. And where did you spend the night of the 6th-7th of June? *A.* We kept up recce on the area of the airport.

Q. You mean the airport at Carpiquet? *A.* I do not know its exact name. We always referred to it as "Airport near Caen." We drove out that road *(Witness points to Caen-Carpiquet Road)*.

Q. And did you change your position the next day about noon? *A.* Yes.

Q. Where did you go then? *A.* On the afternoon of the 7th an English regiment attacked on a front from Rots to Gruchy... My unit was called into support and in Gruchy we fought...

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Q. And were you driven back in the direction of Carpiquet? *A.* It was the other companies of the Regiment that were pushed back. They then reassembled and started a counter-attack back to the village of Gruchy where there was street fighting.

Q. In the course of the English attack had they captured the villages of Buron and Authie? *A.* That I do not know, sir.

Q. Do you know whether that afternoon a successful attack was put in on the German forces at Buron and Authie? *A.* That I do not know, sir.

Q. Where was your Company, then, during the afternoon of the 7th of June? *A.* We were up in support of the other companies up this road. We started from St. Germaine-la-Blanche-Herbe to a crossroads 977697 up in a northeasterly direction to crossroads 988718, and from there in a northwesterly direction to Gruchy.

Q. At what time of the day did you go through the village of Authie? *A.* In the afternoon.

Q. Was Authie at that time in German hands? *A.* When we passed through it, it was in our hands.

Q. You didn't have to do any fighting, then, in Authie? *A.* No.

Q. Did you see signs of fighting in the village? *A.* A few.

Q. I mean you saw the dead bodies of English and German soldiers, I suppose, did you not? *A.* In Authie, no.

Q. How long did you stay in Gruchy? *A.* Approximately two hours.

Q. Then where did you go? *A.* We were then withdrawn back to the Regimental Patrol Point where we filled up and then went as flank guard on the road Caen-Bayeux. I do not remember where the Patrol Point was.

Q. How long did you stay on that job? *A.* From the 7th in the evening until the 8th in the evening, one day.

Q. Where did you go from there? *A.* On the evening of the 8th our tanks came and with the tanks we joined in the battle of Bretteville where I was wounded.

Q. Now, are you quite sure that this place which you spoke of near Authie was the Regimental HQ at the time the fighting was going on at Gruchy? *A.* That I cannot say with certainty. It may be.

Q. What makes you think that was the Regimental HQ? *A.* As we drove past I saw on the castle tower the Regimental Commander.

Q. Who was that? *A.* Standartenführer Meyer.

Q. He has told us that his Headquarters were there *(Indicating Ardenne on map)*. *A.* On the 7th from the castle tower the fighting in Gruchy was visible.

Q. How far from Gruchy was the castle? *A.* In a direct air line, one and a half to two kilometres.

Q. Did you have any occasion at any other time to go to the Regimental HQ? *A.* No.

Q. What was the nature of your particular job in the Company? *A.* I was a machine gun man.

Q. Were you mounted on a motorcycle? *A.* No. We only carried it with us on the car.

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Q. What sort of car did you use? *A.* A schweimmwagen.

Q. That is a reconnaissance vehicle isn't it? *A.* It is not a recce car but a quick car that can go over all sorts of territory.

Q. Is it a wheeled vehicle or a half-track vehicle? *A.* Wheels.

Q. Which was being used by your Company for recce purposes? *A.* They were being used as recce cars.

Q. Now, in coming to the area of Caen on the 6th of June did you pass through the village of Argentan? *A.* From Le Sap we left always by small secondary roads, not on the main roads, by Vimoutiers near Liverot, past St. Pierre-Sur-Dives, always on very small, little roads, past Moult. Then we swung around Caen onto the right, always on little roads – the main roads were prohibited – to St. Germain.

Q. Will you try to tell me now by map reference where you spent the night of the 6th-7th of June? *A.* As I have said before, we recce patrolled on the airport near Caen and road by road we rode up and down all night.

Q. And where were you on the night of the 7th of June? *A.* With all-round defence or in a hedge-hog position we were as guard on the main road, Caen-Bayeux.

Q. Do you remember Stabscharführer Hagetorn having an assembly of your Company a few days before you left for France, in the evening, at which time he gave you certain secret orders? *A.* That I cannot remember, sir.

Q. Did you know a man in your Company by the name of Torbanisch? *A.* Yes.

Q. Was Torbanisch's first name Friedrich? *A.* I didn't know him that well.

Q. He had told us that at Montague shortly before you left for France that Stabscharführer Hagetorn had a Company assembly at six o'clock on this particular evening and that at that time he gave you certain secret orders, and you were required to sign that you had heard the orders given to you. The orders had to do with your behaviour in France with regard to the civilian population and what you should do about taking prisoners, and other things. *A.* Yes, we signed that order.

Q. And do you remember that one of the orders that Hagetorn gave you at that time was that SS would not take prisoners, and that the British did not take SS prisoners and therefore you would not take prisoners? *A.* Yes, sir.

Q. Torbanisch wrote out the order(s) as he remembered them and I show them to you now... Will you look at this exhibit and read it carefully and see if it contains the orders that you heard read by this Company spies at that time? *A.* I do not wholly agree.

Q. Will you indicate the portions of this you don't remember or which you think are not accurate? *A.* The last sentence of Paragraph 1. "If interrogation reveals that the arrested is anti-German he should be secretly executed." That is not correct.

Q. Was anything like that said? *A.* The order really said that French civilians who were anti-German in territory occupied by the Wehrmacht would be apprehended and handed over to the Gestapo. The Wehrmacht itself could not execute people.

Q. By "people," do you mean civilians? *A.* Civilians, sir. The second paragraph is also not correct. It does not tally.

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Q. What is wrong with it and what should it be? *A.* Again, the Wehrmacht can only apprehend people. It cannot execute them itself. They must be given to the Gestapo or to a Court-Martial. They themselves cannot execute anyone. The third paragraph, that is, the third order, he states that, "To leave your sentry (or) go before you are relieved, or, who gives the password to the civilian population, will be punished by death." That, too, is not correct. If you failed to do your duty as sentry you got between three and seven days arrest by the Company. If one handed the password to the civilian population the facts were sent in to the Kreigsgericht (Military Court). The fifth order also does not tally. The soldiers had to keep with them their soldbuch as well as their identity disc but no other papers whatever, not as is stated in this order "Only the identity disc."

Q. Are the orders otherwise as you remember them? *A.* Not quite to the precise wording which I cannot quite remember, but according to the contents they are approximately correct. Concerning the fourth order (that is the one about taking prisoners), nonetheless, we took prisoners as the English took prisoners.

Q. But the fact is that you do remember an order being given to you that the SS troops would take no prisoners? *A.* At that time that order was given.

Q. And were you required to memorize these orders and be able to repeat them if requested? *A.* No.

Q. Did you sign something that you had heard these orders? *A.* Yes, I did sign.

Q. What job was Hauptsturmführer von Buettner doing prior to his appointment to your Company? *A.* He was Regimental Adjutant.

Q. And how long had he been Regimental Adjutant? *A.* That I cannot precisely say. But up to the time he took over our Company he was Regimental Adjutant.

Q. Had he been Regimental Adjutant, say, for six months? *A.* That may well be so, but I cannot assert it firmly.

Q. I don't want you necessarily to be precise about this but was it a period of some months? *A.* Yes.

Q. Were you present at the Sports Field in Montague, – do you remember a company assembly on the football grounds at Le Sap about a week before the invasion at which time your Company Commander Ritzart turned over command to von Buettner? *A.* Yes, sir.

Q. And was Standartenführer Meyer present on that occasion? *A.* Yes, he was present.

Q. And did he make a speech? *A.* He may well have spoken a few words to the Company but not that much. I cannot precisely remember that.

Q. Do you remember him saying anything to the effect that you should not rely on any new weapons? *A.* No.

Q. Do you remember what he had to say about von Buettner? *A.* Yes. He introduced von Buettner to the Company and said he was a young officer, energetic, and he will do his best to lead the Company well, and we should give our confidence to him.

Q. Did he say that von Buettner had served with him in Russia? *A.* Yes.

Q. Did he say what your attitude should be towards taking British prisoners? *A.* Of that I know nothing, sir.

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Q. If we were told by other members of your Company who were present on that occasion that he said the following words, "We must not rely on any new weapons. The British have destroyed our cities and we must retaliate against them." Would you say that he didn't say those words? *A.* Whether he said that or not, sir, I cannot say; I do not remember that.

Q. Are you prepared to say positively that he didn't say it? *A.* That affirmation, sir, I cannot give you. I cannot precisely remember that.

Q. Did von Buettner subsequently tell you himself that you were not to take prisoners? *A.* That he said, yes.

Q. Did you ever hear Meyer say that? *A.* Yes, he said that, but I cannot assert that it was said on that day.

Q. When did he make that statement? *A.* Meyer was frequently with our Company. Therefore, I cannot precisely say when he said that.

Q. Did you hear him say something to that effect yourself? *A.* I heard him personally say that.

Q. Will you repeat as nearly as you can the exact language which he used? *A.* The precise words I cannot tell you but the one sentence among them was "My unit takes no prisoners."

Q. Did you hear that while the 25th Regiment was in occupation of its Headquarters in Normandy, that prisoners were killed who were taken to Headquarters? *A.* Of that I heard nothing.

Q. Did you yourself see any prisoners killed at any time? *A.* No, sir. Our Company had no prisoners.

Q. Do you mean that you refused quarter and didn't take any? *A.* Opportunity to surrender they must have had for on the 7th of June and the afternoon I saw prisoners taken by the 6th Company.

Q. But when you say your Company, the 15th Company, didn't take any prisoners, was that because you didn't have an opportunity to take them or because you refused to accept their surrender? *A.* Up to the day that I was wounded our Company never was in serious battle at close quarters so that no opportunity for taking prisoners gave itself...

Q. When you spoke of seeing the Regimental Commander at the Chateau of Authie was it possible he was just there for the purpose of carrying out a reconnaissance? *A.* How long he stayed there I do not know but on the afternoon of the 7th he was up on the church tower. Later on I was not at the Regimental HQ and I do not know.

Q. Did you see other vehicles and staff officers from the Regimental HQ there at the same time? *A.* In front of the castle I saw no officers or staff cars, or cars, but the enemy could see into the front of the castle. They may have well been around. There was a wall around the castle and some were behind it perhaps.

Q. Are you sure, now, that this was the Headquarters? *A.* On the afternoon of the 7th it must have been there at the Chateau Ste. Louet.

Q. Did you see the Headquarters there on any other day than the 7th? *A.* I was only there on the afternoon of the 7th.

Q. Do you know any members of the 12th SS Division in the neighbouring camp No. 133 at Lethbridge? *A.* No. There may well be people there but I have no information thereon.

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Q. Do you know of any other Hitler-Jugend persons in Canada besides those you have just mentioned? *A.* I have not met people from the 12th SS in my wanderings on ship or in Canada or in any camp in Canada. I did see people from the 12th SS in England.

Q. Do you know a Unterscharführer Biesold? *A.* No. Bischof... I saw Bischof of my Regiment in hospital in England...

Q. Have all the answers that you have given to the questions I have asked you so far been given voluntarily and of your own free will? *A.* I answered to the best of my knowledge and conscience.

Q. Have the answers that you have given been of your own free will? *A.* I cannot say just out of my own free will that I have answered them but it is the best I could do, – according to the circumstances which I am in, the best I could do.

Q. Have you been threatened in any way to induce you to answer these questions in the way which you have? *A.* No.

Q. Have you been given any promises to induce you to answer the questions in the manner in which you have? *A.* No.

Q. Now, you will now be questioned by another officer whose duty it is to make certain that the answers you have given are correct. *A.* Yes.

Q. You will appreciate that some of the evidence which you have given me may affect other persons? *A.* Yes, I understand it concerns those whose names I have mentioned.

Q. This officer will be questioning you on their behalf. *A.* I understand.

Major H.H. Griffin, M.C., Cross-Examiner: Q. When you were first called up were you called up in the Wehrmacht or the SS? *A.* In the first place I volunteered for the Waffen SS.

Q. Why did you volunteer for the Waffen SS? *A.* To be quite honest I wanted to do my duty like any other German likes to do his duty and for that reason I volunteered for the Waffen SS, because otherwise, because of my age, I wasn't yet permitted to join the Wehrmacht.

Q. If you had the opportunity again would you volunteer for the Waffen SS? *A.* I think this opportunity shall not afford itself to me again.

Q. Answer my question. If you had the opportunity again would you volunteer for the Waffen SS? *A.* Yes.

Q. Were you a member of the Hitler Youth? *A.* Yes, sir.

Q. Did you have any choice? *A.* There was no choice. There was no compulsion and I volunteered.

Q. If you go back to Germany will you work for the revival of the Hitler tradition? *A.* No.

Q. Why? *A.* It has no value.

Q. What do you understand by an oath? *A.* From an oath I understand words which I give to which I stick and to which I must absolutely obey and keep truth.

Q. Do you believe in the existence of any God? *A.* I do not believe.

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Q. What will happen to you if you are under oath to tell the truth and you do not tell the truth? *A.* I do not attach any value to the Roman Catholic Faith and I do not believe in God.

Q. (To interpreter – Tell him to answer my question.) What would happen to you if you are under oath to tell the truth and you didn't tell the truth? *A.* I would be shot according to the law.

Q. If it is found that you have not told the truth on this occasion do you expect to be shot? *A.* Anything that I have said so far I can answer for with my conscience.

Q. (To interpreter – Warn him to answer the questions and put the question to him again.) A. I think if I do not state the truth I would be shot?

Q. What would happen to you if you would refuse to answer any questions at all? *A.* I do not know.

Q. When you speak of Standartenführer Meyer do you mean "Panzer" Meyer? *A.* Yes, sir.

Q. You say that you heard Meyer state that all English prisoners were to be shot? Whom did he say that to? *A.* I heard Standartenführer Meyer say "My unit does not (t)ake any prisoners."

Q. To whom did he say that? *A.* He said that in front of our Company.

Q. Was that on parade? *A.* That I cannot say. Standartenführer Meyer has been with us frequently and whether it was on an exercise or on drill I do not know.

Q. Was that not boastful talking? *A.* According to the action taken later it must have been as prisoners have been taken.

Q. How do you know? *A.* Because I have seen it myself.

Q. Who were the prisoners taken by? *A.* The prisoners that I have seen were taken by members of the 6th Company.

Q. What happened to the prisoners taken by your Company? *A.* As long as I have been with the Company we did not taken any prisoners as we were not committed such as to be able to take prisoners; and in the last battle when I was wounded I do not know whether any prisoners had been taken.

Q. If an English soldier had surrendered to you what would you have done with him? *A.* I would have taken him prisoner.

Q. Was that not contrary to orders? *A.* It was contrary to orders but I had to consider that I would be treated the same way.

Q. What would have happened to you if it had been discovered that you had taken a prisoner of war? *A.* I believe nothing.

Q. In other words, your NCOs would have approved of your taking English prisoners? *A.* That is correct.

Q. And would your officers have approved also? *A.* About that I cannot say anything. The time has been too short I spent at the front.

Q. But apparently the officers in the other Company approved of prisoners being taken? *A.* That I don't know.

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Q. Were you never told that it was necessary to take prisoners in order to question them? *A.* Yes. That has been told to us.

Q. Whom was that told to you by? *A.* That we were told by the Section Leaders and the NCOs, that it is better to take prisoners.

Q. Don't you think, then, that what Meyer said was merely to build up your morale and he didn't expect it to be taken seriously? *A.* It is very difficult for me to answer for I had very little occasion to get to know Standartenführer Meyer in battle.

Q. You say that when you were taken prisoner you were treated correctly? *A.* Yes, sir.

Q. That is, you were treated well? *A.* Well, considering it was at the front.

Q. Was not the Waffen SS always correct? *A.* We were correct.

Q. Did Standartenführer Meyer expect you to be correct at all times? *A.* Yes, sir.

Q. [Why] then would he give you an order to do to the prisoners what was not correct?"... *A.* That I cannot understand either.

Q. Do you consider that the 12th SS Division were tough fighters? *A.* They were.

Q. Is it not possible that Standartenführer Meyer was merely building up that belief when he spoke to you? *A.* Yes. He did build up that belief but he has not been disappointed by his men in that belief.

Q. When you first went into action you were a young soldier were you not? *A.* Yes.

Q. And you hadn't been in action before? *A.* No.

Q. Do you not think that it is a good thing for a Commander to tell young, green soldiers that they are tough? *A.* It was good that they were told that and they believed a hard fight was there because they had brought it along with them. Each man has brought with him a belief in a hard fight. They were all volunteers and consequently were anxious to fight.

Q. I suggest to you again that Standartenführer Meyer told you that the unit did not take prisoners in order to build up your morale. *A.* I do not believe that this would have been necessary because the morale was good in our unit.

Q. Do you not believe that if young soldiers had seen enemy prisoners treated well that they might themselves be tempted to give themselves up rather than fight to the end? *A.* No. Definitely not, because, to be honest, everybody had fear of captivity.

Q. Standartenführer Meyer is a good soldier is he not? *A.* Yes.

Q. And a brave soldier? *A.* Yes.

Q. And a correct soldier? *A.* Also.

Q. Do you think that he would do anything which was not according to the rules of war? *A.* No. That I do not believe.

Q. Why, then, do you say that he told you that your unit would take no prisoners? *A.* That I cannot understand myself why Standartenführer Meyer has done that.

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Q. Was it not just talk? *A.* Yes. As I already said that I cannot say because in the three days of fighting I have not had enough experience to find out whether he has done so or not.

Q. But did you not see English prisoners that were taken by another Company? *A.* Yes.

Q. When you first went into action did you believe or not that the English took prisoners? *A.* We believe that the English units would not take any prisoners of us.

Q. When you say "of us," do you mean Waffen SS or Wehrmacht? *A.* Waffen SS.

Re-examined by Lt-Col Macdonald: Q. Where did Meyer get his name "Panzer" Meyer? *A.* The name "Panzer" Meyer he acquired in battle around Kharkov in Russia."

Andrew: I thought that we were going to leave out anything with reference to the previous experiences of the accused and deal directly with the matters in question.

President: Yes.

Macdonald: I would ask that to be struck from the record.

Judge Advocate: Actually that is an exhibit.

Macdonald: Yes, that is in as an exhibit.

Judge Advocate: No, but it doesn't deal with Russia does it?

Macdonald: No.

President: It's hearsay anyway.

Macdonald: *(Continuing to read)*

"*Q.* Did you ever hear it said that it was his practice not to take prisoners? *A.* I don't know anything to that effect.

Q. Was Meyer there when the 6th Company took its prisoners? *A.* No.

Q. When you agree with Maj Griffin that Meyer was a brave soldier and a correct soldier are you saying that from anything you have yourself observed of his actions in battle? *A.* I have not personally seen Standartenführer Meyer in battle."

Macdonald: Will you object to this one?

Judge Advocate: This is already in. The whole document is here isn't it?

Macdonald: Yes. Draufganger, as far as I know, is not a very bad thing to say about a soldier.

Judge Advocate: Well, that was the point. I may take this opportunity to advise the Court not to take into consideration anything that appears in the record relating to these charges, as far as Russia is concerned.

Macdonald: *(Continuing to read)*

"*Q.* Is it correct, then, that you have had no personal opportunity to form an opinion as to his bravery or his correct behaviour in battle? *A.* In my opinion on the basis of the opinion of those comrades who have been with Standartenführer Meyer in Russia he is reputed to be a "Draufganger."

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Q. Might I summarize your attitude, and will you please tell me if I am wrong. You had direct orders from Meyer that you were not to take prisoners, is that correct? *A.* Yes.

Q. You also had direct orders from your Company Commander and your Stabscharführer not to take prisoners? *A.* Yes.

Q. You felt that if you did take prisoners, however, you might not be punished? *A.* Also, and that if we took prisoners we also may be made prisoners.

Q. But that if you didn't take prisoners or if you killed prisoners you would be protected for that and would not be punished? *A.* On the basis of this order, yes.

Q. Was it up to you, then, pretty well to decide the choice that you were to make as to whether you should take prisoners or not? *A.* That was then left to us.

Q. If you didn't take prisoners you would be doing what you were told to do and you would be pleasing your superiors, would you not? *A.* Had the order been handled very rigidly we would have had to do it.

Q. And you took some risk of being punished when you did take prisoners? *A.* No, because a man requires prisoners for the purpose of interrogation.

Q. But in such a case your NCOs or officers would tell you when prisoners were to be taken for that purpose? *A.* That cannot be carried out. The battle doesn't go according to plans.

Q. If prisoners are required for the purposes of intelligence you would be told to take prisoners for that purpose, would you not? It would not be for you to decide. *A.* In individual battle, it is a question for the man himself to decide whether it is necessary to (t)ake prisoners with a view to be able to survive, depending on the factor whether the taking of prisoners would involve his life or not.

Q. If you wanted to get promotion do you think it would help you with your Company Commander if he knew that you were prepared to take these risks, these personal risks, and kill prisoners? *A.* No.

Q. Wouldn't he think you were a better soldier if you did what he told you to do? *A.* An order has to be carried out.

Q. People don't get any promotion in the army unless they carry out orders, do they? *A.* No, one doesn't.

Q. If you had orders from your Regimental Commander, your Company Commander, and your Stabscharführer that you were not to take prisoners, don't you think it would help your chances of promotion if you did what they told you to? *A.* No, it does not help.

Q. Why? *A.* No, because promotion only is given because of bravery, and to shoot a prisoner is not bravery.

Q. Well, is it not a form of bravery to be willing to refuse to take prisoners and to run the risk of being shot yourself if you are captured? Isn't the only reason you didn't shoot prisoners, or others didn't shoot prisoners, was that you were afraid that the British and Canadians would retaliate and treat you the same way? *A.* Yes, it is a question of reciprocity."

Macdonald: Then on the 2nd of October that examination was read back to the witness and he made certain corrections, none of which to the best of my recollection affect to any great extent the original testimony.

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Judge Advocate: Is that document in?

Macdonald: Yes, that is T-5. I would now like to read certain portions of the ***evidence of the accused given to the SHAEF Court of Inquiry***, on page 4 of the *Supplementary Report of the SHAEF Court of Inquiry*:

"26 March 1945... Brigadeführer (Major General) Kurt Meyer, late GOC 12 SS Panzer Division (Hitler-Jugend), whose recorded voluntary answers to questions put to him by the Court are attached to this Report marked as Exhibit No.8.

27 March 1945... The examination, not on oath, of Brigadeführer Kurt Meyer was continued. His further voluntary answers to questions asked by the Court are attached hereto marked Exhibit No. 9.

Exhibit No. 8 reads:

Record of the evidence of Brigadeführer Kurt Meyer.

Brigadeführer Kurt Meyer is called and examined as follows:

Maj Gen Barker (To the Interpreter): Q. Will you say to Brigadeführer Meyer that this is an inter-Allied Board of Canadian, British and American officers who are making certain investigations and he is called upon to give us testimony in this inquiry. *(Interpreter does so.)*

Lt-Col Macdonald: Q. What is your full name? *A.* Kurt Meyer.

Q. Have you been known by the nickname "Schnelle" or "Panzer" Meyer? *A.* Yes.

Q. What is your rank? *A.* When I was taken prisoner I was Standartenführer, which is equivalent to Colonel.

Q. What is your present rank? *A.* I have learnt from the Calais Prisoner of War Radio Service and the prisoner of war newspaper that I have been appointed [General-Major]. I have no official news to that effect...

Q. What formation did you command prior to your capture? *A.* The 12th SS Panzer Division (Hitler-Jugend).

Q. When and where were you taken prisoner? *A.* In Belgium on the 7th September...

Q. Where and when were you born? *A.* On the 23rd of December 1910 at Jarxheim, in Brunswick.

Q. Is that near Magdeburg? *A.* It is 50 or 60 kilometres to the southwest of Magdeburg.

Q. What was the nature of your education? *A.* It was an elementary school, the first school.

Q. Do you speak or understand English? *A.* No.

Q. Have you ever lived or traveled in England, the United States, or Canada? *A.* No.

Q. What was your civilian occupation or profession? *A.* I studied to be a merchant from 1925 to 1928.

Q. Did you actually engage in that business? *A.* No. I was unemployed in 1928 until 1929, except for a short period of employment as a miner. I then had a short spell of employment on the commercial side of a factory and in 1929 I joined the provincial police.

Q. What is your Nazi Party number? *A.* I believe (I am not absolutely certain) it is 316714.

Q. What is your SS number? *A.* 17559.

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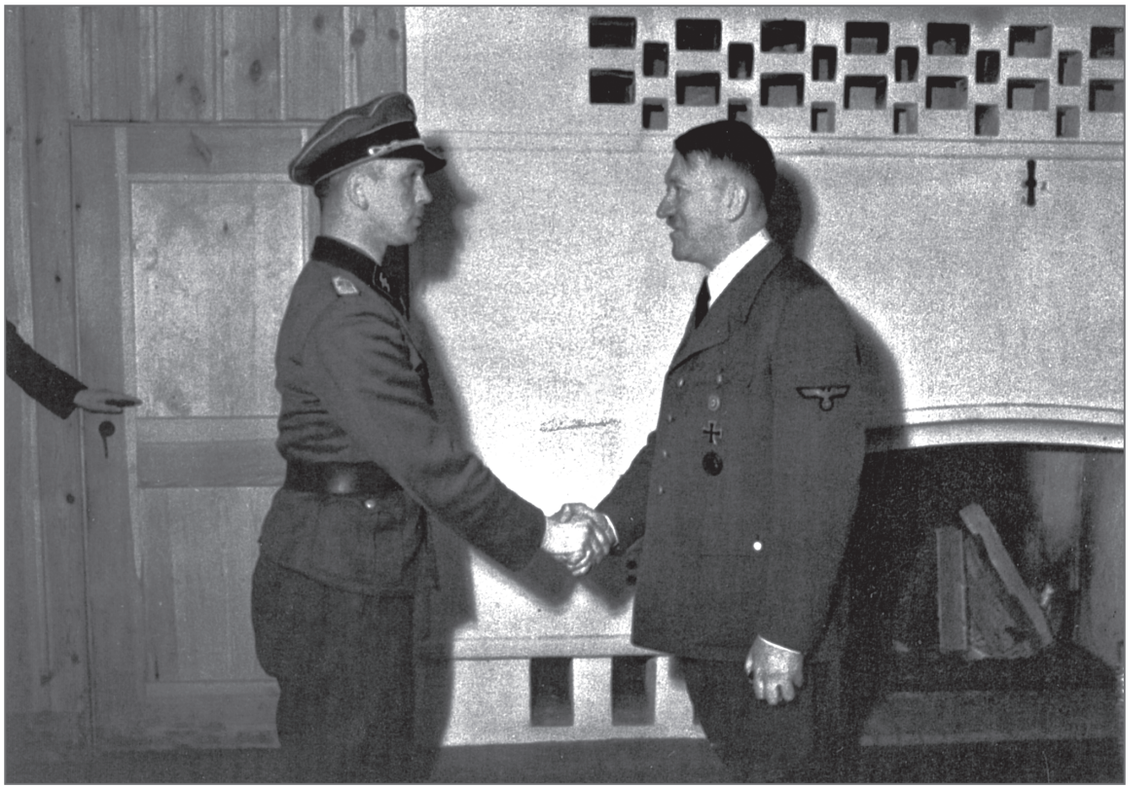
Kurt Meyer in France, July 1940.
(Credit: J.J. Fedorowicz Publishing)

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Meyer in Greece, 1941, where he gained a reputation for speed and audaciousness. This photograph, which appeared on the cover of Illustrierter Beobachter (Illustrated Observer) with the heading of "Heavy Artillery to the Front," is one of the most famous images of the Waffen-SS.
(Credit: J.J. Fedorowicz Publishing / Jost Schneider)

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Kurt Meyer shakes hands with Adolf Hitler upon receiving Oak Leaves to the Knight's Cross at the Führerhauptquartier, Vinita, 25 February 1943. This was a high point in his military career. (Credit: J.J. Fedorowicz Publishing / Roger James Bender)

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Kurt Meyer and Max Wünsche, Spring 1943. The combat performance of both men in operations against the Soviets was recognized and well-rewarded. (Credit: J.J. Fedorowicz Publishing / Jess Lukens)

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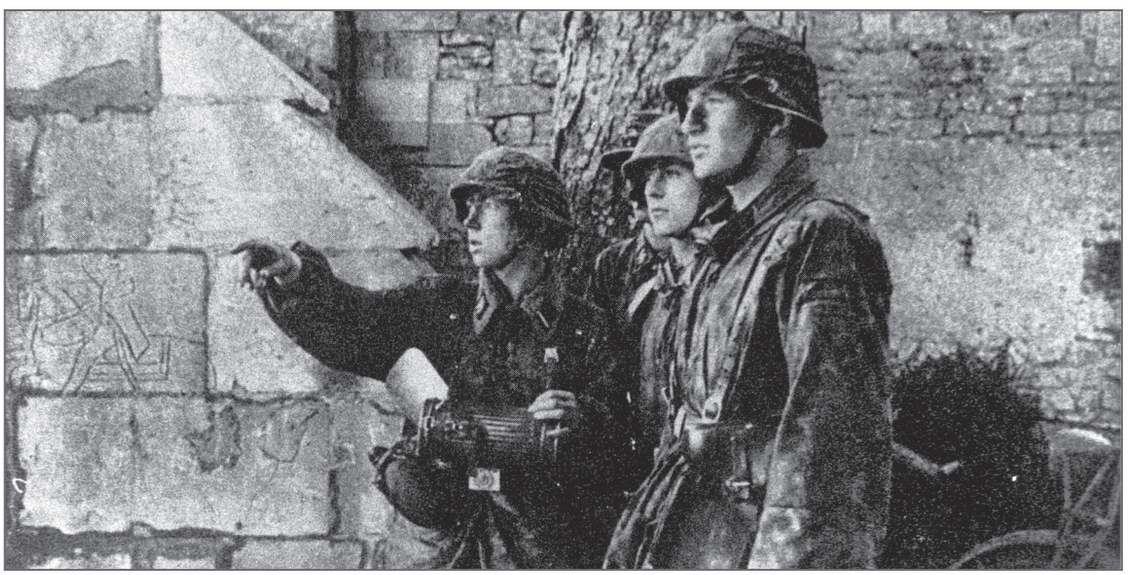


Portrait photograph of SS-Obersturmbannführer Kurt Meyer, spring 1943, showing his Oak leaves. The SS Death's Head insignia is clearly visible on his cap. (Credit: J.J. Fedorowicz Publishing / Roger James Bender)

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Observing a 12th SS division exercise, Normandy Spring 1944 (from the right to left): Generalfeldmarschall von Rundstedt, SS-Sturmbannführer Hubert Meyer, SS-Obergruppenführer Sepp Dietrich, SS-Oberführer Fritz Witt and SS-Standartenführer Kurt Meyer. Units of the I SS Panzer Corps, to which the 12th SS division belonged, formed part of Rundstedt's strategic armour reserve against the expected Allied invasion. (Credit: J.J. Fedorowicz Publishing / Hubert Meyer)



Young Waffen-SS grenadiers awaiting orders to begin the attack to, in Meyer's words, "throw the little fish back into the sea." (Credit: LCMSDS)

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German soldiers use one of the high towers at the Abbaye d'Ardenne as an observation post, looking toward the sea where the Canadians landed and advanced inland. Meyer directed his forces in the battle on 7 June with deadly effect. (Credit: LCMSDS)



A squad of 12th SS grenadiers receive last minute instructions and check weapons at the Abbaye d'Ardenne while staging for the coming battle. Once committed, these troops faced a fierce struggle with the Canadians. (Credit: LCMSDS)

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Kurt "Panzermeyer" ready for the coming battle in Normandy, 1944 in a tailor-made jacket and cap of Italian camouflage material. Conflicting evidence by witnesses during the war crimes trial put him in a raincoat. (Credit: J.J. Fedorowicz Publishing / Jost Schneider)



Commander conference at the division command post in Caen-Venoix on 13 or 14 June 1944: (left to right) SS-Obersturmbannführer Max Wünsche, SS-Brigadeführer Fritz Witt and SS-Standartenführer Kurt Meyer. Witt was killed soon after and Meyer assumed command of the 12th SS division. (Credit: Bundesarchives Bild146-1988-028-25A)

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Kurt Meyer as commander of 25th SS Panzer Grenadier Regiment, Normandy 1944. The effects of the battle and lack of sleep are clearly visible, in contrast to the picture of Meyer taken before the commencement of the battle. (Credit: J.J. Fedorowicz Publishing / Jost Schneider)



A soldier of the 12th SS, wearing the distinct camouflage uniform, captured by Canadian troops in Normandy. (Credit: LCMSDS)

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Kurt Meyer in German Army uniform after his capture by partisans in September 1944. Once his true identity was discovered, Meyer was transferred to London for interrogation and investigation for alleged war crimes. Meyer's name was on a general list of officers and non-commissioned officers sought by SHAEF from the 12th SS division for the actions in Normandy. (Credit: J.J. Fedorowicz Publishing / Jost Schneider)



Meyer, still handcuffed to Maj. Arthur Russell of Winnipeg, piles out of the back of an armoured car at Aurich barracks, 31 October 1945. Russell became Meyer's constant companion for the duration of the trial. (Credit: B.J. Gloster, DND)

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The General, arriving at Aurich Barracks, was stripped of his clothing, given a complete medical, a thorough quizzing by the Winnipeg Rifles "I" Officer, and then given an issue suit of underwear and black overalls. He is shown here being led to the cells wearing his black "Zoot Suit." 31 October 1945.
(Credit: B.J. Gloster, DND)



The CWCIU Prosecution Staff at the Meyer trial, Normandy Building, Maple Leaf Barracks, Aurich, 29 December 1945. Left to right: Lt-Col C.S. Campbell, Lt-Col B.J.S. Macdonald, and Lt-Col Dalton Dean.
(Credit: Official Trial Photographer, DND)

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Intensive media interest surrounded the trial. In this photograph, Kurt Meyer is exercising under the watchful eye of guards and a Canadian film unit recording truck, 12 November 1945.
(Credit: Capt. B.J. Gloster, DND)



Meyer had regular half-hour afternoon exercises, handcuffed to Major Russell. In this photo, "two burly Royal Winnipeg Rifle guards carrying heavy clubs following closely behind." 12 November 1945. These walks and light jobs often attracted curious onlookers and the press.
(Credit: Capt. B.J. Gloster, DND)

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Kurt Meyer was at first very unwilling to be photographed and insisted on standing with his back to the camera and facing the wall. After considerable conversation with Kurt Meyer, and using an interpreter, the photographer was able to convince the prisoner that the newspapers might do him much good if he were to pose for a good pic of himself, rather than having to use a poor one. In this shot, Meyer "is still not too happy about it." Aurich, 30 November 1945.
(Credit: Capt. B.J. Gloster, DND)



Court Room scenes in the Normandy building, at Maple Leaf Barracks, Aurich, where Kurt Meyer was formally charged. He pleaded 'Not Guilty' to the six charges read to him.
(Credit: Capt. B.J. Gloster, DND)

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Journalists analyzed the proceedings for the Canadian public. This photo captures "a group of warcos in the court room at their desks." Left to right: Sgt. E. Paine of the Maple Leaf; Ralph Allen of the Globe and Mail; Mr. A. J. Forrest of the German Youth Service Control Council; Capt. R.H. Haviland, press officer; and William Boss and Ross Munro of the Canadian Press. 21 December 1945.
(Credit: Lieut. H.D. Robinson, LAC PA 189589)



The judges are sworn in: (left to right) Brigadier J.A. Roberts, Brigadier H.A. Sparling, Lt.-Col. W.B. Bredin (judge advocate), Major-General Harry W. Foster (president), Brigadier Ian S. Johnston, and Brigadier Henry P. Bell-Irving (off picture). "I swear by almighty God that I will well and truly try the accused before the Court according to the evidence, and that I will duly administer justice according to the laws in force for the trial of a person charged with the commission of a War Crime, without partiality, favour or affection."
(Credit: Capt. B.J. Gloster, LAC PA 140576)

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Lt-Col W.B. Bredin addressing the court. As the Judge Advocate General representative at the trial, Bredin became involved in sharp exchanges with Lt-Col Macdonald during the prosecutor's opening address. (Credit: Capt. B.J. Gloster, DND)

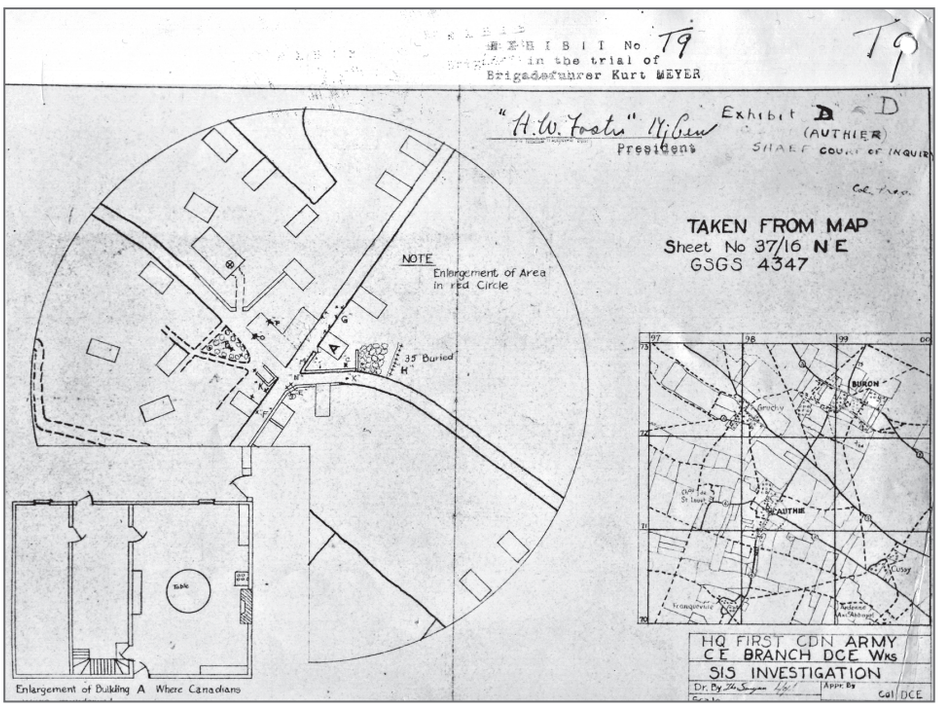


Diagram of Authie showing the sites of atrocities committed against Canadian prisoners of war.

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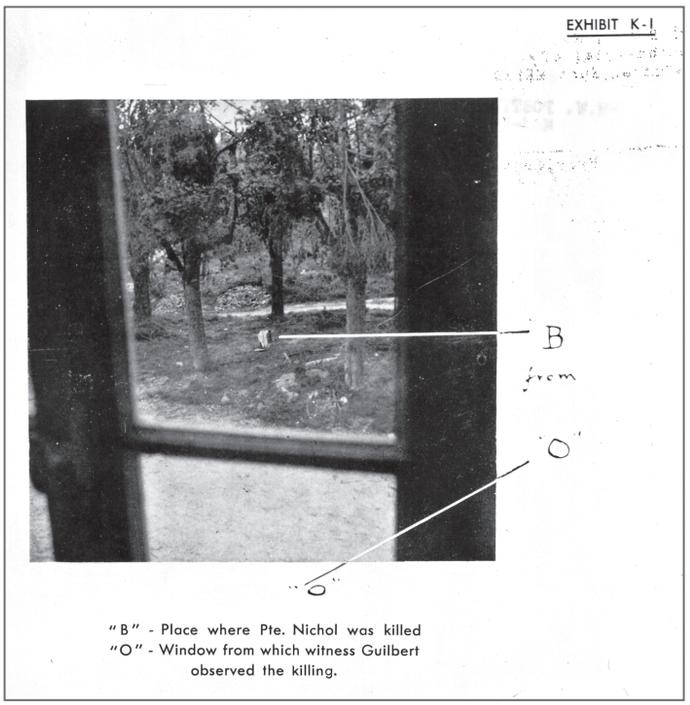


Exhibit T-10: The killings at Authie. "B" identifies where Pte Nichol was killed. "O" is the window from which witness Guilbert observed the killing.

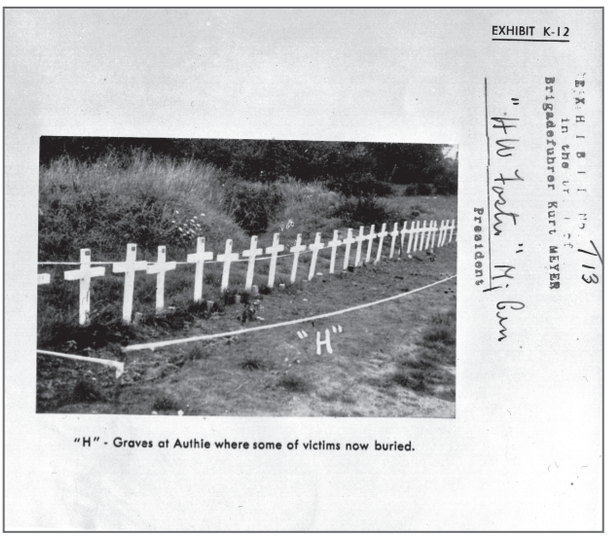


Exhibit T-13 shows the graves at Authie where some of the victims were buried.

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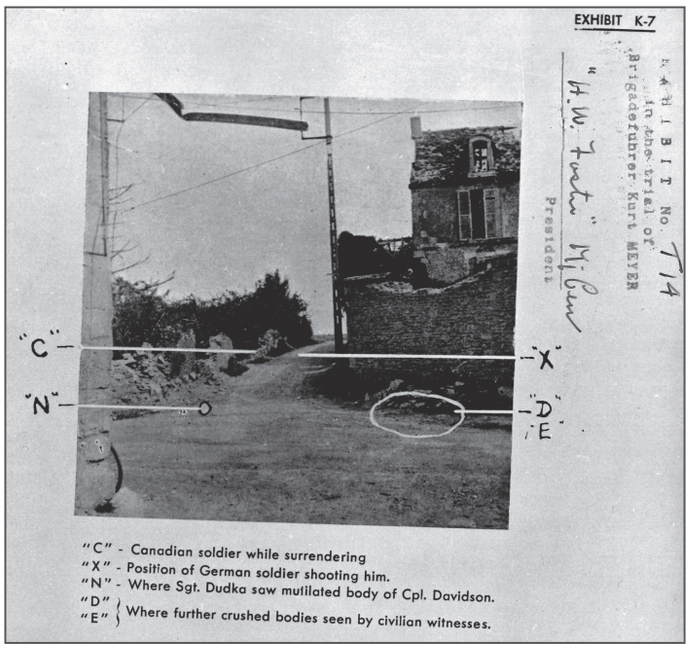


Exhibit T-14: The murders at Authie. "C" designates where a Canadian soldier was killed while surrendering. "X" shows the position of the German shooting him. "N" is where Sgt Dudka saw the mutilated body of Cpl Davidson. "D" and "E" identify the spot where civilian witnesses saw other crushed bodies of Canadian soldiers that had been run over by German tanks.

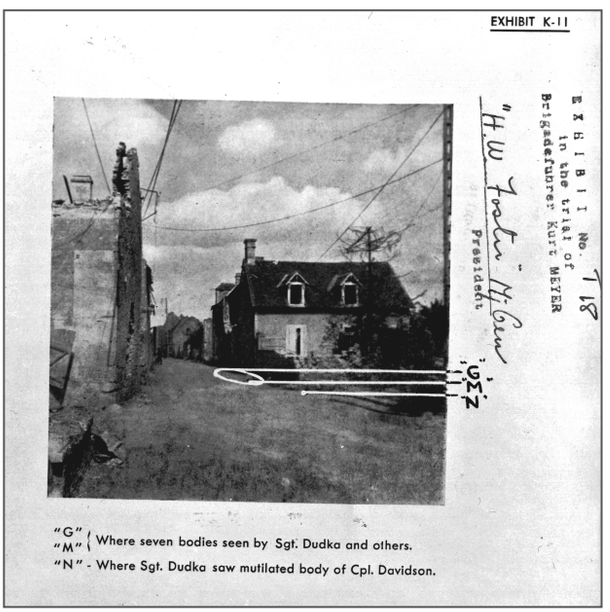


Exhibit T-18: The murders at Authie. "G" and "M" identify where Sgt Dudka and other witnesses saw seven Canadian bodies. "N" identifies where Dudka saw the mutilated body of Cpl Davidson.

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Exhibit T-24: Witness Jan Jesionek standing in the front court yard in the Abbaye d'Ardenne.

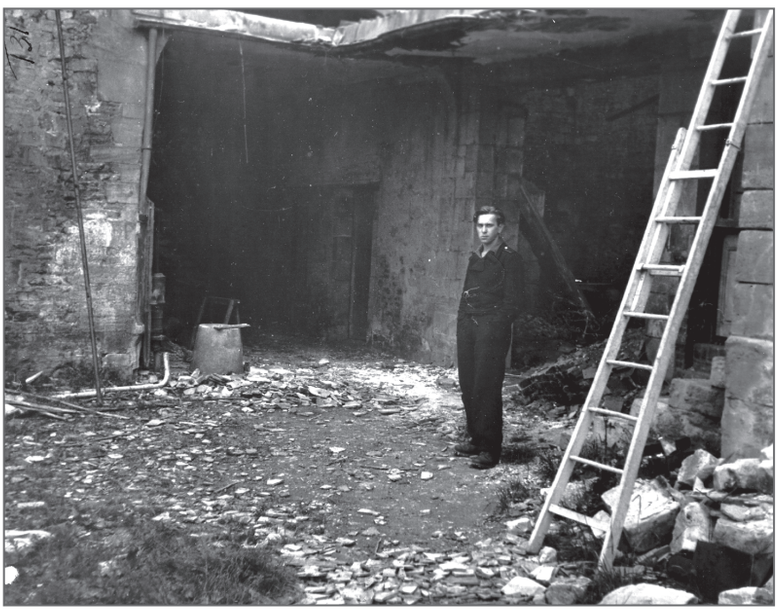


Exhibit T-31: Jesionek stands in the position of one of the German sentries in the passageway leading towards the garden at the Abbaye. Canadian prisoners passed by this point before they entered the garden and were shot.

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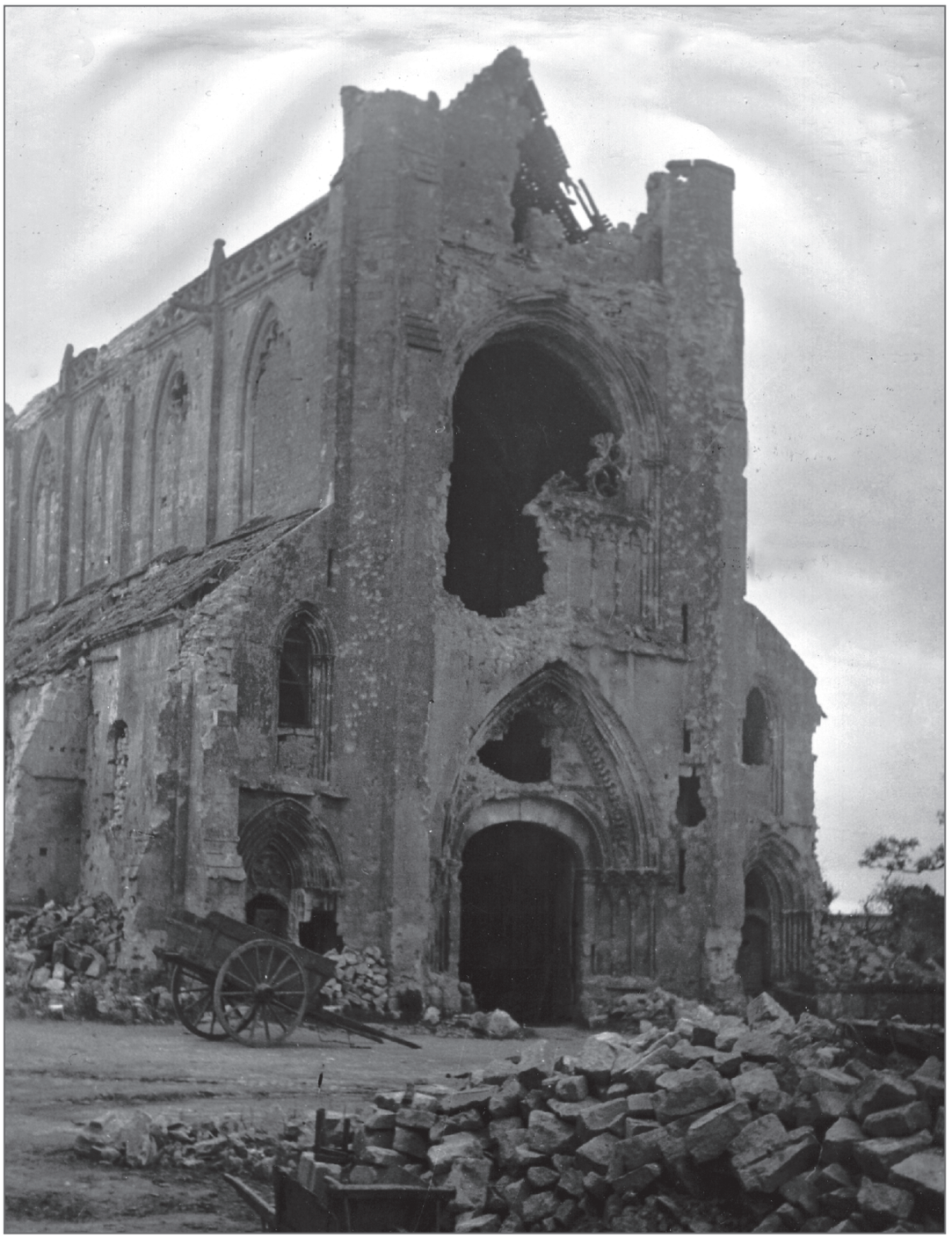


Exhibit T-27: The damaged exterior of the Abbaye d'Ardenne in 1945. Jesionek identified the chapel as the place where Meyer stood with his staff and headquarters personnel prior to the murder of Canadian prisoners.

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Exhibit T-34: Jesionek points to the spot in the garden where he saw the seven Canadian bodies.



Exhibit T-36: Jesionek points to the entrance to the courtyard where he saw "approximately four dead Canadians."

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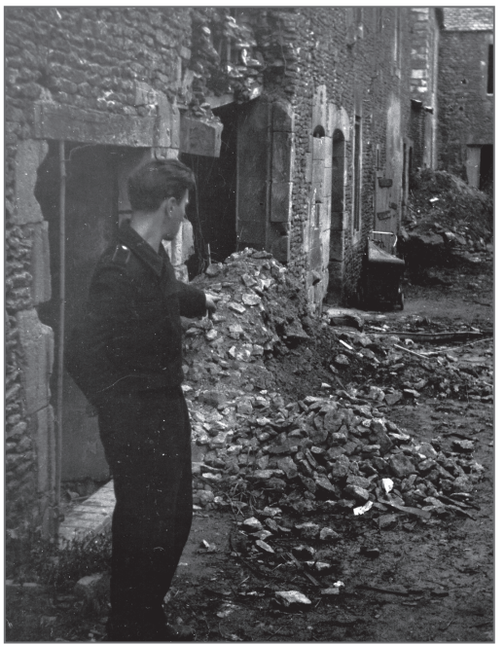


Exhibit T-37: Jesionek points to the courtyard in which he saw "five or six dead Canadians."



Exhibit T-48: The body of Trooper H.B. Phillip. Lieut-Col MacKeen identified the cause of "head wounds."

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Lance Corporal George G. Pollard of the Stormont Dundas & Glengarry Highlanders was captured during an early morning patrol toward Gruchy on 17 June 1944. He was transported to the 25th Panzer Grenadier Regiment Headquarters at the Abbaye d'Ardenne, where his body was eventually discovered.
(Credit: Gregory Charles Pollard)



General Eberbach, Meyer's Heer superior in the summer of 1944, appeared as a character witness and described the prisoner as a "young, fresh, dashing man of position, quick in resolution, better in attack than in defence, ambitious, conscious of his abilities but always eager to learn... I know without hate against the Canadians. Murder of prisoners [is] not in his line." Here Eberbach talks to the defence counsel's interpreter, Capt. Wady Lehmann of Millardville, B.C., 28 December 1945.
(Credit: Lieut. H.D. Robinson, DND)

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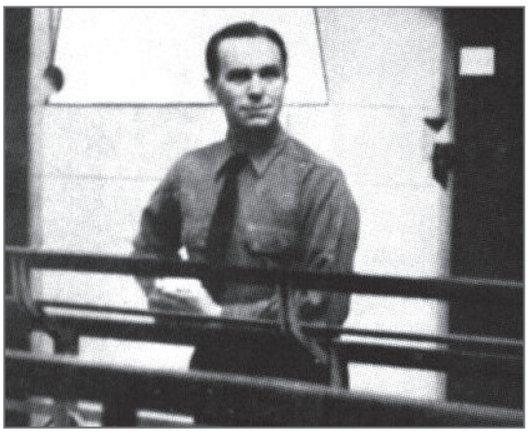


Meyer, after hearing his sentence of death by shooting, made a final request: one last visit from his wife and immediate family. The convening officer, Maj-Gen. Chris Vokes, granted it. Meyer's wife, mother, his nine year old daughter Ursula, and his sister Mrs. Meleni Feind visited the prisoner at Maple Leaf Barracks. "Their arrival showed a prepared composure," the photographers noted, "but their departure showed great emotion." In this photo, Kate and Ursula appear with escort Capt. Wady Lehmann, 30 December 1945. (Photographer: Lt. Robinson & Capt. Closter, DND)

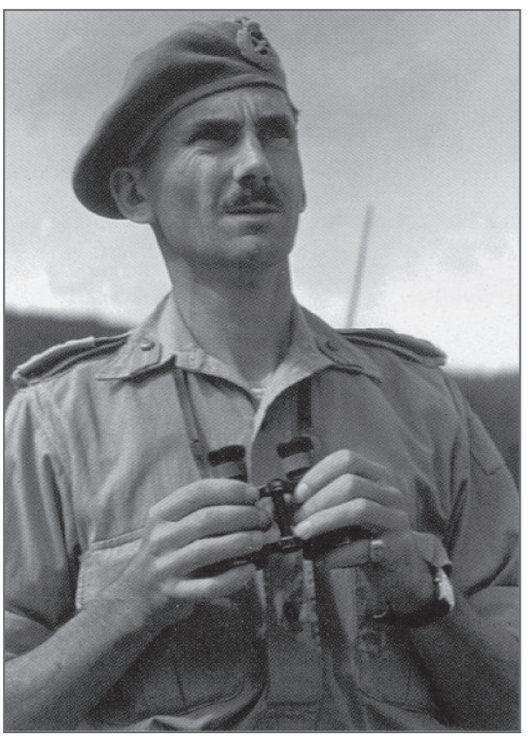


A soldiers' soldier: Major-General Chris Vokes commuted Meyer's sentence to life imprisonment, suggesting that a commander's vicarious responsibility for atrocities did not warrant a death sentence. (Credit: DND ZK-844)

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Meyer at Werl Prison in Westphalia, Germany, where he was much more content than he had been in Canada. "I breathed a sigh of relief to be among soldiers once more," Meyer later recorded.
(Credit: J.J. Fedorowicz Publishing)



Meyer saw Major-General Guy G. Simonds as a fighting soldier like himself, and appealed to him for empathy. Simonds was Commander 1st Canadian Division in Italy, 1943, when this photo was taken, and went on to earn respect for his creative operational leadership in Normandy and Northwest Europe.
(Credit: DND, ZK-486)

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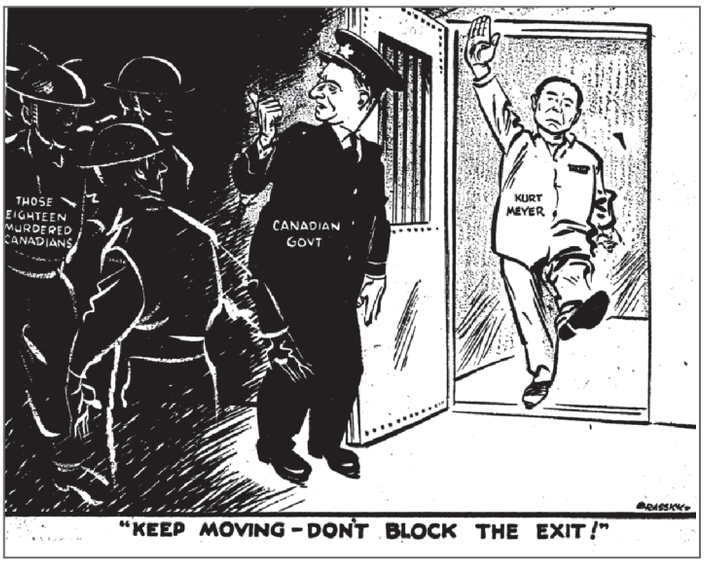


Kurt Meyer in the early 1950s. (Credit: Library and Archives Canada)



Brooke Claxton, a veteran of the First World War, was Minister of National Defence from 1946-54. His biographer David Bercuson notes that "Claxton set the pattern for postwar organization of the Canadian military, contributed greatly to defining its missions, and oversaw the greatest peacetime expansion in Canada's forces." (Credit: LAC C-71165)

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"Keep Moving – Don't Block the Exit!" Cartoon from the Calgary Herald, 1954, protesting Meyer's release. The federal government is depicted pushing aside "those eighteen murdered Canadians" to make way for a pigeon-stepping Meyer making a Nazi salute.
(Credit: Calgary Herald)



"Meyer did not like prison garb. He claims all war criminals were wronged. His face shows his bitterness."
(Credit: Weekend Magazine, 1957)

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"Meyer the family man poses with his wife, Kate, and five children. He now sells beer to Canadian occupation troops, seeks to whitewash Hitler's shock troops."
(Credit: Weekend Magazine, 1957)



"Joyful reunion with his wife and friends greeted Meyer on his release from prison in 1954. German opponents claim that since then he has been working secretly towards a revival of the old Nazi ideologies."(Credit: Weekend Magazine, 1957)

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Q. Will you state the nature of your party activities and offices and rank held in the Party? *A.* Until 1934 I was a member of the Party. From 1934 I was a soldier in the SS and the Leibstandarte.

Maj Gen Barker: Q. What is Leibstandarte? *A.* It is Adolf Hitler's Guard Regiment.

Q. Is that part of the Hitler-Jugend or of the SS? *A.* It was part of the armed SS.

Q. The Waffen SS? *A.* Yes, the Waffen SS.

Macdonald: Q. You said that you served for a period of time with the provincial police; with what branch of the provincial police was that and for what period of time? *A.* It was in the armed provincial police from the 1st October 1929 until the 15th May 1934.

Q. Did you have any particular duties while you were connected with the police? *A.* No, simply armed police duties. I was section leader, infantry leader.

Q. What was the nature of your preliminary military education? *A.* First of all the general police school. Then in 1934 I had retraining for the armoured forces, then a course for company commanders, then a course for regimental commanders, and occasional courses in engineering and other special operations. Do you wish me to give the names of the places where the courses were held?

Q. No. Would you give me an account of your military history from the time you became connected with the Leibstandarte SS Adolf Hitler? *A.* I was platoon commander from 1934 to 1936, company commander from 1936 to 1940, I commanded a battle group (Kampfgruppe) from 1940 to 1943; in 1943 I was appointed regimental commander when the Hitler-Jugend Division was re-organized, and when our Divisional Commander was killed I succeeded him as Divisional Commander.

Q. What was the date of your appointment as Regimental Commander? *A.* I cannot tell you exactly to the day. I think it was in April or May 1943. May I continue?

Q. Yes. *A.* I only actually took command of [the 25th Panzer Grenadier Regiment] in August 1943 after completion of a course...

Q. Now will you please state the nature of your war service. Where did you first see action? *A.* During the Polish campaign I commanded an anti-tank company. After the Polish campaign I took over a company of motorcyclists and I went through the campaign in the west with this cyclist company.

Maj Gen Barker: Q. What division was this cyclist company in? *A.* In the Leibstandarte. After the close of the campaign in the west I formed a reconnaissance unit out of my cyclist company.

Lt-Col Macdonald: Q. You were speaking of your service in Roumania. Will you go on, please? *A.* From Roumania we went into Bulgaria and then, when the frontier was opened, into Yugoslavia and on into Greece. We went into the pass south of Monaster and came into contact with British and Australian troops. We then went south-west through Kastoria and Janina. I was then sent down to Corinth Canal to stop further embarkation by means of a rapid operation we crossed the Canal and captured Patras. As far as I was concerned that was the end of the Greek campaign.

Q. Will you go on from there? *A.* We were then rested and sent to Russia across the frontier about a week after the beginning of the operations. I was then fighting on the Russian front on the southern sector until, I think, July 1942. The unit was then sent to Normandy to reform...

Q. When was it that you left Russia? *A.* June or July 1942.

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Maj Gen Barker: Q. Now at that time what position did you hold and in what unit did you belong? *A.* I was a major and in command of the recce unit which I had formed in Metz.

Q. In the Leibstandarte? *A.* Yes. In the Leibstandarte...

Lt-Col Macdonald: Q. Will you describe the nature of your second campaign in Russia? *A.* I was in command of a battle group (Kampfgruppe). We were at the front in the region of Kubiansk, and west of Kharkov. We were then in the counter-offensive north of Kharkov."

Andrew: This is getting into a campaign now in Russia. Does that still hold, sir, that the court will not regard this evidence as it is being read out?

Macdonald: The only thing I have been seeking to avoid, and I don't agree that it is not admissible (only inadmissible at this stage from our own point of view), is introducing evidence concerning his individual acts in Russia. His general military experience on the other hand is a part of his whole military background which I think should be before the court.

Judge Advocate: There is nothing prejudicial in what you are now reading?

Macdonald: I do not think so. I want the court to fully understand what experience this man has had. He will probably give it himself anyway.

Judge Advocate: It merely says where he was in Russia at various times.

Macdonald: Yes.

President: Well, there is no reason why we should not have that.

Macdonald: *(Continuing to read the evidence)*

"At the capture of Kharkov I entered the town at the north-east corner. That was the end of active operations as far as I was concerned. I remained in Kharkov for a time instructing on an NCO's course after which I was sent into the Reich to take part in a course for regimental commanders at the armoured troops school (Panzer truppen schule)...

Q. Did you at any time lecture at a regiment's course at Munster? *A.* No. After the course I went to Belgium where the division was formed up. I took command of a regiment.

Maj Gen Barker: Q. And what regiment was that? *A.* The 25th Panzer Grenadier Regiment.

Lt-Col Macdonald: Q. What decorations and awards have you received? *A.* In the Polish campaign I received the Iron Cross Second Class and a wound stripe. In the west I received the Iron Cross First Class and the Infantry Assault Badge (Infanterie Sturm Abseichen). In the Greek campaign I received the Knight's Cross and a Bulgarian and Roumanian decoration. In Russia, in December 1941, I received the German Cross in gold. In the spring of 1943 (I cannot remember the exact month) I received the Oak Leaves for the capture of Kharkov. Later on I received the Silver Decoration for hand-to-hand fighting (nahkempfspange). In Normandy I was awarded the Swords to my Oak Leaves...

Q. Will you now draw on this map the boundaries of the regiments in your division as they were established on 9th June? *A.* I have marked my own front with the boundary on my right with the 21st Division and the boundary on my left with the 26th Regiment."

Macdonald: That map is before the Court. Then on Page 28, fifth question from the bottom:

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"*Q.* Which battalions of your regiment recaptured the village of Authie on the afternoon of the 7th June? *A.* It was the Third Battalion.

Q. And was it the Third Battalion also that went on and recaptured the village of Buron? *A.* The armoured elements took the village(s) of Authie and Buron and the infantry then moved forward and occupied a line between those villages.

Q. Which portion of the tank battalion put in that attack? *A.* The armoured unit Prinz.

Q. That was not part of your division, I take it? *A.* Yes, that was part of my division.

Q. In other words, you mean the First Battalion of the Panzer Regiment in your division? *A.* Yes. I think it was the First but it might have been the Second. I had not much experience of the division at that time."

Macdonald: Actually, it was the 2nd. Then Exhibit No. 9, on the 1st page, the fourth question:

"*Q.* Well, then, which battalion of your Regiment was it that captured Authie? *A.* The Third Battalion."

Macdonald: Then the first interrogation by the Canadian War Crimes Investigation Unit on the 15th October 1945...:

"*Q.* First of all, I understand that Hauptsturmführer von Buettner was your Adjutant until up to about a week before the invasion, is that correct? *A.* Yes.

Q. And for what period prior to that time had he been your Adjutant? *A.* From September-October 1943.

Q. And had he served with you in Russia? *A.* In 1941 he was in my troop. Also in 1940 – a few weeks before the campaign in France.

Q. And I believe that he was killed in battle on the night of 8th-9th June 1944? *A.* He was wounded and died in hospital. ...

Q. Where was von Buettner buried? *A. (Witness points at Ancient Abbaye Ardenne...)*

Q. And he left the post of Adjutant, I understand, to become Commander of the 15th Recce Company? *A.* Of the 15th Company.

Q. And was he succeeded by Obersturmführer Schueman? *A.* Obersturmführer Shueman.

Q. What was Schueman's first name? *A.* That I cannot say, I don't know.

Q. With what unit had he previously been serving? *A.* In the 1st Battalion as Platoon Commander.

Q. And was he still Adjutant up until the time you were appointed Divisional Commander? *A.* I relieved him before that *(Witness says he wants to think it over carefully)*. He was a few more days Adjutant once I took over the Division and then he was relieved.

Q. Was he relieved by your successor Milius? *A.* Yes.

Q. Do you know why? *A.* Milius took over my troops. Then Milius took out of his own troops men whom he knew personally (humanly) better. Also Schueman did not really lend himself so well to the post of Adjutant and Schueman then again became troop officer.

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Q. With his original Battalion, the 1st? *A.* Yes, he came to the 1st Battalion. I cannot say that quite precisely as I was at Divisional HQ. As far as I can remember he returned.

Q. And was he succeeded as Adjutant by Untersturmführer Breiholz? *A.* Yes, Breiholz...

Q. How old a man was Scheuman? *A.* He was young, 22-23 I suppose.

Q. How tall? *A.* A bit over 1.80 (metres).

Q. Was he dark or fair? *A.* Blond, blue eyes, light blond.

Q. Was he thin or stoutly buil(t)? *A.* Thin, athletic build.

Q. Did he speak English? *A.* School English...

Q. Now, of the officers that you had at our Headquarters, who conducted interrogations of prisoners? *A.* Schueman, with his school English. I did not make bigger interrogations because Divisional HQ wanted prisoners most quickly. Prisoners were not interrogated at Regimental HQ.

Q. Some of them, of course, were though, weren't they? *A.* I was not always at Regimental HQ, and when I returned from the forward troops the reports, the statements of the prisoners, were put before me. The questions which were asked prisoners at Regimental HQ were merely "What unit" so that we were informed whether we had tanks or infantry on our front. Then prisoners were taken, then, without awaiting my return, taken to Divisional HQ because Divisional HQ placed great value on that. It was forbidden by Division to delay prisoners at the front line units and to question them. These prisoners had to be taken back right away by the Feldgendarmerie to Divisional HQ...

Q. Were any of these drivers you have mentioned holding the rank of Unterscharführer? *A.* Yes.

Q. Which? *A.* Bornhoft.

Q. And did he also have an Iron Cross? *A.* Yes.

Q. Will you describe Bornhoft's appearance, please? *A.* 1.75 (metres) tall, thin, dark blonde, blue eyes. He may also have been a little bit smaller, perhaps between 1.72 and 1.75.

Q. How old was Bornhoft? *A.* Also 23-24.

Q. Had either or both of your drivers served with you in Russia? *A.* Yes, both.

Q. That is, with you in the (Leibstandarte Adolf Hitler)? *A.* Yes, also in France and in Greece...

Q. Now, do you remember the day on which von Buettner took over command of the 15th Company? *A.* I cannot precisely; it may have been a fortnight or so before the invasion.

Q. And this took place at Le Sap, did it not? *A.* Yes.

Q. And at the time von Buettner took over command of the Company did you attend a formal assembly or parade of the troops at which time you introduced von Buettner to them? *A.* Yes. I handed over the Company from the old Company Commander to the new Company Commander. I was half an hour there in an orchard.

Q. And I believe that you, in the course of your introduction, spoke to the troops about the possibility of an invasion? *A.* That is possible. Yes, I did speak about it.

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Q. And I understand that you told the troops that von Buettner was an excellent officer in whom you had the greatest confidence? *A.* Yes, I said that von Buettner had fought under my leadership in Russia and I said to the Company I expected that the Company under the new Commander would do its duty and would not disappoint me. I said that for this reason to the Company: because Buettner was not very popular and that is why I personally relieved him as Adjutant of my Regiment.

Q. Now, I am also told that you regarded the 15th Company in a somewhat personal way, perhaps as your own Company? *A.* I always felt myself much drawn to the 15th Company because I felt a comradely attachment to them, because I too was at one time a motorcycle man and I had a lot of interest in the education of this Company, because this Company had to ride into the enemy on un-armoured vehicles in order to do [reconnaissance]...

Q. Now, I have been told by officers and men of your unit that it was invariably your practice in fighting to be well forward with the troops? *A.* Yes.

Q. In the very first contact which you made with Allied troops on the afternoon of the 7th June, I am told that you carried out this practice on that occasion? *A.* Yes... I am now marking, through the arrow point of the arriving 2nd Battalion, put myself at the head of this Battalion, went through this village (Cussy), my intention being that by my personal presence I would pull along my men forward... I met the Battalion Commander at the hedge between the Monastery Ardenne and Cussy... I gave the order after completing the 'readiness,' without regard to all losses, to reach the coast; I [took myself] to the monastery, Ardenne, to the tower... This group of prisoners was instantly removed from this artillery area and at the entry to the monastery Ardenne, taking full cover as there was shell fire. I conversed with the two officers in this entry here, the northeasterly entry to Ardenne.

Before I left I gave (the Battalion) orders to take the prisoners to Divisional HQ right away, and some prisoners to be taken back immediately by PKW to Divisional HQ so that they could be interrogated. After the prisoners had marched off I drove to St. Contest... Thus, we came regretfully to the conclusion that the 21st Panzer Division had not participated in the attack as was originally arranged...

Q. Now, on the morning of the 8th of June there is evidence you were at the Abbaye? *A.* That is thoroughly possible, as I came back,... I wish to think that over again... I came back as I am pointing, on the main road from Bretteville; was during the night at point 69 *(Exhibit "A")* and crossed over to Battalion HQ, Milius, but did not find it.

Q. Where was it supposed to be? *A.* At the garden or park here *(Map ref: 986723 – Exhibit "A")*. And from there I drove across to Ardenne, went up the church tower and from there I observed the attacks of our Luftwaffe on the disembarking ships, but I especially went up there to look over once again the fire fight in Bretteville.

Q. Now, while you were at the Abbaye that morning had there been British air activity by low-flying planes? *A.* Yes...

Q. Well, put it this way: Did you order that the schwimmwagens be placed inside the old chapel? *A.* I surely gave the order that the vehicles should be camouflaged... in such a manner that they couldn't be seen.

Q. But I have been told that as a consequence of low-flying attacks from enemy planes that you thought the vehicles should be put inside the building so they would be less conspicuous, and, as a consequence of that, you told them to put some of these vehicles in this old chapel which was being used more or less as a barn? *A.* It is thoroughly possible that I said 'Make these things vanish' (and)

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'Push your cars into the chapel.' That is the kind of order I gave while passing because all that type of thing was looked after by the Adjutant or whatever ordonnanz offiziers were present, but under no circumstances can it involve vehicles of the 15th Company. I wish to repeat that the 15th Company area which I have pointed out to you was resting. It is possible that one or two of the vehicles of the group of the 15th Company, which I have drawn in here, which is quite close, that they, without my knowing it, pushed their vehicles in with the other vehicles, but I did not know anything about it...

Q. Now, while you were at the Abbaye on the morning of the 8th of June, did you have your Adjutant and Ordonnanz Offizier and other normal members of your headquarters staff with you? *A.* The Ordannanz Offizier was up forward in Bretteville and was wounded. I said that before."

Macdonald: The witness in a subsequent interrogation corrects that. He is mistaken about his dates and the Ordonnanz Offizier was not killed until the night of the 8th or the 9th. He continues:

"The Adjutant was fetched by me to come to Ardenne so that he could put me in the picture, and he received orders from me in Ardenne to fix up the Regimental HQ. That happened in the morning...

Q. Now, did you have Obersturmführer Schuemann up with you in the vicinity of the Abbaye on the evening of the 7th? *A.* It is possible that he was there and that he received orders from me when I came to the decision to push on; to push on with the 15th Company and some tanks, toward Bretteville."

That is the case, sir.

President: The accused and escort may withdraw from the Court. The Court will adjourn for ten minutes.

B3. Case for Defence

President: I declare the court open...

President: *(To the accused through Interpreter)* You will now proceed with your defence. You, may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination. You may, however, make a statement without being sworn and you will not be subject to cross-examination but a statement, which could have been made on oath, will not carry with the Court the same weight as sworn testimony. You may call witnesses, in your defence as to character whether you give evidence or make a statement or do neither.

Q. Do you wish to give evidence yourself as a witness, make a statement, or do neither? *A.* I myself wish to make statement. I request that it be under oath.

Andrew: That is, he wishes, sir, to give his evidence in the box on oath.

President: *(To the accused through Interpreter) Q.* Do you intend to call witnesses on your behalf? *A.* Yes, I wish to avail myself of witnesses.

Q. Are they witnesses as to character only? *A.* No, witnesses concerning facts and character.

President: *(To Defending Officer) Q.* Do you wish to make an opening address? *A.* No, I do not wish to do so, sir, but I have here the desire of the accused signed by himself to give evidence on oath and if that could be filed for future reference? My friend has no objection. *(Statement by accused indicating desire to give evidence on oath is [submitted])*

Andrew: Sir, I would like to ask for an adjournment until after lunch to start the examination of the first witness. It will be somewhat lengthy.

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President: Yes.

Judge Advocate: You know that you are entitled to make an opening address under Rule of Procedure 41, if you wish?

Andrew: No, I do not wish to.

Judge Advocate: You are not going to?

Andrew: No.

President: Accused and escort may withdraw. Court will adjourn until 2 o'clock.

—

President: I declare the court now open.

Macdonald: Before the examination proceeds could I get permission for Capt Wagman to leave. He was the Medical Officer who gave evidence last this morning and my friend here is in agreement with this.

President: There is just the problem of the Second Charge Sheet.

Macdonald: Capt Wagman has no evidence to give on the Second Charge, although we may be repeating evidence given before this court by way of reading into the record.

President: I mean is he concerned in any way with the Second Charge Sheet?

Macdonald: The matter with respect to which he was giving evidence concerned an atrocity which occurred either while the accused was Regimental Commander or Divisional Commander and it may be therefore relevant to the Second Charge Sheet but it was proposed that we would apply to the Court to read that evidence rather than require the witness to re-appear and I think my friend is in agreement with me in that procedure.

Judge Advocate: It is hardly proper to read at the hearing of the Second Charge the evidence which was given before this Court on the First Charge.

President: Well, let us not have an argument about that subject now. We will discuss it afterwards.

First Witness for the Defence

Brigadeführer Kurt Meyer, formerly Commander 12th SS Panzer Division (Hitler-Jugend), being duly sworn is examined by the Defending Officer, Lt-Col Maurice W. Andrew:

Andrew: *Q.* What is your name? *A.* Kurt Meyer.

Q. What is your rank? *A.* Brigadeführer (Major-General) of the Waffen SS.

Q. What formation did you command in August 1943? *A.* Panzer Grenadier Regiment 25.

Q. When was that regiment formed? *A.* I took over the Regiment in September 1943.

Q. Was that the date of the formation of it? *A.* No, the Regiment was already previously formed.

Q. Of what did the personnel consist? *A.* The troop consisted of 90% volunteer young Germans, the youngest 16 ? years old, the oldest 18 years old. The remainder consisted of taken over German soldiers, soldiers who were posted to the unit, not volunteers.

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Q. Had these men that you had in August 1943 ever been in battle before? *A.* No.

Q. Can you tell the Court what type of discipline you had in the Regiment? *A.* The discipline of my young soldiers was good and was based on the foundation of the family; it was fundamentally different from the discipline of a young troop. Because of their youth the leadership had to find a new way in the education of these men. Between officers and men, apart from the ordinary officer relationship, there was a brotherly relationship established. Parents were far reachingly included into the education. For the troops there was given a prohibition of smoking and of participation of alcohol, furthermore, the visiting of prohibited house(s) in Belgium was forbidden. Every relationship with women was prohibited for soldiers up to the age of eighteen. The officers were especially selected on the basis of their character. Those found not suitable were, within the first weeks, removed. In social respects, the idea of motherhood was held high to my men in the motto "the mother fights, lives, sacrifices and dies for her family [and] her children." My troops once voluntarily gave up their salary for three months in 1943 to give that money to the poor and bombed out people at home. In religious respects, my men had freedom. I called to them, "God cannot be proved but he is to be believed. Man only becomes man when, through his conscience, he feels himself responsible to his God. A soldier who does not believe in God cannot fight." The purely military education was hard and based on military experience. Every training was made to approximate war conditions. All exercises were conducted with live ammunition and with fighting weapons, not training weapons. The losses which thereby resulted had to be taken in order to avoid losses during action. These losses were extremely small, not worth mentioning. For their fighting motto my soldiers were given the idealistic point of view of soldierhood, in brief; "I am nothing, we are everything." The entire troops were looked upon as one unit. I demanded of my men during their period of training a total concentration upon training and to spare their bodily efforts for future action. In the entire troop there was not one man who had been crimed [sic]. Even those boys who had committed some youthful stupidity were eliminated during the first week. Soldiers who, during the training, committed an offence against the comradely spirit or against the unit were removed from the ranks and sent back to the Reich. As far as criminal matters were involved, the men were removed from the unit and were taken on strength of the Punishment Battalion at home. Even shortly before the invasion a few junior NCOs were removed from the unit. The picture as a whole, that that unit gave, presented a picture of the cross-section of German youth. The troop was selected from any social point of view but comprised in itself all social strata of the German people. I was satisfied with the discipline and the bearing of the troop. In the years before I did not have as good a troop as this young unit.

Q. Where was the regiment in August 1943? *A.* The regiment was in Beverloo in the troop exercise area.

Q. Now, you heard the evidence of the prosecution witnesses regarding speeches made by you to the 15th Company and to the regiment in Beverloo, what do you say to that? *A.* I heard these statements and I am prepared to the best of my ability to repeat those speeches.

Q. Were the speeches much the same that you made? *A.* In basic characteristics they were all the same, they had the goal to prepare the men for battle.

Q. Can you remember what you said? *A.* Yes.

Q. Can you remember what you said, what was the basis of these speeches? *A.* The basis of these speeches was that these young men had never experienced battle and had to be put into action at a very youthful age.

Q. Did you ever say in any speech that you made in Beverloo or on any occasion that your unit would make no prisoners or take no prisoners? *A.* Such a statement I did not make.

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Q. You heard one witness tell about a Regimental parade at Beverloo, do you remember that parade? *A.* Yes.

Q. Can you describe that parade and the occasion for that parade? *A.* Yes. This so-called Regimental parade took place in the spring of 1944 on the 30th January. There were present higher superiors, among them a General. On that day I handed the weapons of the regiment to my soldiers. Those soldiers who had not yet taken an oath of the Division, they now took their oath.

Q. And did you make a speech on that occasion. *A.* Yes sir.

Q. And did you tell your men that your unit would make no prisoners on that occasion? *A.* No.

Q. Did you have other Regimental parades in Beverloo, that you remember? *A.* I had two more such meetings. The first time I spoke for two minutes, then I collapsed and was taken away by the doctor. The collapse is to be explained by numerous serious brain injuries and spine injuries. The second assembly did not have the purpose that my Regiment should hear a speech from me, it was a radio transmission and if I am not mistaken, but I am not mistaken, it was surely so, the Reich Government gave an explanation about the political attitude of Italy and shortly before this radio transmission I spoke a few words to my troop.

Q. On either of these occasions did you say anything about your unit not making prisoners? *A.* No.

Q. Where did your regiment go when it left Beverloo? *A.* Near Beverloo, in the direction of Diest.

Meyer: I request that my counsel come back to the speech that I gave the 15th Company.

Andrew: Yes, we want to refer now to a speech you made to your 15th Company.

Meyer: Yes, I have the desire to refer to this speech as during these proceedings it has come into appearance once or twice.

Andrew: Go ahead.

Meyer: *(Continuing testimony) A.* The 15th Company invited me to a comradely evening. My speech had the following words: “Boys, I thank you for your invitation. I can assure you that I have enjoyed coming to you. I feel myself intimately connected with you. I myself was for many years a motorcycle rider and recce man. There are in our regiment many infantry companies, and other types of companies, but there is only one recce company. Therefore you have been selected from the entire regiment. I expect from you that you will be the model in the Regiment, you must give yourself your own model. The recce service and the recce battle is the most interesting battle that exists in any army. Never will you have comrades to the left of you and comrades to the right of you. Your unit will push far into the enemy and fight alone. You are that Company which must give me the openings for my battle leadership. If you are good the Regiment can fight well. If you are no good, the Regiment, because of your inability, will pay a high price in blood. I expect of you that you learn here during your training in Beverloo the trade – the trade aspects of your job and upon that particular point of view which is necessary to fulfil your arduous task. On the basis of the experience, which I have made during my battles I would like to give you one directive. Your strongest weapon is not the machine gun or cannon. Your strongest weapon is the speed – the motor of your vehicle. Serve this motor with a strength and the quicker your work, the quicker you fight, the quicker the higher command receives a picture of the enemy’s intentions and so much the better your own leadership can place its troops into action. It is not so that because of your speed, your unit will have to pay a higher price in blood. Quite the contrary is true. To prove this to you I can tell you that throughout the entire battle in France

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in 1940 I only lost seven comrades. In Greece, our total loss was three comrades in all. Please allow yourself to be taught by your older comrades this practice. I now give to you a point which refers to imprisonment. My point of view is that imprisonment is nothing honourable. After the end of each war every prisoner should be in a position to prove that he fell into captivity guiltlessly. Experiences of 1941, 1942 and 1943 have taught us that there is no imprisonment for us. There was in my troop between 1939 and 1943 not one prisoner. The comrades who had the bad luck to be seriously injured or who have not got back have used the last bullet in their weapon for themselves. I myself have sworn myself, my family and my wife that I myself would not go living into imprisonment. That I mean. Let yourselves be told by your comrades by the volunteer Cossacks here with us – let yourselves be told the reasons why we must act thus. I wish you, my boys, no imprisonment. I wish from this Company which is to be a model to see no prisons. The last shot belongs to you. Now boys we want to leave the service and in this comradely evening we want to converse together as human beings and as comrades, and from this evening we want to take with us pleasure, laughter, and strength for further service." That was the end of the speech. In the room were present the 15th Company, numerous German women, music of the Navy and also Belgian girls who helped in the Red Cross. Apart from that numerous guests. After my speech there was a meal partaken of by all and after that there were theatricals.

Q. Now, you have referred to your being wounded. How many times were you wounded? *A.* Three times.

Q. Where were you wounded? *A.* The first time I was wounded in the shoulder – shot through the shoulder. The second time, in Normandy – grenade splinters, right hand. The third time, after my imprisonment with a rifle butt.

Q. You were in numerous accidents, were you not, in the course of your military career? Don't tell me about them, just say? *A.* Yes. I have eighteen broken bones.

Q. And head injuries I think you said? *A.* Yes – four concussions.

Q. Now, when did you leave Beverloo? *A.* I can't say it exactly – it may be February or March.

Q. And where did you go from Beverloo? *A.* My Regimental HQ was up in Diest – near Diest on the railway from Brussels to Aachen.

Q. Was your Regiment ever in LeSap? *A.* My Regimental HQ never – my company yes. LeSap is in France.

Q. What Company was in LeSap? *A.* The 15th Company.

Q. Do you remember making a speech to the 15th Company in LeSap in the football ground? *A.* Yes.

Q. Now we don't want you to make the speech here, but can you describe that meeting with the company. *A.* Yes. The speech took place on account of handing over of the Company from Hauptsturmführer Ritzert to Hauptsturmführer von Buettner.

Q. And on that occasion did you say to the 15th Company that your unit takes no prisoners? *A.* No, I did not say that.

Q. Now, did you make a speech on that occasion? *A.* Yes.

Q. And without going into details of the speech, can you give us the context of that speech? *A.* I would like to divide the speech into three parts. The first part the pure and formal transfer of the Company

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from one officer to another officer. The second part had as its contents the V-weapons. The third part as its contents had the imminent invasion.

Q. Did you on any occasion in LeSap or when this Company was in LeSap make any speech wherein you said "My unit takes no prisoners"? *A.* No.

Q. You heard the evidence of the witnesses regarding your speech at LeSap; what do you say about it? *A.* Yes.

Q. Was what they said correct? *A.* No, it is not correct. It's meaning is warped. In wording very similar and put before the court quite misleading[ly] and with a totally different character.

Q. . Well, will you tell, as far as you remember, this portion of your speech in which you are reported – you are wrongly reported – here in the Court, so you say? *A.* I first want to give the statement of the deserter, Jesionek. Jesionek says I had incited my men to take reprisals against prisoners of war. That is not true. The word "prisoner" was not mentioned. I did say: "Soldiers, you now hear from the press and through the radio the slogan "V-weapons" and things in connection with V-weapons. You hear the words "Revenge" and "Reprisals." We are soldiers and must see the situation as it presents itself to us and we can only reckon with facts. The fact is that we are here in Normandy and we here, in our fists, have the weapons of the German people. I know that rocket weapons are in preparation but I do not believe that these so-called wonder weapons will take the fighting out of our hands. If the Allied forces take a stand for the invasion then reprisals or revenge will not be achieved through V-weapons but revenge will be achieved through our personal action, through our blood, through our spirit of attack, offensive spirit and through the annihilation of the enemy forces. We can speak of a revenge when we have crushed the invasion and have placed our weapons at the coast as defensive weapons." That was the contents of this part.

Q. Will you ask the witness the meaning of the word "Vernichtung"?

Lehmann: May I make a remark here sir. The accused used the term "Vernichtung" in the course of his repetition of his speech. It is however a military term used in Germany more as we use "destructive attack" and "destroy" and in interpreting that word he has given it as "annihilation" and I think that one should pay some attention to the exact meaning. ...

Andrew: *(Continuing examination) Q.* Did you ever receive any orders as Regimental Commander concerning prisoners – concerning the treatment of prisoners? *A.* Yes.

Q. Can you tell me when and what they were? *A.* The times I cannot give. I can recollect one order which I received either in Belgium or in France. In this order it is pointed out that the prisoners are most speedily to be removed from the battlefield and are to be led to the higher command – higher echelon. I can also remember another order. It was given before then. The order... had as its contents the treatment of saboteurs.

Q. Did you ever give any orders as Regimental Commander concerning the handling of prisoners? *A.* At sand table exercises and tactical exercises I frequently outlined and mentioned the treatment of prisoners, especially during the training of the 15th Company in Beverloo. In the field out of doors as well as during lectures I pointed out that that company, as a reconnaissance company, had especial duty to bring prisoners from up front to the rear because the main job of the 15th Company, as a reconnaissance company, is to bring back clues for the leadership of the troops. In this connection, I frequently said the following sentence, word for word: "Your job is not battle but reconnaissance. You must bring me clues – information."

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Q. Now, you heard the evidence of Torbanisch read, concerning secret orders which he signed. What do you say about that? *A.* I would like to have a German translation of this so-called order.

Andrew: May I have the original please?

Judge Advocate: Exhibit T-3 *(Exhibit T-3 is handed to the witness)*.

Meyer: *(Continuing) A.* Secret orders in every army of the world have the purpose to convey a matter which is to be kept secret to a limited circle of people. With relationship to the secrecy of the matter, the secrecy of the matter is the terming of secret orders. In Germany there are three types of secret orders – the simple secret order, most secret, and chief matters. All secret matters are transported by officers, read by officers, and administered by officers. No secret orders are ever read verbatim to an assembly of men. But the officer responsible for the troop – he must tell the company, battalion or regiment about the meaning of the contents of the order. He must inform them of that. Every secret order is entered in an orders book. Thereafter it is destroyed after a time or in due time it is returned to the authority which has given the order. When a document is destroyed there must be a written certificate written in the presence of an officer. This means that an NCO gives to a company in an open street in a hostile country the secret order or reads out a secret order in open street in an enemy country, or an enemy intention country. The NCO who is here mentioned had no secret orders. That what I have here in my hand is the product of the imagination of a deserter who probably with this piece of paper with the Belgium guerilla wanted to obtain bed and board. The contents of this order produces truth and fairy story simultaneously.

Judge Advocate: Combined?

Stonborough: Combined.

Meyer: *(Continuing) A.* Here on this piece of paper are tactical thoughts which during inspections I said to my troops. As example, point 6. Point 3 is practically verbatim translation of the ordinary sentry instructions of the German Army. These sentry orders the German soldiers learned in the first four weeks of their basic training. Apparently this man learned them well because it is practically word for word correct. About the remaining points I do not wish to speak as they are so stupid that no officer can believe them. I would like to give the court an explanation.

Q. Yes. *A.* Shortly before leaving Belgium for France I gave to my regiment an order concerning the leaving of billets; regarding transport movements on the railways; about the arrival in France, and about behaviour during leaving or entraining, on the train, and detraining, and I further pointed out the heightened danger of espionage in northern France and near the coast, and also referred to what sprang from that, namely, a heightened awareness, [alertness] of the troops... This order had a purely disciplinary content and was intend[ed] to show to my men the discipline that I demanded of them once again. This mythical signature which soldiers of the 15th Company are reported to have affixed to a secret order was given but was given under the instructions concerning desertion and the prevention of espionage. This signature is not given on orders from Regiment but in the entire German Armed Forces, is repeated every quarter year, and every quarter year the men must sign that he has been instructed by the company commander about espionage and how to fight it, and this signature was given either in March or the beginning of April, by the 15th Company because the quarter year in question had just ended. That is the explanation that I wanted to give.

Q. Now, where did you go, or how long did you remain, in LeSap, the area? *A.* I myself or the company?

Q. The whole Regiment, in the Le Sap area? *A.* Numerous weeks; until the beginning of the invasion.

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Q. And where did you go then? *A.* We stayed in this area until the 6th of June.

Q. And then what took place? *A.* Then started action and invasion.

Q. Would you describe the movements of your regiment on the 6th of June, in brief? *A.* The Regiment was alarmed by a German air force sentry who was on the coast in the early hours of the morning, about 2 a.m. One hour later the Regiment was ready for action. The order to action arrived toward 9 o'clock in the morning. It may have been a little bit later, I cannot say. The first march order said, broadly speaking, that the Regiment should proceed towards Lisieux. When the Regiment had reached this area, by radio a new march direction or ordered the new march order led into the area west of Caen. I used the road with the Regiment by Andre. I crossed the Orne at St. Andre, and, at the beginning of dusk I stood south of Grainville, which lies north of the main road Caen-Villers Bocage. Shortly before reaching this road my 15th Company, with whom I was, was attacked by low flying planes, that was the baptism of fire of the 15th Company and my men had opportunity to witness the seriousness of war. Their comrades ran as living torches through the countryside. I gave an order to the 15th Company to push forward Recce in north-west direction towards Bayeux; and also in direction of Cheux. The Recce results showed me that the coastal divisions and those troops put into action up front were not retreating firing – they were not conducting a fighting retreat. In the course of the evening I was oriented by the Ordonnanz Offizier who came from either the 21st Panzer Division or from a coastal division. With the commander of the 21st Panzer and the commander of the coastal divisions. I was appraised that these two commanders were in a combined HQ north of Caen.

Q. Will you mark that in *(Indicating Exhibit T-1)*? *A*. I cannot put the point in according to scale on this map but I can say it was in a quarry and this quarry was built out to real command posts – fitted out as an important command post.

Andrew: There is an indicating flag placed at the point which is shown at approximately 032698. It is just about north of Caen *(Indicating Exhibit T-1)*.

Meyer: *(Continuing) A.* I reached that Headquarters at 12 o'clock midnight, and here I was put into the picture by both divisional commanders, and I also got a picture of the position of these two divisions – of the position in which these two divisions found themselves. The Coastal divisions no longer represented a fighting force. The Divisional Commander no longer had any means to lead his troops. He had one Regimental Commander hanging on the other side of the telephone, but this Regimental Commander was encircled by enemy tanks. The Divisional Commander was of the opinion that his Division had been wiped out to the last man. His frontal sector was very, very big. The commander of the 21st Panzer Division whose real Headquarters was 20 kilometres south-east of Caen had put his Division into action on both sides of the river Orne. The most easterly battle group fought in the area Troarn against British air landing troops. The other half of the division, a westerly half, had on the 6th pushed so far forward that they could put fire – could fire into the coast – could put down fire onto the coast. In the course of the 6th, especially in the evening hours, enemy air landing troops and parachutists were landed. In view of the situation, the battle group command in question decided to withdraw to the area Epron. The battle group HQ was in Epron where I saw it two days later. It was the commander of the Panzer Regiment, Col von Oppeln-Bronikowski.

Andrew: *(Continuing examination)* And there is an indicting flag placed at Epron with "21" after it. *Q.* Now, when did you say that the battle HQ was there? *A.* On the 8th, I said. That which I have given you up to now I heard in the pillbox HQ of the two Divisional Commanders.

Macdonald: Did he say the Headquarters was established on the 8th of June at that point?

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Meyer: *(Continuing) A.* I saw the Headquarters on the 8th in Epron, hard south of Epron. The troops were to the north of Epron and 21st Panzer Div, and it was the commander of the Panzer Regiment of that Division. In view of this situation report, I decided to place my regiment in the area St. Germaine in readiness for the battle. The regiment had on the 6th severe, – well, its march was severely handicapped through low flying planes. I could therefore only give my first orders on the morning of the 7th there where the road goes under the railway.

Stonborough: It is south-west of Caen. It is between Caen and Bretteville-Sur-Odon.

Andrew: *Q.* And was that your HQ? *A.* The first house east of the railway. Yes, that was my first HQ.

Andrew: And that is point 005673.

President: Is it not 989664?

Andrew: *(Continuing examination) Q.* Are you sure that is right? *A.* The road goes under the railway.

Macdonald: Would you at this point – it might save confusion, point out to the witness that he put the Headquarters at the other railway to the east of that place, before?

Andrew: *(Continuing examination) Q.* There is where the road goes under the railway *(Indicating on Exhibit T-1)*. *A.* 300 meters west of the church.

Q. Church where? *A.* Due south of the "E" in Caen.

Macdonald: He has got the wrong place.

Meyer: It was the same place where Witt subsequently was killed.

Campbell: That is right.

Andrew: *(Continuing examination) Q.* Alright, go on. *A.* From this order I gave one after the other the orders for the putting into readiness, to the forming up area of my regiment.

Q. Just a moment. Before you go on; while you were there at this HQ you have pointed out, what had you decided to do with the Regiment? *A.* I had decided right off to attack, without further orders from division or anyone, to attack the enemy and to throw them and to try to seek contact with my right wing with the left wing of the 21st Panzer Division so that the attack could subsequently be carried forward together.

Q. Now, are you talking about the 7th now? *A.* I speak now of the 7th of June in the morning of my first HQ.

Q. And will you tell us what troops were in front of you, that is, west of Caen at that time? *A.* I would like to proceed logically with my description. From here I gave orders that the 1st Battalion should be on the right, the 2nd Battalion in the middle, and the 3rd Battalion on the left, and the artillery should be south of Caen in such a position to support an attack from the north; two companies of the tank battalion left, and two companies of the tank battalion on the right; recce to push forward on the road Caen-Bretteville and on the road Bretteveille-Sur-Odon – Carpiquet, and road Verson-Norrey. After I had given this order I myself drove into that area, that countryside, and I chose the path from the Headquarters a few meters on the main road to the big church then a road which led in a north-westerly direction to the village St. Germaine, left the road at St. Germaine, drove to a little wood due north of St. Germaine and from there in a direction north-east past Ardenne to the village of Cussy. During this trip I saw my units move into the ordered forming up area. I could get from my men no

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exact picture about enemy movements. I therefore came to the conclusion to pull my men with me by a short jump of my vehicle and I had the intention from Cussy to reach Buron. After a few hundred meters drive I was taken under fire by enemy tanks from Buron. I did not spot the tank in Buron but I placed it due to firing. One tank I definitely recognized at the north-west corner of the garden area of St. Contest. I therefore drove back to the village of Cussy. Here in Cussy, I found the Regimental Commander of the Grenadier Regiment of the 21st Panzer Division who there had his Regimental HQ, (the men he had with him were very few), later between the village of Cussy-Buron-Putot. That was at the noon hour of the 7th. *(Witness marks with a flag and with a "21" after it, MR 996705, on map included in Exhibit T-1.)* I greeted the Regimental Commander. He put me in the picture and told me that due to the landing of the air landing troops he had lost for the time being the contact and command of his troops but he hoped in a short time to have his regiment again firmly under command. I here wish to state that the relationship with the 21st Panzer Division, its officers and Divisional Commander was an extremely hearty one. I say that because it was doubted here the other day.

Q. What time of day was this that you met him approximately? *A.* It was either at noon or early afternoon when I spoke to him.

Q. Alright, go on. *A.* There were several other officers of my Division in the neighbourhood. From Cussy I drove to Ardenne and from Ardenne I could get a far reaching picture of the entire area. I could see the coast from that section, not the water actually but I could see the barrage balloons of the ships. Apart from that I could see movements from motorized columns that moved in a south-westerly direction. On the basis of all these movements and what I saw of the enemy I knew the situation thus, that the invading troops had the intention of pushing through between Caen and Rots in order to get onto the big highway Caen-Villers Bocage. I therefore decided not to await further reinforcements but, after the forming-up had been completed, to attack the enemy. When I came down from the tower at Ardenne I saw two officers of the Coastal Division that came from the direction of Gruchy-Authie and who had with them some dispersed soldiers. These officers had the intention to evade further to the south. I forbade any further withdrawal, gave these two officers the order to accompany the attack of my troops with their men and to reconquer that territory which they had lost.

Andrew: Sir, that is a good breaking point. May I ask for an intermission?

President: Yes.

Macdonald: Mr. President, may I ask the same order with respect to communication with the witness while he is under oath until his evidence is completed?

President: Will the escort see that there is no conversation? Court will adjourn for ten minutes.

—

President: I declare the Court open...

Andrew: *(Continuing examination) Q.* Now, witness, you reached in your evidence before intermission, to where you came down from the Abbaye and you told the two Coastal Defence officers to take part in the coming battle with your own troops. Go on from there. *A.* Yes. As soon as I got a review of the parade of my troops I drove back to St. Germain. During that drive I was shot at by the same tank that fired at me before at the wall of the Abbaye Ardenne. I arranged for a new Headquarters through my [Dispatch Rider] at the road fork St. Germain.

Q. Will you mark that please? *A. (Witness indicates by flag spot near road junction 995691 (or 995692)... Exhibit T-1.)* The Headquarters was situated exactly opposite a Service Station or petrol station...

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Andrew: *(Continuing examination) Q.* Was it a military petrol point? *A.* No – civilian. There I heard that Canadian troops had shot German prisoners of war after they were taken prisoners. I forbade the spreading of this rumour.

Q. Who did you forbid it to? *A.* My [Dispatch Riders], the Adjutant, and also the Ordonnanz Offizier who were in my neighbourhood. I also forbade that a report should be made to Divisional HQ. I told the Adjutant: "I can only believe it when I see it myself." Here I met the Commander of the Panzer regiment. I have to correct myself, I met the Commander of the Panzer regiment before, but here I spoke to him. Here I also spoke to the Divisional Commander. The Divisional Commander had no exact information about the movement of the 26th Regiment, my left neighbour. Subsequently, I went back to the Abbaye Ardenne in the tower and gave the order to bring over a small tactical Headquarters staff.

Q. What time would this be? *A.* Shortly after 12 o'clock. I have to point out here that I cannot remember the times exactly.

Q. Well, approximately then. *A.* Shortly after noon hour.

Q. Go ahead. *A.* In the tower of Ardenne, I had a conversation with the commander of the 2nd Battalion. After the Battalion had formed up the formation was complete. I gave the order to attack from this tower by radio. The tactical plan hereby was that the plan of the attack was to take with the 3rd Battalion on the left wing and the two Panzer companies under support of concentration of Artillery, to take the place Authie and Buron. The tactical plan was that the attack would circle around the right wing, the left Battalion would attack first and subsequently the whole front would move in a northerly direction.

Q. I show you here a diagram, did you draw that? *A.* Yes.

Q. And what is that diagram of? *A.* That is the plan of attack of the 3rd Battalion on Authie.

Q. And there are red and blue marks on this diagram? *A.* Yes.

Q. The red squares indicate Canadian tanks, is that right? *A.* Yes.

Q. The blue lines and blue squares indicate German tanks and infantry of the 3rd battalion, is that correct? *A.* Yes.

Andrew: I do not know whether this is of any use to the Court but it shows a rough diagram of the attack on Authie.

Judge Advocate: Do you want to put it in as an exhibit?

Andrew: Well, if it will help the Court.

Judge Advocate: That is Exhibit T-66...

Andrew: *(Continuing examination) Q.* Alright, proceed. *A.* As soon as I had completed the attack, I could well see the movement of the 3rd Battalion. The fighting tank units were in radio contact with the tower where I was.

Interpreter: The accused said he will now give a description of the attack of the 3rd Battalion.

Andrew: Alright.

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Meyer: *(Continuing)* The 3rd Battalion attacked Authie with two Companies in front and the third Company in between the two front Companies following them. The two Companies in front were accompanied by tanks. The two Companies in front were formed in a narrow deep formation. Before the tanks could enter into battle the infantry had driven themselves into the corn fields and the hedges close to Authie. Of the advantage of the infantry practically nothing could be seen from the tower. Before the infantry reached the city or came into the city of Authie artillery fire was directed on the road crossing *(MR 994713)*. As soon as our tanks came within shot distance from Authie a violent tank battle started. I noticed two of my own tanks being blown up into the air and of the Canadian tanks I did not see any escape. The two frontal Companies and the tanks did not attack the town or the city but just by-passed it on either side in the direction of Buron. As soon as the two Companies had passed the city and their fronts were north of Authie, I noticed how the third Company attacked the city from the south to north. With this Company there were only a few tanks who moved forward on the road from south to north along side them. That was the tactical picture of the battle which I could see from the tower.

Q. Now what time was this battle over, when did your troops consolidate? *A.* It must well have been between four and five in the afternoon. The whole battle for Authie did not last longer than 15 to 20 minutes.

Q. What were you doing at this time, when the battle was finishing? *A.* During all that time I was standing on the tower.

Q. At this time of the battle were yours the only troops in your area? *A.* No.

Q. Who else were in your area? *A.* There were a few dispersed soldiers from the coastal battalions and a few anti-aircraft soldiers who joined the attack soldiers from the area Carpiquet in the attack at Franqueville, that is they came from the direction of Franqueville and joined the attack.

Q. Were there any 21st Panzer Division troops in your area? *A.* There a few dispersed soldiers of the 21st Panzer Division. I have seen myself a Panzer soldier at the road crossing in Authie. Not exactly at the road crossing but about 40 to 100 meters away from that crossing.

Q. How did the coastal defence people dress? *A.* They were wearing the cloth uniform, as I wear it here, but over that they were wearing a camouflage ground sheet.

Q. How did the 21st Panzer Division soldiers dress? *A.* They were wearing camouflage uniforms similar to our camouflage uniforms.

Q. And how did the flak people dress? *A.* They were wearing blue air-force uniform and over that the blue camouflage suit of paratroopers. That was not a uniform dress.

Q. Now, how were you dressed on the 7th of June? *A.* In camouflage uniform.

Q. All day? *A.* Yes.

Q. Did you have any supporting troops attached to your regiment? *A.* Yes, I had artillery from the division and tanks with me.

Q. Now, were these supporting troops with you on the 7th June? *A.* Yes.

Q. Will you tell me how your officers dressed on the 7th of June? *A.* All men of my regiment, including officers, were wearing camouflage uniforms. No officer distinguished himself, as far as uniform is concerned, from a private soldier.

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Q. Did you have anybody around your advanced or Tactical HQ on the 7th who was not dressed in camouflage uniform? *A.* I cannot remember that. It is possible that the two officers of the coastal unit were seen there but they were not from my regiment.

Q. Well, after the battle, or during the battle, did you see any prisoners? *A.* Yes.

Q. Tell the court about it? *A.* When I was standing on the tower during the first phase of the attack on Authie I saw a small group of prisoners coming out of Authie in the direction of Ardenne. This small group of prisoners was the only thing you could clearly see from the tower. The 3rd Company was engaged in the attack on Authie and it was not visible from the tower and this company had not yet reached the village of Authie. From my position on the tower I noticed that the attack on Authie made good progress and that the commander of the Battalion was at the road crossing between Buron and Authie.

Q. Could you see him? *A.* Yes, I could see him. Since I saw enemy movements deeper in that area I took the decision to see this Battalion Commander myself in order to convey the order not to continue the attack north of Buron and at the same time inform him of what I had seen from my position of the battle. I drove by motorcycle from the Abbaye Ardenne to the Battalion Commander.

Q. Were there any prisoners, Canadian prisoners, at the Abbaye at this time? *A.* No.

Q. Go on. *A.* The first time that I saw prisoners, I noticed in a fruit garden in Cussy, when I came through Cussy. I drove from Cussy to the marked cross...

Q. You drove to the crossroad at 987719? *A.* Yes.

Q. The Battalion Commander you said was just south of there? *A.* Yes, at the crossing.

Q. Alright. *A.* During my drive I noticed that the battle was quite heavy – harassing artillery fire was on the area.

Q. Which area? A. South of Buron and Authie.

Q. Yes. *A.* I left my motorcycle to go to this Battalion Commander by foot. The motorcycle was shot to pieces. After I had had a short conversation, parts of minutes, with that Battalion Commander, I moved back in the direction of Cussy. There I noticed the Canadian prisoners here moving in a southerly direction in the direction of Cussy.

Q. Were you walking or riding then? *A.* At this moment I was on my feet, that is to say, I crawled on my stomach. This 3rd Battalion – the following company of the 3rd Battalion, that is the rear company of the 3rd Battalion, shot at the prisoners and also at me in spite of my signaling with a map. The prisoners had no weapons at that time and I took it that this following company, this rear company, expected a counter-attack by Canadian troops. At a short distance I traveled forward in the direction of Cussy, together with these troops. They were scattered troops. I jumped on a vehicle and drove in the direction of Cussy. Here in Cussy in the fruit garden, several prisoners had gathered together in the meantime. Here in this garden I found the G3 I, the Intelligence Officer, who had already taken charge of the prisoners. I drove back from Cussy to Ardenne and went to the tower to witness the ensuing battle and to have another view of it. From this tower I saw the advancing prisoners from Cussy towards Ardennes. I left the tower in order to go to the 2nd Battalion. During this time, for the first time this evening, there was a heavy artillery fire on the area, especially on the city or village of St. Contest. When I came down the prisoners were in the Chapel, in front of the chapel especially. I would say north of the chapel, I noticed the prisoners.

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Q. How many? *A.* I estimate on a hundred.

Q. Continue. *A.* The prisoners were poorly guarded. One could hardly see a guard. They were sitting in the chapel, [they] were smoking. They had brought water and I saw that straw was being carried into the chapel. At this moment a few shells came into the area of the Ardenne. I told the G3 I, "It is getting time that you leave with your prisoners. We will soon have artillery fire here." I was sitting on a stone in the door of the chapel. Opposite to me a Canadian soldier was sitting, smoking a cigarette. About five [and a half] meters left of me the G3 I was busy with a Canadian prisoner. The G3 I had a wallet in his hand.

Lehmann: A brief case.

Judge Advocate: Which is it?

Stonborough: Wallet.

Meyer: *(Continuing) A.* The Canadian made to me an older impression so I took it that he was an officer.

Judge Advocate: What did he say?

Interpreter: Somewhat older impression – made the impression of being somewhat older so I took it that he was an officer.

Meyer: *(Continuing) A.* I went to the officer – to this group and by means of Canadian soldiers and German soldiers I asked this officer "Why do you fight against us?" and I told this Canadian officer "Is it not ridiculous that we crush each others skulls." He had his wallet still in his hand. He had in his wallet the pictures, which he was putting back. I saw the pictures. These were family pictures and made it clear that I also had a large family. Upon my question why he was fighting us, he made big eyes and shook his head. The whole conversation this whole conversation had only taken a couple of seconds. I then went back and placed myself in my motor-bicycle with side-car and before I left I saw that the G3 I gave orders to form the prisoners into a marching order. From the door within to the door – outside door of the Ardenne is approximately fifty meters. It might be more and on that way behind were several wounded. I had a short talk with the Doctor and gave the order to evacuate the wounded as soon as possible.

Q. Where was that? *A.* Here. Both sides. This is the outside door and this is the inside door and here, opposite this hall so to say, the wounded.

Q. Mark [where you saw the wounded as you left the Abbaye] "BB." *A. (The accused complies.)*...

Meyer: *(Continuing)* The total number of wounded I estimated at 50 soldiers. The doctor told me that he had difficulties in evacuating the wounded. The low-flying aircraft who held the area shot at every vehicle they could see. I thereupon gave the order to evacuate the wounded during the night, at the beginning of darkness, and then went to the 2nd Battalion.

Q. What time would this be about, that you went to the 2nd Battalion? *A.* It must have been about 1800 or 1900 hours. The Battalion was still engaged in fighting and the Battalion Commander was killed just the minute I arrived there.

Q. Before you left the Abbaye, did you give any orders other than what you have said to us concerning the prisoners? *A.* No.

Q. On the 7th of June, did you know that there were any Canadian prisoners shot at the Abbaye? *A.* No.

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Q. Did you ever give any orders on the 7th of June for Canadian prisoners to be shot? *A.* No.

Q. Go on. You had reached the Battalion Commander of the 2nd Battalion. Go on from there. *A.* The Commander of the 2nd Battalion was killed by a direct hit from a tank and lost his head. I ordered a new Battalion Commander and put him in the picture.

Q. Who was this new Battalion Commander? *A.* Haupsturmführer Schrott. During this time heavy artillery fire was directed on the area – the Battalion sector. An infantry battle was going on heavily and there was tank and artillery fire.

Q. Where was this going on? Where was the 2nd Battalion then? *A.* North of Contest in the direction of Galmanche. From there I went to the 1st Battalion. This Battalion was engaged in attacking Cambes. That Battalion had withdrawn from the last mentioned village since an enemy tank attack had come in on the left flank, and because the 21st Panzer Division, presumably on account of an error, had not accompanied my attack. I spoke with the Battalion Commander and gave the order to defend and keep the conquered positions, and to take up contact in the right to the 21st Panzer Division and to the left with the 2nd Battalion. From the 1st Battalion I drove back to the 2nd Battalion and there I gave the same order changing over from attack to defence and to seek contact with the 1st Battalion. From the 2nd Battalion, I drove to the 3rd Battalion by to the garden fields west of Contest, and I wanted to speak to the Battalion Commander. I could not find the Battalion HQ. I should like to point out something to the Prosecutor.

Q. Point it out to the Court. *A.* I have told the Prosecutor in my former testimony that I could not find [the] Headquarters of the 3rd Battalion on my return from Bretteville. That is a mistake. I did not find that Headquarters [this] particular night. ...

President: The Bretteville he refers to. Is that Breteville-Sur-Odon or Bretteville-l'Orgeuilleuse?

Andrew: It is… north-west of Caen.

President: Bretteville near Bayeux.

Andrew: Yes.

Meyer: *(Continuing) A.* When I could not find this Battalion HQ, I drove back to Ardenne.

Q. And what time would you arrive at Ardenne? *A.* It was already so much darkness that it was impossible to fight.

Q. To fight? *A.* I take it that it must have been 11 o'clock.

Q. Go on. *A.* At Headquarters – at Regimental HQ that is to say, at Tactical Headquarters, I found my Adjutant and dictated to my Adjutant the happenings of the that day for the War Diary and discussed with the Adjutant the casualties of that day and dictated the Daily Report to Division. I dictated the orders for the next day and subsequently studied on the map, studied my area on the map – particularly in the north-west direction.

Q. Now, where were you in the Abbaye area at that time? *A. (No audible answer.)*

Andrew: He points to the house marked "R."

Andrew: *(Continuing examination) Q.* You examined your map and then what did you do? *A.* Thereupon, I received a situation report from the Division on the total sector and on the sector of Division. From this situation report, it was evident that the Division Commander had difficulties in the sector of the 26th

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Regiment. I also became anxious with our neighbouring division that should have come to our flank not being there yet. I mean the Panzer Lehr Instructional Division. On account of this report I summoned my Company Chiefs to my HQ, to me, and gave the Commander of the 15th Company Reconnaissance orders for the morning of the 8th of June. The reconnaissance orders were to go in the direction of Carpiquet in the sector of the 26th Regiment. The order was "I want to know what is going on in the north-west flank of the 25th Regiment. Where are the enemy troops before the 25th Regiment? Where is the right wing of the 26th Regiment? The second Recce order was to advance in the direction of Rots on the main highway Caen-Bayeux. I want to know how far the enemy troops have advanced on this road." Those were the Recce orders given to the 15th Company on the night from the 7th to the 8thof June.

Q. Now, just before you go on. When did you move your main HQ to the Abbaye Ardenne? *A.* Tactical HQ was removed on the 7th of June.

Q. Was moved from the main HQ up to Abbaye Ardenne? *A.* The Tactical HQ left the position opposite the petrol station to Ardenne on the 7th.

Q. Yes. We understand that but when did you bring the rest of this HQ up to Abbaye Ardenne? *A.* When the attack came towards Bretteville, I ordered the remainder of my HQ to Ardenne.

Q. When was that? *A.* It was in the evening 8 June.

Q. Did you have any Feldgendarmerie at your Tactical HQ? *A.* Yes.

Q. Where were they from? *A.* Feldgendarmerie were allotted by divisions to the regiments to assist in the battle.

Q. Where was Divisional HQ at this time? *A.* Divisional HQ during the time of my first HQ was on the road Bayeux-Villers Bocage.

Q. Whereabouts? *A.* Exactly here *(Indicating on Exhibit T-1.).*

Q. You put that flag for your HQ did you not *(Indicating Exhibit "T-1")*? *A.* This was my first HQ and later became divisional HQ.

Q. Well, then, on the 7th? *A.* I left with HQ on the 7th. Divisional HQ moved in on the 7th. I cannot say the exact time. ...

Macdonald: I think he said Bayeux-Villers Bocage road. He meant Caen, if he said that.

Meyer: Caen.

Andrew: *(Continuing examination) Q*. Who was your adjutant on the 7th and 8th of June? *A.* Obersturmführer Schuemann.

Q. Who were your Battalion Commanders on the 7th? *A.* 1st Battalion, Waldmüller; 2nd Battalion, Skapinni; 3rd Battalion, Milius.

Q. Now, who was the Ordonnanz Officer at Division? *A.* Obersturmführer Meitzel was the first Ordonnanz Officer at Division.

Q. Who was the Divisional Commander? *A.* Brigadeführer Witt.

Q. How long did he command? *A.* He held his command I cannot say from what exact date, to approximately 14 days from the day of invasion.

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Lehmann: 10 to 14 days.

Interpreter: *(After talking to witness)* 10 to 14 days, from the day of invasion. From battle reports this day may be established clearly.

Andrew: *(Continuing examination) Q.* How was the Intelligence Officer from Division, or the officer from Division – the G3 I from Division – how was he dressed on the 7th when he was at your Headquarters? *A.* I believe he was not wearing a camouflage uniform.

Q. How did the divisional officers usually dress? *A.* Generally speaking divisional officers were not wearing camouflage uniforms. It all depended on personality.

Q. How did the Feldgendarmerie dress who were at your Headquarters? *A.* They were wearing the grey uniform, I cannot say exactly whether they were all wearing camouflage uniform, or they had a plate in front of their breast in which could be read Feldgendarmerie.

Q. What were their duties? *A.* Feldgendarmerie had the duty to take prisoners of war from the place of battle to the area in the rear.

Lehmann: From the fighting troops to the collecting area. ...

Andrew: I am going into another phase of the examination and I think we could adjourn, sir.

President: Yes, it would be a good time to adjourn. Will the accused and escort withdraw, please. The Court will adjourn until 10 o'clock tomorrow morning.

(The court adjourned at 1720 hours and reconvened at 1000 hours on 19 December 1945)

19 December 1945

President: I declare the Court open...

Andrew: *(Continues examination) Q.* Witness, who was your driver on the 7th and 8th of June 1944? *A.* Oberscharführer Behlke.

Q. And what happened to this Behlke? *A.* Behlke was seriously wounded on the attack on Bretteville and died the next day.

Q. What date was that? *A.* It must have been the 9th. I cannot say precisely.

Q. Did you ever have a Russian driver? *A.* Yes.

Q. What was his name? *A.* The first name, Michael.

Q. Where was he at this time? *A.* In Germany.

Q. Whereabouts? *A.* In my home.

Q. What was he doing in your home? *A.* This Russian had no family. His family was banished to Siberia in 1925. He was with me since 1944, was thrice wounded during the fight in Russia. I was very grateful to this Russian because he had saved my life numerous times. I considered myself responsible for him and had sent him in 1943 for the first time to my home and in 1944, in May, after an accident I sent him to my home again. The exact date was the 20th or the 23rd of May. I cannot say that precisely. It was Mother's Day in Germany.

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Q. Going back to the 7th of June. You mentioned something yesterday about the Headquarters of the 21st Division. Did you see anybody from the 21st Division on the 7th of June? *A.* Where?

Q. Any place? Did you see any person? *A.* Yes, in Cussy I talked with a regimental commander of a regiment of the 21st Panzer Division, and, north of Cussy, the men of that regiment lay.

Q. Was that a panzer regiment or a grenadier regiment? *A.* It was a panzer grenadier regiment.

Q. Did you see the commanders of any of the panzer battalions of the 21st Division? *A.* On the 7th I did not see the commander of the tank regiment of the 21st Panzer Division.

Q. Now, you have pointed out the Headquarters of the 21st Panzer Division as it was on the 7th? *A.* Yes.

Q. And did you ever go to that Headquarters? *A.* Yes.

Q. When? *A.* I was there during the night of the 6th to the 7th; spoke to the divisional commander personally, both of us talked to the Ia *(the rough equivalent of the GSO I)* of his division and both us together spoke to the commander of the coastal division. I herewith wish to state that this Headquarters was an advance or attack Headquarters. The rear Headquarters of 21st Panzer Division was south-east of Caen.

Macdonald: Excuse me for interrupting, but yesterday this point arose as to where this Headquarters was and the witness said that he had been at the Headquarters on the 8th of June. I queried that at the time and the evidence was wrong, and I raise the question again as I presume my friend is cross-examining his witness on that point.

Andrew: No. As a matter of fact, I was trying to get him back into the picture of what evidence he gave yesterday instead of having it read.

Campbell: But it is another "amendment."

Andrew: I do not know what my friend means by that. *(Continues examination)*

Q. When you were at this 21st Division HQ what information, if any, was given you? *A.* First I got information about the enemy from the commander of the coastal division, and the information about them themselves. During this talk, instruction, the Commander of the 21st Panzer Division was standing beside me at the table. After I received this instruction, I received information from the Commander of the 21st Panzer Division.

Q. Were you given any information regarding German mines in the area in which you were? *A.* Our regiment already had the plans for the mines along the coast, – the coastal mine belt.

Q. Were there any mines in the area Authie, Buron, Cussy, St. Contest, St. Germaine; in that whole area? *A.* No. Minefields were only immediately at the coast. Apart from that there was a thin belt of mines all around Divisional HQ in the quarry. This mine belt was surrounded by wire obstacles.

Q. Did you ever send, – or were tanks, your own tanks used in the area Authie, Cussy, – or in your own immediate area? *A.* Yes.

Q. Was anything reported to you of minefields in that area by the tank people? *A.* No.

Q. Now, then, you took us yesterday in your evidence to midnight or 11 o'clock on the 7th. Will you tell us the story of what you did and your regiment did from where you left off in your evidence yester-

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day; that is 11 o'clock on the 7th? *A.* I wish to say that when I finished up yesterday I was not at eleven o'clock. I was up to two or three in the morning. The precise time I cannot state.

Q. Alright, go from there. *A.* After I had been put into the picture by Division, the Battalion Commander of No. 1 Battalion came and put me into the picture regarding his position. That battalion had difficulties in the late evening concerning its re-organization for advance, caused by heavy artillery fire on the village of Buron, and the casualties of numerous officers. I discussed the entire situation of the Regiment with the Commander of the 3rd Battalion and I gave the Battalion Commander a "rocket" because he could not tell me precisely about his losses nor about the position of his weapons. The Battalion Commander left the Regimental HQ after about half or three-quarters of an hour and returned to his battalion. Afterwards the commander of the radio monitoring sector whose duty it is to listen in on enemy radio communications came to me and he announced to me from what he gathered from what had been going on over the air and from what he had seen of captured enemy maps from shot up tanks, that he was now in a position to monitor all enemy tank inter-communications and had already done so to the west as far as Norrey. He did not yet bring me any important tactical orders of the enemy but he did bring the commander's call for "RV." When that platoon commander of the monitoring service left me I was alone for about one hour and I studied, or rather continued to study, the map with my regimental doctor, with special emphasis on a north-westerly direction. Also present was in the room my Ordonnanz Offizier Koenig. At first light, I climbed up on the tower and watched the enemy forming up area and could notice movements in the neighbourhood north of Cairon. I gained the impression that the enemy was desirous of pushing down in a southwesterly direction. After lengthy watching I came to the conclusion that it was actually only a concentration. In view of these observations, I came to the conclusion to help my own division on my regiment's left flank with a thrust towards Bayeux. My main thought at that time was to bring my left neighbouring regiment up to the same height as quickly as possible. As I had no troops at my disposal for this thrust, I had to release from my own regimental sector the troops for that purpose. Therefore, I made the decision to take the 16th Engineering Company from the 1st Battalion and to take it out at my flank, – or place it out at my left flank; so that the 16th Company would place itself to the left of the 3rd Battalion and thus make contact with the neighbouring regiment. That particular sector was during the night from 7th to 8th safeguarded and secured by weak forces of the 15th Company. The 15th Company was as I pointed out yesterday... divided into [a] reconnaissance portion and two defence outposts. When I had come to this conclusion I drove to the 1st Battalion, – I cannot tell you the precise time, it was very early. It may have been seven or eight o'clock. I talked to the commander of the 1st Battalion in order to release from the sector of the 1st Battalion the 16th Company. This conversation, of necessity, took somewhat longer because the Battalion Commander was reluctant to let go that company. He sought to prove to me that that company must under all circumstances remain at the right wing. After I had given the order to release that company, I on foot walked along the positions of the 1st Battalion. The Commander of the 1st Battalion accompanied me up to the Headquarters of the 2nd Battalion.

Q. Just mark in with just a short arc the position of the 1st Battalion? *A. (The witness complies.)*

Andrew: The position of the 1st Battalion is shown... as north-west of Epron.

Andrew: *(Continuing examination) Q.* Alright, go on. *A.* With the Battalion Commanders of the 1st and 2nd Battalions I stayed for awhile at the Battalion HQ of the 2nd Battalion, and here I exchanged our experiences concerning the first day in action of our young soldiers. Afterwards the Commander of the 1st Battalion returned to his Headquarters and I myself walked along the positions of the 2nd Battalion with the 2nd Battalion Commander.

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Q. Where is the 2nd Battalion? Mark it. *A. (The witness places a blue arc north of St. Contest just over the word Malon...)*

Q. Continue on with your story? *A.* I got into my vehicle at the Headquarters of the 2nd Battalion and drove through the village of St. Contest in the direction of Buron. In Buron and St. Contest, I walked along the positions on foot. I then went to the Battalion HQ of 3rd Battalion. There, I talked to the Battalion Commander.

Q. Roughly put in the position of the 3rd Battalion? *A. (The witness places an arc... just north of Buron.)* 3rd Battalion HQ was in an orchard south-west of Buron. I told the Battalion Commander of the 3rd Battalion of my intention to attack in the evening hours in the direction of Bretteville. Also I told him that the 16th Engineer Company would be at his left flank and at the beginning of dusk those parts of the 15th Company who were there would be relieved by the 16th Company and I told the commander of the 3rd Battalion that he would be responsible for the 16th Company. From Battalion HQ, I went to Gruchy and from Gruchy to a small chateau west of Authie.

Q. Who was in Gruchy? *A.* In Gruchy there was one platoon of the Engineer Company which I had already added to the 3rd Battalion on the 7th of June; also weak parts of the 15th Company were there. From Gruchy, I drove to that chateau. There were parts of the 15th Company. From that chateau I drove across a little field path to Franqueville. From Franqueville I went to an abandoned flak position which was situated between Franqueville and the main road Caen-Bayeux. There were also parts of the 15th Company. From that position there I inspected and looked over the area which was planned for the forming up point for the coming attack. I found the area favourable. From that flak position I drove up to Point 69, one kilometer to the east of Rots. There at Point 69 there was a standing patrol of the 15th Company. From that point, I could note some movements on the heights near Rots – on the east side of Rots in the orchard. From Point 69, I groped my way forward with two other men to a smashed up house south of that road in order to gain an impression of the area between [the] road and railway. I note here on the map that that house is marked. I mean the house is under the figure "9" [Reference 958704]. From there, I drove back to the main Regimental HQ.

Q. And where was main Regimental HQ at this time? *A.* Opposite the petrol station. Here at the Regimental HQ I also found the Regimental HQ of the Tank Regiment – the Panzer Regiment. There I informed my Adjutant about the plan of attack.

Q. Do you know what time this would be in the morning approximately? *A.* Shortly after noon between 12 and 1 o'clock. Then I drove up to Ardenne. I immediately went up to the top of the tower.

Q. Were you alone at the top of the tower? *A.* No. There were artillery officers up there. I also spoke up there to the Commander of the Tank Regiment and also with the 1st Ordonnanz Offizier of the Division.

Q. What is his name? *A.* Meitzel.

Q. And how were you dressed during your morning activity? *A.* Throughout the entire period of action, I wore a camouflage suit except for one day I wore an ordinary uniform tunic.

Q. What day was that or about what day? *A.* That was the day after the attack of Bretteville. Then I had to change my coat because I had been on fire.

Q. When you returned to the Abbaye around noon –

Macdonald: 1400 hours.

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Andrew: *(Continuing examination) Q.* At 1400 hours. When you returned to the Abbaye did you see any vehicles in the Abbaye? *A.* I first want to say something. I did not say 2 o'clock. I said between 12 and 1 o'clock.

Macdonald: That is at the Tank Regiment Headquarters which is opposite the petrol station. It was between 12 and 1 o'clock when he was there.

Interpreter: That is correct, sir. That is what he said.

Andrew: *(Continuing examination) Q.* What time did you –

President: *(To reporter)* Will you read that part of the evidence over please? *(Reporter complies.)*

Macdonald: Is that all you have there?

Reporter: Yes, sir.

President: I did not hear any mention of 2 o'clock.

Macdonald: I'm sorry sir. All of us here had the impression he said "2 o'clock."

Andrew: *(Continuing examination) Q.* What time did you arrive at the Abbaye? *A.* I cannot tell you exactly when it was. Early in the afternoon. It was so early that we could still invite the officers present for lunch; we had a little bit of food there. I believe it was between 1 and 2 o'clock.

Q. Now, were there any vehicles in the chapel when you returned? *A.* As Regimental Commander, I did not put most of my attention on the efficiency of the vehicles. I cannot remember on the 8th having seen vehicles in the chapel. I cannot believe it because on the 7th I already told my runners to remove all the vehicles standing around the area – to remove them from Tactical HQ. I was endeavouring to make the Regimental HQ as inconspicuous as possible.

Q. Now in one of these interrogations before my friend, Col Macdonald, you said that on the morning of the 8th –

Judge Advocate: You are going to lead him now, are you not?

Andrew: Well, I will read it out.

Judge Advocate: That is what we are trying to avoid to your own witness. Can you not direct his attention to that to ask him?

Andrew: *(Continuing examination) Q.* Was General Geyr with you on the morning of the 8th?

Macdonald: He is certainly leading him now.

Judge Advocate: Can you not direct his attention to the matters without –

Andrew: *(Continuing examination)* Were there any senior officers above your own rank with you on the morning of the 8th at Ardenne Abbaye? *A.* I do not know whether the Divisional Commander was there. I said in my statement that General Geyr had been there in the morning of the 8th but I also said in my statement "I do not know it precisely." General Geyr was not there on the 8th. He was there on the 10th in the morning.

Q. Now, will you give me the position of the various parts of 15th Company on the morning of the 8th? *A.* Company HQ was from the 7th on, on the road Caen-Bayeux. Around this Company HQ on both

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sides of the road lay the men of the 15th Company. From this basis, the 15th Company was put into action.

Q. What were the positions of the 15th Company on the 8th? *A.* On the 8th, the 15th Company with weak forces took the following positions – right wing Gruchy, left wing road crossing south of Franqueville, advance recce patrol Point 69. Two recce patrols in a north-westerly direction.

Q. Before you left on your visit to the 1st Battalion were there any people of 15th Company around Tactical HQ? *A.* The 15th Company had no business around the monastery of Ardenne but I could not say whether one or other individuals were there.

Q. Were there any of their vehicles around the Abbaye on the morning of the 8th while you were there? *A.* Do you mean Regimental vehicles?

Q. No, I mean the 15th Company. *A.* No. They could not have been there because it is in the nature of a recce company that the vehicles be where the men are.

Q. Did you have any vehicles at Ardenne Abbaye on the morning of the 8th? *A.* Yes, in the area of the monastery, yes.

Q. Mark on that chart of Ardenne Abbaye where the vehicles were *(Referring to Plan in Exhibit T-1). A. (Witness marks in plan of Abbaye Ardenne... with blue pencil and initials "CC".)*

Q. What type of vehicles were those? *A.* I want to mark the different points with numerals to that the different types of vehicles can be more easily distinguished. *(Witness places large numbers from 1 to 5 beside the position of the vehicles of which he will indicate the type.)* Point 1 – in a barn: three or four motorcycles and two motorcycles with sidecars. Point 2 – vehicles of the Ordonnanz Offizier, also a motorcycle. Point 3 – vehicles of the medical officers and other runners. Point 4 – munitions vehicles and tractor of an anti-tank gun which was in position there. Point 5 – command car immediately at the chapel.

Lehmann: Mr. President, there is one point left out in connection with point 1 – "These various motorcycles included my own."

Andrew: *(Continuing examination) Q.* Were there any civilians living in that Abbaye area on the 7th and 8th of June? *A.* Yes.

Q. Do you remember the structure of the chapel, the structure itself. On that day – on the 8th of June, as well as any other time, did you know that structure well? *A.* Do you mean only the chapel or the entire monastery?

Q. Only the chapel. *A.* The chapel in my estimation has not been used for a number of hundred of years.

Q. I will show you now Exhibit T-28. Do you recognize that as the interior of the chapel? *A.* Yes it is.

Q. Do you remember whether there was an opening in the centre of the rear wall of the chapel? *A.* No, I cannot remember that. There was only one entrance that I know and that was looking to the west towards the courtyard.

Q. Now, continue on from what you were telling us about being on top of the Abbaye. You were up in the tower. Now continue on from there. *A.* Up there on the tower I judged the countryside with the Commander of the Panzer Regiment in preparation for the attack that night, and I discussed with the Regimental Commander of the Panzer Regiment and with the Artillery the entire plan for the attack

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that night. I told the Ordonnanz Offizier from Division about my plans so that he could put the Divisional Commander in the picture.

Q. Now, you heard this evidence of Jesionek about what happened on the morning of the 8th of June 1944? *A.* Yes.

Q. Was what he said correct? *A.* No.

Q. Continue on with your story. *A.* I lunched with the Commander of the Tank Regiment and after that I slept for awhile. The Commander of the Tank Regiment subsequently went back to the old Regimental HQ. There he put his tanks into readiness.

Q. What was the name of the Panzer Regimental Commander? *A.* Standartenführer Wuensche.

Q. Go ahead. *A.* When the tanks had filled up with petrol I had the tanks taken forward up to the Flak position, Franqueville. There I had the 15th Company get onto the tops of the tanks.

Q. What time would this be? *A.* Shortly before dusk, I take it about 9 o'clock in the evening.

Q. Yes? *A.* From there we started off on our attack to Bretteville.

Q. Where were you at this time? *A.* I promised my 15th Company that I would participate with them in their first attack.

Q. Was this their first attack? *A.* It was the first attack of the 15th Company. I preceded the entire attack on my motorcycle. Up to Rots I led the attack myself. Then I let a few tanks go ahead between Rots and Bretteville, there were three tanks ahead of me. The Company Commander of the 15th Company was on top of one of the tanks and was shot down.

Q. What was his name? *A.* HSS von Buettner. He fell down to the road to the edge of the ditch. I myself got into close combat with a machine gun which lay in position behind a small tank. My driver was shot through the stomach. I myself was on fire because of the leaking petrol, I was covered with it, and I was alight.

Q. What was the name of that driver? *A.* Behlke.

Q. What nationality was he? *A.* German.

Q. Alright, go on. *A.* My comrades of the 15th Company who were with me quenched the fire, the attack was carried further forward towards Bretteville and then pushed into Bretteville. The projected cooperation with the 3rd Battalion of the 26th Regiment did not come to pass because the village of Norrey had, in the meantime, been heavily occupied and in spite of the fact that the 3rd Battalion of the 26th Regiment pushed on both sides of the railway up to Norrey and the neighbouring battalion reached the point west of Bretteville, but because of this splitting up the attack of the 26th Regiment could not be crowned as a success and my own group in Bretteville was too weak to hold on for the next day. Because of the monitored radio traffic and close help I resolved to pull back my troop in the early morning hours to the heights at Rots.

Q. What time would that be that you did pull back on the morning of the 9th? *A.* Shortly before first light.

Q. Can you tell the Court who were the people that wore the words "Adolf Hitler" on their sleeves? *A.* I, of course, brought from my old troops in Russia, men who belonged to that Division. For the front I brought two officers and three NCOs. After the first attack one officer was killed, the second wounded, and Sergeant dead, the second Sergeant dead, and the third Sergeant was wounded and as

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he was taken away was murdered by partisans. After that time, I had none of my old comrades in the front area.

Q. Now, will you tell the court where the 12th Division got its staff? *A.* Divisional Staff was recruited from the Commander who was a Leibstandarte Adolf Hitler man, also its First General Staff Officer was, for a time, in the Leibstandarte, the remaining officers were from the most varied Divisions.

Q. Were there any German troops in Authie before your troops arrived there on the 6th or 7th? *A.* I did not see any in Authie but there must have been some because I subsequently saw the signs of battle there. I found right in the neighbourhood of Authie an armoured troop carrying vehicles of the 21st Panzer Division.

Q. Where was your Regimental Aid Post on the 7th June? *A.* On the 7th June, I do not know exactly where it was, but I do know where the wounded were being bandaged up. In the north entrance of the Ardenne.

Q. Mark "BB" on the plan. *A. (Witness complies.)*

Q. Do you remember where it was on the 8th of June? *A.* I do not know where it was on the 8th of June but later on I ascertained that the Regimental Aid Post was in the building marked with a "H."

Q. On the 8th June, how did you evacuate your casualties from the Regimental Aid Post? *A.* On the 7th June people were taken back by ambulance in the later afternoon, afterwards I prohibited further evacuation because of losses due to low flying planes, in the evening hours the prisoners were taken back in trucks.

Q. How did you evacuate on the 8th, do you remember? *A.* I cannot say, on the 8th I saw few wounded I saw no wounded. I wish to add something about the matter of wounded. Here in the proceedings the treatment of wounded has been discussed. At Regimental HQ there was no dressing station but there was a collecting point for the evacuation. It is not customary that an emergency bandage, which has just been put on a few minutes before, will be removed at such a collecting point and a new one put on. The main function of that place is to put an emergency bandage on those soldiers who have not yet been looked after. The Regimental doctor did the right thing indeed because the dressing station could be reached in ten minutes drive.

Q. Where was that? *A.* I cannot say precisely, it was somewhere on the west side of Caen.

Q. Did the 12th Division or any other German formations in the area of Caen have a hospital, a field hospital, or any type of hospital? *A.* The Division had a field hospital in Buron. This hospital was bombed by the RAF at the very moment that your wounded were lying on the operating table. There is a witness for that in the form of a medical orderly in Camp 18 in England.

Q. Now, did they handle the seriously wounded cases? *A.* Yes, I also wish to state that your wounded were taken back with my wounded and that as far as they died they were buried right beside my soldiers because I gave a special order that your soldiers would be given a Christ Cross on which would be their number and their name as far as was ascertainable. These graves were easily recognizable.

Q. Was there a military hospital of any kind in Caen? *A.* There was a military hospital in Caen, but it was absolutely full up because the city of Caen suffered huge losses through the bombing attacks. There were no soldiers, only civilians.

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Q. The troops of various other formations that you have been telling us about in the area of Authie, did they remain there all the time with you as long as they were in your area? *A.* I want to answer another question which appeared before.

Q. Well answer this one first, and then go back to it. *A.* On the 8th I had given an order that all troops which did not belong to my Regiment get out of my area and be led back to Division.

Q. Now that other question you wanted to answer? *A.* Through the description of the wounded Canadians here in this court a few days ago a lop-sided picture has been created. A German Panzer Division has a Medical Unit. This unit is dependent upon action divided up among the fighting troops and behind the battle area of the Division is a field hospital. The Medical Company which was destined for my Regiment was, during the marching up into the area Caen, attacked by low flying planes and the main part of the material and personnel was destroyed. It took a few days until the necessary reserves were brought up. About this, the Ordonnanz Offizier at division must know something. As I was at Division on the 9th I listened to a report of the Divisional picture to the Divisional Commander and from this report I could gather that the Divisional Commander had utilized French Red Cross nurses and so forth to look after our wounded. That explains how Canadian wounded were looked after by French Red Cross girls, but they were working under the orders of the Divisional doctor and the medical treatment was carried out by Division.

Q. Did your regiment, on the approach march to Caen area, lose or suffer many casualties? *A.* My Regiment itself lost few vehicles but the supply columns and such troops that had no anti-aircraft defences, they lost a considerable portion.

Q. After things became settled on the night of the 8th what road from then on did you use to go forward to the forward positions from your rear area? *A.* On the morning of the 8th the Commander of the Tank Regiment came wounded to my Regimental HQ. He had a grenade splinter and he gave me a picture about Rots, then I drove via the Battalion HQ of the 3rd Battalion and drove to Rots via Cussy.

Q. Now, then, on the 9th, what I want to get is after the battle had more ore less settled down, from the 9th as long as you were in that position around Authie, what road did you take to get form the rear to the front position?

Macdonald: There was an answer given by the witness here that I am sure is going to result in argument later, he gave the date as the 8th I believe and I would like to check the record to see how that is recorded. Would the Court Reporter read that question, please? *(Court Reporter reads back answer to previous question.)* In previous testimony, the witness gave this date as the 9th.

Judge Advocate: Will the Defence Counsel put this question to the witness again, please.

Andrew: *(To witness) Q.* What date was it that the Commander of the Panzer Regiment came to your Regimental HQ wounded? *A.* 9th June.

Andrew: I think it is fairly obvious from the explanation he gave about Rots that it was the morning of the 9th. The witness is now marking with small blue dashes the road taken from rear areas to the forward battalions on the Map on Exhibit T-2.

Andrew: *(Continuing examination) Q.* What have you marked on the map? *A.* I pointed out the road which I usually used to visit my units from Regimental HQ.

Q. You have marked three different roads? *A.* It is a one way route on the drive from Regimental HQ to 1st, 2nd and 3rd Battalions and from the left one back again to Regimental HQ.

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President: The Court will now adjourn for ten minutes. Accused and escort may withdraw.

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President: I declare the Court open...

Andrew: *(Continuing examination) Q.* Now as you marked these routes on the map I notice that you missed Authie. Why? *A.* This way was the ordinary way I used to visit my troops. If I left it out it is because I had to go to Buron to the chateau and from the chateau to Franqueville while Authie is to the east of the chateau but I quite frequently drove through Authie. The first time on the morning of the 9th as I returned from the Battalion HQ of the 3rd Battalion driving through Rots. I want to say here that in Authie there were no German troops. In Authie there was no supply point. It was not a thoroughfare.

Q. Why? *A.* The 3rd Battalion was in Buron and had its services. "A" Echelon (Tross) in Cussy. The 16th Company was supplied from Franqueville.

Q. Now, did you ever give any orders regarding the burial of the dead? *A.* Yes.

Q. Tell the Court about them. *A.* As I on the morning of the 9th of June drove from Regimental HQ to Rots, I saw in Authie on both sides of the road, mainly near the road crossing, I saw dead Canadians and Germans. I wish to state here which has not been brought up so far, that on both sides of the road there were some weapons and that at the little pond in Authie where there was a body, there was also a machine gun and that near the dead body which lay in the park. I now mean this dead body bayonetted to death according to the Frenchman, 20, 30 – it may even have been 50 metres away there was a machine pistol.

Lehmann: With reference to the distance – 30 to 50 metres away from this first position by the pond in the park was where this body was.

Andrew: *(Resuming examination) Q.* 30 to 50 metres from where? *A.* 30 to 50 metres away from the dead body near the pond there was a machine pistol. From the first dead body, not from the second dead body.

Q. Alright. Go on. *A.* As I returned from Rots, I gave the order that the weapons were to be destroyed or collected.

Q. Who did you give that order to? *A.* To the Battalion Commander of the 3rd Battalion.

Q. Go on. *A.* In addition I gave an order that the bodies were to be buried.

Q. Who did you give that order to? *A.* Also the Commander of the 3rd Battalion through an Ordannanz Officer. After a few days I noticed that the bodies had not been buried, also a German body had not. I thereupon reprimanded the Battalion Commander in a very loud conversation. The Battalion Commander put forward as an excuse that as the Battalion sector was so big, he had no men at his disposal to clean up the battlefield. Moreover he tried to excuse himself by the attacks made by low flying planes and enemy activity. Whereupon I gave an order that the dead were to be buried with the help of the civilian population. The evidence of the French witness here a few days ago is not correct. He said that he had heard that the permission had been given by the military HQ in Caen. I would like to state that from the 6th of June there was no military government or military HQ in Caen. The order to bury the bodies was given by the German troops who were fighting there. On account of this incident I gave an order to my entire regiment which once again said, or once again brought out the respect due to dead comrades. About this order, I suppose all officers who served in my regiment at that

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time and who are present here can give information. The oral discussion with the 3rd Battalion Commander must have been heard by the Battalion Adjutant – Bergmann – who is also here. I do not seek to excuse my troops but I wish to state that the troops were overworked and had exceptional – or shall we say – sectors of over normal size to defend.

Q. Now, did you ever see dead Canadians at Ardenne Abbaye? *A.* Yes.

Q. Will you tell the Court the story about it? *A.* Yes. On the morning of the 10th of June, General Geyr was at my Regimental HQ. Shortly before noon, two officers of my Regiment came to me.

Q. Who were they? *A.* Sturmbannführer Doctor Gatternigg and Obersturmführer Stift. I wish to state that Obersturmführer Stift was my steady companion.

Q. Did you ever see dead bodies of Canadians before this occasion you are speaking of now? *A.* No.

Q. Proceed. *A.* Both officers came to me as I had left the tower and wanted to go into the building which is here marked with the letter "R." The two officers requested me for permission to make a report. I do not know exactly whether Gatternigg said it or whether Stift said it – whether I knew it that in the little garden next to the building which is here marked with the letter "H" dead Canadians were lying. They were under the impression that these Canadians there had been shot. Thereupon I laughed and said "That is impossible. You must be crazy." Both officers confirmed to me "Yes we have the impression it is so." Thereupon I gave to my Adjutant Obersturmführer Schuemann the order to control that – to check that. After a few minutes the Adjutant came back and confirmed the statement of these two doctors. Whereupon I with the Adjutant and with the two doctors went to the entrance where the garden begins.

Q. Will you mark that "DD"?

Andrew: The witness has marked "DD," the entrance where he stood, to the garden. That is on Exhibit T-1. *Q.* Alright, go on. *A.* Here I had, alas, to convince myself of the report just made to me. I was incensed and ordered my Adjutant to go to the house which is here, marked with the letter "R." In this building marked "R" I had a heated argument with my Adjutant, and I said to the Adjutant "How does it come that you have not been informed of such a deed here at Regimental HQ? It is out of the question that here at Regimental HQ conditions are reported to me by other officers." I made heavy reproaches to my Adjutant and said to the Adjutant "Only the fact that during the 7th and the 8th you were not here at all times at the Headquarters prevents me from handing you over to the Divisional Commander." On the strength of this happening I gave the Adjutant the order to start working in a new Adjutant. He himself received the order from me that after he had worked in the new Adjutant he would be returned to the front.

Lehmann: "Discharged and returned to the front."

Stonborough: I asked the accused what he said. He does not mention the word discharge.

Lehmann: But I heard the first answer.

Stonborough: That is why I asked the accused again. The accused is being quoted; not you Capt Lehmann.

Meyer: *(Continuing) A.* I told the Adjutant or I discussed to the Adjutant that he would not receive a company but would be put in as a platoon commander into the 1st Battalion. Simultaneously I gave the order to the Adjutant to ascertain who had done the deed and gave the order to bury the Canadians. I myself shortly after noon went to the 2nd Battalion with the intention to inform the judicial officer of

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the regiment in the 2nd Battalion. Judicial officer was Doctor of Law Tiray. On my trip to the Headquarters of the 2nd Battalion I met the Divisional Commander

Q. Who was the Divisional Commander? *A.* Witt. Witt came from the Headquarters of the Coastal Division but the Headquarters of the Coastal Division was no longer occupied by a staff. Witt was recce'ing whether that Headquarters would lend itself to his own division because his own Division HQ was under fire. I then made a report to the Divisional Commander about the occurrence at the Ardenne. I said to the Divisional Commander "I have an unpleasant report. This morning in the area of Ardenne shot Canadians have been found. I have the impression that they were shot there." The Divisional Commander was very much excited about that and expressed himself: "Well, we have the swineishness. This taking the law into one's own hand must be stopped by every method (self-justice). This could only have been men who had heard about the shooting of our own comrades." I said to the commander, "I do not think that it was my young soldiers." The Divisional Commander stood on the same point of view that young people of 17 or 18 could not do such a deed. The Divisional Commander demanded of me to ascertain the guilty and to take them, or to command them to Division. Moreover, he asked for a written report about the occurrence. I herewith wish to state that the rumour which on the first day had run through the troops had unfortunately been found true. South of Rots the shot German soldiers lay in one file with shots through the head. After the conversation with the Divisional Commander I visited the 2nd Battalion in order to speak there with Dr. Tiray. In view of the battle activities it was not possible to speak to Tiray there. I spoke to Tiray the same day in the evening at my HQ and gave Tiray an order to find, or to seek the culprits, and I also brought to his attention that he had every reason to push the matter because in the afternoon of the 7th his reserve platoon had been in the neighbourhood of Ardenne, – had been lying in the neighbourhood of Ardenne. That was the occurrence on the 11th of June.

Q. Now, you have said that Witt ordered you to given a written report to Division? *A.* Yes.

Q. Will you tell the court about that? *A.* The written report to Division was to have been handed in as soon as the first facts had been ascertained. My first enquiries, also the first enquiries of the Ordonnanz Offizier, found no clues as to the guilty. The first enquiries at the 2nd Battalion 6th Company, also proved negative. After a few days the Divisional Commander visited me once again. I drove with the Divisional Commander along the entire front in a sidecar motorcycle. On this occasion the Divisional Commander once again asked me to give a written report about this matter, – to hand in a written report about this matter. I reported to the Divisional Commander that up to now that I had no information about the culprits. Divisional Commander requested me even without information –

Interpreter: Without basis, is his word.

Meyer: *(Continuing) A.* to make a report so that the file could be closed. To this report it never came because the Divisional Commander was killed the next day and I took over the Division. I can no longer tell the day precisely nor can I remember the contents of the order precisely, but I do know that an order came out from Division during the battle concerning the treatment of prisoners. I myself talked to the commanders and called their attention to the possibility of such actions.

Lehmann: Will you ask the witness to explain that over because those are the words you used.

Interpreter: Impossible behaviour is what it would mean in German.

Andrew: That is what I want. The proper meaning – that it was impossible.

Interpreter: He said "Unmoegeichkeit." I do not want to put words in the witness' mouth.

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Meyer: *(Continuing) A.* I did that on the 11th.

Q. Now, did you at any time subsequent to the 11th of June see dead Canadian soldiers around the Abbaye? *A.* No. The only soldiers I saw there were in that little garden. I merely looked in for a few seconds to take in the picture and then I acted.

Q. Did you on the 8th of June ever wear an overcoat? *A.* No.

Q. A coat of any kind? An overcoat of any kind? *A.* No. Nor can I picture a soldier who wears a coat during battle.

Q. Where is Shuemann now, do you know? *A.* Shuemann was transferred to the 1st Battalion and there led a platoon. Whether he is dead or missing I do not know. I believe he was reported missing, but there should be the two witnesses, Gatternigg and Stift. They ought to be alive.

Q. Did Schuemann go to the 1st Battalion while you were still in command of the regiment? *A.* Schuemann went to the 1st Battalion while I was still Regimental Commander but when I went to Division he was called back for a few days in order to put the new Regimental Commander in the picture.

Andrew: May I ask this witness if he has anything more that he would like to address to the court?

President: Yes.

Andrew: *Q.* Have you anything more that you would like to address to the court before the examination ends? That is on the facts of the case? *A.* I wish to state that about the shot German soldiers I made a report to Division, and that Division handed on this report to the International Red Cross.

President: Well, I think we had better wait until after lunch before we start cross-examination. The accused and escort may withdraw. The court will adjourn until 2 o'clock.

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President: I declare the Court open...

Macdonald: *(Cross-examination) Q.* Now, Brigadeführer Meyer, you have been interrogated on a large number of occasions, have you not? *A.* Yes.

Q. You were interrogated first by the SHAEF Court of Inquiry presided over by an American Major-General on the 26th and 27th March 1945? *A.* Yes.

Q. And you have been interrogated five times by the Canadian War Crimes Investigation Unit? *A.* I can't remember that.

Q. Well, then I will recall the dates for you: on the 15th October, 17th October, at which times you corrected your previous evidence, on the 26th October when you asked to talk to somebody from my unit and Col Campbell went to see you, on 28th October when you made a statement to me and on the 30th of October when you corrected the interrogation which took place on the 28th of October. *A.* Yes, if you regard those individual questions as interrogations then that is correct.

Q. Now, I show you copies of the evidence which you gave at that time and you might be good enough to tell me if that is your signature appearing on them? *A.* Yes.

Q. And I think you put your initials at the bottom of each page? *A.* Yes.

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Judge Advocate: Copies of these are in are they?

Macdonald: No, they are not. Copies, of course, have been in the possession of the accused and his counsel.

Macdonald: *(Continuing cross-examination)* Now when you were first captured you were also interrogated and gave a signed statement did you not? *A.* No.

Q. You deny that you gave such a statement? *A.* I was captured in September, I was taken to hospital the next day and in November I gave my first statement.

Q. Alright. On the 9th and 10th of November you gave a statement of your own handwriting? *A.* Yes.

Q. And more recently you were interrogated by Lt-Col Chater of Intelligence, HQ Canadian Forces in the Netherlands, covering the period from 6th June to 25th August 1944? *A.* I was not interrogated by Col Chater but I did on his request make a free statement about tactical matters in Normandy.

Q. Yes. Now, I am sure that the Court and everyone else has been deeply impressed by the apparent accuracy and clearness of your recollection of all kinds of details which you demonstrated in the Court here in your evidence in the last day. One might have thought that a Regimental Commander engaged in fighting a battle at that time would be indistinct about some detail(s) on hours and dates and things of that kind?

President: You are supposed to putting questions to the accused.

Macdonald: *(To the court)* I am leading to a question, Mr. President.

Meyer: The Colonel is quite right, but if a man has given a few hundred battles and skirmishes he has a certain routine in his appreciation of battle occurrences.

Q. As a consequence of the consideration which you have had the opportunity of giving to the matters on which you have given evidence your answers were amazingly clear and distinct? *A.* I must state that the Colonel is wrong. I have not yet been able to ascertain the date when I took over the Division.

Q. Would you be good enough to explain to me, which I perceive you have anticipated, why on that particular subject there is such a blank spot in your mind. Have you a guilty conscience about something that occurred on the 17th of June? *A.* Colonel, throughout the entire proceedings you will ascertain that the times I have given are inaccurate – that the times and the days and the dates themselves are not precise, are inaccurate, that all matters I have pointed out here have been in relation to tactical events. Concerning your last question I can tell you I have no bad conscience regarding the 17th of June.

Q. Now, answer this question. You said in your first interrogation which you wrote out in your own handwriting that you took over command of the 12th SS Division on the 15th of June. When you were interrogated by me at the SHAEF HQ you said it was either the 10th or 11th of June. Your statement to Col Chater is that you took over command on the 13th of June. Now, will you please tell me why a date like that does not stand out in your memory? *A.* If you look at the statements properly you will see that they contain the statement that I cannot accurately give the date. I have actually said it may be the 12th, it may be the 15th. I cannot say precisely.

Q. Do you say it may be the 10th? *A.* No, the 10th is impossible.

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Q. … In view of your present evidence that is impossible is it not? *A.* No, it is impossible. On the 10th I could not have taken over the Division.

Q. Yes, you are quite right. And if you did not become Divisional Commander until noon on the 17th of June it is impossible that you were right when you said that it was the 13th of June and on the 15th of June? *A.* As it was not possible for me to give the accurate information I said to you "Please ascertain when the battle was north of Fontenay in a park. When the battle was on I took on the Division."

Q. How many times in your lifetime have you been appointed a Divisional Commander? *A.* Once I became Divisional Commander. I only once in my life became Divisional Commander at a time when I have fought as I have never fought before in my life and therefore I have no interest in that date.

Q. Do you expect all of us here to believe that? *A.* Whether it is believed or not is a matter of indifference – that is the way it is.

Q. Now you have beautifully provided alibis and stop-gaps for everything that has been suggested as to your behaviour as a Regimental Commander. You have even stopped up some gaps which did not exist so far as the evidence was concerned anyway. I do not know whether that was due to a conscience with regard to the matter or not, but that is the fact. Now –

Andrew: That is not a fact. It has not come out here yet.

Macdonald: It will in just a couple of minutes.

Macdonald: *(Continuing cross-examination) Q.* I am curious, however, to know why you were not asked, and we may as well know why now, why you were not asked and why you did not volunteer an explanation for the shooting of Lieut Williams at your Headquarters on the morning of the 17th of June? *A.* Because I heard for the first time here something about it.

Q. You mean you have not had time to think up an answer for that one. Is that what you mean? *A*. Because this so-called fact is unknown to me and I know nothing about it.

Q. You were Regimental Commander and at that Headquarters that morning were[n't] you? *A.* Yes.

Q. And you know nothing about it? *A.* Whether I was Regimental Commander on the morning that this is said to have happened. I do not know if I was Regimental Commander.

Q. Are you qualifying the answer that you have just given in which you said you were there on the morning of the 17th? *A.* It must be ascertained when I took over the Division.

Q. Alright, we will repeat the question to which you gave a positive answer a few minutes ago. Were you a Regimental Commander and at your Headquarters of the Regiment on the 17th of June? *A.* That I do not know before it has been ascertained when I took over the Division.

Q. And you cannot help us on that at all? *A.* No.

Q. It might have been the 13th? *A.* I have already told you once, Colonel, that I cannot say the date precisely, that I cannot ascertain it, that I can give you the proper occurrence which took place when I took over the Division.

Q. I am not asking you that. I am asking you the date when you were appointed Divisional Commander. You have had since last March at least to think about it? *A.* I do not know.

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Q. Very good. Now, if Lieut Williams was shot at your Headquarters on the morning of the 17th of June do you as Regimental Commander take responsibility for that? *A.* I as Regimental Commander gave no order to shoot the prisoner.

Q. That is not the question I gave you. Answer the question? *A.* I can take responsibility for that which I ordered.

Q. Who ordered the shooting of Lieut Williams then? *A.* I have already said before that this fact is unknown to me.

Q. You realize also that in the evidence which has been brought out here that the body of Lieut Williams was allowed to remain unburied for a period of a month, lying less than fifty yards from your Regimental HQ? Now, in view of what you told us this morning about your strict orders about the careful burying of Canadians killed, I am curious to know why this particular order was not carried out in this case? *A.* I can tell the Colonel just as little as he knows himself because the entire story is unknown to me.

Q. Now who succeeded you as Regimental Commander? *A.* Obersturmbannführer Milius.

Q. And it was Obersturmbannführer Milius' Battalion which put in the attack on the village of Authie when at least twenty-three Canadian prisoners were killed on the 7th of June? *A.* It was the Battalion of Milius.

Q. And Milius was one of those to whom you gave instructions after the 11th of June that the greatest possible care should be taken to see that Canadian prisoners were not shot in future? *A.* I talked to all Battalion Commanders and pointed out to them when our young men have to be supervised and that the prisoners must speedily leave the battlefield.

Q. And Milius was one of those Battalion Commanders to whom you issued those orders? *A.* I talked to Milius about it.

Q. Did you issue those orders to him or did you not? *A.* Yes.

Q. Now was it also to Milius that you issued an order along with other Battalion Commanders that Canadian bodies were to be properly buried and proper crosses put up? *A.* That they are decently buried, yes.

Q. And it was to Milius among others that you gave such orders? *A.* Yes. I added to my order verbatim that he should get civilians as help.

Q. And what precisely did you tell him to do? *A.* I said to Milius: "There lie in Authie and here on the battlefield, also in the immediate vicinity of Battalion HQ, there are still bodies of the battle occurrences of the first days. It is necessary that these bodies be buried if only for the reason to prevent an epidemic."

Q. And what did you tell him about putting up a Christ Cross? *A.* About a Christ Cross I did not speak to Milius.

Q. To whom did you give that instruction? *A.* That order went to the Hospital Louvigny.

Q. And did you tell Milius anything about keeping a record of the bodies which were buried? *A.* No.

Q. And on what date did you give these instructions to Milius? *A.* It must have been the afternoon of the 9th of 10th – it was after the battle in Bretteville. It probably was the 10th.

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Q. And to whom did you give the instruction to bury the bodies of the eighteen Canadian prisoners who had been killed in the garden at your Headquarters? *A.* To my Adjutant Obersturmführer Schuemann.

Q. Did you check up to see whether or not these bodies had been properly buried? *A.* No.

Q. You have heard the evidence here that six of them were buried in one grave on top of each other and that four were buried in another small grave one on top of another, some face down and some on their backs? *A.* Yes, I have.

Q. Who is responsible for their burial in that manner? *A.* I gave the order to the Adjutant.

Q. Do you mean that that lets you out? *A.* He had to execute the order but I do not have the intention to withdraw from my comrades.

Q. Well, I do not know what you have been intending to do but who now does take responsibility for the way in which these bodies were buried – you or the Adjutant? *A.* It is in military life that he takes the responsibility who receives the order and has to execute it.

Q. And who would the Divisional Commander hold responsible for this, you or the Adjutant? *A.* The Divisional Commander holds responsible the next in rank, that is the Regimental Commander.

Q. Of course, you knew that those men had been murdered in your Headquarters did you not?

Lehmann: The words "Regimental Commander" were not used by the witness.

Stonborough: The word "the Regimental Commander" was used and I request the Court also to request that these interruptions cease.

Lehmann: The last I heard was "dienstgrad." If the witness did say anything further I did not hear it.

Macdonald: He said it in a lower tone. You probably did not hear it.

Macdonald: *(Continuing cross-examination) Q.* Now, you discovered, so you told us now, that on the 11th of June eighteen Canadian prisoners had been murdered at your Headquarters?

Andrew: I do not remember him saying he discovered at all.

President: No.

Meyer: *A.* I did not say that I discovered them nor did I say that all eighteen were murdered. I did say that two officers reported to me shot Canadians *(By interpreter – Then he corrects himself)* – dead Canadians that these two officers mentioned that they had the impression that the Canadians had been shot there.

Q. And you went to the garden at the passageway and verified that fact? *A.* Yes.

Q. And you told us on one of the interrogations that you believed there were 18 or 19 bodies? *A.* Yes.

Q. Now, you were angered about that, were you not? *A.* Yes.

Q. And very much shocked? *A.* Yes.

Q. And you immediately reproached the Adjutant for his negligence, shall we say? *A.* I made reproaches to the Adjutant that he himself did not ascertain the deed and also that the very deed itself could happen.

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Q. In other words, you reproached him for his negligence in the duties of Adjutant? *A.* Yes.

Q. And as a consequence of your discovery of his inability in these matters you decided that he should be removed from his appointment as Adjutant? *A.* Yes.

Q. And feeling, naturally, very badly about this discovery you ordered that the bodies be buried? *A.* Not because I felt badly about that but because it is customary that dead people be buried.

Q. And you are familiar also with the provision of the Geneva Convention as to the burial of the dead and you know in what manner they should be buried and you know what records should be kept, how they shall be honourably buried, how the graves shall be marked and how information with respect to their burial shall be sent to the other belligerent. Now, can you tell me what was done to see that any of these regulations were carried out in connection with the men who had been murdered at your Regimental HQ? *A.* The Colonel is quite right. The burial did not take place correctly, on the other hand the investigation had not yet been closed and if the Colonel has fought a long time he will know how one works on the battlefield.

Q. This was not a battlefield, this was a Regimental HQ at least 3000 meters behind any battlefield. *A.* That is an error, it was not 3000 meters to the front line.

Q. Alright, make it 2500, anything you like. *A.* The Regimental HQ lay on the battlefield. It was not only within reach of the heavy weapons but also within reach of the heavy infantry weapons.

Q. Well, do you mean by that everyone kept down in a dugout and it was a great feat of bravery for them to emerge at all to bury these bodies? *A.* That [is] not..., but if you know the tactical occurrences you know that every man was worked to the bone.

Q. You found that the[y] were too overworked to properly bury these bodies? *A.* I do not wish to excuse the occurrence, the burial is not correct.

Q. No, and furthermore, they were not so overworked that they could not go to the most meticulous care to conceal these graves. *A.* Do you mean to conceal the bodies or to conceal the graves?

Q. To conceal the existence of the graves and the fact that there were bodies there. *A.* If I had any intention of concealing anything then I would not have given the order to leave civilians in the Monastery.

Q. Well, I do not suppose very much more harm could be done by that time; the bodies had been lying around for three days. *A.* It proves that while that happened, no responsible officer of the Regimental HQ could even imagine such a deed of what had happened.

Q. In any event, you left this duty of burying these bodies to your Adjutant after he had demonstrated his incapacity to you, and you made no inquiry to find out whether he had properly carried out you instructions? *A.* The Adjutant was an extremely intelligent, good officer and before he came to the troop, he was a student. I did not relieve the man because he mentally was not capable but because of this deed, because he did not report it to me and I could not make the Adjutant 100% responsible because on the 7th and 8th he was not constantly at Regimental HQ. If he had been there constantly, then he would have been put at the disposal of Division.

Q. That still does not answer the question. After the Adjutant had demonstrated his incapacity to you in this particular matter you gave him certain instructions and never checked up to find out whether he carried them out properly. *A.* That is an order which any junior NCO can execute. Generally speaking I had to assume that that order would be correctly executed by the Adjutant.

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Q. So Schuemann takes the responsibility for this as well? *A.* I want to tell the Colonel again I have no intention of leaving my comrades alone. I make factual statements here.

Q. Well, I want you to make a factual statement now. Is Schuemann responsible for the manner in which these bodies were buried? *A.* He had been ordered to bury them.

Q. So that he must be responsible? *A.* Yes.

Q. And Shuemann, unfortunately, is dead and not able to appear here today. *A.* I say to the Colonel for the third time, I have no intention of leaving my dead comrades alone.

Q. I am not interested in speeches, I am only asking you to agree with me that Shuemann is dead today and not able to appear here. *A.* Whether Schuemann is dead I do not know.

Q. It was known to your staff officers at Division was it not? It was known to your staff officers at Division before you had to make an explanation for these bodies? *A.* That Schuemann is dead?

Q. Yes. *A.* Schuemann was to me announced as missing and not dead.

Q. I say to you then that it was known to your staff officers at your Divisional HQ that Schuemann had been killed at Epron early in July, did you know that or didn't you? *A.* To me he was known as missing.

Q. Now, will you tell me, please, what percentage of officers and NCOs in the 12th SS Division roughly, had formerly belonged to the Leibstandarte Adolf Hitler? *A.* In the total Division in 1943 from the [Leibstandarte Adolf Hitler] 700 men were transported from Russia to Belgium. Among them were a few hundred Luftwaffe NCOs who, in Russia, received a short training about infantry fighting but who had not fought a single day with the [Leibstandarte Adolf Hitler], they were NCOs. With the officers, it was so, the Commanders of my Regiment, the first two Commanders were from the [Leibstandarte Adolf Hitler] and the 3rd was never in the [Leibstandarte Adolf Hitler], Milius, the Company Commanders in my Regiment consisted half and half and Wehrmacht half and half of SS. I know you have a list here and can ascertain.

Q. Well now, when these [Luftwaffe] NCOs were being organized for your division I understand that you yourself trained them all in Russia? *A.* No, I myself did not train them. There were in Russia a number of Abteilung, units, who were being trained and these units I had from the point of view of discipline under my command but I did not give instruction. I did not take them into action but at the end of their training I participated in the inspection of their teaching and their battle training. Commanders of the individual battalions (one of them was Olboeter) and there was also an Artillery Battalion, and a Tank Unit – that Tank Unit was only there a few days and then was sent back to Germany.

Q. You told me in a previous interrogation that you had conducted an NCO's School in Kharkov. Is that correct? *A.* That was not an NCO's School. Those present were NCOs.

Q. Was it a training school? *A.* A re-training school.

Q. In other words, you were retraining members of the airforce who were transferred to the Wehrmacht or Waffen SS? *A.* No, I did not retrain them. The order to retrain them and the official plans came from the Leibstandarte. There [were] still many officers of the Leibstandarte in this camp because simultaneously in this camp also NCOs were being trained for the [Leibstandarte Adolf Hitler].

Q. What was your function at this school? *A.* For the men who were to be sent to the Hitler-Jugend Division, I had the disciplinary control, or supervision.

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Q. From this school in which you had that duty to perform, a large number of NCOs came to the 12th SS Hitler-Jugend Division? *A.* A few hundred came to the Division.

Q. Now, we have not yet had a firm answer to my question, roughly what percentage of the officers and NCOs of the 12th SS Division came from the [Leibstandarte Adolf Hitler]? *A.* I cannot say precisely.

Q. Can you give it roughly so far as officers are concerned? *A.* No, I cannot tell you that but the Ordonnanz Officer of [the] Division can easily tell you.

Q. Can you tell me then, were the members of the Leibstandarte who came to the Hitler-Jugend Division spread out more or less uniformly or allotted more or less uniformly throughout the whole Division? *A.* Yes.

Q. Now, you told us about the early training of this Division, that is the 12th SS Division, or perhaps just the training of your own Regiment. Was the training of your own Regiment of the same type that was given throughout the whole Division? *A.* The basic aim was the same but it is, in military matters, it is so that the personality of the officer shows itself in his training.

Q. And it also shows itself in the character of soldiers that he produces, does it not? *A.* Yes, I also want to say it is not only dependent upon one Commander but on the corps of officers.

Q. Now, you spoke about your young soldiers who varied in age from 16? to 18, was that the prevailing age throughout the whole of the Division, that is, of the younger recruits? *A.* Yes.

Q. If the private solders throughout the Division were all of that same age group and recruited from the Hitler-Jugend, and the officers and NCOs largely coming from the [Leibstandarte Adolf Hitler] then the discipline, training and fighting characteristics of the troops should pretty much be uniform through the Division? *A.* Yes, you mean up to the day of battle?

Q. Yes. I presume that after the battle started you found some difference in the fighting capacity as between various units? *A.* I even knew that before.

Q. And that was not so much due to the character of the men and the junior officers of the various units as in their leaders I suppose? *A.* It goes back to every individual soldier, every individual officer. Every man reacts anew in every battle. Man is not always of equal value in battle. His nerves and his ability change in battle from minute to minute. His own ability and the experiences of battle form the man during battle.

Q. And if the men were more or less of the same type and the same origins their response to battle conditions should have been more or less uniform throughout the Division, should it not? *A.* It is the duty of an officer corps and of a commander to get the troops on a one common denomination. It is well known that even after years of training every company has a character peculiar to itself and not one company resembles another company.

Q. Well, is that due to the old saying that there are no bad soldiers, just bad officers? *A.* You are quite right. I would like to say further that the NCO corps determines the quality of the troops.

Q. Of course, but the NCOs are bound to the policy and orders of the officers above them, are they not? *A.* Yes.

Q. Now, one thing that struck me as rather peculiar in the course of your evidence yesterday was that in the course of one of your speeches to your men you pointed out that it was not an honour to be taken prisoner and the last shot should be saved for the man himself to escape such a fate. Now, I am curi-

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ous to know why you did not carry out your own advice? *A.* If you absolutely want to know I give you an answer. That speech I made in 1943 and at that time an invasion was not a matter of daily talk. At that time, therefore, I had a different enemy in front of my eyes and therefore I would not have fallen into captivity alive. If you want to know it quite precisely I used still another sentence in my address. I fought for the last time in 1941 against the Western Powers, from that day on never again. We would see how the new fight develops. I also told my people during my speech that I could give them no order; every man would have to figure it out for himself.

Q. Did you give them some very sound advice that rather than fall into enemy hands they should commit suicide? Is that what you mean? *A.* Yes. I did that for comradely reasons. If you knew the picture you would probably confirm me in this idea and probably say it yourself.

Q. Did you really mean that it sounded well in a speech but when it came to carrying it out in action it was a very different matter as far as you personally were concerned? *A.* I do not need to defend in this room here my soldierly bearing.

Q. Now, you say that when you made that statement in 1943 you were thinking of warfare in other places. Where – in Russia? *A.* Yes.

Q. And if you had been in danger of falling into Russian hands, I presume you might have carried out your own advice?

Andrew: This matter here, you are asking the witness questions which in themselves perhaps may be incriminating. Now, I do not think it is fair.

Macdonald: I think that is quite an admission to make at this stage of things.

Andrew: No, I do not want that to go in because I do not think it is fair at this stage for these matters to come up, for reasons which you have.

Macdonald: Let us get it clear on the record Mr. President. I have not, for reasons which I have mentioned, brought the matter of Russia into this argument because I do not want it to be thought on the part of the prosecution that we have needed to introduce any other elements into the facts constituting the main case for the prosecution, other than those arising in Normandy and Western Europe, but I do think however that it is important that the Court get a complete picture of this man's character and his behaviour with his troops and in the training of his men. If the accused has something to hide, I think that is something that the Court should know about.

Judge Advocate: The Court is here to determine those facts.

Macdonald: Yes, but I do submit that this man c[a]me along and put his own character in issue and I submit that the prosecution is now entitled to look into his record to see if the Boy Scout atmosphere which he has endeavoured to produce is correct.

Judge Advocate: I think the evidence you were referring to is to the conduct and training of the men under his command.

Macdonald: That is right.

Judge Advocate: I should say that is material.

Andrew: Yes, that is fair enough. I think I can see what my friend is driving at here now. It is just that it may lead to something else. He also said in his evidence that he had a certain enemy in mind and that is

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why he made certain statements in his speech. Now, that is the explanation that my friend wants and I think going any further we are treading on ground where the facts cannot be proven – something that cannot be proven here and it is not a fact.

Macdonald: There is no harm in asking the accused to answer this question. He has the right to admit or deny it, just whatever he sees fit. Some of these statements we may be able to prove.

President: I think we will adjourn and discuss this matter in detail. The accused and escort will withdraw. The Court is adjourned for ten minutes.

—

President: I declare the Court open...

President: The Court rules that the prosecution may not refer to specific incidents that might have occurred in some other theatre than Normandy. The prosecution, however, may refer to training methods or training expedients in other theatres of war where these troops who served in Normandy under Brigadeführer Meyer might have received instruction. Will you carry on with your cross-examination please?

Macdonald: *(Continuing cross-examination) Q.* Now have you completed your explanation as to why, if you had been in danger of being taken prisoner, you might have taken your advice you had given your troops, that was to commit suicide? *A.* I referred to Russia, yes.

Q. Now, when you made this statement to your troops, were you training them at that time for service in Russia? *A.* Yes. 1943, that was.

Q. What time in 1943? *A.* I made this statement in the fall of 1943. It must have been December – November or December.

Q. And did you repeat that statement on some subsequent occasions? *A.* The whole statement?

Q. The statements about if they were in danger of capture, SS troops should commit suicide? *A.* I did not say that SS troops should commit suicide. However, on one occasion with the 15th Company I indicated from statements to the men of the 15th Company that the welfare of the Regiment depended on them and that these men must attempt everything – to destroy everything that they had in their possession, that cards, orders, maps, that under no circumstances should they allow themselves to become prisoners, that in the cause of their leaders it was better to fight to the last cartridge.

Q. And what were they to do with last cartridge? *A.* Destroy themselves.

Q. Now, this was not what you told them at Le Sap was it not? *A.* Le Sap, yes. I said that many times also during the battle training.

Q. You also said that at Le Sap. That was the question. *A.* I said "Whatever may happen in other units – it can happen in other units whatever you like but you are the example of the Regiment and the Regiment depends on you."

Q. Yes. We will get you to give these speeches again a little later. What I am asking you is that you said that at Le Sap. That was "not to be taken prisoner, that they should save one cartridge for themselves rather than to be taken prisoner." *A.* Yes, I said that.

Q. Yes, and that was about one week or two weeks before the invasion and at a time when you knew that they would be sent into action against the English? *A.* Yes.

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Q. Was the advice that you gave at that time that was to destroy themselves rather than to be taken prisoner, said at a time that you knew that you were not going to be opposing the Russians but the British? *A.* Yes.

Q. And for whatever reason there may be, you did not take your own advice? *A.* What do you mean "I did not take my own advice"?

Q. To save a cartridge for yourself. *A.* Yes, he is right.

Macdonald: *(To interpreter)* What answer does he make?

Interpreter: Yes, he is right.

Judge Advocate: Who is right?

Interpreter: What the Colonel said, that is right.

Macdonald: Well, we finally have that straightened out then.

Macdonald: *(Resuming cross-examination) Q.* Now that we are on the subject at the present time, I should like you to repeat as nearly as you can, the third part of your speech at Le Sap. *A.* You mean the part with the 'V' bombs?

Q. That's right, yes. *A.* "At the moment on the radio and the newspapers there has been much said about 'V' bombs and about retributions and their soldiers and we must look at the situation as it presents itself to us. We must see the facts. The fact is that from the German people weapons were put into our hands, we received weapons. I don't believe that this so-called miracle weapon, this 'V' weapon, takes away the necessity for battle from us. In the case of an invasion we must commit ourselves with our blood, with our strength and with our knowledge. We can speak of retribution when with our fighting we destroy the forces which have landed. When we have built in our weapons for defence on the coast then we have the best form of retribution for ourselves."

Q. Now, is that pretty much the whole of it? *A.* That is the sense of this part.

Q. Now, I should like to read what you said about this speech before, on the 15th of October interrogation, on page 30, question 201:-

"*Q.* And do you know, Brigadeführer, that men from your company, the 15th Company have said that on several occasion prior to the invasion you said to them that 'My Unit takes no prisoners.' *A.* No, I did not say that."

Do you remember that question and making that answer? *A.* Yes.

Q. The next question:

"*Q.* You positively deny then that you made any such a remark? *A.* Yes. Just as you said that to me I never made it. But I said very often and at every opportunity, to do so to speak to my soldiers 'I hope that we, when we come into battle and for the first time have to fight, are hard enough to survive this heavy battle, this heavy fighting. In spite of the fact that you are so young I trust in your bearing and if you should ever with your physical or mental forces come to the end...'"

A. I should like to interrupt. That is correct word for word. What you are now reading is the second part, the second paragraph. Yesterday, I divided my speech into three parts.

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Q. Well, then, will you give us your second part? *A.* "The indications that within a reasonable time the invasion would be forthcoming are mounting. I believe that within a time that can be foreseen we will have to fight. I have hoped for you another engagement, form of battle. The coming battle will be very hard. We shall have to fight against very material strength, against superiority. I hope that you, in spite of your youth, will prove yourselves well on the field of battle, and, if at some time it should be very hard, then reflect please on your homes; think of your mother, children, your wives, what they have to endure from the terror bombing at home, and then turn, look to burnt out cities and streets in this homeland, then you will find the strength to overcome the hardness on the field of battle. I know that on the field of battle very many moments have influence on the individual. I myself experienced every engagement in a different way. It is not always the case that the soldier goes bravely into battle but each time he must pull himself together. And when you are fighting in battle and detect fear do not be ashamed. Every soldier, even the oldest soldier, is conscious of fear on the battlefield, but he must be able to overcome this fear, and, if you have next to you a comrade who is not able to overcome that, then help him and take him along with you. One thing, however, may not take place and that is cowardice. If you see that an NCO or an officer is acting in a cowardly way in that he is sending you up front and he hangs back himself, then you have the right to shoot this coward. I do not except myself from this and I promise you to participate in the first attack at the head of your company. I feel myself closely united with your company. I recognize the reconnaissance company as my company, therefore together we will go through the first battle. One thing we must keep before ourselves: I do not wish any prisoners from this company. The last round belongs to us ourselves." Approximately that is roughly the content of this paragraph. I should like to say to the Colonel that I left out one paragraph during the statements in London, not intentionally but because it did not occur to me at the moment. That is the part with references to the fact that I gave my men permission to shoot every coward on the battlefield.

Q. Well, then, it was after part two of your speech in which you referred to as you are reported in London as having said "Then think of your burned mothers and sisters and think of your destroyed homeland"? *A.* Yes.

Q. And it was after that reference that you then spoke about retaliation or revenge; is that correct? *A.* Yes. I said that about the 'V' weapons.

Q. Now, you made some reference to your presence at a comradely evening which your company had, I believe, at Beverloo? *A.* Yes.

Q. And that you and the Company Commander and some others attended that function? *A.* Yes.

Q. Why did you deny that you had said on that occasion your company was to take no prisoners? *A.* There is no occasion when I have said "We take no prisoners."

Q. No, but why did you specifically deny that on this particular occasion you said you did not take any prisoners? *A.* There has been no occasion when I have said that.

Q. Well, there must be a lot of other occasions that you didn't, as well as on this social evening? *A.* The Colonel is making a mistake. There is no occasion where I have said to my soldiers that "We take no prisoners."

Q. Is your recollection of what occurred at this social occasion very clear? *A.* Yes, it is quite clear to me.

Q. Would your recollection be just as clear as that of your Company Commander? *A.* It can be assumed.

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Q. Well, I am told by members of your company that your Company Commander was so drunk that he could not stand up and, moreover, that your were very drunk yourself and made speeches all evening? *A.* I do not know of this fairy story. I can tell the Colonel the following: Yesterday, I said that alcohol was forbidden in my Regiment and that, on this evening, there was tea with rum for the soldiers. It is possible that because of this the mood at the occasion was livened somewhat. It is true it was livened somewhat. It is also true that among the guests that were there other alcohol was drunk. It is not correct, however, that everybody was completely drunk.

Q. Just the Regimental Commander and the Company Commander? *A.* I have never seen a group where two people could get drunk and the rest not, and, moreover, there were women there, ladies.

Q. Well, I am really not interested in all these details. All I want to know is, is my information correct or is it not, that you were very drunk and that Haupsturmführer Ritzert was so drunk that he could not stand up? *A.* I was not drunk.

Q. Had you been drinking? *A.* Yes.

Q. So that the rule which applied through the division did not apply, at least, to some of the senior officers? *A.* You are twisting the sentence somewhat. I said yesterday that alcohol was forbidden for the recruits up to eighteen years of age. You could not forbid alcohol for soldiers who have fought for years, but young men who are still developing, alcohol can be forbidden in their case.

Q. I understand all that but was this one of the occasions on which the boys under eighteen did have a little alcohol? *A.* I said yes. They received tea with rum. I believe at supper they had a glass of beer. I am not quite sure.

Q. Do you mean it was rum and tea or rum with tea, or tea with rum? *A.* I can tell the Colonel that Germany had already some years of war behind it and was not in the fortunate position to have a lot of alcohol to place at the disposal of the troops.

Q. Was this after the capitulation of France? *A.* The time for which the Colonel is speaking is 1943.

Q. Now, I should like to refer you to the evidence of one of your officers, Hauptmann Fritz Steger, given at Concordia, Kansas, on the 25th of July 1945, to No. 1 Canadian War Crimes Investigation Unit. I will wait until my friend has a chance to look it up in case he wants to object to it.

"*Q.* But do you not recall that Meyer exhorted the troops that they should fight ruthlessly when the fighting occurred? *A.* Yes, surely. He said "Action unto the last man," but we Army Officers understand by action to the last, fight to the last until it is hopeless.

Q. And was that the understanding of the Army officers in Russia? *A.* Yes. Wehrmacht in Russia had strict orders not to shoot prisoners but Meyer once told us that they shot prisoners in Russia.

Q. When you said they who are you referring to? *A.* The LAH-Leibstandarte Adolf Hitler...

Q. As you know, Meyer had an extremely bad reputation in Russia..."

Andrew: No. That was the question.

President: We do not want that.

Macdonald: Well, sir, the suggestion is here, that if the accused had that sort of a reputation and it was known to the troops who were serving under him in Normandy...

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President: I do not want reference to Russia. I do not want the Press to refer to Russia. "Another theatre"...

Macdonald: *(Continuing to read)* "*A.* Yes, certainly...."

President: Just a moment now, before you go any further with this. We are not concerned with the reputation the accused had in some other theatre, but if you can show the effect of the training of these young soldiers, then this is permissible. But we do not want to...

Macdonald: Well, can I put it this way, that what I am leading up to, sir, is to establish that Meyer himself during the period of training in Belgium said to the officer from whose evidence I am now reading, certain things about what he had done in Russia.

President: We do not want to relate to foreign powers specifically.

Macdonald: Well, may I refer to it, leaving the name out?

President: Use the expression "another theatre."

Macdonald: Very good.

President: If it was said in training in connection with the training of these young soldiers in France or Belgium, well, then, it is permissible...

Macdonald: This is the statement that I am reading. I am telling him what somebody else has said and I am going to ask him if he agrees with that. ...

Judge Advocate: Alright. It is not generally proper to read the evidence of another witness to this witness, through another witness. That is what I am getting at.

Macdonald: This evidence is of statements which Capt Steger says were made to him by the accused, and I am asking him now whether he made such a statement to Capt Steger. Is there anything wrong with that?

Judge Advocate: No.

Macdonald: What I am saying now is that Steger says the accused said to him: "*A.* Yes certainly, Meyer himself boasted that if in another theatre they ever got him, things would go very badly for him..."

Judge Advocate: Just a moment, Col Macdonald. Ask this witness whether he said something to somebody. That is the proper way to approach it, is it not? If he said he did not, then you may later in rebuttal question him on it.

Macdonald: That is what I am leading up to. I have not had an opportunity to ask him such a thing.

Judge Advocate: No, but you have something else before the court, something that somebody else has said. You are bringing in evidence indirectly now of what somebody else said.

Macdonald: That is right. I cannot get him to deny it though unless I tell him what the statement is. Very well. *Q.* Did you say to Capt Steger or to any other of your officers that if you were captured in another theatre that things would go very badly with you? *A.* In what connection am I supposed to have said that? If it is a question of being given over to the Russians, why yes, that is right.

Q. And what reason did you give for that? *A.* Because the Russians gave themselves every trouble to get me and wanted to because of the successes I had had. Incidentally, there was hardly a successful leader of troops in Russia whom the Russians did not want to get.

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Q. Now did you say in the Officers' mess to Capt Steger and other officers in Beverloo that when you were in another theatre you frequently had to shoot prisoners? *A.* It is possible that I have said that. I can't recall it but it is completely possible. I can recall at that time I had a Recce Company Battle Group that operated up to a 150 kilometres behind the enemy lines.

Q. Now, in your evidence yesterday you made some reference to the Secret Orders which were supposed to have been given to the 15th Company and with respect to which Torbanisch gave some evidence to the SHAEF Court. Now, will you look at those orders T-3. Now you have told us that some of those orders were precisely and accurately recorded, particularly that one with respect to guards and sentries? *A.* Yes.

Q. And what one is that numbered? *A.* No. 3.

Q. And I think you also said that No. 6 was a correct order? *A.* No. 6 is an extract from a Tactical Order which I gave on shooting and which on other occasions I have given to my soldiers. I should like here to indicate particularly that the 15th Company as a Recce Company I said "You may never take the same way to and from the front – up to and back from the front – but from case to case you must choose a new route."

Q. Now does No. 5 contain the general tenor of proper instructions to your troops? Are those correct instructions for a Reconnaissance Company? *A.* That is an order – it is an order; it is a training matter which is valid for all soldiers, also for your soldiers.

Q. You do not disagree with that kind of an order? *A.* The last sentence here, however, never appeared in an order which I have given but it is self-evident that traitors are executed.

Q. Now, with regard to the secret orders, I understand that you at periodical intervals of three months or so repeated orders to your troops with respect to matters of espionage and so on and which they signed as having acknowledged hearing those orders read? *A.* It is a general order in the Germany Army that every quarter year all soldiers had to be instructed with regard to matters such as espionage, desertion, security of information and that they had to sign to the effect that they had heard it and the lists were then given to the next senior formation.

Q. Now is the second order along the lines of the order which were issued with regard to matters of espionage? *A.* I can only say that in this second order which is a training matter that people who want to give instruction about that must observe that they are not to be apprehended but that traffic with these people is to be maintained in order that the suitable police organization can step in. When this order appears the men shall be taken prisoner and a sharp cross-examination shall be made. I would like here to make clear that as long as I have been commanding a unit I have never conducted a cross-examination. It is also forbidden for units to conduct cross-examination or to undertake any particular imprisonments. Only in the case of capital crimes where the greatest danger exists may the unit itself undertake to arrest and then prisoners must be handed over as quickly as possible to the feld-polizie. During my time in France and Germany there was no case where any civilian was arrested by a unit or interrogated by a unit.

Q. Well, then your criticism of the secret order is largely that the Waffen SS did not apprehend and cross-examine and punish prisoners who were guilty of espionage but that this was done by some other service – I would suggest the Gestapo? *A.* It was the feld-polizie.

Interpreter: I think you have to use the German term for that.

Lehmann: It is the military police.

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Interpreter: No, it is not.

Macdonald: I think we had better retain the German words.

Macdonald: *(Resuming cross-examination) Q.* Now when you say "field police" are you referring to feldgendarmerie which are attached through Division to Units or are you referring to the secret field police? *A.* The feldpolizi of a Division is a military police and has nothing to do with civilians. In the billeting area in Belgium and France, field commands were set up and under these field commands was at the same time the police for the billeting area.

Q. Well now were they feldgendarmerie or secret police – the ones that you have been referring to? *A.* These field commands had charge of feldgendarmerie and secret police.

Q. Now, with regard to the first order the evidence of Torbanisch is that these orders were given shortly before the departure of the troops for France. Were there any such orders given at that time? *A.* In this order there is again mention of cross-examination. Apart from the part that a man shall be secretly executed I believe that this last sentence proves everything.

Q. I do not follow that. *A.* I believe the last sentence proves the military impossibility of such an offence.

Q. Well, in other words, so far as the execution was concerned that would be carried out in a concentration camp, run by the Totenkopf Verband or the Gestapo. Is that what you are suggesting rather than that the execution would be conducted by the field police? *A.* I should like to tell the Colonel that in my entire time in France and Belgium I have never had anything to do with the Gestapo or with a concentration camp either orally or written.

Q. But that is not the answer to the question which I asked. I asked you if that is the manner in which the execution is intended to be carried out? *A.* I do not understand why I am being asked this question at all. I don't know the ways of the field commands or of the secret police. In a pure military matter, however, I can give this advice that my field commander under whose command I was in Belgium is a prisoner in England in Camp 1 and he can give information on this question.

Q. Well, we will simplify it by putting it this way. If a member of the civilian population misbehaves with respect to any of the troops under your command I understand you to mean that you would not deal with him yourself but would turn him over to the appropriate police authorities? *A.* When a civilian commits an offence against the existing regulations, then a report was sent to the field command. What the field command did I do not know.

Q. Alright. Now, we will come to this objectionable fourth order. You say that you never instructed any of your troops or any of your officers or NCOs at any time that they should not take prisoners so I presume that you disagree with the first sentence?... *A.* As it stands here I did not say it.

Q. And with respect to the second, even, if prisoners were executed after they had been interrogated I presume you said nothing like that to your troops? *A.* No.

Q. What I have said is correct? *A.* I did not say it.

Q. But I presume that you will agree in everything that you have said that you did not say what is mentioned in the third sentence? *A.* I recall my statement in Le Sap which has quite another character than the sentence as it stands here.

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Q. Well, did you not tell us at an earlier stage in the evidence this afternoon that you had told your soldiers that rather than give themselves up they should commit suicide? *A.* I said this to the 15th Company who are carriers of secret information and which had the task of coursing through the enemy. From this sentence, you could take it to mean that it might refer to all SS soldiers. I should like to point out to the Colonel here that the men from the 15th Company were selected from the entire Regiment.

Q. But you do agree then that what is said in the third sentence of the fourth order is what you did tell the troops of the 15th Company? *A.* I said it to the 15th Company, yes.

Q. And this order is reported to have been read to the 15th Company by their Company Stabscharführer? *A.* The order was not read out and could not be read out because [I'd] never commit such an order to writing.

Q. You were much too astute for that were you? What is your answer to that? *A.* Such soldier matters, where it is a question of character and heart, you cannot give to them with a written order. However, when you have enough old comrades in such a company they know how the Commander fights and on this basis of mutual confidence you can say something like this.

Q. Now, the last sentence in the fourth order – "The officers have said that the British don't take prisoners as far as SS soldiers are concerned." Did you ever say that to your soldiers? *A.* I did not say it personally and I do not think that an officer or an NCO has said it because since 1941 we have not fought against Englishmen. My last fight with Englishmen ended with a couple of bottles of champagne and it was together with your officers after being taken prisoner.

Q. You remember the massacre of British soldiers that occurred in the near vicinity of the Recce unit of the Leibstandarte Adolf Hitler just prior to the evacuation of Dunkirk at Wormhout do you not? Your friend Wuensche must have told you about that if you have not heard it yourself. *A.* No, Wuensche did not tell me anything about that. I will say to the Colonel that I was also at Dunkirk but I saw no murdered soldiers. I was 15 to 20 kilometres south of the town of Wormhout.

Q. You, at that time, commanded the Recce Battalion of the [Leibstandarte Adolf Hitler], did you not? *A.* I commanded a Company, not a Battalion. I can tell you that this company did not fight against Englishmen. The last battle was in a place about 8 kilometres west of the town of Wormhout against French troops. The place was situated on a canal and the battles against the Englishmen were conducted with infantry for 24 hours and our unit was pulled out and ordered to be thrown in towards the south.

Q. What I perhaps should have said was that you commanded the 15th Recce Platoon of your Regiment at that time? *A.* Yes.

Q. And the present Standartenführer Wuensche was your [second in command] or one of your Platoon Commanders? *A.* Yes.

Q. Had you never heard that SS troops massacred a lot of British soldiers at that time? *A.* No.

President: I think we will adjourn. The accused and escort may withdraw. The court will adjourn until 10 o'clock tomorrow morning.

(The court adjourned at 1640 hours and reconvened at 1000 hours on 20 December 1945.)

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President: I declare the Court open...

Macdonald: *(Continuing cross-examination) Q.* Now, I think you were telling us yesterday, witness, that there had been difficulties in getting certain supplies to the front by reason of the bombing of your vehicles on the road? *A.* Not bombs, but low-flying planes.

Q. Yes. It was correct that by reason of that, you did not have enough petrol to keep your tanks in operation and you were unable to carry out some of the plans which you had? *A.* I could not execute the plan I had with the Panzer Battalion Prinz and I had to wait for the Panther Battalion. That is why the Panzer Battalion led the attack on Bretteville.

Q. Is it correct that you were short of petrol? *A.* Yes.

Q. And I think you told Col Chater on your interrogation that that was one of the reasons why you could not carry out all your plans. *A.* Yes. Not only petrol but also ammunition.

Q. And I suppose supplies of all kinds? *A.* The artillery ammunition had to be fetched from the area Corpien.

Q. And you were short of petrol and ammunition and also food I suppose? *A.* The food was not so bad, it merely was a matter of – it was more a matter of congestion. I can however particularly say that due to the bombing of the connections and bombing of bridges, there had been a delay in supplies.

Q. Yes. Now, your original plan I understand was to drive right through to the sea, was it not? *A.* The intention was to drive as far forward as the forces could go and if possible to reach the sea.

Q. Now, in the first couple of days so far as your own front was concerned, you took quite a large number of prisoners? *A.* Yes.

Q. And then you found that for various reasons you had to take up a defensive position? *A.* Not only after a little while but during the first attack hour, even in the very first half hour, I would say, from the hour I visited the 1st Battalion south of Buron. I refer to a statement I made here some days ago.

Q. You realized that early, then, that it was going to be necessary for you to take up a defensive position and you could not carry out your original intention? *A.* I noticed that the forces opposite me were too strong in artillery and in air force and also the artillery was too heavy for my intention of attack.

Q. In other words, on the first day you did realize that it would be impossible to carry out that intention, at least for some little time? *A.* I ascertained it would be impossible throughout the fighting to undertake a tank attack during daylight.

Q. That is not in answer to my question. Will you please direct yourself to the question and give me an answer "Yes" or "No." *A.* Please ask the question again...

Q. Well then, is it a fact that on the very first day you realized that it was going to be impossible for you, at least for some time, to carry out your original intention of driving to the sea? *A.* I say what I said before, that it would be impossible throughout daylight to carry out an attack.

Q. I did not ask you whether it was going to be impossible during the daylight to carry out an attack. *A.* The idea itself was not given up. It was prepared for night hours.

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Q. But you did realize on the first day, did you, that by reason of a lot of things you were not going to be able to drive right through to the sea as you originally intended? *A.* Yes.

Q. And for that reason then, did you take up a defensive position? *A.* Yes.

Q. Now, after the first couple of days of action, did you take very many prisoners of war? *A.* Not only in the first few days, we took lots of prisoners especially south of Caen. I think more south of Caen than north.

Q. When you were occupying the position north-west of Caen, did your regiment take very many prisoners for the next month? *A.* Do you mean June?

Q. Yes, from the 8th of June to the 8th of July? *A.* It is in the character of battle that troops can only take enemy prisoners when the troops attack and during the time my troops attacked, they did make prisoners and frequently they made prisoners when they were sent on patrols to take prisoners. Subsequently they also took prisoners of Canadian patrols who endeavoured to look into my Regiment.

Q. Well, how many prisoners did you take during the month from the 8th of June to the 8th of July? I mean the 25th Panzer Grenadier Regiment? *A.* It is not known to me. There can only have been very few.

Q. And by the reason of the fact was it necessary to make an offer to some of your troops of a thirty day leave in return for the capture of prisoners? *A.* I did not promise my troops a thirty day leave during the fighting in Normandy but during the training period in Belgium and France, especially the 15th Company in its training, it was promised to the people that they would get a leave for prisoners and, in addition to that, in Normandy for particularly dashing recce patrols – in executing particularly dashing recce patrols, leave was granted.

Q. Did you make any additional inducement to your troops after the 8th of June to get prisoners? *A.* I gave an order that was daily, that they had to make patrols to bring in prisoners.

Q. That is not the question. I asked you if you offered an additional inducement to get prisoners after the 8th of June? *A.* Not an extra grant but those who did a good job were rewarded as that is customary in every army in the world. It is thoroughly possible that the Battalion Commander repeated the old order from their training period.

Q. How many leaves did you give to the 3rd Battalion after their exploit at Authie? *A.* I do not understand the question. I have just been speaking of recce patrols, that is people who go alone or with a few comrades to venture into the enemy lines.

Q. Is it true that Witt telephoned your HQ about the 10th of June and complained that you were not getting any prisoners and that they were to be immediately sent to him? *A.* I cannot remember that. It is thoroughly possible that the Divisional Commander called up and referred to the order that prisoners were to be sent to Division by the quickest route, and not to keep the prisoners a lengthy time on the field of battle. I just want to point out that I did not get a "rocket" from the Divisional Commander. On the contrary, my Regiment got praise from the Divisional Commander because the troops had been sent back in the quickest manner.

Q. I am sure they were, but did you get such a call from the Divisional Commander about the sending back of prisoners? *A.* I cannot remember such a call. It is possible, I do not know.

Q. When you were interrogated before you had a very good recollection of it. *A.* About such a conversation?

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Q. Yes. *A.* I cannot remember.

Q. Alright, now, what does the baendel or arm-band bearing the words Adolf Hitler signify? *A.* It indicates those people who belong to the Corps Staff of the 1st Corps and the Corps Troops and those who belong to the 1st SS Panzer Division, Leibstandarte Adolf Hitler.

Q. Were there a large number of men in your Regiment who wore the baendel Adolf Hitler by reason of their previous association with the Leibstandardarte Adolf Hitler? *A.* Many people there were not. There was not one fighting soldier with that arm-band but there were a few NCOs. There were also a few officers. The men who had come from the Leibstandarte were particularly located in the rear areas – the supply areas and in the skeleton of the Regiment. And also, of course, Company Commanders, a few.

Q. And practically all of the Battalion and Regimental Commanders? *A.* Yes.

Q. Now, during the period from the 7th to the 21st of June, were there any other SS troops in the area west of Caen in the area between Caen and Bayeux? *A.* From the 7th to the 21st?

Q. From the 7th to the 21st. *A.* On the 9th or 10th, it may even have been on the 8th, the 1st Corps Troops came to my Headquarters – Tactical Headquarters of the heaviest Corps Artillery, and this artillery unit had in the entire sector its forward observation posts. I cannot quite remember the day but in the attack on Carpiquet, a regiment of the Leibstandarte Adolf Hitler participated. That must have been at the end of June or July – the attack between Franqueville and Carpiquet.

Q. That attack did not actually take place until about the 7th or 8th of July, did it? *A. (No audible answer.)*

Q. Perhaps you can answer this question. It was not until July that any other SS Division moved into the Caen area between Caen and Bayeux? *A.* I cannot tell you the exact date but there were Regiments which were in use between Franqueville and Carpiquet and the other one in the attack from Verson in the direction of St. Mauvieu. These fights were in my opinion in the beginning of July.

Q. So that there actually was no other SS Division in the area we have been referring to, at least prior to 21 June. Is that correct? *A.* Yes, that is correct.

Q. Now, I want you to cast your mind back to the afternoon of the 7th of June. We will start a little earlier perhaps than the afternoon, and I would like you to tell me again the circumstances in which it was first reported to you that German prisoners of war had been shot by Canadians? *A.* I first heard that in the area of St. Germain, where my Headquarters was subsequently put. I heard that talk between runners – runners were talking about it. That time soldiers of the German Coastal Division and workers of the Division Todt came back on the road Caen-Bayeux and also some displaced personnel of the 21st Panzer Division. I subsequently heard that talk in the area south of Ardenne. The first time I heard it was in the morning. The second time in the afternoon.

Q. And this was on the 7th of June, before you put in your attack on Authie? *A.* Before the attack on Authie.

Q. Tell me exactly what it was you heard these runners say? *A.* The runners said that they had heard that the Canadians took no prisoners – soldiers had come through here who had said that they had seen around Rots prisoners who had been shot. I then prohibited the men from continuing to tell this rumour and I characterized it as a rumour. I said to my officers who were standing nearby "I do not believe that until I have seen it myself."

Q. And then I think you said yesterday that you had confirmed that rumour later? *A.* Yes.

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Q. Now, will you tell me the circumstances under which you confirmed the rumour? *A.* After the attack on Bretteville I drove back in the night to Authie. In the morning Wuensche came back to me and he told me that the attacking troops on the west of Rots dug themselves in a defensive position, and that by now the Battalion under Krause of the 26th Panzer Grenadier Regiment had made contact with my left wing. Whereupon I drove from Ardenne to Rots to satisfy myself of the description of the situation and from Rots I drove to the Headquarters of the 3rd Battalion, the Battalion commanded by Krause, and discussed the situation with Krause. From Rots, I took the road south. I drove under a railway viaduct.

Q. Is this the one? *A.* Yes.

Macdonald: The witness points at the bridge south of La Ville-neuve at MR 947704. *Q.* Will you go on? *A.* And from there to drive to St. Mauvieu. Immediately after the railway viaduct I found an armoured troop carrying vehicle of the 21st Panzer Division and behind that a radio car of the 12th SS Panzer Division. In the troop carrying vehicle the driver had died from burn wounds. The car had been shot up. The vehicles were both on the right side so that traffic coming the other way could pass. Just opposite the other side of these two vehicles the road made a little widening there, there was a little widening of the road. I suppose, this widening of the road had formerly served to keep gravel there. There was a little gravel storage square. In this little widening of the road there were a large number of German soldiers. I cannot tell you how many. Between 7 and 10, both men of the 21st Panzer Division and men of the 12th SS Division. One man was lying all the way on the right, he apparently had been wounded during the fighting and a junior NCO or NCO, medical, had a field dressing in his hand to bandage up that chap; that if one stood in front of that position one saw to the left the remaining German soldiers, in a straight line but in a slight circle. The radius of this circle was perhaps as far as from here to the lamp *(indicating lamp in room)... [The diameter of the circle was 5 to 6 meters.]* All men had no weapons with them. The weapons lay on top of the vehicles which had been burn out. A machine gun was lying on the road. That is the picture which I found.

Q. Now, how many men were there exactly, Germans, German bodies? *A.* I think there must have been between 7 and 10. I cannot say exactly.

Q. And all 7 or 10 were within this distance of about, – what did you say, 5 meters? *A.* Yes, it was not a straight distance, it was, as I said, a slight semi-circle, and in this semi-circle there were the bodies.

Q. Now, did you examine to see what the nature of their wounds was? *A.* They all were shot through the chest or through the head. What the wound of the first man was I do not remember. I think he also had bullets. I did not especially examine the bodies and on order of the Divisional Commander I made a report on the matter and Division probably undertook the rest. The place where I found these bodies was not situated in my regimental sector.

Q. Now, who directed your attention to these bodies, – guided you to this place where they were? *A.* I was not led to it. I said, as I was driving to Battalion HQ of Krause, I saw it. I was not led through by anyone.

Q. Now, if this was not in your sector, where, at this time, was the Headquarters of the Krause Battalion? *A.* Here. It was a park. *(Indicating on Exhibit T-1, pointing to park in MR 933687.)* I would make a little sign.

Q. And... what was the thing that eventually satisfied you that these people had been captured, taken prisoner and then shot? *A.* I allowed myself to be convinced by the fact that the weapons were on the

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burned vehicle, that within the semi-circle of bodies there were no weapons, that the NCO who apparently had been trying to bandage up the wounded person could not possibly have been fighting for he still had the field dressing in his hand. In all my battles I have very, very rarely found a whole group of infantrymen dead in one bunch. That sort of thing can happen in street or house fighting or on roads but it can never happen in open countryside.

Q. Well, was not this on a road? *A.* It was on a road, but on a little widening, and when fighting goes on, – I would like to make a little drawing in order to show the Colonel how this widening of the road looked. *(Paper is handed to witness and he draws the sketch)* I cannot give you the widening of the road according to scale... Where I have put the little "L" there were the bodies in a semi-circle, and the little rectangles that I have filled in are the two vehicles on the opposite side of the road. *(Sketch drawn by the witness is marked Exhibit "T-67" ...)*

Macdonald: *Q.* And how far were the bodies from the railway bridge? *A.* About 100 meters.

Q. Did you find any other bodies around in the field? *A.* No.

Q. How many troops could a troop carrier normally carry? *A.* Half a section, about 6 men.

Q. Did you see any other vehicles around there? *A.* No.

Q. Now, is this the same incident that you were told about on the morning of the 7th of June at your Regimental HQ? *A.* I suppose so because at the Regimental HQ and also south of Ardenne I did not hear anything precisely, but only rumour that German soldiers had been shot in the [Rots area].

Q. Now, who was with you when you saw these bodies? *A.* I was on my motorcycle. On the motorcycle was either Obersturmführer Dr. Stift or Dr. Gatternigg. I think Stift was with me, and I think Gatternigg subsequently also looked at the bodies.

Q. And as a consequence of that you then made a report to Division and to the best of your knowledge that matter was investigated and reported to the International Red Cross? *A.* After I returned from the Battalion Krause to Ardenne I spoke to the Divisional Commander on the telephone about the tactical situation and after that I made this report to the Divisional Commander.

Q. Did you make any further investigation of the matter or did you go back to the place to examine the bodies again, or the situation? *A.* No. As I told you before the place was not in my regimental sector. The Divisional Commander asked me to make a written report rather a report on the matter.

Q. And this examination of these bodies took place on the 9th or 10th of June, was it? *A.* I cannot tell you that. I did not give the order for that. I did not have anything to say and they did not tell me when they did.

Q. No. No. I do not mean that. When did you examine these bodies yourself? You said it was after the Bretteville battle? *A.* Noon of the 9th.

Q. Now, with respect to this matter I want to read you your evidence given at the SHAEF Court of Inquiry, found at *Supplementary Report*, Exhibit No. 9, page 23; and first, before I read that I would like to know if this was the time the Divisional Commander accompanied you? *A.* My first report I made by telephone and subsequently when I drove along the entire front with the Divisional Commander, I drove along the entire front and also drove to that place.

Q. Well, then, what you told me a few minutes ago to the effect that you had not gone back a second time to look at these bodies is not correct? *A.* It is correct. I have not said that I went there with the Divi-

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sional Commander to look at the bodies. I said that I had driven along the front with the Divisional Commander.

Q. Let us get this straight again now. Am I right or wrong in assuming that you said originally that you just went to this spot once where these bodies were? *A.* I frequently drove through that locality but I did not go there extra to look at the bodies.

Q. I see. *A.* And I did have absolutely no more responsibility to bother about the place.

Q. You have got some new idea now, have you? *A.* I do not need a new idea.

Q. Now, did you go to this spot with your Divisional Commander and look at these bodies? *A.* I drove with the Divisional Commander from Rots to the Battalion Commander of the 3rd Battalion. At the Battalion Commander of the 3rd Battalion at that time there was also there Standartenführer Wuensche who commanded a Tank Regiment. I do not know exactly whether Wuensche came along or whether he was there already but I did drive with the Divisional Commander... on the road which I have shown to you before from Rots to Mauvieu.

Q. Now, will you please answer my question. Did you accompany the Divisional Commander to the spot where these bodies were? *A.* I cannot precisely remember that I directly guided him to these bodies, but we drove past that spot so as when we drove past I surely said to him "This is the spot."

Q. And did you stop and look at the bodies? *A.* I cannot remember that.

Q. This was not the first time that you had been to the bodies but the second time? *A.* I want to tell the Colonel, I once stopped there, looked at the bodies, stayed there approximately half an hour, and with the accompanying Dr. Stift or Gatternigg I looked through the cornfield nearby for signs of battle but found none. The conclusions to which I came then were that the armoured and troop carrying vehicles were shot up by an anti-tank gun. From the first building behind the railway viaduct I think then we still found a motorcycle.

Q. You found a motorcycle the first time? *A.* Yes.

Q. Well, I asked you that before, whether there were any other vehicles there and you said no. Is this another idea now? *A.* You are quite right. You spoke of vehicles and I said there were two German vehicles.

Q. I see. What is a motorcycle? *A.* It is a motorcycle.

Q. I see, and a truck is a truck, I suppose? *A.* Before we were speaking of German vehicles and if you are speaking of English vehicles you have got to tell me.

Q. Well now, was this motorcycle a German or an English one? *A.* English one.

Q. Will you mark on here *(Indicating Exhibit T-67)* where you saw the English motorcycle? *A.* That is the railway viaduct. Here is a house, and here is the next house, and here in the garden there was a motorcycle and there were raincoats. I saw nothing further *(Witness refers to Exhibit T-67)*.

Q. Mark "M" for the motorcycle and "H" for house? *A. (Witness complies.)*

Q. Now, did you on the south side of the railway see any motorcycle at all, German or English? *A.* No. Only these two vehicles pointed out.

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Q. Now, this little semi-circle that you have drawn here marked "L" where the bodies were found, is that in a bit of a depression? *A.* Yes.

Q. Well now, we have it clear that the first time you went there you went there, with either Gatternigg or Stift and you spent a half hour there, just the two of you, examining these bodies; is that correct? *A.* I did not inspect the bodies. By body inspection, I understand a precise investigation examining where the shot went in and where it went out and the position of the body and so forth *[referring to a medical examination]*...

Q. Well, the first occasion on which you saw these bodies was in company with either Dr. Gatternigg or Dr. Stift, and there were just the two of you there; is that correct? *A.* Behind me were also my accompanying people. I always had an accompanying motorcycle with sidecar and, moreover, a few dozen infantrymen of the 3rd Battalion walked by, which from south to north, was pushing towards the road.

Q. Now, was this on the day after the Bretteville attack; in other words on the 9th of June? *A.* Yes.

Q. And when was it then that you went past the spot with the Divisional Commander and pointed it out to him? *A.* It may have been a few days later. It may have been on the 10th. I cannot say that accurately. I do not think it was on the 9th because I spoke to the Battalion Commander of the 3rd Battalion in the afternoon in Rots. It could not be on the afternoon of the 9th because at that time the Battalion Commander of the 3rd battalion was in Rots but when I went there with the Divisional Commander he was at his Battalion HQ.

Q. So you fix it as the 10th or some later date, is that right? *A.* I do not think it could have been on the 9th.

Q. Now, when you say that these bodies had wounds on the chest and head, what kind of wounds were they? *A.* They were not shrapnel wounds or grenade splinter wounds, they were shot wounds. If the first dead person's body had shrapnel wounds I do not know.

Q. And could you tell from what direction the bullets had entered their bodies? *A.* No, I could not ascertain that.

Q. Now, I will read your previous evidence at page 23:

"*Lt-Col Macdonald:* As Regimental Commander and Divisional Commander in the Normandy campaign, have you any complaints whatever to make as to the treatment of German prisoners by Canadian troops. *A.* No."

Now, if at any time in the course of this reading you disagree with the way in which your evidence is recorded here will you interrupt and tell me so.

"*Q.* Have you heard of any complaints from German prisoners with respect to the treatment of German prisoners? *A.* No. Those who returned to us have not made any remarks of that sort.

Q. You mean by that remarks as to improper treatment? *A.* Yes.

Q. Have any cases of improper treatment been reported to you at all? *A.* I have had a report and have myself seen a case in which a number of German soldiers were shot while one of them was holding a medical packet of field dressing in his hand and I can show you the place on the map where that occurred. It occurred, directly south of the railway bridge at Villeneuve, just outside my sector but very close to it. It was the day on which I went around the front with the Divisional Commander.

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Q. How many German soldiers had been killed? *A.* Four or five. I cannot say exactly.

Q. Had they been killed while prisoners? *A.* I could not discover that. I can only discover that the bodies were lying with no weapons and one soldier had had a packet of field dressings in his hands.

Q. The place where you saw those bodies was within the German lines was it? *A.* The time at which I saw the bodies they were inside the German lines but when the incident occurred the German lines were further back and they were in front. I imagine they belonged to a Reconnaissance Detachment but they were not my troops.

Q. Had you any means of discovering when the men had been killed? *A.* No. I couldn't establish that. I simply reported that matter to the Division.

Q. You actually saw the bodies yourself did you? *A.* Yes.

Q. How long had they been dead? *A.* They must have been dead several days when I saw them.

Q. In what part of the bodies were the wounds? *A.* They all had shots in the head.

Q. Were the fatal wounds bullet wounds or was there evidence of shrapnel wounds? *A.* No, they were bullet wounds, though I can't say whether they were from rifles or pistols.

Q. Can you tell from which direction the bullets had been fired? *A.* No, I did not ascertain that. Further inquiries were conducted by Division. I simply reported the matter.

Q. Were the bodies examined by the medical officer? *A.* Yes, I believe they were examined by a Doctor and by the Divisional Judge.

Q. And an inquiry was made and a report submitted presumably on the basis of that inquiry? *A.* Yes. I was later informed by Corps that a report had been made to Army and also to the International Red Cross.

Q. And what was the nature of the finding of the Court? *A.* I do not know.

Q. Were any particular troops blamed for this? *A.* No.

Q. Was the soldier in whose hand you say there was found a bandage wearing a Geneva Cross? *A.* Yes.

Q. That is an armband on the arm? *A.* Yes, the red and white band.

Q. Did you see this band on the soldier's arm yourself? *A.* Yes.

Lt-Col Boraston: Was this fact included in your report? *A.* Yes. I reported the matter very much in the terms in which I have described it to you. I didn't conduct any further inquiries.

Lt-Col Macdonald: How did this first come to your attention if the men killed were not troops of your Regiment? *A.* When I came to the boundary of my front to take over arrangements for contacting the troops on my left the matter was reported to me by my own men and as the place was so close I went to examine it myself.

Q. And this was on June the 9th when you were making your tour with the Divisional Commander? *A.* Yes. The Divisional Commander went back towards Caen by road and I stayed for a little while longer in the place where this incident occurred. My medical officer was with me and he also saw it.

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Q. What was your medical officer's name? *A.* Dr. Gatternigg.

Q. And with what formation or unit did he normally serve at that time? *A.* He had just taken over a Medical Company.

Q. With what formation was he serving? *A.* With our Division.

Q. What was the number of the unit to which he belonged? *A.* Simply "Medical Company."

Q. Simply "Medical Company" 12th SS Division. *A.* Yes."

Meyer: That is where he landed subsequently. At the time he was my Regimental Doctor.

Macdonald: *(Continuing reading)*

"*Q.* With what unit was he serving when you last heard of him? *A.* In the same Medical Company.

Q. And approximately when was your last information obtained with respect to him? *A.* Last August.

Q. And who reported this incident to you? *A.* A Company Commander of the Engineers who were in position there. Their position is marked on the road closest to Villeneuve on the map square 9670. On the other hand German prisoners of war who returned to our lines reported that they had been well treated and well fed.

Q. What was the name of the officer or NCO, however, who reported this incident to you? *A.* I can't say – I am afraid that is in the report.

Q. Was it an officer or was it an NCO? *A.* It was a Company Commander, an officer.

Q. Who was the Company Commander? *A.* I shall think of it if I can reflect.

Q. Would you remember the name if you heard it again? *A.* Yes.

Q. Pinkernell? *A.* No, he was in a Pioneer Battalion. It was an Engineer Company of the Panzer Grenadier Regiment.

Q. Was that the 16th Company? *A.* Yes. The officer in question was killed in a farm near Authie. His name was Werner.

Q. When was he killed? *A.* Two days before the capture of Caen.

Q. Now do you know of any other incidents whatever where it is suspected that Germans having been taken prisoners were killed by the British or Canadian troops? *A.* No such report was made in my sector.

Q. Do you know whether, as a consequence of the opinion which was formed with regard to the treatment of these prisoners that you referred to, any retaliation was taken by any of the German troops in the neighbourhood? *A.* No. No orders of that sort came down from Army or from Corps nor were any such orders given by Division or Regiment.

Q. Apart, however, from any orders do you know whether the troops on their own initiative took any retaliatory action? *A.* No. There were many cases in which prisoners came back and the fact that they came back alive was the best proof that there was no feeling of that sort."

Q. Now do you agree that you have been correctly reported? *A.* Yes, I can exactly remember what is there read.

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Q. Now, do you want to make any explanation for the differences between your two stories? *A.* Those are not two stories. I told you before that in Rots the Battalion Commander of the 3rd Battalion was. I myself talked there to the Battalion Commander. It is quite possible that the Divisional Commander was with us there. I can not remember that today but I do remember that I was at the original Battalion HQ of the Battalion Krause with the Divisional Commander and it is correct that Werner told me from Point 69 "There they lie." He brought it to my attention.

Q. Now, is it true that that is the first you heard about it? *A.* It was the first time and the only time that during the fighting of my Regiment I heard or saw such a thing.

Q. Now you tell us that you heard about this on the morning of the 7th. Now you say that was the first time. You said then it was on the morning of the 9th when you were visiting this Battalion. Now which is it? *A.* It is quite correct what I have said. On the 7th I was told by rumour at my Regimental HQ from troops who were returning. The returning soldiers brought this rumour with them. As I did not succeed there to find the man who could say to me "There and there I saw that and that" I prohibited that rumour and made no report on the matter. Only after the attack on Bretteville on the 9th I then got real facts.

Q. Well what you were first told was of the shooting of troops at Rots. Is that not correct? *A.* In the area of Rots – yes but I do not know whether the people who came back meant that case. It was not specifically said.

Q. Now we will start correcting your former evidence. Did the man who had the field dressings in his hand actually have an armband on or did he not? *A.* As far as I can remember he had an armband on.

Q. And was it on the day that you went around the front with the Divisional Commander? *A.* It was on the 9th of June.

Q. Was it the day you went around with the Divisional Commander? *A.* I cannot say precisely whether the Divisional Commander was with me on that day. I request that you ask Wuensche who was present throughout all battles.

Q. Did you go back on a subsequent day with the Divisional Commander? *A.* I once drove past there with the Divisional Commander to the Battalion Commander of the 3rd Battalion. The precise day I can not give you but I do remember that we together were there at Battalion HQ.

Q. Well, did you and the Divisional Commander look at these bodies on some subsequent day? *A.* I can not remember that. If we drove past I assuredly showed him the spot.

Q. Now were there 4 or 5 bodies or were there 7 or 10? *A.* I can not say precisely how many there were but my first statement of 4 or 5 was not correct, there were more.

Q. Now, did they all have shots in the head or just some of them? *A.* I saw shots in the head and shots in the chest.

Q. Did they all have shots in the head? *A.* I do not think they all had shots in the head.

Q. Why did you say so when you were asked that question before then? *A.* When I was asked that the first time I gave you that as a point of departure. Moreover, the formal report of Division with the medical certificates attached must be in your hands.

Q. What do you mean "a point of departure." Do you mean the point of departure from the truth?

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Lehmann: "Point of departure" – we will look that up in the dictionary.

Interpreter: "Point of support" is the actual translation.

Macdonald: *(Continuing cross-examination) Q.* When you gave your evidence before you were asked "On what part of the bodies were the wounds" and you said "They all had shots in the head." *A.* It is quite possible that I said that.

Q. Then it is or is it not true? *A.* They had head and chest wounds.

Q. Everyone of them had a head and chest wound had they? *A.* No, there were some that had head shots and I also saw men there who had chest wounds and I also saw one man who was just to be bandaged up who apparently had wounds of burns.

Q. Now, I want you to tell me, were you telling the truth when you said they all had shots in the head and it is a very important point. *A.* As I made that statement I did not consider myself being closely questioned, to make exact statements about this occurrence but I called your attention voluntarily to this matter and during this bringing it to your attention I did not exactly or intensively occupy myself with the reality. I merely wanted to give you a clue. The exact report with the medical reports must have been in your hands or must be in your hands, for I suppose the Division with a Legal Officer and its medical officer made an exact examination for I later heard that the entire matter was given to the Red Cross.

Q. The important thing about this story is whether or not these people had been shot after being taken prisoner and one of the most important things in that, of course, is in what part of the bodies the wounds were found. Now, if a soldier killed in action is killed by a bullet, in most cases the bullet wound is either in the head or the chest, is it not? *A.* You are quite right. That characteristic is especially anticipated in street and house to house fighting when the man only with his head peers up over a wall. In an open field a man generally has chest or abdominal wounds.

Q. Now, these people you saw were all found in a depression. If they had been found there, where else would you expect to find bullet wounds except in the head or chest? *A.* I request that the Colonel look at the precise report of Division. I cannot make a statement as to where the shots were as I did not concern myself sufficiently with the matter.

Q. You concerned yourself sufficiently with it to make a slander against other troops, did you not? *A.* I refute that charge. I refuse to accept it. I merely brought the matter to the attention of my Division. The reputation of a troop I can only undermine if I make a report on those soldiers and that report is untrue and if I then hand on that untrue report.

Q. Well, you have handed on a report without taking the trouble to investigate whether these people had been killed under circumstances which suggested that they had been taken prisoner? *A.* It was not necessary for me to make an exact investigation. That was Division's job. It was necessary that I call the attention of the Divisional Commander to the matter.

Q. Do you take my assurance that the Red Cross received no such report? *A.* That I do not know. I believe it if you say it.

Q. You subsequently, in a very few days later, became Divisional Commander yourself, did you not? *A.* Yes.

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Q. Did you ever hear what action Division took on your report? *A.* I can only say to the Colonel that when I took over that Division I saw no writing desk, only bombs, grenades, and shells. I could not bother about that.

Q. Well, that is all very melodramatic, but just answer the question, did you hear what action Division took on your report; that is the question? *A.* I heard that while I still led the Regiment that the thing had been worked on.

Q. I see. Now will you tell us if you were able to discover on what date these so-called German prisoners were killed? *A.* These soldiers must have been killed either the 6th evening or night or on the 7th up to noon. These soldiers were not part of a planned recce but must have been part of dispersed troops for there was a vehicle of the 21st Panzer Division and of the 12th SS Division, both driving in the direction of north.

Q. Now, moving on from this discovery at your Regimental HQ on Wednesday noon, at noon on the 7th June I mean, will you now consider the matter and tell me how many times you left the Ancient Abbaye from 2 o'clock on that afternoon till midnight that day? *A.* Before the attack of the 3rd Battalion started I spoke south of Ardenne with the Commander of the 3rd Battalion. During the attack, after the taking of Authie, I spoke with the Battalion Commander to the north-east of Authie. After that I went back to Ardenne up to the tower and between 1800 and 1900 hours I went to the battalions, first to the 2nd Battalion, then to the 1st Battalion, then to the area of Contest and Buron but I didn't find the Battalion Commander there and when it was dark I came back to the Regimental HQ. It was no longer sufficiently light for battle.

Q. And did you leave the Abbaye once more during that day? *A.* Before the attack or after the attack?

Q. No, you have taken us from the beginning of the attack at 2 o'clock, you told us you went to the 3rd Battalion, the next trip you went to the position north of Authie where you saw the 3rd Battalion commander, then at 1800 or 1900 hours you went to the 2nd and 1st Battalions and could not find the 3rd Battalion, now you made one more trip out that day, I think to Division, did you not? *A.* I think that after I talked to that Battalion Commander south of Ardenne during the forming up I was once more at the Regimental HQ down at the petrol station and there I think I talked to the Divisional Commander but I cannot remember precisely.

Q. Now, that is not what I am directing your attention to, I am asking you how many times you left your Headquarters in the Abbaye Ardenne from the time you left it at 2 o'clock in the afternoon? *A.* If you want to ask me that precisely I can answer you precisely, only from the beginning of the attack.

Q. What time did the attack start? *A.* I can not tell you the time, I think between 1600 and 1700 hours, then I left the tower for the first time after the village of Authie had been taken. Then I drove back via Cussy and I told you that there I saw prisoners, went up on the tower again, looked at the battle field again, then I told you at that moment there was a heavy Artillery fire on Contest and at that moment there was action going on in Buron on both sides of Buron. I then left the tower after having talked privately to a Canadian Officer, upon leaving I talked privately to my doctor at the entrance, then I drove to the 2nd Battalion, I arrived up there at the moment when the Battalion Commander was knocked down by a direct hit, gave my orders there and visited the Commander of the 1st Battalion, drove back to the 2nd Battalion, drove back to the orchard between Contest and Buron, did not find the Battalion Commander there, drove back to Ardenne. That I can remember.

Q. Now, when was the next trip that you made from the Headquarters? *A.* Next trip was the next morning.

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Q. I see, well now if Hauptsturmführer Isecke at the Panzer Regimental HQ says that you came back at 10 o'clock that night, is he right or are you? *A.* Came back to where?

Q. Came back to their Headquarters, your old Regimental HQ. *A.* That I returned from the 3rd Battalion?

Q. No, on your way to Division. *A.* I cannot remember that.

Q. Alright, are you willing to agree that he is more likely to be correct than you are if he says that you were there at 10 o'clock? *A.* I just want to say I never drove to Division; that is an error of Isecke.

Q. Then you did not see the Divisional Commander that night? *A.* I saw the Divisional Commander shortly before the attack started at the old HQ. In the night I did not see the Divisional Commander. At any rate I was, during the night, at the Ardenne and not Divisional HQ.

Q. So that from the time you saw the Divisional Commander at your old Regimental HQ and the middle of the day on the 7th June, you did not see him again? At least some time on the 8th June? *A.* I cannot answer that. I do not know that.

Q. Now, are you willing to agree that Isecke might be right if he says that you went back to your old Regimental HQ at 10 o'clock? *A.* No. When I returned to the 3rd Battalion between Buron and Contest I went right up on the tower, looked at the battle field from there, stayed at least one hour if not longer on the tower and watched the air fights over the landing places. I cannot remember that during the night I returned to my old Regimental HQ.

Q. That still is not the answer to my question. I understand you to say that during the evening of the 7th June you went back to your old Regimental HQ near the petrol station, is that correct? *A.* Certainly not at 10 o'clock.

Q. That is not the question, did you go back at any time on the evening of the 7th June? *A.* I cannot remember that.

Q. In any event you spent the night at the Ancient Abbaye, the night of the 7th and 8th June? *A.* Yes. On the 7th in the evening I ordered my Adjutant up to this advanced Headquarters. I did not work at the old Regimental HQ, I worked up at the new Headquarters.

Q. Now, during the night of the 7th June did you find it cool enough to wear a great coat or a trench coat? *A.* No.

Q. So that we can conclude that until you were burned in action during the attack on Bretteville, on no occasion during the day time or night did you wear a trench coat, rain coat or great coat? *A.* During the night I was not on the battle field. I stood at my map table in the building next to the chapel.

Q. Now, I thought you told me yesterday that you were on the battle field when you were in your Headquarters at the Ancient Abbaye? *A.* Quite right, but it was a different thing to sit in a Regimental HQ in a room. If I, as a Regimental Commander, had to live in a hole I obviously would put on a coat, but if I sit in a room I can have no use for a coat.

Q. Well then, let us put it this way, did you from the time you went to the Ancient Abbaye at 2 o'clock on the 7th until after the attack on Bretteville at any time whatever wear a great coat, a trench coat, or a rain coat? *A.* No, I cannot remember.

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Q. You are thinking carefully about this are you? You are not going to try and qualify this later and say you made a mistake or could not remember? *A.* I want the Colonel to ask me precisely on what road?

Q. I am not asking you precisely about any place. I am trying to find out whether you are telling the truth to this court. *A.* On the afternoon of the 7th I wore no coat. I wore no coat on the 8th and on the 8th, during the attack on Bretteville, I also wore no coat.

Q. Well, we have it fairly definitely then that you wore no coat of any description is that correct? *A.* On the 6th, as I drove to the Divisional HQ of the 21st Panzer Division, I think I wore a coat in the car but precisely I cannot tell you that.

Q. And you do not feel that at any time during the night of the 7th/8th June there was any need for you to wear a coat at your battle HQ? *A.* No, I can explain that to you because I ran up on the tower a few times and if you look at this tower staircase you will know that by running up it you get warm enough.

Q. Did you sleep any during the night of the 7/8th? *A.* No. I sat at my table.

Q. For the whole night? *A.* The night before that night and the night later I did not sleep during the night. From the 5th to the 6th, 6th to the 7th, 7th to the 8th, I did not sleep.

Q. What did you do, sit at your table all night on each occasion? *A.* Which night do you want to know about?

Q. Well you said the whole night of the 7th except for the excursions made to the tower, you stayed at the table all night. *A.* And sat in the room.

Q. But you told us that you stayed at your table. Were you working? *A.* Most of the time I stayed at the table.

Q. And what did you see at night when in the tower? *A.* I could watch a lot of things, such as how wide the beach head was.

Q. You could see all this at night, could you? *A.* That particular thing I could only see during the night and not during the day time because of the anti-aircraft fire of the ships and of those troops already disembarked. From that I could deduce the strength of the troops, especially during the attack on Bretteville I could come to my conclusions, because during the attack on Bretteville there was a bombing attack of ours on the coast line and north of Bretteville to the coast there was heavy anti-aircraft fire... That is why I endeavoured to see very much at night.

Q. Now, early next morning I understand you made a tour of the battalions on a motorcycle, is that correct? *A.* Yes.

Q. And you did not find it necessary to wear the usual German motorcycle coat? *A.* No, I want to explain that the camouflage suit is a coverall suit and under that camouflage suit I wore a thick motorcycle jersey, pull-over. Throughout my entire stay at this point, from the first to the last day I, during no battle activity, wore a coat.

Q. Well, now, you have explained to us that being at Regimental HQ is not included in battle activity so do you mean to say that you did not wear a great coat at Regimental HQ? *A.* I wore no coat.

Q. Did anybody else at your HQ wear a coat at any time? *A.* My officers at the Regiment wore no over coat.

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Q. Well, I am talking about any kind of coat, a trench coat, or a rain coat, or a motorcycle drivers' coat? *A.* It is quite possible that officers, when they drove back to Division or for supplies, that there they might wear a coat. [It is] quite likely that during the night one or another wore a coat, but I affirm that during the day no officer wore a coat.

Q. Now, were your Medical Officers at Regimental HQ on the morning of the 8th June? *A.* He would have been there.

Q. And were they there all morning? *A.* That I do not know.

Q. Well, you described where their vehicles were that morning. How are you able to describe where their vehicles were that morning if you are not sure they were there that morning? *A.* The Doctor does not have only one vehicle but many vehicles.

Q. How many? *A.* There [was] more than one man, there were medical orderlies and the medical drivers, who have to drive away the wounded.

Q. When did they move their vehicles up to the advanced Regimental HQ? *A.* They did not all come forward. The first days the actual Regimental Dressing Station was down in St. Germain. This old Regimental Dressing Station was kept on for a few weeks for sick soldiers. During the battle on the 7th the Regimental Doctor with a few medical men cam up to Ardenne.

Q. Now, do you mean Gatternigg or Stift? *A.* I mean Gatternigg, Stift was always with me. Only in the afternoon of the 7th did he help Gatternigg in treating the wounded.

Q. So that you are quite certain that both Gatternigg and Stift were there on the morning of the 8th? *A.* I do not know whether Gatternigg was there for the whole morning on the 8th…, but during the night I stayed with Gatternigg in that building, also with Stift.

Q. That is the night of the 7th and 8th? *A.* Yes, and I was also with both these officers up on the tower.

Q. So that if prisoners were shot at the Abbaye on the morning of the 8th as Jesionek alleges, both these medical people would be there at the time? *A.* Gatternigg surely must have been there if he was not away at the old Regimental Dressing Station. Stift cannot have been there on the morning of the 8th as he was accompanying us.

Q. When you were interrogated in London, I was endeavouring to obtain from you the names of any witnesses whatever who could confirm your story with respect to the discovery of these eighteen bodies. *A.* You mean the first interrogation?

Q. I mean the one on the 28th of October [1945]. Do you remember that?... *A.* Yes.

Q. I want to read to you what you said about that. On page ten – question twenty-three:

"*Q.* And who were the two officers who reported the finding of these bodies? *A.* These were two doctors. They were the doctors that on the very same day opened a Regimental Aid Post in the same house which I showed you in a picture the other day.

Q. What were the names of these doctors? *A.* The one was Hauptsturmführer Doctor Gatternigg.

Q. That was your Regimental Medical Doctor, was it? *A.* Gatternigg was Regimental Doctor who nearly always accompanied me.

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Q. And what as the name of the other doctor? *A.* I cannot give you the name with exactness now. I would have to look at the list of the names, but Gatternigg, if he lives, will be able to tell you that quite easily... But I do think that in the same interrogation I gave you the name Stift – the same interrogation or the next day.

Macdonald: *Q.* Yes, I'll read it to you. In the meantime I may tell you that we made some inquiries ourselves so we did know what the name of this doctor was when we asked you the question. And at question twenty-four of the evidence taken on the 30 October,

"*Q.* Who is Doctor Stift? *A.* That is the other doctor who made the report to me with Doctor Gatternigg whose name I could not remember.

Q. What is his Christian name? *A.* Erich.

Q. What was his rank? *A.* Obersturmführer (Medical).

Q. Was he a Medical Officer or a Dental Officer? *A.* Dental Officer, but he was also a Medical Officer.

Q. Was he attached to your HQ or was he attached to one of the Battalions? *A.* He was Regimental Dentist and very frequently accompanied me.

Q. Did he accompany you when you went to the Divisional Commander? *A.* Yes.

Q. Was he sort of personal Ordonnanz Offizier there? *A.* Yes."

Now why did you have so much trouble remembering his name when you were originally asked about it? *A.* The first question, I just could not think of it at the moment. I said to you "Give me a list and I will show you the name."

Q. You could not remember the name of this man who accompanied you to the Division? *A.* During the moment of the second I could not think of that name.

Q. I see. Now, what became of Gatternigg? *A.* Gatternigg stayed with the Regiment and after the battle for Caen he took an ambulance company in the Medical Battalion of the Division. He was the oldest practicing Medical Doctor.

Q. Now, is it true that he, at one time after you left the 25th Regiment, commanded that Regiment? *A.* No.

Q. Did he take part in operations? *A.* He was present during the entire battle time.

Q. And did he actually take command of any of these operations himself? *A.* He led no operation but due to the many experiences which he had gathered during four years he aided and helped the Regimental Commanders because he had for years led an NCO's school.

Q. I am told by your officers that he actually commanded the 25th Regiment. *A.* No. That is not correct.

Q. That is not correct? *A.* No.

Q. Now, with regard to your visit to the village of Authie, you told us yesterday about finding certain bodies in the streets of Authie and the discovery of weapons and you even described the appearance of the body in the park. *A.* I did not describe to you how the body looked. I saw a Canadian.

Q. I see. You saw a bayonetted Canadian body there, did you? *A.* I only saw the body. I saw no wound.

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Q. I see. Now, on what day was it you went through Authie? I want you to tell me again. *A.* It was the day after the attack on Bretteville had started.

Q. That was the 9th of June? *A.* Yes.

Q. And that is the same day you discovered the murdered German prisoners? *A.* It was even the same trip.

Q. Will you describe what you did in Authie? *A.* I told you that at my Regimental HQ, Wuensche put in an appearance and gave me a picture of the situation. Whereupon I drove to the Commander of the 3rd Battalion in Buron. I told the Commander of the 3rd Battalion about the general situation and I told him that the 16th Company had advanced and that its left wing was at Point 69 and its right wing at Gruchy and that he himself would be responsible for the boundary of the 16th Company and the 3rd Battalion and that my Regiment had now found contact with the right wing of the Regiment 26. From Battalion HQ I drove by the road to Authie. From Authie I drove to the left to the little Chateau and there, in this neighbourhood of the Chateau, I looked over the ground for putting in a platoon of 88s. They were to be used, these 88s, as anti-tank platoon for the 16th Company. Then I drove down to an old and abandoned flak position in order to reconnoiter there for a possibility of putting in two further 88s. And then I drove on the big road Caen-Bayeux in the direction of Rots. And there, at Point 69, I spoke to the Company Commander of the 16th Company. Then I drove to the Battalion Heaquarters of 3rd Battalion, 26th Panzer Grenadier Regiment and then I drove back to Rots again and stayed in Rots for quite a while. A long time I stayed in the open field between Rots and Point 69 in order to reconnoitre the lay of the land. Also in the fields, in the area in the fields, due west of Rots and there I reconnoitred the country-side – the terrain.

Q. Well now, can you get us back from the country-side to Authie, which is what I asked you about? *A.* Do you want me to tell you what I saw in Authie?

Q. Yes, that was the question. *A.* I am sorry, I did not know that. I drove off from Buron with my motorcycle. With me was my accompanying officer Stift. I saw my first dead Canadian on the road between Authie and Buron, apart from signs of battle in Buron. Shortly before the east entrance to Buron there were quite a few knocked out vehicles. Can I have a plan of Authie, so I can point it out to you?

Q. I show you Exhibit T-9. *A.* I came down this road on my motorcycle [on the the Buron-Authie road].

Macdonald: The witness indicates a point just below the word "Note" on Exhibit T-9. *A.* And a few small munition tractors. Here, down to the crossroads on both sides of the road I saw dead bodies. Here an entrance to a courtyard.

Macdonald: The witness now points to the north-west side of the highway just short of the road crossing. *A.* There lay a German soldier with his head in such a way that he was lying on the pavement, and here, up here, also a few German dead.

Macdonald: Witness indicates road leading off to the north-west. *A.* And here at the corner of the pond I saw a dead soldier and near him there was also a machine-gun and while driving out of the village I saw on my left a little part. There, there was a Canadian too. I carried on along that road to the Chateau. I also forgot to say that in the road there were weapons lying around.

Q. So you remember being examined on this point by the SHAEF Court of Inquiry? *A.* Yes.

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Q. I read to you Exhibit Number Nine, Page 1 and if you find at any time that you are incorrectly reported, will you interrupt me and explain it – not explain it but give the answer as it should have been recorded?

"*Q.* Did you go into the village yourself after it had been captured? *A.* Yes, I went to Authie myself after we had captured the village which lies in front of it. I went to that village when my line was extended. I went there two or three days after we captured the village, making a tour through Epron, then St. Contest, Buron, Gruchy and farm west of Authie. We then went west to Rots and then back to Caen along the main road from Villeneuve.

Q. If the attack on Authie was on the 7th June when was it that you made this tour? *A.* That was after the complete recapture of that group of villages. It must have been on the 9th of June. Yes, I remember it was on the 9th June, the day before the death of our Divisional Commander whom I accompanied on this tour. You have a picture of the tour, showing me and the divisional commander in a car."

A. I want to add something. It is correct as I have said, I was in Authie on the 9th. It is also correct that I drove along the front with the Divisional Commander. It is also correct that it was on the day before the Divisional Commander was killed. That was not the 9th or 10th, it was later.

Q. In other words, the day before he was killed was the 16th of June? *A.* If I took over the Division on the 17th then it must have been on the 16th. As I do not know the exact date when I took over, I cannot tell you.

Q. Now, to go,

"*Q.* Did you actually go through the streets of Authie or did you by-pass that on the west? *A.* No, we went from Gruchy south through a group of houses lying west of Authie then via an [anti-aircraft] position of ours south of Authie to Rots, which lies further west."

A. That is correct. That is the trip I took with the Divisional Commander. I drove along the entire front and visited the troops.

Q. Yes, and then you go on and say:

"We did not go through the actual streets of Authie. Shall I mark the exact front to show where we went? *(Witness marks his tour with a red pencil.)* I suggest that I should mark the battalion's sectors so that it can be seen which was held by which."

A. I want to call your attention to the fact that you are dealing with the trip with the Divisional Commander which took place on the day before he was killed?

Q. Yes, alright. That would be on the 16th of June? *A.* That I do not know.

Q. And was that the occasion you saw the bodies lying around on the streets of Authie? *A.* No. On the day that the Divisional Commander was with me, the day before he was killed, there were no bodies in Authie because after my first visit to Authie I gave an order to the 3rd Battalion to bury the dead with the help of the civilian population and to collect the weapons or to destroy them. I would like to point out that through the entire time there was no German soldier in Authie.

Q. Now, to whom did you give the order for the burial of these bodies? *A.* The evening hours of the 9th, while handing out orders, I gave the Ordonnanz Offizier of the 3rd Battalion this order and gave the same order to the Battalion Commander himself when I went to look him up. That must have been a few days later.

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Q. And did Obersturmführer Meitzel eventually have to give the order for the burial of these bodies? *A.* He at that time was Ordonnaz Offizier of the Division and was in my Regimental sector, and also Meitzel reported to me that there were dead bodies lying around in the terrain. Meitzel himself gave no order but the second occasion, when I was already the Divisional Commander, I had given out an order for the entire division that our own and Canadian dead are immediately to be buried.

Q. So that, when you speak of a general order having been issued with regard to the burying of the dead, you were speaking of an order which you issued after the seventeenth of June? *A.* Yes, after I took over the Division I sent out the order. Each of my Divisional officers, individually, every day, one had to drive along the entire front of the Division and Meitzel reported to me that he had still seen some unburied dead and then I handed out that order for the entire Division.

Q. Meitzel does not say it was after the 17th of June he found the bodies. He says that on the thirteenth of June he saw them and that he ordered your driver who was driving him at the time, to see that the bodies were buried. *A.* At that time the order had already been given to the Battalion Commander and if you will interrogate the Battalion Adjutant of the 3rd Battalion you will ascertain that I rebuked the Battalion Commander that the bodies had not been buried. That must have been already before the 13th. The 11th, 12th or 13th.

Q. Well, just give me a straight and short answer to this question; do you say that Meitzel is not telling the truth when he says that he gave an order on the 13th of June to bury the bodies in Authie? *A.* If Meitzel says so, it is true.

Macdonald: Very good.

President: Is this an appropriate place –

Macdonald: Yes sir, it is.

President: The accused and escort may withdraw. The Court will adjourn until 2 o'clock.

—

Macdonald: *(Resuming cross-examination) Q.* Now, witness, I am going to ask you a number of questions to which I want you to answer a simple "Yes" or "No." If you have any explanation to make, or anything further to say with regard to the questions I ask you, I will give you an ample opportunity when I have finished questioning you on this particular topic. Now, do you remember being interrogated in London by me on the 15th of October last? *A.* Yes.

Q. And do you remember this question being asked of you and making this answer: "Do you regard the oath which you have just take as binding on your conscience?" Answer "I do"? *A.* Yes.

Q. Now, turning to page 27 of that same examination, question 183:

"*Q.* Do you know whether any of the wounded prisoners or any others died while at your HQ? *A.* I heard nothing of that. I must also say that I did not pay much attention to that. I had a lot of things to do at the time. It was the duty of the Feldgendarmerie and the medical men. I did see once that some of your men and some of my men together were transported off in an ambulance. I saw that shortly before I drove with the 15th Company to Bretteville. There was a Truppen-Verbandplatz in the castle of Louvigny, and that is also where your wounded were taken."

Do you remember being asked that question and making that answer? *A.* Yes.

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Q. Is it true? "Now, just one answer "Yes" or "No"? *A.* What I said, yes.

Q. Question 184:

"*Q.* Was it reported to you by anyone that Allied prisoners had died at your HQ and that it was necessary to bury them there? *A.* No."

Do you remember that question being asked and making that answer to that question? *A.* Yes.

Q. Is the answer which you then gave truthful? *A.* Yes.

Q. Question 185:

"*Q.* So that to the best of your knowledge all the prisoners who were brought to the Abbaye on the night of the 7th were evacuated that very night? *A.* Yes. I myself saw that they were being transported off."

Do you remember being asked that question and making that answer? *A.* Yes.

Q. Is that answer truthful? *A.* This was Question 185?

Q. Yes. This was question 185. *A.* Yes.

Q. Question 186:

"*Q.* Now do you remember while you were at the Abbaye on the morning of the 8th of June that approximately seven prisoners were brought in and reported to you? *A.* No. I cannot remember such a thing...

Q. We are told that prisoners were brought in that morning and that the guard who brought them in reported that fact to you and that you at the time were standing in the chapel in the Abbaye. *A.* I cannot remember that."

Q. Do you remember those questions and making those answers? *A.* Yes...

"*Q.* Now do you want more time to think about it or are you sufficiently clear on the point, that, in fact, no prisoners were reported to you at the Abbaye on the morning of the 8th of June? *A.* I understand. I understand. I need no time to think that over because what I do not know now I won't know later. It is thoroughly possible that some were announced to me but it did not sink in. My thoughts were with the battle; and I am reported to have stood in the chapel?

Q. Yes. *A.* Well, then, I would assuredly have come down from the tower and observation point and it is therefore quite possible that as I was walking past, the sentry announced to me so and so many prisoners, but I did not appreciate that because my thoughts were with the leading of the troops and not with the transporting away of prisoners.

Q. There is evidence that that did occur. Now, as you have been thinking about it you seem to have come to the conclusion that it is possible. *A.* It is possible and I cannot swear to it and I cannot deny it. On the whole I believe my men and if my man said he made the report to me, then it would be true. I have no reason to assume that my men lie."

Now, do you remember those questions being asked you and making those answers?

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Andrew: Just one moment there. My friend is asking this witness: "Did you make certain answers?" and one answer which has a lot to do with the explaining of this answer he is making, he has left out. He did not read the whole of answer 187.

Macdonald: I am very sorry. It was entirely unintentional. It is a very long answer and I didn't think it was relevant.

President: Read the whole answer.

Macdonald: Yes, sir. The question of answer 187 is:

"*Q.* We are told that prisoners were brought in that morning and that the guard who brought them in reported that fact to you and that you at the time were standing in the chapel in the Abbaye? *A.* I cannot remember that. But throughout that time from all battalions there were constantly being brought prisoners who had been dispersed or who had hid themselves; but bigger squads I did not see. I spoke to one of your prisoners who had kept himself hidden four or five days in Buron, who showed remarkable bearing and who out of sheer hunger handed himself to us. That was the first prisoner with whom I had a long conversation as things went, and he too, as the next occasion presented itself, was taken back by the Feldgendarmerie to the division."

Macdonald: *(Continuing cross-examination) Q.* Now, do you remember those questions being asked of you and making those answers to them? *A.* Yes.

Q. And are they correct? *A.* I heard in the one statement I have just heard that I had seen the evacuation of wounded at the time I was going with the 15th Company to Bretteville. That is an error. That is not correct.

Q. Do you say that you are improperly reported? *A.* No. It is possible that I made a mistake, because that day we did not have any fighting.

Q. Very good. Question 191:

"*Q.* Well, then, I want to tell you something more that your men say. They say that when the presence of these prisoners was announced to you, you said "What do we want with these prisoners. They only eat our rations." You then issued orders in a low tone to one of your officers and then said in a louder voice "In future we will take no prisoners." The officer then left with the guard who had announced the presence of the prisoners, interrogated the prisoners, and searched them. They were then taken into the little garden adjoining and shot by an Unterscharführer attached to your HQ. Now what do you know about that? *A.* Of that I know nothing. What the Colonel has said I do not know anything. I never heard anything nor was I ever so stupid as to give an order to shoot prisoners."

Do you remember being asked that question and making that answer? *A.* Yes.

Q. Is the answer truthful? *A.* Yes.

Q. Question 192:

"*Q.* Is it possible that you were astute enough not to give orders to shoot prisoners but that you intimated to your officer that you wanted that done? *A.* No."

Do you remember that question and making that answer? *A.* Yes...

"*Q.* This member of your unit who saw them and heard what I have just repeated took us to the place where the execution is supposed to have occurred and eighteen bodies of Canadian soldiers were re-

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covered from that spot, everyone of whom had died from a bullet in the head, or from other head injuries. *A.* Tell the Lieutenant-Colonel that I have never heard of this thing until I have just been told of it, and if that happened it is swineishness. I can tell the Lieutenant-Colonel that I did not give that order whether he believes it or not."

Do you remember that question being asked of you and giving that answer? *A.* Yes.

Q. Is the answer truthful? *A.* Yes.

Q. And the question 197; which follows the other:

"*Q.* Whether you gave the order or not these men were shot within a 100 metres of where you were at the time. They were shot by troops under your command. *A.* I do not believe that a man would dare in my presence to shoot prisoners."

Do you remember being asked that question and making that answer? *A.* Yes.

Q. And then this question... I am just going to read part of this question. If my friend wants the balance I will read it.

"*Q.* Now you appreciate the circumstances being such as I have just detailed them to you that it may be necessary to put you on trial for these offences?"

Do you remember that being said to you at that time? *A.* Yes.

Q. And then on the 17th of October 1945, the first question:

"*Q.* You consider yourself as still under oath? *A.* Yes...

Q. Now, you have heard read to you the transcript of the answers which you gave to the questions that were asked you on Monday, October 15th. Subject to the corrections which you have made do you agree that you are correctly reported in the transcript at which you have been looking? *A.* Yes.

Q. So that you will be able to identify the particular piece of transcript at which you have been looking will you write your name across the first and last pages and put your initial at the bottom of each page?"

Do you remember that being said at that time? *A.* Yes.

Q. And did you, as a consequence affix your signature to the evidence of the 15th of October? *A.* Yes.

Q. Now, question 18, on page 7:

"*Q.* Did you receive any reports whatsoever as to any atrocities having been committed by the troops under your command? *A.* I received an enquiry from Corps HQ when I led the Division.

Q. Yes, but none of your officers or NCOs or even private soldiers ever reported atrocities to you? *A.* No.

Q. And so it is correct to say that, by reason of the fact you never had to, you therefore did not at any time discipline any of your officers or men for committing such offences? *A.* I did not need to punish anyone for I did not know anything about it."

Now, do you remember being asked those questions and making those answers? *A.* Yes.

Q. Are your answers correct and truthful? *A.* Yes.

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Q. Question 21:

"*Q.* I show you now a view of the courtyard of the Abbaye looking at the west which I will mark as Exhibit "A," and a view of the same courtyard looking towards the east, which I will mark with the letter "B." Do you recognize these pictures? *A.* Yes, I am beginning to orient myself.

Q. And I show you a third photograph marked "C," which shows again the same direction as Exhibit "A" but shows the corner of the courtyard. *A.* Yes, I see.

Q. Do you remember a passageway leading out of that courtyard shown in Exhibit "C" into a little garden? *A.* No. My battle HQ was in the other court and at that court I never was."

Now, do you remember being asked those questions and making those answers? *A.* Yes.

Q. And are the answers truthful? *A.* This last answer I corrected, that I had been in the courtyard.

Q. When did you do that? *A.* When I told him that together with French civilians who were connected with the place I went into the courtyard.

Q. Who did you tell this to? When did you correct it? *A.* I believe in the same statement to the Colonel. I told him that French civilians were wounded; a 15-year-old girl who had her leg torn off, an older man, he was missing a hand, and both wounded were brought by a French driver to my Regimental HQ.

Q. Well, now, if you did make that correction and you were back in the courtyard, the answer which you gave is not completely accurate is it? *A.* That I was not in the courtyard?

Q. Yes. *A.* I was in the courtyard.

Q. Yes. Well, then, the answer which I read to you: "No, my battle HQ was in the other court and at that court I never was" is not an accurate answer? *A.* The answer is wrong and the proper answer must appear there shortly.

Q. Well, what is the correct answer then? You are recorded here as having said – here is the question,

"*Q.* Do you remember a passageway leading out of that courtyard shown in Exhibit "C" into a little garden. *A.* No."

Is that true or isn't it? *A.* I did not recall the passageway.

Q. And Question 32:

"*Q.* Now is there anything else which you want to add to the testimony which you have given? *A.* No."

Now this was on the 17th October and do you remember that on the 26th October Col Campbell came to see you? *A.* Yes.

Q. And a conversation along the following lines took place,

"*Q.* I understand from the Intelligence Officer at the London District Cage here that you sent word that you would like to have an opportunity to make a statement of some kind to a senior officer of our unit in connection with the events about which you were examined recently by Lt-Col Macdonald. *A.* Yes.

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Q. You will remember that the last time that you spoke to Col Macdonald and he examined you at that time he asked you what your preferences were with respect to representation and counsel in the event of your being put on trial? *A.* Yes.

Q. Since that time Col Macdonald has been away from our HQ and he will be returning as far as we know tomorrow. In the meantime steps have been taken to implement your wish with respect to representation or counsel. *A.* Yes."

Macdonald: *(To court)* This has been in the possession of the accused. I do not know whether it is necessary to ask him to verify it or have a translation made but I think it should be on record.

President: Well, it should be translated because there are people in the Court here who should hear these things.

Meyer: I should like to say something on this point.

Macdonald: *(Resuming cross-examination) Q.* You can make your explanation when we are through.

"*Q.* In view of this situation it would be considered unprofessional for me to allow you to make any statement until such times as you either have an opportunity to discuss the matter with your counsel or until I am so directed by senior military authority to do so. Until Col Macdonald returns, therefore, it will not be possible to give effect to your wish. *A.* Yes.

Q. In the meantime I wish to say to you again that until such times as you have discussed the matter with counsel to be assigned to you that you should make no statement whatever to anyone. I will see to it that by Monday at the latest a senior officer will come and see you again about this matter. *A.* Yes.

Q. Have I made myself perfectly clear? *A.* Yes. I have understood the Lieutenant-Colonel perfectly. I wish to state that the statement I was about to make or which I wanted to make refers to my testimony given the last time and in the long time which I have had at my disposal to think things over I now have views and also new facts which I would want to point out to you on the map. It concerns the putting into action of the 15th Company and happenings at the Abbaye.

Q. Well, as I told you a moment ago you will have an opportunity on Monday to make these representations to some senior officer and in the meantime I can only say that until that time you ought not to make any statement to anyone."

Do you remember that conversation taking place? *A.* Yes sir; that is right.

Q. Now, on the 28th October 1945 when you were examined by myself:

"*Q.* I understand that you have sent for us because you wish to add something to the statement that you gave to us on the 15th and 17th October last? *A.* Yes.

Q. Before permitting you to do so I feel it is my duty to say to you that you are not obliged to make any statement and that if you do it will be taken down and may be used at your trial. *A.* Yes, sir.

Q. We have been endeavouring to get counsel for you but one has not yet been appointed. Nevertheless, if you wish to make a statement we are prepared to hear it, but on the other hand if you wish to postpone it until later that is your privilege. *A.* Please tell the Lieutenant-Colonel that thinking over what I had said at my leisure I discovered that some errors crept in which I would like to remove before the trial and for this I would like if possible to be given a map.

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Q. For the purpose of making this statement do you still consider yourself to be under oath which you took when previously giving evidence? *A.* Yes, sir."

Macdonald: *(To the court)* Now, the first part of this deals with a correction which the accused makes as to the date on which the attack took place on Bretteville. He corrects it from the night of the 7th-8th to the night of the 8th-9th. Otherwise, I don't know that it is necessary to go through it. *(Continuing)*

Q. Now, on page 4 in the middle of Answer 7,

"*A.* ... I would now be grateful to the Lieutenant-Colonel if he would now permit me to be read my statement concerning my activities at Ardenne through your help as interpreter. I would like now to hear that part of my examination in which you gentlemen began to point out the finding of the bodies of shot soldiers *(Interpreter starts reading Meyer's evidence through A.183 to A.189 inclusive from evidence given on 15 October 1945)*. When I came out of my conference with General Eberbach..."

Macdonald: *(To the court)* I think I should explain at this point that the accused after being warned that he would probably be put on trial was given the opportunity of consulting with General Eberbach who was in England in a prisoner of war camp and Oberstleutnant von der Heydte, a professor of International Law, and Lt-Col Chater who was at Intelligence, Canadian Army HQ in the meantime.

Macdonald: *(Resuming reading)*

"*A.* When I came out of conference with General Eberbach certain questions were asked of me and certain pictures of the old monastery were shown to me. Can I see my answers of that day? *(Interpreter then reads from evidence of 17 October 1945...)* I wish to make a statement to Question 184."

Macdonald: *(To the court)* And that question reads "Was it reported to you by anyone that Allied prisoners had died at your HQ and that it was necessary to bury them there? *A.* No."

"*Q.* Yes, go ahead. *A.* But first I want to ask a question. Oberstleutnant von der Heydte is here in this house. Is he going to be my Defender during the trial?

Q. No. You and he, I thought, had agreed that he was not competent to act as your counsel. *A.* Yes, sir. I am very well acquainted with Oberstleutnant von der Heydte because we were for many months together in the same prisoner of war camp and I want to before I make the statement which I intend to make, I would like von der Heydte to give me professional advice before I make this statement as he is an old lawyer.

Q. Now, I think at this point I will have to make clear to you again what your legal rights are. Von der Heydte, I understand, felt that while he had a great deal of experience as a Professor of Law that this did not qualify him to act as your counsel in this case. We have been endeavouring therefore to get some other competent counsel for you..."

Macdonald: *(To the court)* I should insert here, sir, that this "we" is very largely inclusive and it was of course the proper authority and the proper "A" Branch who were doing it.

Macdonald: *(Resuming reading)*

"and as I told you before you are entitled to employ at your own expense either an English or German Barrister and we are prepared or at least the Canadian Army is prepared to supply in lieu of such counsel or in addition to such counsel other competent military officers with legal qualifications. We are hopeful that at least one such military adviser will be available either tomorrow or the next day.

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If you wish to consult either von der Heydte or such military counsel or both before making a statement it is, of course, your privilege to do so as I pointed out at the beginning. Personally as a lawyer myself I don't want to induce you to make a statement which may be harmful to you at your trial but it is your right to do as you please. Do you wish to consult with von der Heydte again? *A.* Yes. He sits upstairs and next to me. From the statement I wish to make tell the Lieutenant-Colonel a lot depends and at any rate it would clarify the matter so that we approach the trial with open cards because the point raised in Question 184 is not 100% correct and I don't want to be regarded as a perjurer at the trial.

Q. Very well, we will send for von der Heydte and if, after consulting him you still wish to make a statement without waiting to consult with such legal counsel as may eventually be appointed we will be prepared to hear your statement."

Macdonald: And then Oberstleutnant von der Heydte is brought in. Q. Is what I have read to you so far correct? *A.* Completely correct.

Macdonald: Now reading from Question 15:

"*Q. (This is to von der Heydte)* The Brigadeführer has asked permission to add to the statement which he gave to us on the 15th and 17th of October last. We are at present endeavouring to obtain suitable legal counsel for him and I felt it my duty to warn him that at this stage of things he perhaps should consult with someone before he volunteers anything else in the way of a statement because if he makes a statement it will be taken down and may be used in evidence at his trial. I don't mean in this sense that what he has already said will not be used at his trial but I must particularly warn him of this at this stage of things. He wishes to consult with you before deciding to make a statement. I pointed out to him that other legal counsel, possibly Canadian military officers, will be appointed within the next couple of days but that it will be up to him to decide. *A. (By Oberstleutnant von der Heydte)* May I repeat Brigadeführer Meyer wants to speak with me about some legal aspects and he does not want me as counsel in his trial but only now till the moment he gets another counsel.

Q. That is my understanding of it. *A.* Yes, I will ask him. *(Von der Heydte speaks to Meyer in German.) (Continued by von der Heydte)* – Yes it is as you said. He wants to speak with me about this – what he said already, and he wants me to advise him if or whether he should make a new statement now or he should wait until the Canadian officer who will defend him in his trial arrives.

Q. Yes. *(The Investigating Team except for the Court Reporter 'non-German speaking' then leave the room to permit Meyer and von der Heydte to consult privately together. After a period of ten minutes the examination is then resumed.) A. (By von der Heydte)* One thing, reading this and thinking over this reflecting, he found that there is a gap, and he is resolved to tell you about this gap. That is why he asks my advice. He feels that you will take it amiss, you understand, that you won't see the right point why he tells this now and that it seems as a sort of, how shall I say it – the point is that he wants you to know that it is not a negation of previous testimony but only an amendment *(I think is the best word)*. It is not that this is wrong what he said but he wants to state an episode he did not think of at the moment when he gave this statement and on reflecting the whole case he found that this amendment is necessary. Do you understand?

Q. Yes, I follow you. *A. (By von der Heydte)* It is not a negation but only an amendment. That is the point which he wishes you to understand.

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Q. Does he wish to make this explanation now? *A. (By von der Heydte)* Yes, he wishes to make it now. Then he says that he can give this statement without my presence and perhaps if you would allow later it may be that later he wants me again.

Q. Well, I think that in view of the fact that he has consulted you about the matter that you should perhaps remain until he has made the statement. *A.* I should remain?

Q. Yes. *A.* Here?

Q. Yes."

Is that a correct record of what occurred on that occasion? *A.* Correct.

Q. Now, a statement of Brigadeführer Meyer follows thereafter and I am not going to read it all because it is pretty much in the same language as he has given before this court, but I just want to point out the main parts of the statement and if my learned friend wants the rest of it I will do so.

Andrew: I just want to make a remark here. Capt Plourde was in London and reported to War Crimes on the 26th October and had been appointed junior counsel on this case.

Macdonald: That is not correct, Capt Plourde had not been appointed at that time.

President: Alright, go ahead,

Macdonald: *(Resuming questioning) Q.* About a third of the way down the page, Answer 22:

"*A.* On the 10th or 11th of June two officers of my Regiment reported to me that in the area Ardenne they had found shot Canadians. That report was to me incomprehensible and I therefore ordered my Adjutant, Obersturmführer Schuemann, to investigate this report. Schuemann came back with these two officers after a few minutes and confirmed the announcement made by the two officers. Thereupon I myself personally made an inspection of the shot Canadians and found that the Canadians had been killed through shots in the head...

The Adjutant assured me that prisoners sent back from the sector of the 3rd Battalion via Cussy had been brought back to Ardenne and, under his supervision, had been handed over to the Feldgendarmerie for evacuation. ...

Q. Now when you went to look at these bodies where were they? Where did you find them? *A.* In the garden.

Q. That is the garden that is connected with the main courtyard by a passageway on the north-west portion of the Abbaye premises? *A.* I can't remember that precisely any more, it was a little garden next to a courtyard.

Q. How many bodies were there? *A.* The number I can't give exactly, it must have been 18 or 19.

Q. Did you examine each body? *A.* No.

Q. Did your Medical Officers report to you that all 18 or 19 bodies appeared to have died from bullet wounds in the head? *A.* Yes, they said to me that they had been killed by head shots.

Q. That is all 18 or 19? *A.* That I don't know...

A. On the morning of the 8th I was at the Regimental HQ at sunrise with General Geyr at my observation tower of Ardenne."

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Now do you remember those questions and answers and what occurred on that occasion? *A.* Yes sir.

Q. Is it a correct record? *A.* Yes.

Q. And then on the 30th October, Question 2:

"*Q.* Before I proceed any further I want to know whether you consider the oath which you originally took with respect to these examinations as still binding on your conscience? *A.* I maintain my oath with addition of the declaration I made on Sunday...

Q. What I want to know now is subject to whatever corrections you made... in your statement of Sunday 28th October, do you consider that the contents of the transcript which has just been read to you of your evidence given on the 17th October 1945 is completely true? *A.* Yes.

Q. Then we are perfectly clear, are we, that the record of your evidence of the 17th October which has just been read to you is correct and a true copy of what happened and what was said at that time? *A.* Yes, that is correct...

Q. Now, you have had read to you the complete transcript of the proceedings of 28th October 1945, is that a correct transcript of what happened at that time? *A.* Yes.

Q. Will you then sign on the first and last pages and initial at the bottom of each of the pages of the proceedings?"

Is that a correct record of what occurred at that time? *A.* Yes.

Q. Now, have you anything that you would like to say further about the matter? *A.* In my first statement I told the truth and in my further statements I completed point 184.

Q. Now, Question 184 I will read to you: "Was it reported to you by anyone that Allied prisoners had died at your HQ and that it was necessary to bury them there?" and your answer to that question made on oath was: "No." Now, will you tell me how you can now justify yourself in saying the complete opposite? *A.* I am not saying the opposite. Under "to have died" I understand a wounded person who has died there.

Q. Now, I give you question 183: "Do you know whether any of the wounded prisoners or any others died while at your HQ?" and your answer under oath to that question was: "I heard nothing of that." Is that your truthful answer? *A.* Yes sir. I did not hear that wounded died or that others died. I did, however, hear as was reported to you that Canadians had been shot there.

Q. Well, what do you think happened to the Canadians that were shot if they didn't die? *A.* I have already said that under "died" I understood a wounded person who, because of loss of blood, died.

Q. Well, don't you suppose that is what happened to these people? *A.* I don't regard that as dying, that is not described as dying in Germany, that is murder.

Q. Well, I agree that it was murder but I can hardly see how you can have a murder without somebody dying, will you tell me how that is accomplished? *A.* I cannot give any answer to this question.

Q. The simple answer to the question is that you didn't tell the truth, in fact you lied? *A.* I have told the truth as it was put before me.

Q. Now, Question 191:

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"*Q.* Well then, I want to tell you something more that your men say. They say that when the presence of these prisoners was announced to you, you said "what do we want with these prisoners, they only eat our rations." You then issued orders in a low tone to one of your officers and then said in a louder voice, "in future we will take no prisoners." The officer then left with the guard who had announced the presence of the prisoners, interrogated the prisoners and searched them, they were then taken into a little garden adjoining and shot by an Unterscharführer attached to your HQ – Now, what do you say about that? *A.* Of that I know nothing. What the Colonel has said I do not know anything. I never heard anything nor was I ever so stupid as to give an order to shoot prisoners."

Now, you say that is a truthful statement, do you? *A.* I can repeat here before the court the same thing as I said to you there. First, I cannot recall that prisoners were reported to me. Secondly, in the Abbaye as well as in the entire Normandy I gave no order to shoot a prisoner and I did not know at that time when I made this statement that soldiers from my Division or from my Regiment shot prisoners. What I now know about that, that it may have been members of my Regiment, I have learned in the course of the proceedings here.

Q. Now, it was on the 11th June that you went to that garden and saw 18 corpses there, wasn't it? *A.* Yes sir, that is right. You will also recall that I, as well as my Divisional Commander, doubted that it may have been people from our unit.

Q. But at that time you had formed the opinion, and so had your Medical Officers, that every one of these 18 soldiers had been killed by head wounds of some sort? *A.* I should first like to establish that I did not say 18.

Q. I am not going to quibble about 18 or 19, you know that a lot of Canadian prisoners had been shot at your HQ, and you knew it on that day, and that knowledge was in your mind when you gave that statement. *A.* I say to you that I gave no order to that effect, and that the fact was not known to me, and afterwards when I heard that from the two doctors I doubted that my soldiers had done it.

Q. I don't care anything about giving the orders or who did it, you knew on the 11th June that Canadian prisoners had been shot at your HQ and when you gave these statements on the 15th and 17th October 1945 that knowledge was present in your mind. *A.* In the question I was asked whether any of my soldiers had been shot and I said "No." Then I was asked whether it had been reported to me that my soldiers had shot Canadians and I denied that.

Q. You said you didn't know anything about the whole business? *A.* That my soldiers were supposed to have shot soldiers I did not know.

Q. Alright, if you think by evading the question that way you are convincing anyone that you are telling the truth you are seriously misled. *A.* Of that I can only say the following: I do not know today who really committed the deed and I have no idea of incriminating my Regiment without exact information.

Q. I put to you the next question, Question 196. See if you can get around this one.

"*Q.* This member of your unit who saw this and heard what I have just repeated took us to the place where the execution is supposed to have occurred and 18 bodies of Canadian soldiers were recovered from this spot" –

And let me say here that unless there were a large number of spots where 18 bodies were buried you knew what I was talking about –

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"every one of whom have died from bullets in the head or other head injuries."

Is there the remotest possibility you didn't know what I was talking about on that occasion – did you know what I was talking about on that occasion? *A.* Yes.

Q. Now, let's hear what your answer is,

"*A.* Tell the Lt-Col that I have never heard of this thing until I have just been told of it."

Now, is that a truthful answer? Answer yes or no. *A.* I cannot answer yes or no. I must say more.

Q. You answer yes or no. *A.* I cannot.

Andrew: Here is another answer that has not been read in full. It is only fair that the whole answer be read.

President: Yes.

Macdonald: *(Reading further)*

"*Q.* This member of your unit who saw this and heard what I have just repeated took us to the place where the execution is supposed to have occurred and 18 bodies of Canadian soldiers were recovered from this spot, every one of whom had died from a bullet in the head or from other head injuries. *A.* Tell the Lieutenant-Colonel that I have never heard of this thing until I have just been told of it and if that happened it is swinishness. I can tell the Lieutenant-Colonel that I did not give that order whether he believes it or not."

Q. Alright now, give us your explanation? *A.* This point begins with a statement that the witness took us to the place of execution. Now I should like to hear what comes before that answer because there is a statement that he had seen...

Q. You mean you want a little more time to think an answer up. I will read you a couple of more pages and then you will have time to think. *A.* I don't need any time to think this over.

Q. And glaring at me isn't going to answer anything either. You are not going to intimidate me by your glares I can assure you. Now, I will go back to the question I was reading to you before, I will read all that intervenes:

"*A.* Of that I know nothing. What the Colonel has said I do not know anything, I never heard anything nor was I ever so stupid as to give an order to shoot prisoners.

Q. Is it possible that you were astute enough not to give orders to shoot prisoners but that you intimated to your officer that you wanted that done? *A.* No.

Q. Whose responsibility do you think it is if these prisoners were killed as I have told you? *A.* These prisoners were handed over to the Feldgendarmerie and the Feldgendarmerie then had the responsibility for them.

Q. In this particular case they were not and the shooting was done by an Unterscharführer permanently attached to your HQ? *A.* When was that supposed to have been on that day?

Q. On the morning of the eight of June. *A.* There was no Unterscharführer with me at that time.

Q. This member of your unit who saw this and heard what I have just repeated took us to the place where the execution is supposed to have occurred and eighteen bodies of Canadian soldiers were recovered from that spot, every one of whom had died from a bullet in the head or from other head in-

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juries. *A.* Tell the Lieutenant-Colonel that I have never heard of this thing until I have just been told and if that happened, it is swinishness. I can tell the Colonel that I did not give that order whether he believes it or not."

Well now, that has given you another five minutes. What is the explanation now? *A.* I can only say the same thing. At that time I had never heard of this, that an Unterscharführer from my Regiment had shot these Canadians there and if that happened then it is swinishness.

Q. Not only did you give a very evasive answer on that occasion, but when you were asked by your superiors for a report as to whether any atrocities had occurred anywhere in your division, you lied to them as well? *A.* That is not correct what the Colonel says. That time, as I was asked to make a report I passed the reports on to the units and to this day it is not known to me who it was who committed this deed.

Q. But you did not tell your superiors – you sent in a "nil" report, did you not? *A.* Regarding this case?

Q. Regarding any atrocities of which you had knowledge? *A.* I spoke with the Divisional Commanders about that only once or twice.

Q. But Brigadeführer Witt was not the one who was asked to make this report. It was you. It was you who put in the "nil" report knowing that at your own HQ, 18 prisoners had been killed. *A.* If you regard this order in this way, then you are right. It was not known to me then whether my troops had done it.

Q. It had occurred at your HQ through and you did not report it. *A.* Yes, that is right.

Q. It would be pretty difficult to get it any closer to you unless it was done right in your own command post. *A. (No audible answer.)*

Q. Now, it was after you had made these denials on the 15th and 17th October that you were advised that you would probably be put on trial and then six days later... *A.* I should like to point out here...

Q. Now just a minute – just a minute – I'll do the pointing out now and you can say what you want later. Nine days later, or perhaps that is not quite accurate, perhaps it was eleven days later. Nine or eleven days later you decided it was high time for you to get on the right side when you found out that we knew much more about this than you had thought we did, and that you had better come and make a statement fast before the trial, and despite the fact that we did everything we could to dissuade you from making this statement we could not stop you. Now, what is your comment on that? *A.* You are right but with these differences. It was not nine or eleven days later but in the first twenty four hours but I could not get in touch – I could not reach any officer and the commandant of the house when I reported to him the following day said that no officer could be reached and that you yourself were enroute and that he would look after the matter – within a reasonable time an officer would look after the matter and as far as my silence up until that point, I can tell you that every commander has silence when there is no clarity in the matter – remains silent as long as he can.

Q. You mean until you discover that you are in for it you keep silent...

President: This is a military court and sarcastic suggestions and a running commentary is something that we do not have in a military court.

Macdonald: I'm very sorry sir. I have been dealing with an extremely difficult witness and I felt justified in putting the question.

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President: Bring it out with your questioning but we will have to cut out these sarcastic suggestions.

Macdonald: Very good, sir.

Macdonald: *(Continuing cross-examination) Q.* Now, I want you to tell me how many bodies you yourself observed in this garden on the 11th of June when you went to it to look at these bodies? *A.* I did not count them. I looked in from this door, got the picture and went with my Adjutant to my Headquarters.

Q. Now, you suggested that the reason why these bodies had not been buried before was because your men had been over-worked and you were in a dangerous battle area. Now what I am curious to know, is if that is so? *A.* I believe the Lieutenant-Colonel is making a mistake here. I have never said that these Canadians were not buried because we were too busy, I spoke of dead, fallen Canadians and Germans in the front line particularly in Authie.

Q. My recollection was that when I asked you for an explanation as to why these bodies had laid unburied so long – *A.* The recollection which the Lieutenant-Colonel has is not correct. When I saw these bodies I gave orders that they were to be buried.

Q. How long had the bodies been there before you saw them? *A.* I do not know that.

Q. So that then there is really no good reason why they should not have been buried before? *A.* They had to be seen first. The medical officers reported to me in the morning.

Q. I suppose by this time they had become a menace from a health point of view, had they? *A.* I can only say to the Lieutenant-Colonel I only saw these bodies on the eleventh for the first time.

Q. You have seen a lot of dead bodies in your experience as a soldier, have you not? *A.* Yes.

Q. Well then, had you no impression as to when these men had been killed? *A.* I have already told the Lieutenant-Colonel that I did not go right into the garden and look over each individual body but I convinced myself they had been shot.

Q. Well, don't you think that it would have been of assistance to you in finding out who did it to decide when they had been killed? *A.* I did not conduct the investigation. The investigation was conducted by the legal officer and the Adjutant. It could only have been in the last few days because in the last few days there was no large group of prisoners.

Q. Now, did you know that they had been buried in five graves? *A.* No. I did not know how they were buried.

Q. Can you give any explanation why they should have been buried in so many graves? When they were all being buried at the same time? *A.* I cannot give any explanation, perhaps it was something to do with the terrain. I do not know.

Q. Are you quite sure that you saw eighteen at that time? *A.* I did not see any eighteen. I have already said I looked in the door and I saw a number of dead Canadians. I did not count them. It was later reported to me that there were eighteen or ninteen.

Q. Now, your own history, as far as you employment is concerned. You were a merchant from 1925 to 1928, were you not? *A.* Yes.

Q. Then you were unemployed for a year. *A.* Yes. As a merchant in my business, I was unemployed. Within my calling I could find no work.

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Q. Then you became a member of the provincial police? *A.* No. In this year, I was a mine-worker. I earned my bread as a mine-worker.

Q. I understand that you had told the SHAEF Court that you had served something like three years on the provincial police. *A.* Up until 1928 I was in business myself, a merchant and then from 1928 to the first of October 1929 I earned my bread as a miner. From the 1st of October until the 15th of May I was in the rural police.

Q. Where were you stationed? *A.* I was in Scherin in the police school. In 1934 I moved to Rostok.

Q. And was that where you were stationed until you joined the Leibstandarte? *A.* From Scherin, the police school, I went to the Leibstandarte Adolf Hitler in 1934, the 15th of May I think.

Q. And where were you stationed? *A.* In Berlin.

Q. Do you remember a secret order which was issued by the Führer on the 15th of October 1942?

Judge Advocate: Of course this method of cross-examination presupposes that you have an order.

Macdonald: It is contained in the SHAEF Report.

Meyer: There are all kinds of orders which have been given and it is asking quite a lot to ask if I remember one given on the fifteenth of October 1942.

Macdonald *(Continuing cross-examination) Q.* Yes, but you have been examined on this before and it is not entirely now to you. Now, the order I am speaking about is with respect to commandos and paratroopers. Do you remember that order? *A.* Yes, I remember such an order.

Q. And you remember that in paragraph three, it says:

"I therefore order:

Hereafter all opponents met by German troops in the course of so-called Commando operations, in Europe or Africa, even if they would appear to be groups of soldiers in uniform or demolition squads with or without arms, must be exterminated to the last man in combat or pursuit. It will make no difference whatsoever whether, in the course of these actions, they be landed by boat or plane or descend by parachute. Even if these individuals acted as if they wished to surrender no quarter must, on principle, be given them."

Now, do you remember the terms of that order which I have read to you? *A.* The article terms as they stand in there I do not recall. I already said to the Colonel in the Spring of 1945 that by the division in 1942 I received an instruction, demolition squads and sabotage troops who were landed or brought into the hinterland, the rear areas would not be regarded as soldiers but after being taken prisoner would be handed over to the police. I have not had the order itself in my hand.

Q. Well, now, will you tell me, if such an order was issued, with your knowledge of international and military law, whether that order would be in violation of the laws of war?

Andrew: Before he answers this question. Again he is asking the witness something he is not sure of. Now, the whole order is absolutely different in the next paragraph. If he reads it then a fair answer can be obtained from the witness. He has read one portion. *(To Macdonald)* Now read paragraph 5.

Macdonald: This is the executive portion of the order, Col Andrew. I have it here in both the German and the English.

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Andrew: I have it here in both German and English too.

Macdonald: The witness has seen this order before. We cannot put the whole report in evidence.

Judge Advocate: No. You cannot put the whole report in. What is it you are reading from?

Macdonald: The SHAEF *Supplementary Report* Exhibit C-1, C-2, C-3, C-4.

Judge Advocate: That is what you were reading from a few minutes ago?

Macdonald: Yes.

Judge Advocate: And you have a copy of that, have you not, Col Andrew?

Andrew: Yes, I have sir. Thank you.

Macdonald: *(Continuing cross-examination) Q.* Now, will you comment on that, please, witness? *A.* I have not been instructed on this point but I can say something about that, and that is concerning my actions. In the first place I had not fought against airborne troops and have never had an opportunity to capture any saboteurs, but during the fighting in Normandy I was asked by the G-3(I) of my division what was to be done with the so-called commando troops. It is possible that the G-3(I) was referring to this order. Thereupon, I told the G-3(I) "If they are wearing uniforms then they are obviously soldiers." I can also tell you with what commandos this had to do, – with what commandos we had to do. It had to do with the 47th Commandos and I ask that the witness Meitzel be asked. He must have observed me while I with members of these commandos was speaking with them. He must also have heard my order that these men were to be treated as soldiers. I request that the witness Meitzel be questioned regarding this.

Q. Well, where did this occur, and when? *A.* That occurred in the first period that I had command of the division.

Q. Now, actually, witness, the order was that "These people will be shot whether in uniform or not." You must have seen that when you were reading it? *A.* I have not had the original order itself in my hands, and I judge only from original orders which I have actually in my hands.

Q. Very well then, we will say this: If this is a correct copy of the original order is it ordering a treatment of prisoners in contravention of the laws of war? *A.* Yes. It breaks the international laws.

Q. Yes. Now did you receive any similar orders to that from your Divisional Commander Witt? *A.* No.

Q. Was there any understanding with the commanders of other units in the Division that prisoners were not to be taken? *A.* No. I should like to make clear here that never in my entire military career have I had an order not to take prisoners or to shoot prisoners, – to shoot unarmed prisoners.

Q. Well, do you not think it is strange, then, that where a division had been trained in the same uniform manner and had the same type of personnel throughout, that we should find not only in your regiment but also in the adjoining regiment that the regimental commander himself had ordered the shooting of prisoners and witnessed the execution being carried out?

President: Has that been proved?

Macdonald: I have reports here, sir, to establish that. I am quite prepared to verify it.

President: Alright. Carry on.

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Meyer: *(Through interpreter)* I should like to know if these are facts you mention.

Macdonald: I say they are facts insofar as it is possible to prove anything. There are witnesses from the 26th Regiment.

President: Well, now, that's...

Judge Advocate: It is not fair, what you are going to ask him. As far as you can go, in any event, would be to ask him whether he knew something had been done.

Macdonald: He has asked me the question. I am quite prepared to limit it.

Judge Advocate: But you are introducing to the Court something that has not been proved. You may put the question to him, – if he knows this, and he can answer "Yes" or "No."

Macdonald: He is asking the question.

Andrew: He asked you the question and the proper answer for you to make is "No. It has not been proved."

Macdonald: I would say nothing of the kind.

Judge Advocate: But you see, it is not proved in this Court.

Macdonald: No. Quite.

President: A set of circumstances has been established by a Military Court of Inquiry. That is all, is it not?

Macdonald: Yes. That's right.

President: And they make a finding or a report?

Macdonald: That's right, sir, yes.

President: Well, that is not absolute proof.

Macdonald: I will not ask the question, sir, if you do not think it is helpful to you. That is the basis on which I suggest it should be permitted. It seems to me that if a pattern can be established throughout a particular division which has been trained in the same way with the same sort of personnel, it should be of some assistance to the Court in determining as to the soundness of the explanations given for the offences which have occurred in this particular unit of the division. Whether those explanations are valid ones, or whether the offences merely fit into a pattern of conduct that persisted throughout the whole organization, in other words, it even suggests that the divisional commander himself may have issued some such order.

Judge Advocate: I do not think you can introduce it as an accomplished fact. I think the best thing to do is say "Do you know that a certain incident occurred somewhere else?"

Macdonald: Yes. I suggest too that this witness has had unusual opportunities for such knowledge because he himself became divisional commander and would have had a better opportunity for finding these things out, that he may not have had as regimental commander.

President: Yes.

Macdonald: *(Continuing cross-examination) Q.* Now, I will put this to you specifically. There were two regimental commanders in your division, were there not? *A.* Four.

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Q. Yes. There were two Panzer Grenadier Regimental Commanders? *A.* Yes.

Q. And the other one was Obersturmbannführer Wilhelm Mohnke? *A.* Mohnke, yes.

Q. And he, prior to his appointment to the 12th SS Division, had belonged to the Leibstandarte Adolf Hitler? *A.* Mohnke was in his last engagement with the LAH, Leibstandarte Adolf Hitler, in 1941, was wounded, and had a false leg, ankle.

Q. Now, did you know that on the 11th of June 1944, three Canadian prisoners of war were interrogated by this commander at his HQ at Haut du Bosq?

President: Wait a minute. Wait a minute. Can you prove that?

Macdonald: I can submit a report, sir, which is evidence before the Court.

Judge Advocate: The point I am trying to make is that it is not proved, you see. It has not been brought in the case before the Court for what it is worth. It could have been filed, but, not having been filed you could ask, perhaps, general questions, – whether the accused knew something, and then you might ask the Court after the defence is completed, if in rebuttal certain reports can be brought in. It might be possible in rebuttal.

Macdonald: In the first place, I would submit that it is merely a type of question which in normal practice is admissible in cross-examination in any event; secondly, if I want to bring in these reports in rebuttal I must first ask the question in order to provide the foundation for that application.

Judge Advocate: Is it not better to ask him "Do you know something happened?"

Macdonald: That is exactly what I am asking him.

Judge Advocate: No, you are not asking if something happened. "Did you hear if it happened?" You should say so. "Did you hear anything happening," rather than assuming it is a fact.

Macdonald: I will re-phase the question but will you please correct me if it is not in accordance with your views.

Macdonald: *(Continuing cross-examination) Q.* Do you know if on the 11th of June, *(To the Court: I am being specific about it because the proof is specific. I am not talking about something in general.)*

Andrew: Why not place the question this way: "It has been reported to me that a certain thing happened on a certain date."

Judge Advocate: Or better still: "Was it reported to you?" "Did you hear a report that such and such..." instead of "Do you know of something happening?"

Macdonald: I do not want to use any technical words because the witness is extremely technically minded, and I would rather use more general terms.

Judge Advocate: "Did you hear a report?" How about that?

Macdonald: Alright.

Macdonald: *(Continuing cross-examination) Q.* Did you hear a report that on the 11th of June 1944, three Canadian prisoners of war were interrogated by the commander of this regiment at his HQ at Haut Du Bosq, and were then shot in the back while he and his officers stood and watched. Did you ever hear of that? *A.* No. I have heard nothing of that.

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Q. Do you know Sturmbannführer Bernard Siebken, the commander of the 2nd Battalion of the 26th Regiment? *A.* Yes.

Q. And was he formerly a member of the Leibstandarte Adolf Hitler? *A.* Yes.

Q. Did you ever hear that on the morning of the 9th of June 1944, five Canadian prisoners of war were lined up and shot at the Headquarters of this commander in Le Mesnil Patry while ten officers stood and watched in what is described by the civilian witnesses as a "happy mood." Did you ever hear of that? *A.* I have not heard of that and also I do not believe it.

Q. Now, did you ever hear that on the morning of the 9th of June, at the same time as the other incident, that an officer and escort went to the Battalion First Aid Post of this battalion which was 200 meters from the Battalion HQ and took out three Canadian wounded prisoners of war and shot them in the back while an elderly French woman was forced to stand and watch this murder? Did you ever hear about that? *A.* No.

Q. And in the same battalion did you ever hear that on the evening of the 8th of June 1944, forty Canadian prisoners of war, while being escorted to the rear from this HQ, were turned into a small field near Fontenay Le Fesnel and ordered to sit down? That then an officer and nine soldiers arrived, formed up in line abreast and shot 35 of the prisoners with their machine pistols, five escaping to relate the story. Did you ever hear of that? *A.* No. I have not heard anything of it. In England for the first time in November I have heard of this story.

Q. Now, do you know Sturmbannführer Bremer and Hauptsturmführer von Reitzenstein? *A.* Yes.

Q. Both of the 12th SS Reconnaissance Battalion[s]? *A.* Yes.

Q. Did you ever hear that on the afternoon of the 8th of June 1944, at the Headquarters of this unit, 19 Canadian prisoners of war were murdered in three different incidents on the orders of this commander at the Chateau d'Audrieu? Did you ever hear of that? *A.* No. This is the one, incidentally, I heard in London. Not the other one.

Q. And is that the one you read about in the Canadian service paper? *A.* I cannot recall whether, – it is possible that that is the case but I cannot recall.

President: The accused, incidentally for the record, the accused cannot be held answerable for these incidents which occurred in other regiments, nor can that information which has just been divulged be used to influence the Court in this trial here. The purpose of introducing those alleged reports is to show tendency. That is really the Prosecution's case.

Andrew: Just one thing, sir. I am reading paragraph 5 from the Order of the Führer referred to in the cross-examination, the last part of the cross-examination of my friend, and, as the document was referred to, I wish to read it so it will go down in the record.

"These regulations do not apply to hostile soldiers captured (or who have surrendered) in open combat in the course of normal combat operations. (Offensives, large scale landing operations by sea or air.) They do not apply either to enemy military personnel fallen into our hands following naval engagements, or to airmen having descended by parachute to save their own life in the course of aerial fighting."

I have no questions.

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Macdonald: Lest there be any misunderstanding about this order: I was not suggesting for a minute that it applies to this particular accused, because the case would rest right there if it did. I was merely suggesting that here was an order from the Führer which the witness agrees that, insofar as it affects paratroops and commandos, was in violation of the laws of war because it says that such persons, even if in uniform, should not be taken prisoner. That was the whole point.

President: The accused and escort may withdraw. The Court will adjourn until 10 o'clock tomorrow morning

(The court adjourned at 1630 hours until 1000 hours on 21 December 1945.)

21 December 1945

President: I declare the Court open...

Macdonald: Sir, there were a couple of witnesses who have asked me to speak to you to get permission to get away if it is possible. The one is Madame Vico and the other is Capt Bluteau, the Records Officer. I have spoken to my friend about them and he has no objection to them leaving. I see no likelihood of them being required for any further purpose.

President: Yes, let them go.

Andrew: Call the witness Meitzel.

Macdonald: Capt Bluteau has one bit of evidence to give merely with respect to that Corporal who was missing. We did not have the official report from CMHQ at the time he gave his evidence previously. The Court therefore granted permission that the evidence could be given when it was received. It is only in the form of a letter but I think that evidence should be given before he leaves.

Andrew: Do you want to put that in now?

Macdonald: If he is here, yes.

President: *(To witness Meitzel)* I remind you that you are still under oath.

Andrew: Shall I proceed sir, or should my friend bring in his witness, Capt Bluteau?

President: I think we had better have him first.

Andrew: I am informed, sir, that Capt Bluteau is not here at the moment so I will proceed, with your permission, sir.

President: Alright.

Second Witness for the Defence

Obersturmführer Bernhardt Meitzel, 12th SS Panzer Division (Hitler-Jugend) having been reminded of his former oath, is examined by the Defending Officer, Lt-Col M.W. Andrew:

Andrew: *Q.* Meitzel, you have already been sworn? *A.* Yes sir.

Q. And you have already told the Court that you were an Ordonnanz Offizier for Panzer Gruppe west and that you were with the 12th SS Panzer Division? *A.* Yes sir.

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Q. Were you every in Beverloo? *A.* Yes, sir. I was some time with the 25th Regiment in Beverloo during the period of the basic training and organizing of the Regiment.

Q. And what time would that be? *A.* It must have been the time between August 1943 and January 1944.

Q. I think you said you were there through the training period, would you tell the Court what you know about the training of the 25th Panzer Grenadier Regiment? *A.* General Meyer trained his men according to his experience which he gathered during the Russian campaign. I think the 25th Regiment was the best Regiment of our Division and had very strict discipline.

Andrew: I have a request from the accused that the witness speak in German as the accused can understand better and have it translated into English.

President: Alright.

Andrew: *(To witness)* You speak in German and it will be translated into English.

Andrew: *(Continuing examination) Q.* Now, what about the training, were you ever told anything about the handling of prisoners? *A.* Yes sir. First of all, throughout the training, instruction had to be given about the Geneva Convention and the Articles of War. Secondly, there were exercises without troops during their training which all Adjutants had to take part in, and which dealt with the treatment of prisoners and their interrogation. Thirdly, a general order was issued afterwards about the treatment of prisoners of war and the interrogation of prisoners of war. This order as repeated again on the second or third day of the invasion and was distributed down to Companies. The content of this order is approximately as follows. First, as many prisoners as can be should be taken. Second, only units with recce missions have permission to interrogate prisoners themselves. Third, all other must send prisoners back to Division as quickly as possible. Fourth, pay books, identity discs and personal property are to be left on the prisoners. Fifth, it is to be prevented that prisoners destroy their distinctions in rank and their badges. Sixth, officer prisoners of war and other rank prisoners of war are to be sent to Division by separate routes.

Q. Did you ever hear any rumours in Beverloo or during the time you were connected with 12th Panzer Division that Brigadeführer Meyer said his unit takes no prisoners? *A.* I never heard anything about it.

Q. Did you ever hear that in any junior officers' mess? *A.* No, also there I never heard anything of that.

Q. When did you say you left the 25th Regiment? *A.* I think I was last in Beverloo in January 1944.

Q. Were you with the Regiment after they moved from Beverloo? *A.* In France I was no longer in the general billeting area of the Regiment.

Q. When did you join the Regiment or become connected with the Regiment again? *A.* During the invasion I was numerous times, or a few times, at Regimental HQ.

Q. Where were you on the 6th of June? *A.* On the 6th of June I was in Berlin.

Q. Where were you on the 7th of June? *A.* On the 7th in the morning at 8 o'clock I arrived at Divisional HQ.

Q. What were you at Divisional HQ? *A.* I took over once again my job as First Ordonnanz Offizier.

Q. And tell us what was happening on the 7th, after you arrived at Divisional HQ. *A.* First contact with the enemy had taken place in the night from the 6th to the 7th between recce elements of the divisions.

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On the morning of the 7th the main body of the 25th Panzer Grenadier Regiment, south of Caen and north-west of Caen, formed up for an attack in a north-westerly direction.

Q. And do you know if at this time there were any other troops north-west of Caen besides the 12th Panzer Division? *A.* Yes. First of all, Caen at that time was in the billeting area of the 21st Panzer Division. From the report on experiences in battle which came out in the middle of July and was issued by Army Group that the 21st Panzer Division had the order first to push in the bridgehead of the 6th English Para Division but that throughout that, on the 6th a battle group of the 21st Panzer Division was put into action north-west of Caen, the battle group was known as "Battle Group Rauch." Apart from that battle group there were remnants there of the 716 Coastal Division in Franqueville and Authie there were Air Force units there in order to protect the Airport Carpiquet, and throughout the first days of the invasion the heavy anti-tank battalion No. 202 helped the 25th SS Panzer Grenadier Regiment. That was all formations that I can remember.

Q. Will you tell the court how the 21st Panzer Division dressed? *A.* The Panzer Grenadiers, as far as I know, wore camouflage suits made of Italian tentage material.

Q. And how did the coastal defence people dress? *A.* The new camouflage suits had already been issued but I only say the old grey German field uniform.

Q. And how did the people in Authie and Buron dress? *A.* They wore the standard German air force uniform.

Q. Do you know if any of these people you have mentioned ever fought with the 12th Panzer Division? *A.* North-west of Caen, there was the Headquarters of 716 Coastal Division. The Divisional Staff on the 7th reorganized a battalion from the remnants of the Division. This battalion fought in the sector of the 25th Regiment and was, as far as I can recall, later handed over to the 21st Panzer Division.

Q. Can you tell us what the boundaries were between the 21st and the 12th Division on the 7th or subsequently? This is Exhibit T-2 I am showing you. *A.* On the 7th there was no boundary as far as I can remember between the two divisions because the 1st Battalion of the 21st Panzer Grenadier Regiment reached the southern outskirts of Caen while on the 9th and 10th the fixed boundary between the two battalions was the railway.

Q. Will you describe the railway? *A.* The railway west of the road Caen-Douvres.

Q. Did you ever know a Russian driver employed by Meyer? *A.* I heard in Beverloo that Standartenführer Meyer used a Russian driver.

Q. Do you know if this Russian driver was with him in Normandy? *A.* I never saw him or ever heard of him.

Q. Do you know what happened to Brigadeführer Meyer's driver on the night of the 8th June? *A.* After the attack on Bretteville, Meyer gave a report to Brigadeführer Witt on the next morning when I was present and could listen to it. In this report Standartenführer Meyer said that he, on the road to La Villeneuve south of Rots, had pushed on together with Hauptstrumführer von Buettner, that Hauptsturmführer von Buettner had been mortally wounded, and that a little while later his driver too had been shot. As far as I can remember it was a man of the rank of Rottenführer I am sure it was a German.

Q. And you say you listened to this conversation? *A.* Yes, I was present when that conversation was made to Witt from Meyer.

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Q. Were you ever at any meetings between Brigadeführer Meyer and his Regimental Commanders after he became Divisional Commander? *A.* I only remember two officer discussions, one in Verson and one in Caen before we handed Caen over, before we left Caen.

Q. What were they, what was the nature of the conversation? *A.* The first conversation was the rape of a French girl by a member of the 6th Battalion. The NCO had, on the day before, been shot by Court Martial and on the next day Standartenführer Meyer spoke about this to his Commanding Officers. I remember that he said the young soldiers of the Division are being brutalized by battle and it is under all circumstances to be prevented, that this leads to crimes of this nature. I order[ed] that such occurrences be most strictly punished. That is all.

Q. Do you remember being at Garcelles? *A.* Yes, on the 10th July 1944.

Q. What were you doing at Garcelles? *A.* At that time I handed over my job as Ordonnanz Offizier to my successor.

Q. And what happened there, that you remember? *A.* At that time the height 112 and 113 was recaptured by us and at that time in our Division 150 prisoners were taken. As the weather was extremely bad that night Brigadeführer Meyer gave the order that for the night they should be put into the buildings of the Divisional HQ. That is all.

Q. Do you remember any other incidents where General Meyer was connected with Canadian prisoners? *A.* On the 10th August 1944 I had been captured by the 4th Canadian Armoured Division. As I succeeded in escaping I reported back to Brigadeführer Meyer. He was having supper with three Canadian prisoners of war at his HQ.

Q. Did you see anything that should not have been done to prisoners, happening there? *A.* No, I did not see anything.

Q. Well, do you remember the 8th of June 1944. *A.* Yes.

Q. Will you tell me the events of the morning of the 8th of June 1944 as you remember them? *A.* I have endeavoured to reconstruct the happenings of the invasion. I believe that I remember that parts of the 1st Battalion of the 25th Panzer Grenadier Regiment were taken back from Cambes to Epron. On the morning of the 8th I tried in vain to get the eight o'clock and the ten o'clock sitreps from the Adjutants of the Regiment. As also the noon sitrep did not arrive I myself drove to the advanced HQ of the Regiment.

Q. What did you do when the eight and ten o'clock sitreps did not arrive – what did you do? *A.* I surely called the Headquarters, the advanced HQ, without making contact with Obersturmführer Meyer.

Q. Did you ask for Meyer? *A.* No. It is the job of the Adjutant to make out the report but he too had no contact with Meyer.

Q. Where was the Adjutant at that time – when you phoned him? *A.* I believe he was at the Headquarters in St. Germain and I think the Sigs officer was in the old Abbaye.

Q. Could the Sigs officer – did he have contact with Brigadeführer Meyer? *A.* No, surely not.

Q. And then what did you do? You told us a minute ago but repeat it. What did you do? *A.* I myself drove up to the Ardenne Abbaye in the hope of finding Meyer there and to get the positions of his units from him.

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Q. What time was this? *A.* As far as I can recall it was 12 o'clock because I think as I left I was invited by lunch by the Brigadeführer.

Q. Did you see the Brigadeführer at Ardenne Abbaye when you arrived? *A.* Yes, I met him on top of the tower with the forward observation officer of the heavy artillery battalion.

Q. What was he dressed in? *A.* I think I never saw him dressed differently than in the camouflage suit.

Q. And after you saw him in the tower, what happened? *A.* He marked the positions of his units on my map. He came down the tower – anyway he left the tower with me and invited me for lunch. As I had no time I left the inner courtyard, came under fire in the big orchard there and had to seek cover under a radio car.

Q. Did you have a look inside the chapel? *A.* Yes. It was very dark in the chapel.

Q. Did you see any vehicles in the chapel? *A.* No.

Q. Are you sure? *A.* Yes. I have never been able to remember that there were vehicles in the chapel.

Q. Now, can you tell us anything about the evacuation of wounded on the 7th and 8th of June? *A.* I remember that the Commander of the Medical Battalion came two or three times to Divisional HQ in order to state that he tried to get the Ib (approximately the Deputy Adjutant and Quartermaster General) to give him vehicles because many of our ambulances had been shot up by fighter-bombers. I think an order was issued that vehicles were to be ruthlessly taken, also from the French, to evacuate wounded.

Q. You told us, the other day, the date on which Brigadeführer Witt was killed? *A.* I think surely it was on the 17th of June.

Q. Now will you – how do you know that? *A.* I have endeavoured to reconstruct the entire course of the invasion and first of all I have always been of the opinion that it was the 17th and after reconstructing the course of the invasion the 17th once again emerges.

Q. Are you sure of the 17th? *A.* Yes.

Q. From the 7th at noon to the 17th were you always employed at Divisional HQ? *A.* Yes. I was always Ordonnanz Offizier Number 1.

Q. Is it because of that that you can give us this information so clearly? *A.* Yes.

Judge Advocate: This is your witness you know. You must not lead him.

Andrew: *(Continuing examination) Q.* Who took over from General Witt? *A.* On the same day that Brigadeführer Witt was killed, Meyer took over the Division. I think the confirmation came from Berlin one or two days after he took over the Division.

Q. Referring to Exhibit T-2 – map of Caen area, do you know for a certainty whether there were any mines, German mines, in the area Gruchy, Authie, Frenqueville, Cussy, St. Contest? *A.* I know quite surely that we received, I think from 84 Corps, the mine plans of the Coastal Divisions. On the day that we reached Caen a mine plan was given to all units. I know for sure there was only one minefield in the area of Caen. This minefield was around the Divisional HQ of the 716th Division.

Q. Where was that? *A.* I only know that the Divisional HQ was in a sort of quarry north-west of Caen. I myself was never there.

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Q. Well, can you say for sure whether or not there were mines in the area I have pointed out? *A.* There surely were no mines there.

Q. When you say "surely there were no mines there" do you mean you are certain there were no mines? *A.* Yes.

Q. Did you ever hear Meyer say anything about the disposal of the dead? *A.* About a week after the beginning of the invasion I was in Authie with the driver of Meyer.

Q. What nationality was the driver? *A.* He was German. In Authie I saw Canadian soldiers and SS people who must have been killed there throughout the first few days and who up to that date had not been buried. He said there were no troops available to bury these. I ordered him to advise General Meyer about these matters and further later on I also talked to General Meyer. I do not know whether I telephoned directly. I only remember that Meyer suggested an order be given out by the Division that all dead should be buried with the help of civilian population during the night as due to the fighter-bombers it would be difficult to do during daylight hours. That is all.

Q. Do you remember the dispositions of the various units of the 25th Panzer Grenadier Regiment on the 8th of June? *A.* The sequence from right to left was the 1st, 2nd, 3rd Battalions. The hole between the 25th Panzer Grenadier Regiment and the 26th was filled, if I can rightly remember, from right to left with parts of the 15th Company and a platoon of the 16th Company. Later on these two units were replaced by the flak Battalion of the Division.

Q. Did you know Doctor Gatternigg and Doctor Stift? *A.* Yes. Gatternigg was Regimental Doctor and Stift was Regimental Dental Officer and later on he came to Division with Standartenführer Meyer as Ordonnanz Offizier Number 5.

Q. Do you know the relationship between Stift and Meyer when Meyer was commander of the 25th Panzer Grenadier Regiment? *A.* I think they were very, very close.

Q. Did you ever hear of any prisoners being shot at Ardenne Abbaye at any time? *A.* No, I have never heard anything of that.

Q. You are sure? *A.* Yes, I am quite sure.

Q. Did you know Schuemann? *A.* Yes. He was the successor to von Buettner as Regimental Adjutant.

Q. And was he the Adjutant for Brigadeführer Meyer? *A.* From the first days of the invasion he was Adjutant of Meyer.

Q. And did he remain Adjutant for Meyer throughout his whole Normandy career? *A.* I am not sure of the date but I think that three days before the Divisional Commander was killed Schuemann was relieved by Breiholz.

Q. Where did Schuemann go then? *A.* He got a platoon in the 1st Battalion.

Q. What happened to him after that? *A.* On the afternoon before we gave up Caen, Schuemann was killed as platoon commander in Epron.

Andrew: That is all thank you. Your witness.

Macdonald: *(Begins cross-examination) Q.* Was any explanation ever given to you, Meitzel, as to why Schuemann was relieved of his post? *A.* I was always of the conviction that he was not competent for that post.

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Q. And in what respect do you mean? *A.* Meyer was used to von Buettner who was the most capable Adjutant in the Division and, in contrast to von Buettner, Schuemann was a young and inexperienced officer.

Q. And so far as you know, was that the reason why he was relieved? *A.* I have always assumed that was the reason.

Q. Now, when you say that you have never [heard] of any prisoners having been shot at the Abbaye how can you account for that when I tell you that it was a matter of common gossip at the Rear HQ of the 25th Panzer Grenadier Regiment? *A.* I can only explain it, that members of the Regimental HQ Company drove back to the Rear HQ and there told someone about it.

Q. And to your knowledge as a staff officer, the administrative officer of the Regiment came up daily to the Regimental HQ, did he not? *A.* I do not know, it is likely.

Q. Yes. So that if such a rumour was current at Rear HQ, it could be quite easily brought back by the administrative officer when he returned? *A.* Tactical HQ and the Headquarters of the Deputy Adjutant and Quartermaster General were not together in the same spot and I never saw "Q" personnel at the Tactical HQ of the Division.

Q. Now, you tell me your job was at Divisional HQ? *A.* Yes.

Q. Not at the Regiment at all? *A.* No.

Q. Now does it not seem to you strange that Gatternigg, Stift, Meyer, and Schuemann, four at least, there may have been many others, knew that eighteen Canadian prisoners had been shot at the 25th Panzer Grenadier Regimental HQ. They knew that on the 11th of June and both Meyer and Stift went to Divisional HQ about the 17th of June. Does it not seem strange that you, having daily contact with them from then on, never heard of this? *A.* If I knew about it there are only two possibilities. Either the prescribed report was made, then I would have heard something about it, or the matter was kept a secret within the Division.

Q. Within the Regiment, or the Division? *A.* Within the Division.

Q. Well, what other staff officers were there at the Headquarters senior to you. I mean the 1A would be senior to you I presume? *A.* Yes the 1A – (GSO 1) yes.

Q. And apart from him I presume that you were the senior of the other staff officers? *A.* In operations, yes.

Q. Yes. Now, if a report had been made to Divisional HQ that such a thing had occurred, does it not seem strange to you, or was it an ordinary occurrence, that such a thing would not come to your ears? *A.* The report would not have been given to operations but to the judicial officer of the Division, but I suppose I would have heard of it in conversation with the 1A (GSO 1).

Q. Now, did you know that between the 7th and 21st of June, over a hundred and fifty Canadian prisoners of war were shot in your Division? *A.* I have never heard anything of that.

Q. Did you hear of any of this at all? *A.* No, I never heard anything of that.

Q. Did you know Obersturmbannführer Mohnke? *A.* Yes. I knew him. He commanded the 26th Panzer Regiment.

Q. He commanded one of the two Panzer Grenadier regiments in the Division did he not? *A.* Yes.

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Q. And did you never hear that he had ordered the shooting of prisoners and had watched the shooting being carried out? *A.* No, I never heard anything of that.

Q. Do you think that as a senior staff officer at Division that you were very well-informed? *A.* I cannot imagine that an older officer would brag about such atrocities to me.

Q. With what organization had Mohnke previously served? *A.* He was Company Commander throughout the Balkan campaign in the Leibstandarte Adolf Hitler.

Q. Do you know what kind of reputation the Adolf Hitler Division had? *A.* No.

Q. Do you know that it had a very bad reputation for discipline and for behaviour? *A.* No. We never lay side by side with the Division Leibstandarte Adolf Hitler.

Q. And did you know that special patrols had to be put out to restrain, particularly, the members of that Division?

Andrew: I am asking the court if, in their opinion, they feel this has anything to do with the evidence which has been given in-chief by the witness and brought out in this case?

Judge Advocate: He has the right to cross-examine as to credit, whether or not he heard of certain things.

Andrew: My friend's first question "Did you ever hear anything about the Balkan campaign..." and the answer is "No." It may end up in China.

Judge Advocate: It is a question whether this witness heard of something. We have come back to the same question. It is only as to credit that such questions may be put to the witness. It may be to that purpose only.

Macdonald: Yes. This witness is a staff officer who, it is reported, knows a great deal about the goings on in the Division, and in that particular regiment, and I am attacking his credibility on that.

Judge Advocate: But what I want to point is that something which is said to have happened somewhere else has not been proved before the court. You may ask this witness if he has heard anything. It is only the question of credibility of this witness as to whether or not he has heard something. You may subsequently prove that he has heard something. I do not know. We do not know.

Macdonald: *(Continuing cross-examination) Q.* Well, now, witness, what was your answer to the question in respect to whether you did hear anything? *A.* I did not hear anything.

Q. And did the Leibstandarte Adolf Hitler form a part of your corps in France? *A.* In the first days the 21st Panzer Division and the Panzer Instructional Division were part of our Corps, and, I think only from the 30th of June onward, the Leibstandarte again became part of our Corps.

Q. Yes. Well, was the Corps commanded by Sepp Dietrich, at that time? *A.* It was known as the 1st SS Panzer Corps.

Q. And of what did it consist? *A.* On the 6th of June 1944, 21st Panzer Division and the 12th SS Panzer Division; approximately on the 10th of June, 21st Panzer Division and the Panzer or Tank Instructional Division and the 12th SS Panzer Division; on the 30th of June 1944, approximately, 12th SS Panzer Division, one regiment of the Leibstandarte Adolf Hitler and the 9th and 10th Panzer Divisions. The 16th German Air Force Field Division had in the meantime been divided up among the other divisions of the Corps.

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Q. Now, during the month of June, were there any SS troops in the area west of Caen; that is, in the area Caen-Bayeux, besides the 12th SS Division? *A.* On the 27th of June the Regiment Frey of the Leibstandarte Adolf Hitler reached the area of our Division and was put into action in the area from right to left, Franqueville, Verson.

Q. Now, are there any troops in the Waffen SS or the Wehrmacht who wore – this is a self-evident question I suppose – who wore the SS or Blitz markings except troops who are connected with the SS Divisions? *A.* No.

Q. Now, with regard to mine fields, do you know whether the 25th Panzer Grenadier Regiment put out any mine fields? *A.* Surely only after the front had been stabilized around the 10th or 12th.

Q. Now, is it not a normal precaution to set up a few local mines in approaches to HQ and a few other vulnerable spots? *A.* In our Division I do not really think so because only members of the Engineering Battalion had been sufficiently trained to be able to put out mines.

Q. Well, what about the Engineering Company of the Panzer Grenadier Regiment; would they not be capable of laying mines? *A.* Yes, that is possible.

Q. Now, then you are not going to say positively, Meitzel, that mines were not laid in the vicinity of the 25th Panzer Grenadier Regiment after their occupation of the area, are you? *A.* Yes, with the 16th Company that is possible.

Q. Now, you say that about a week after the invasion you had occasion to go through the streets of the village of Authie and saw a number of dead bodies there? *A.* Yes.

Q. Now, are you quite sure that you saw German bodies there? *A.* Yes, I am quite certain.

Q. No one else has mentioned that. You are quite sure...

President: Oh, yes they have. That has been mentioned before.

Macdonald: I did not hear that there were any SS bodies there.

Macdonald: *(Continuing cross-examination) Q.* Well, then, will you tell me what you know about the SS bodies there? *A.* As I got into the village I saw in the entrance of a house, or the entrance of a courtyard, a few dead bodies in British uniform. At the cross-roads of the road leading in from the west I saw directly on the road two SS men lying. As that surprised me very much indeed I have always been able to remember that and I think I have already made the same statement in America.

Q. Will you look at Exhibit T-9 and tell me where you saw the SS bodies? *A.* I have never seen that village on a map but I think the two SS bodies were lying here. *(The witness points to spots marked "D" and "E" on Exhibit T-9.)*

Q. And, as a consequence of that, then, you issued certain instructions with respect to the burial of these bodies? *A.* I instructed the driver of Standartenführer Meyer to report to Standartenführer Meyer about this matter, and, subsequently I talked to Standartenführer Meyer and he suggested that we make a Divisional order.

Q. Now, was he Divisional Commander at that time? *A.* No, he was surely still Regimental Commander.

Q. This was an order issued by Division about it? *A.* Yes, the order was given out and the order was repeated when Meyer took over the Division.

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Q. Well, do you mean that it was repeated immediately after he took over the Division? *A.* I think a few days later after he had seen dead cattle and dead bodies somewhere in the sector of the 26th Regiment.

Q. It was, then, largely by reason of the fact that it was a serious health menace that this order was issued? *A.* When it came out the second time, very likely.

Q. Now, very few prisoners were taken on the front of the 12th SS Division after the 8th of June; is that correct? *A.* Between the 12th and the 17th we had a very few prisoners.

Q. Between the 12th and the 17th?

Interpreter: Between the 12th and the 17th.

Macdonald: *(Continuing cross-examination) Q.* Now, you got a prisoner on the morning of the 17th in the 25th Panzer Grenadier area? *A.* That is possible. I cannot remember.

Q. Well, it was your particular duty to know about such things, was it not? *A.* Yes, but on that day we had that artillery attack on our HQ and the Brigadeführer was killed and we changed our HQ and I do not precisely remember whether we took prisoners.

Q. Well, it is a day that will stand out very much in your memory anyway? *A.* Yes, I can remember a lot.

Q. Now, there is evidence that a Canadian officer named Williams, while on a patrol during the night of the 16th – 17th of June, was captured in the vicinity – or he was captured, rather, by the 9th Company of the 3rd Battalion of the 25th Regiment; that he was sent back to the Battalion Dressing Station at Cussy; that he was then sent to the Regimental HQ; that the time he left the Battalion, that is the 3rd Battalion, was three o'clock in the morning, that is the 17th of June, and shots were heard between four and six o'clock in the morning in the Regimental HQ; and when the Canadians occupied the area a month later, the body of this particular officer was found there within 50 metres of the Regimental HQ with very serious head injuries. Now, did you know anything about that at all? *A.* No. I know nothing about that. Throughout the entire 17th I was at Divisional HQ.

Q. Well, that is what I mean. Did you have any report early that morning that an officer had been captured and had been interrogated at the 25th Regimental HQ? *A.* I can remember quite a lot of the 17th but of that I know nothing.

Q. Now, you served under Standartenführer Meyer for quite a while, did you not? *A.* From the 12th of June until the 15th of July as Ordonnanz Offizier.

Q. Well, I am not suggesting that you are not telling the truth, Meitzel, but it is fair to say that you would like to be helpful to him, is it not? *A.* I have up to now said nothing else but what I know.

Q. Would you answer my question? You would rather like to be helpful to your former commander, would you not? *A.* I would be happy if things turned out to his advantage, but according to my oath I will say nothing but the truth.

Q. Now, when you spoke of the drivers that Meyer had, why did you especially mention that you were sure they were German drivers? Where did you get the idea that you should mention that? *A.* I know that the Brigadeführer told the Divisional Commander that the killed Rottenführer had already been in Russia with him, and with the successor I myself talked and he spoke German, and achieved the rank of Oberscharführer and I emphasized it because in the question before that there was a question about the Russian driver.

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Q. But what I am getting at, did Meyer tell Witt at that particular time that it was a German driver who had been killed? *A.* No, he said "I am very sorry that my driver was killed." "My driver," and he mentioned the German name which I cannot recall.

Q. Now, if it were recalled to your mind would you be able to remember? *A.* I do not think so but I remember quite well that Brigadeführer Meyer said the driver jumped on the road, on the embankment, on the right of the road and shouted at the shadows which were flitting past "Hands up." I can hardly credit the Russian driver with such quick reaction.

Q. Why would you not credit the Russian driver with such a quick reaction? *A.* The Russians who volunteered, offered themselves to us were mainly servant types, – of a servile nature.

Q. And it was because of this failure to react that you thought it must have been the German driver?

Interpreter: What was that?

Macdonald: *(Continuing cross-examination) Q.* And it was because of his quick thinking that you concluded that this was a German driver; is that correct? *A.* I am quite sure that Standartenführer Meyer would have mentioned it if it had been a Russian driver who had been killed there.

Q. Alright. I see. *A.* Moreover, I am quite sure that he had the rank of a Rottenführer.

Q. Who had the rank of a Rottenführer? *A.* The driver who was killed in the attack on Bretteville during the night.

Q. Did you know that none of Meyer's drivers held any rank lower than Unterscharführer? *A.* No.

Q. Now, when you were speaking of what occurred at the 25th Panzer Grenadier Regiment at Beverloo from… September 1943 to January 1944, were you speaking merely as a staff officer who paid occasional visits to the regiment? *A.* I was only in Beverloo accompanying Brigadeführer Witt or the Ia, or as Director of Fighter Bombers during an exercise.

Q. So that your visits were of an official character and on a pretty high level? *A.* Among the younger officers I had no close acquaintances in Beverloo.

Q. By reason, therefore, of that fact, you would not honestly say you know what sort of instruction was actually being given to the private soldiers of the Regiment – you knew of it only in an official capacity, I assume? *A.* I can only judge the technical efficiency or technical level which had been reached. I can also judge how many cases of crimes were reported to the divisions from the individual regiments.

Q. The general discipline insofar as the obedience to orders or performance of duties was concerned was particularly good, you have told us, in that Regiment? *A.* The discipline of the Regiment I can judge from the honour guards, or guards of honour and HQ guards which were sent from Regiment to Division.

Q. And Standartenführer Meyer, I suppose, was a stern or strict disciplinarian, was he? *A.* That... I can judge from the time once he had taken over the division.

Q. You agree with that, then, do you? *A.* Yes.

Q. Now, with respect to the position of the air force troops in the neighbourhood of the village of Authie on the 7th of June, I want to read you what Standartenführer Meyer said to the SHAEF Court of Inquiry,... and I would like you to tell me if you agree with what he has said. Now, I do not think the

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preliminary to this has any bearing on what I am going to read but if my friend objects and wants me to read it I am quite willing to do so.

Andrew: Where is it?

Macdonald: On page 13, Exhibit No. 9. Well, I had better read it and we will save time:

"*Q.* Now, I want to tell you that it has been established to the satisfaction of the court that in the village of Authie at least 33 Canadian soldiers were murdered after having been taken prisoner by members of the group which you have told us was commanded by Milius.

A. I consider it impossible that Milius gave an order to that effect or even that he knew about it for in that case he would have informed me. I should say that it is quite impossible that he gave an order and I cannot believe that he knew about it."

Now, the part of this which I want you to comment on is as follows,

"Milius' troops were in Authie but I consider it impossible. There were air force troops in the immediate neighbourhood of the village also. There were at Franqueville in the A.A. position I have already mentioned."

Q. Now, were the air force troops at that time at Franqueville in the A.A.positions there? *A.* It was not the flak people of our Division. Of other flak people I know nothing.

Q. You do not know of your own knowledge, then, whether they actually were in Franqueville or anywhere else at that time; is that what you are saying? *A.* When we took over the Divisional HQ in Venoix, that Headquarters was still being used by Company HQ of the company which had the protection of the airport of Carpiquet. I asked a junior NCO for maps of Carpiquet and this map still had signs on it, – markings, that in Authie, Franqueville and Venoix, parts of his unit were billetted. I know it from that and I know no more.

Q. Now, you spoke of having difficulty in getting a sitrep on the 8th of June from the 25th Panzer Grenadier Regiment? *A.* Yes.

Q. And which of these reports was it that failed to come in? *A.* The eight and ten o'clock sitreps could only be made in respect to supply matters and not in respect to tactical matters.

Q. And had these [situation reports] come in or [any] reports? *A.* Yes, the adjutant gave me those.

Q. Then these reports were not held up. The ones at eight o'clock and ten o'clock did come in, is that correct? *A.* Yes, but they only interested the Assistant Adjutant and Quartermaster General Department and not the Ops.

Q. I must have misunderstood you. Then the reports in which you were interested and which were due at Division at eight o'clock and ten o'clock did not come in? *A.* Yes.

Q. Is that correct? *A.* Yes, that is correct.

Q. Then what reports were you supposed to get then? *A.* I got every two hours a report from regiments.

Q. And you failed to get that report on tactical matters – is that correct, at eight o'clock and ten o'clock that day? *A.* Yes.

Q. And from whom does that report come every two hours? *A.* The Adjutant is responsible for that report.

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Q. And he is the one to whom you would look for this report, not to the Regimental Commander? *A.* I think I drove, on orders of the Ia, to get the map markings directly from the Regimental Commander.

Q. Well, this probably was then for the purpose of getting fuller information or more precise information, was it not? *A.* Yes.

Q. And not because the Adjutant had been unable to contact Meyer? *A.* The original reason was that I had not received the eight and ten o'clock reports.

Q. Well then you went to the Regimental HQ about twelve o'clock noon, did you? *A.* Yes, around noon.

Q. And you found Meyer there at that time? *A.* Standartenführer Meyer was on the tower of the Abbaye.

Q. And you immediately got the information you wanted, I suppose? *A.* Yes.

Q. And after you had gotten the information you had a lot of work to do, I suppose, and you went right back did you? *A.* Yes, that is correct.

Q. I do not suppose you were concerned with counting the vehicles in the chapel or the disposition of the vehicles around the Headquarters were you? *A.* No, of course not.

Q. That was a matter, was it not, of complete indifference to you? *A.* That there were vehicles in the courtyard I noticed because I sought protection under them from English artillery fire and the question whether there were vehicles in the chapel was asked me and I have answered it as well as I can.

Q. And the fact is to be quite honest about it, is it fair to say that you do not know whether there were vehicles there or whether there were not? *A.* As far as I can remember, first of all it was dark in the chapel and the main entrance was blocked through a wooden wall -

Q. How did you get into the chapel then? *A.* Through the main entrance and then left into the tower. At about one metre in the chapel there is a kind of wooden wall.

Q. You say you went in through the main entrance? *A.* Yes.

Q. And then the entrance to the tower was to the left as you entered the chapel? *A.* As far as I can remember the entrance is left from the main entrance up into the tower.

Q. Yes. Now, you say that that entrance was blocked up at the time? *A.* As far as I can remember the entrance behind the entrance to the tower was blocked with a wooden wall.

Q. Now will you mark there where you think that wooden wall was. There is the chapel over there. Will you put a red line opposite the place where you say the entrance was blocked? *A. (Witness marks Exhibit T-1.)*

Q. Now, would you say therefore that it was impossible to get vehicles in through that entrance? *A.* While the entrance was blocked, certainly.

Q. And it was blocked on the 8th of June? *A.* Yes, and as the vehicles of the Regimental HQ Company were always being used I cannot imagine that that wooden wall would be removed when anyone needed a vehicle.

Q. Now do you know there was an entrance at the back of the chapel? *A.* I never saw anything and as it was dark I think that was the only entrance.

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Q. Well you would not say it was wrong if the French civilians who lived there say that there is an entrance at the other end through which they had put vehicles? *A.* No, certainly not.

Q. Now when you saw Standartenführer Meyer at the Abbaye in the tower who was with him at the time? *A.* As far as I can remember the Commander of the Heavy Cannon Troop of the Heavy Artillery Battalion.

Q. And there were just the two of them there in the tower at the time? *A.* I can only remember a radio signals man of the artillery.

Q. I presume that the space in this tower is rather small is it not? *A.* It is very narrow up there.

Q. And not very many people could be up there at the same time? *A.* No. I think at the utmost six people but I did not pay any attention to that.

Q. Well now what I do want you to direct your mind to very carefully is whether there were any other persons there than the ones you have told me about, and to the very best of your recollection I want you to give me a correct answer. You have said there was an Artillery officer, a signaller, in addition to Meyer and yourself. Now that makes four? *A.* It is possible that Sturmbannführer Bartling who commanded the Artillery Battalion was there too but it is also possible that I didn't meet him there on the 8th but at a later date.

Q. Now, was Sturmbannführer Milius there? *A.* No, that I know for sure.

Q. Was Haupsturmführer Schrott there? *A.* No, he was not there.

Q. Or Waldmueller? *A.* No, there was no Battalion Commander there.

Q. Was Wuensche there? *A.* No, I did not meet him there.

Q. Was Isecke there? *A.* No, he was not there.

Q. Now, you say that you were invited to stay for lunch? *A.* Yes.

Q. And had they started to eat their lunch by the time you left? *A.* I don't know that. I didn't see anyone eating and I immediately left.

Q. Now, during the time you were at the Headquarters did you see any of the people whom I have just mentioned to you, that is Milius, Schrott, Waldmueller, Wuensche or Isecke? *A.* On that day not one.

Q. Now, where were you at the time you saw Meyer talking to some Canadian prisoners on the 10th of August? *A.* I commanded a Tank Company in a Tank Regiment and saw the Brigadeführer at his HQ. The name of the Headquarters was Levend Marie Jolie to the east of Potigny.

Q. And was this at a place to which your Division had eventually withdrawn having been forced back from its original position at Verson? *A.* Between Verson and Levend Marie Jolie there were five HQs.

Q. And your unit from June to July when Caen was captured had been successively forced back beyond the Orne to the position in which you were at the time this conversation occurred? *A.* Yes, that is correct.

Q. And this was on the 10th of August just shortly before the larger part of your Division was trapped in the pocket between Falaise and Argentan? *A.* It was twelve days before that day.

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Andrew: *(Re-examination) Q.* Go back to the 8th of June 1944. You have told the Court in your examination-in-chief that you phoned the Adjutant of the 25th Regiment on the morning of the 8th regarding a report? *A.* Yes.

Q. Is that correct? *A.* Yes, that is correct.

Q. You also were in contact...

Judge Advocate: He is still your witness.

Andrew: Yes, but this has been brought out. It has been referred to in the cross-examination. Now I am re-examining. This is not examination-in-chief.

Judge Advocate: I know. You still should not lead him.

Andrew: *(Continuing re-examination) Q.* Did you phone the Signals Officers at Abbaye Ardenne? *A.* As far as I can remember the Adjutant was in St. Germain and the Sigs Officer was at Abbaye Ardenne.

Q. You mentioned something about Brigadeführer Meyer not being available? *A.* I am sure that in the morning there were battles north of Caen and in the afternoon and during the night the attack on Bretteville.

Q. When you phoned the Adjutant in the morning was it necessary to contact Brigadeführer Meyer? *A.* It referred to battles which were to be reported to Corps HQ instantly and as the Adjutant had no connection I think either with the Battalion or with the Brigadeführer he was not informed about the course of these battle activities.

Q. Was the Adjutant at St. Germain in contact by any means with Ardenne Abbaye? *A.* Division had a direct line to Ardenne Abbaye as far as I recollect.

Macdonald: Mr. President, I did not refer to any of this in my cross-examination and it is hardly proper re-examination. If my friend goes into it, which I do not object to, I would request the right to again examine on this point. He can ask anything he likes if I have a chance to go back to it.

Andrew: This is why I am doing this, sir, because my friend questioned on what I have brought out in chief regarding this telephone conversation on the morning of the 8th between the witness and the Adjutant of the 25th Regiment.

Macdonald: I did not discuss the communications and where people were.

Andrew: Then I will not discuss communications. I have already cleared up the point I want.

Andrew: *(Continuing re-examination) Q.* Well, again coming back to the Abbaye will you say for a certainty whether there were vehicles in the Abbaye or not at noon on the 8th when you were there?

Macdonald: This is cross-examination.

President: He has already given us an answer.

Andrew: *(To the court)* I would like the Court to place this question if they would, sir. Ask the witness if mines laid by sub-units would be reported back to Divisional HQ after they had been laid.

President: *Q.* Was it the normal practice when the unit of the Pioneers laid mines, was the location of those mines automatically reported back to Divisional HQ? *A.* All minefields had to be reported immediately at the latest by the next two o'clock reports had to be reported to Division.

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Macdonald: *(To the court)* Mr. President, may I suggest that that question be followed up a little further to see if he makes any distinction between a minefield and occasional mines – necklaces or something of that kind which may have been put out in the immediate vicinity of a HQ.

President: *(Continuing questioning) Q.* We have a system whereby we lay tactical minefields and we have another type which we call a "protective" minefield. Now, when you say "minefields must be recorded and reported" do you mean all mines? *A.* In contrast to British policy, 16 Company may only lay mines at the order of Regimental HQ, secondly it was not our habit to lay mines in the course of an attack, not even for the protection temporarily of all-round or hedgehog defensive positions.

Macdonald: Now with respect to communications, sir, I would like to ask one or two questions or perhaps the Court would.

President: Better ask them through the Court.

Macdonald: I would like to know whether the witness had any means of knowing where the Adjutant was at the time he was phoning him, what the means of communication was, and following that up whether it was customary to discuss the tactical disposition of troops over the telephone, in any event.

President: *(Continuing questioning) Q.* When you were at Division and you held a telephone conversation with the Adjutant checking on the missing situation reports where was the Adjutant? *A.* As far as I can remember at the Main HQ of the Regiment in St. Germain.

Q. And he was unable to give you any information over the telephone. Is that correct? *A.* Yes, about the battle happenings he knew nothing.

Q. Was it for security reasons that he refused to discuss it on the telephone or was it because he did not in fact know? *A.* Because he did not know about it. It was permitted on double lines which are tap-proof, it was permitted to transmit tactical reports.

Q. You have said that after the accused had taken over command of the Division that it was necessary to issue orders given on the second or third day after the invasion started that prisoners must be sent back for interrogation. Was it as a result of shootings? *A.* No, I regard that as impossible. I think it was only sent out again to recall it to the memory of all unit commanders and to ensure that the sending back of prisoners was not delayed.

Q. Did either Doctor Stift or Doctor Gatternigg speak English? *A.* Of that I know nothing.

Q. What did they look like? Can you describe each one in turn? *A.* I can describe them but it will not be sufficient to find them.

Q. How did they normally dress? *A.* While Stift was Ordonnanz Offizier No. 5, he steadily wore a camouflage jacket. Gatternigg I remember that at the Regimental HQ at Ardenne he wore a camouflage suit and, after giving up Caen when he substituted for wounded Sturmbannführer Milius for a few days, he wore at the Headquarters the normal regular German Army uniform.

Q. Now, when you made this trip to the Ancient Abbaye the morning which we have just been talking about, did you ever speak to any prisoners of war that you might have seen around there? *A.* No.

Q. Did you see any? *A.* I cannot remember it.

Q. When you were asked to mark that plan there, apparently your attention was directed to the Abbaye building itself and not to the chapel and we just want to be sure that you mark the thing properly, you

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marked the building that has no tower on it. *A.* I asked Lt-Col Macdonald whether this was the tower and this was the main entrance, he said it was and then I put in the red line.

Q. Well then, will you mark it properly? *A.* I see this plan for the first time and I request that I be excused if I made a mistake. I think that is the entrance from the garden *(Witness is marking it with a red line)*, then one makes a left turn and if this is the main entrance with each side a tower there was a wooden wall behind the main entrance so that one could get onto the tower from inside. I recognize the chapel on these pictures, I think that the circular staircase is in this part of the tower. *(Witness is referring to Exhibit "T-26" and "T-27" and he said that the tower, he thought, was on the left inside as you look at the photograph.)* From the inside one got onto the tower and the OP was in this little corridor up there. *(Witness indicates corridor at the top of the building, connecting the two towers in Exhibit "T-26".)*

Q. And when you speak of the entrance to the Abbaye as having some obstruction, were you speaking of the entrance which shows in these two Exhibits? *A.* Yes, I always referred to this entrance here and believe that behind this entrance there was a wooden wall or rampart.

Q. One more question from the Court. This morning, while speaking of these two sitreps which did not arrive, one at 8 o'clock and one at 10 o'clock which caused you to go there, what time was it when you spoke to the accused in that tower? *A.* I cannot remember exactly but it was around noon because afterwards I was invited for lunch because I had already made the 8 and 10 o'clock sitreps without the information from the Regiment and sent it on, now I was fetching the noon sitreps from the Regiment.

Q. Well now, why was it that you were able to get that information at Regimental HQ when you got there personally when you could not get it over the telephone? *A.* When I talked to the Adjutant the last time he had no connection with Standartenführer Meyer.

Q. But he had seen Standartenführer Meyer before you arrived? *A.* As far as I remember he could not give me that information over the telephone. It may be that he had seen Standartenführer Meyer.

Q. Well, who did you get the sit reps from, that is the 8 o'clock and the 10 o'clock ones when you got there? *A.* I think I never got them at all. I had Brigadeführer Meyer mark the positions of his battalions onto the map and note down a few facts about the way the morning's battles had gone.

Q. So you got your information from him direct? *A.* As he himself had, as far as I can remember, been to the Battalion HQ, he obviously could give me a better picture than his Adjutant. As far as I can remember I neither saw the Adjutant nor talked to him.

(The witness withdraws.)

President: The accused and escort may withdraw. Court will adjourn until two o'clock.

—

President: I declare the Court open...

President: Will you call your next witness, please.

Andrew: Sir, my friend wishes to address the court.

Campbell: I thought it would be appropriate time to call Capt Bluteau. It will only take a few minutes.

President: He is available, is he?

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Campbell: Yes sir, he is right at the door.

Judge Advocate: He is being recalled with permission of the Court at this stage.

Fourteenth Witness for the Prosecution

Captain M. Bluteau, Officer in Charge Casualty Wing, Record, CMHQ, is recalled with the permission of the Court, and is examined by the Prosecutor, Lt-Col Campbell:

Campbell: *Q.* Capt Bluteau, you have already been sworn? *A.* Yes sir.

Q. And you have told us that you are officer in charge of Casualty Wing? *A.* Yes sir.

Q. Were you asked to make some enquiry into your records? *A.* I was.

Q. Have you completed that research? *A.* I have.

Q. What do these documents that you have shown indicate? *A.* The first one signifies that C54200 Acting L/Cpl Pollard, GG, of the Stormont Dundas and Glengarry Highlanders, is listed as missing, from the seventeenth of June 1944. The second one shows him as missing presumed killed – authority Officer-in-Charge of Records.

Q. And what is the significance of the presumption of death? *A.* For all official purposes a man is presumed killed if he cannot be found after a lapse of six months.

Q. That is if you have not located the body? *A.* Yes.

President: The document will be entered as [Exhibit] T-68.

President: *(To the interpreter)* Now, will you summarize that for the benefit of the people at the back of the Court.

Interpreter: *(To the reporter)* Will you read that back please?

President: Well, just give an explanation of what this witness is producing, what his status is and the purpose of this document and significance of it *(The interpreter complies)*.

President: That's all you want, is it?

Macdonald: Yes sir.

Andrew: No questions.

(The witness withdraws.)

Third Witness for the Defence

Standartenführer Max Wuensche, having been duly sworn, is examined by the Defending Officer, Lt-Col M. W. Andrew:

Andrew: *Q.* What is you name? *A.* My name is Max Wuensche.

Q. What is your rank? *A.* My rank is SS Standartenführer.

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Q. And what was your command? *A.* I was Regimental Commander of the 12th SS Panzer Regiment Hitler-Jugend Division.

Q. What Division was your Regiment in? *A.* In the 12th SS Panzer Division.

Q. Do you remember the 7th of June 1944? *A.* I remember that.

Q. And where was the 12th Division at that time? *A.* It was in action in the sector of Caen.

Q. And did you know the Commander of the 25th Panzer Grenadier Regiment? *A.* Yes, I know him.

Q. Did you see him on the 7th of June 1944? *A.* Yes, I saw him.

Q. Where? *A.* It was late in the afternoon when I saw him on the road between Venoi and St. Germain. It was in the vicinity of a petrol station.

Q. How was he dressed when you saw him? *A.* He was wearing camouflage uniform.

Q. And where was your Regiment on the 8th of June 1944? *A.* The second abteilung of the Regiment was already in action. The first abteilung came later and went into action in the afternoon.

Q. Where were you on the 8th of June? *A.* In the morning I left my Regimental HQ and went to the Headquarters of the 716th Coastal Division which was simultaneously the advanced HQ of the 21st Panzer Division.

Q. I show you Exhibit T-2 – Caen area. Will you point out on the map the position of that Headquarters? *A.* Which headquarters do you mean?

Q. The one we have just been talking about; the Coastal defence. *A.* I am not in a position to give the exact position of this HQ. The Headquarters was situated in a quarry which is not mentioned on the map.

Q. In what general direction was it with respect to Caen? *A.* Northwest of Caen.

Q. Did you see anybody there? *A.* I saw there the Commander of the 716th Coastal Defence Division, the Commander of the 21st Panzer Division and the Sectional Commander of the 202nd Heavy Armoured Anti-Tank Battalion.

Q. Now, were any of the troops of these formations which you have mentioned in the area north-west of Caen on the 8th of June 1944? *A.* I remember parts of the 202nd Anti-Tank Battalion, the 21st Panzer Division whom I have seen myself. I also know that there were dispersed personnel of the Carpiquet aerodrome. I did not see these personnel myself. I got the information from the Divisional Commander, the day before.

Q. Were these troops that you have just mentioned in the area north-west of Caen on the 7th of June 1944? *A.* Of the 21st Panzer Division I know it for sure. I was on the 7th of June in the Headquarters of Oberst Rauch, who commanded a Grenadier Regiment of the 21st Panzer Division.

Q. Can you tell me how the 21st, – the troops of the 21st Panzer Division, dressed on the 7th and the 8th of June 1944? *A.* They were wearing, in part, a grey uniform and others had camouflage uniforms made of Italian tent material.

Q. Do you remember how the coastal division dressed – the troops of it? *A.* I had only seen officers of the coastal division. These officers were wearing the grey uniform, and I saw them at Divisional HQ.

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Q. Now, what did you do after you visited the Headquarters of the coastal defence and 21st Panzer Division – what did you do after you visited their HQ? *A.* I was at Headquarters on the 7th and also on the 8th of June. I would like to know which do you mean, what do you refer to?

Q. Will you tell me about the 8th of June, what you did on the 8th of June? *A.* I repeat that I was in the morning at the Headquarters of the 716 Coastal Division and that I there met the Divisional Commander of the 21st Panzer Division and the Commander of the Coastal Division and discussed the situation with him. It was the intention to start an attack in a northerly direction towards the coast, – in a northerly direction together with the Panzer Regiment and the 21st Panzer Division. It was necessary to discuss the command of this attack and for that reason I drove with the Commander of the 21st Panzer Division to HQ of the Panzer Regiment of that Division. I met at that Headquarters the Commander, von Oppeln Bornikovsky. After this discussion I drove back to my HQ and on the way I met the Divisional Commander of our Division. I discussed the situation with him and begged further information in respect of heavier enemy formations in the neighbourhood of Bretteville in the north-west flank of the 21st Panzer Division. Our first intention to start an attack in a northerly direction could not be pursued since the endangering of our flanks, of the flanks of the 25th Regiment was too big and we accordingly would have been driven into a pocket. I suggested to the Divisional Commander that we make a similar attack with limited objective in the direction of Bretteville, to limit the danger on the flank of the 25th Regiment or to assist the advance of the 26th Regiment. I suggested to make the attack in a northerly direction the next day. The Divisional Commander agreed and I made preparations for the attack of my 1st Abteilung in that direction.

Q. Go on. *A.* The attack had to start with the assistance of parts of the 25th Regiment. On account of that I drove to the Headquarters of the 25th Regiment. There I met the commander of the Regiment in the tower of the Abbaye?

Q. Who was the commander of the Regiment? *A.* Standartenführer Meyer

Q. And what time would this be, that you arrived at the Abbaye? *A.* I am not in a position to give the exact time but it must have been in the afternoon. It might have been later, I cannot say it exactly.

Q. And tell us what happened? *A.* I discussed with the Regimental Commander the situation and the attack, surveyed the grounds, and discussed the assistance of artillery.

Q. Now, while you were there how was Meyer dressed? *A.* He was wearing a camouflage uniform as he was wearing every day.

Q. Did you take a look into the Abbaye when you were there, – or into the chapel? *A.* The entrance was blocked on account of wooden blocks and logs. In the chapel it was dark. In the chapel I could not distinguish very much.

Q. Did you see any vehicles in the chapel, any army vehicles? *A.* I cannot remember any vehicle. The only thing I saw were agricultural implements.

Q. Now, do you know if there were any German mines on the 7th or 8th of June in the area Gruchy, Authie, Franqueville, Cussy; that area? *A.* I can remember the fact well because on the 7th of June in the Headquarters of the 716th Coastal Division I received a plan of mines. According to this plan, mines were only laid in the coastal districts and around the Headquarters of that Division. This plan was multiplied by my HQ and delivered to all formations.

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Q. Did you have any of your tanks in the area Authie, Cussy or around that area on the 8th of June 1944? *A.* In this sector my 2nd Abteilung was in action, comprising the 6th, 7th and 8th Companies, and the 5th Company.

Q. Were any mines, German mines reported to you to have been laid in that area on the 7th or 8th of June 1944? *A.* I did not receive any such report.

Q. Now, do you know the... structural features of the chapel at Ardenne Abbaye? *A.* I can remember that because a month later I was in the Abbaye several times.

Q. I show you a plan of Ardenne Abbaye in the Exhibit T-1. Do you recognize the diagram in this general area, – or the general area from the diagram, rather? *A.* I should like to have a look at it for a second or two. I only remember the northern part of it.

Q. The northern part including the chapel? *A.* Yes.

Q. Do you recognize Exhibit T-26? *A.* It must be a picture from a south-easterly direction.

Q. Do you recognize T-27, a picture of the Abbaye after invasion? *A.* I believe it is there, but it is very difficult to remember it.

Q. Was it anything like that when you were there? *A.* Yes.

Q. Do you recognize that picture, which is T-28, the interior of the Abbaye? *A.* I remember the inner architecture which was in the same shape.

Q. Can you tell me, or tell the Court, if there was any entrance at the back, immediate middle back of the chapel? *A.* I cannot remember an entrance at the back. I can only remember that when I wanted to go with my radio station into the tower I had to go always around the chapel.

Q. What entrance did you use? *A.* The front, main entrance.

President: Could we have the witness point out that cut on the plan.

Andrew: Yes sir. *(Continuing examination) Q.* Will you mark on the plan T-1 the entrance which you used to the chapel. Put an arrow... arrow marked "EE." *A. (The witness complies.)*

Macdonald: *(Cross-examination) Q.* How many times were you at the Abbaye altogether in the time that the 25th Regiment was at Ardenne? *A.* I only remember the 8th of June. Whether I have been there at later dates I cannot remember, with exception of a month later when the battle around the Abbaye started.

Q. So that altogether you are certain only of having been at the Abbaye on two occasions? *A.* The battle for the ground around the Abbaye started on the 7th of July. During that time I was there several times.

Q. Well, then, between the 8th of June and the 7th of July, you were not there at all? *A.* I do not remember any calls there.

Q. And the time that you were there on the 8th of June you say that you entered the Abbaye by the main entrance that you indicated on the diagram or chart? *A.* Yes.

Q. And did you drive your vehicle in, or did you go in on foot? *A.* I went on foot.

Q. Now, did you see Standartenführer Meyer on the next day, the 9th of June? *A.* Yes.

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Q. Where did you see him then? *A.* Approximately five hundred meters before Rots on the road Caen-Bretteville.

Q. What time of the day was that? *A.* In the course of the forenoon. I can't give the exact hour.

Q. And who was with him? *A.* I can't say that. At any rate his driver.

Q. How was he dressed at that time? *A.* In camouflage uniform.

Q. And where did he go after he left you? *A.* I cannot say that.

Q. Now, witness, to give you an opportunity to carefully consider the matter, this was on the 9th of June you are speaking of, is it? *A.* Yes.

Q. And you are quite certain, absolutely certain that Meyer was wearing a camouflage uniform at that time? *A.* Yes, he never wore anything else.

Q. And it was the same sort of camouflage suit (I suppose it was the same one was it?) he was wearing on the 8th? *A.* It was of special manufacture made of tent material.

Q. It was the same suit then that he had been wearing on the 8th was it? *A.* Yes.

Q. Now, when you speak of a "camouflage suit" do you mean just a jacket or do you mean the trousers as well? *A.* No, he was wearing a complete camouflage uniform.

Q. Now, would you say that the 21st Panzer Regiment people also wore camouflage uniforms and that they wore camouflage trousers also? *A.* I can only remember the jackets – camouflage jackets.

Q. Now is your knowledge of the mines laid in the vicinity of Authie and Buron good enough to say positively that there were no German mines in the vicinity of Authie or Buron? *A.* My personal knowledge is not sufficient to make that statement but my Panzer Unit, the 2nd Abteilung, went through that sector on a broad front and should have reported to me otherwise.

Q. Well, if any of your tanks ran on mines at least the occupants of that tank would have difficulty in reporting it would they not? *A.* It is not only one tank that is in action and the occupants of the supporting tanks had the duty to report this mine. He had permission to break the wireless silence under these circumstances.

Q. Had you any knowledge of the location of Allied mines in that sector? *A.* The plan of Allied mines I did not see. Therefore I do not know.

Q. And do you know whether or not German mines were laid immediately north of Buron? *A.* I do not know that but as soon as the front came to a standstill and we were brought onto the defensive I am sure that minefields were laid in front of our lines.

Q. Now did you see Standartenführer Meyer on the night or evening of the 7th of June? *A.* I cannot remember that.

Q. Well, now I want to read you what your adjutant Isecke said and I want you to tell me whether you can remember it now and whether what he says is correct. This is the evidence of Haupsturmführer George Isecke given 4 July 1945 to No. 1 Cdn War Crimes Investigation Unit at Gravenhurst...:

"*Q.* What I am curious to know is how you knew, for instance, where Wuensche and Meyer were at the time the fighting was going on? *A.* By radio.

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Q. And could you tell from what was being said on the radio that they were up in the forward positions themselves and directing the attack from a very close distance? *A.* Yes, sir.

Q. Was this ever confirmed to you by anything either of them said to you personally or said in your presence? *A.* Yes, sir.

Q. Does that apply with respect to Meyer as well as your own Commander? *A.* At about 10 o'clock or later that night."

And so that you will be sure we are talking about the 7th of June if you look at Question 127 it says "Now, to go back to the 7th of June..."

"At about 10 o'clock or later that night they both came back and I had to make a report, a verbal report on what units had been coming up since noon."

Now does that help you to recall whether or not you saw Standartenführer Meyer on the evening of the 7th of June? *A.* I can't say for a certainty whether I saw him on the 7th of June. On that day I was rather depressed.

Q. Well, where were you when you were depressed. Were you at the Ancienne Abbaye or somewhere else? *A.* I was very tired.

Q. Well what I am getting at is that your adjutant says that you were up at Meyer's HQ at the Ancienne Abbaye on the 7th of June and that you and he came back to the Rear Regimental HQ at 10 o'clock that evening? *A.* I cannot say with certainty at what time I returned and whether I had seen Brigadeführer Meyer or not.

Q. Where had you been when you say that you "returned"? *A.* I was in the field and was witnessing the battle from a high point in the field where my radio outfit was too.

Q. So that during the battle of the 7th of June you were forward in the battle area yourself. Is that right? *A.* On the 7th of June I was in the field.

Q. It was not quite "the field" I said – "in the battlefield area"? *A.* Yes.

Q. And after the battle I suppose that you went to the Abbaye did you? *A.* Not on the 7th – but the 8th.

Q. Now you have told us you took part in the attack on Bretteville on the night of the 8th and 9th June, did you not? *A.* Yes, I commanded this attack.

Q. And you returned in the early hours of the following morning to your base near Caen? *A.* I myself did – not my troops.

Q. Now your troops did carry out an attack on the following morning on the south side of the railway in the direction of Norrey, did they not? *A.* Yes.

Q. Who commanded that attack? *A.* The Battalion Commander of the 1st Abteilung Sturmbannführer Jurgensen.

Q. Did he tell you that on that morning – early that morning at MR 938706 approximately, a high-ranking officer of your unit captured two prisoners and after interrogating the prisoners shot both of them? *A.* No, he did not report that to me and I do not know anything of that.

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Q. Now, I would like you to consider again carefully the time you were in the tower when you were talking to Meyer on the 8th June. Will you tell me the time as closely as you can? *A.* I am perfectly sure that it was in the afternoon shortly after noon-hour. I cannot give the exact time even if I wanted.

Q. Now when you mentioned "between two and three o'clock in the afternoon" was that an ill-considered answer or are you prepared to stand by that? *A.* It must have been in the neighbourhood of two o'clock in the afternoon.

Q. May it have been later than that? *A.* It could not have been much later than that because at three o'clock the first of my vehicles came to me.

Q. Where do you mean – at the Abbaye? *A.* Drove up.

Q. Where do you mean – to the Abbaye? *A.* No, from the sector St. Germain.

Q. Well, you mean they drove up from St. Germain to what place? *A.* To the forming up place before the attack.

Q. You mean for the attack on Bretteville which was carried out at dusk? Is that what you mean? *A.* Yes.

Q. Well that attack did not take place until dusk did it? *A.* The attack took place in the late afternoon hours and I am perfectly sure that we bypassed Rots before it became completely dark.

Q. Now, darkness did not fall until at least ten o'clock at that time of the year did it? *A.* I can't exactly remember when it became dark.

Q. Well now you have some idea, haven't you? You fought during the month of June. You must have some idea as to what time it got dark. *A.* Yes. I do not remember the exact time as we took Rots and the little place beyond it during battle.

Q. Yes, but tell me this please. Are you asking us to believe that you do not know what time it got dark in Normandy in June 1944? *A.* It is not my intention.

Q. Then what time did it get dark?

President: Before you go any further there might be a certain amount of confusion as to time. You see they were not on Greenwich time the way we were.

Macdonald: I think the French were on double summer time were they not – the same as we were? *(Continuing cross-examination) Q.* Were the German Forces observing what is called "double summer time," that is two hours in advance of Standard time? *A.* Yes.

Q. Well, tell me then at what time it became dark in Normandy in June 1944? *A.* It is possibly between nine and ten. I cannot remember exactly.

Q. That is your best recollection, though, for about the 8th June is it? *A.* I cannot give the exact time to the best of my desire. One lives as a soldier without time, without a watch. I cannot say exactly.

Q. Do you mean to say you would mount a tank attack without a timepiece on you to synchronize the attack? *A.* I believe that it was wrongly translated. I mean I did not have an idea of the time.

Q. Now who else was at the tower with you and Meyer when you were there? *A.* I remember having seen a few officers. It is possible that the Commander of the Artillery Battalion, Commander Bartling was there, and some other Artillery officer.

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Q. Were there any other officers there? *A.* I cannot remember other officers. It is possible that a few more were there.

Q. You know Obersturmführer Meitzel do you? *A.* Yes, I know him.

Q. And was he there? *A.* No, I didn't see him.

Q. Now, did you go with Standartenführer Meyer to look at some bodies of German soldiers that were laying in the vicinity of Villeneuve? *A.* No, I cannot remember that.

Q. Now, when you were at the Abbaye on the 8th June you put the time as about 1400 hours, 2 o'clock. How long did you stay there. *A.* I was only a short time there, I cannot give the exact duration, I believe a quarter of an hour.

Q. Did you have lunch while you were there, with the Standartenführer? *A.* I remember that Standartenführer Meyer invited me to stay for dinner but in order to give my commands to the units I returned.

Q. You did not actually stay for lunch at all? *A.* It is possible that I took a few bites but I did not stay for the entire meal.

Q. Where did you actually eat your lunch that day? *A.* I took a few sandwiches at my HQ.

Q. That was after you got back, was it? *A.* I had a few buns before.

Q. When did you have this lunch, before you went to Ardenne Abbaye or after you got back? *A.* I did not have a complete meal at all that day. I took a few slices of bread before I went to the Abbaye and had a few bites while at the Abbaye.

Q. Where did you have the few bites, up on the tower or somewhere else? *A.* After we had our conversation on the tower we went down to the small house where the Headquarters was.

Q. Where was that with relation to the chapel? Can you tell me without looking at the chart? *A.* Direct left of the west entrance.

Q. Now, I show you Exhibit "T-26," when you say right or left, do you mean right or left on the photograph? *A.* No, on the plan which I have seen before.

Q. Which side is it that you went? *A.* On the left side as I look at the photograph *(Photograph Exhibit "T-26")*. This is the entrance and here is the first house *(House marked on Exhibit "T-1" with an "R")*.

Q. What Regimental Officers did you see at the Headquarters while you were there? *A.* There were two young officers, I do not remember who they were.

Q. They were 25th Panzer Grenadier Regimental Staff, were they? *A.* Yes.

President: *Q.* In your experience in battle did you ever see a schwimmwagen blow up on a Teller mine? *A.* When you make reference to the battle in Normandy, no.

Q. No, I mean at any time, have you ever seen one that has been blown upon a Teller mine? *A.* Yes, I have seen that.

Q. And would you say that it was pretty well demolished, that the occupants in it were pretty badly mangled or did the people manage to get out alive? *A.* According to my experience which I had in Russia nothing remained of the occupants.

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(The witness withdraws.)

President: The accused and escort may withdraw. The Court will adjourn for ten minutes.

—

President: I declare the Court open. Call the next witness.

Fourth Witness for the Defence

PW 31G11791, Untersturmführer Kurt Bergmann, 12th SS Panzer Division (Hitler-Jugend) having been reminded of his former oath, is examined by the Defending Officer, Lt-Col M.W. Andrew:

Andrew: Now the other day I cross-examined this witness, sir, on questions brought up in the Examination-in-Chief, only confining my cross-examination to that. It was then understood that I would call him as a witness for the Defence. I have one or two questions I wish to direct to the witness now.

Q. You recall the period of the 6th, 7th and 8th June 1944? *A.* Yes.

Q. And you recall the following days of the battle after the 8th June? *A.* Yes.

Q. Now, around that time did you ever hear Brigadeführer Meyer give an order regarding the burial of the dead? *A.* Yes, as far as I can remember it was three or four days after the invasion. Then Brigadeführer Meyer came with Obersturmbannführer Milius and saw one dead body at the road crossing. Standartenführer Meyer expressed surprise and gave the order that a search should be made throughout the area for dead bodies and those should be buried immediately. This order was verbally and personally given to Milius. Later in the evening a written order in respect of the burial of dead came from Regimental HQ. In this order it was said that the area should be searched once more for dead bodies, secondly, that they had to be buried at once and, thirdly, that if there were not enough personnel available civilians could be called on to assist. That is all.

Q. Were you ever given orders regarding prisoners of war? *A.* Yes.

Q. What were they, what were these orders, will you tell the Court? *A.* First of all in the German Army there were basic principles in respect of the treatment of prisoners of war. Secondly, when I came to Division tactical exercises, Adjutant's exercises, took place at which the treatment of prisoners of war came under discussion. Thirdly, I believe it was about three to four days after the invasion, orders came from Division that prisoners of war should be evacuated as soon as possible back to Division. This order was only a reminder as it had been issued before.

Q. Do you know of any orders that the troops had to sign? *A.* The Battalion got sitreps against 11 o'clock in the morning. The Battalion passed these reports again at six in the morning to the Regiment. These reports were repeated against six in the evening.

Q. Now, can you tell me of any orders prior to the invasion that the troops, that is your soldiers, had to sign that they had been read to them, or told to them? *A.* No, I do not know of that.

Q. When did you go to the Division, the 12th Division? *A.* At the end of February 1944 I came to the Division.

Q. And what was your task with your battalion that you were serving with on the 8th of June? *A.* My job was the Adjutant in this Battalion.

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Q. How long had you been adjutant of your Battalion? *A.* It was from the middle of March till the 9th of July I was the Adjutant of that battalion.

Q. Were there any instructions passed at any time prior to the invasion, passed down to Regiments or Battalions, that the soldiers had to sign? *A.* No, I do not know of any.

Macdonald: *(Cross-examination) Q.* Now, if Brigadeführer Meyer says there were orders passed down, which the troops had to sign, is he mistaken? *A.* There were no orders that were to be signed by the troops.

Q. Well now, just so there will be no misunderstanding, what I mean is this, that they signed to acknowledge having heard certain orders read, do you understand? *A.* No, I do not know of that.

Q. Now, did you receive any orders subsequent to the 11th of June, with respect to the treatment of prisoners of war? *A.* No, I do not know of that.

Q. Whose duty is it at your HQ to look after prisoners? *A.* Prisoners of war are made by the companies and are passed on to the Regiment.

Q. They are taken by the companies and are they then not brought to Battalion HQ? *A.* No, only reported to Battalion that prisoners of war are made.

Q. And to whom are the reports made that prisoners are taken? *A.* There is a report in which it is to be filled out whether prisoners of war are made or not, and irrespective of whether they are made or not, this point should be filled out and this report is passed on to Regiment.

Q. If prisoners are captured, as they were on the night of the 16-17 June, as you told us about before, you remember, the report of the capture of these prisoners is made to you as Adjutant of the Battalion, is it not? *A.* Yes.

Q. And if there is anything specially to be done about the prisoners, as to where they are to be sent or how they are to be handled, you are the one who issues those instructions, are you not? *A.* No, it is not exactly as you say.

Q. Well then, will you correct me, please? *A.* Prisoners are made by the companies in front and when the two prisoners who are reported to have been made on the 16-17 [of] June, they bypassed Battalion HQ and were evacuated to Regiment. That does not mean that Battalion HQ gave the order for that move, that was natural.

Q. Yes, but the report was made to you, you told us, the next morning, wasn't it? *A.* The next report to Regiment, this it mentioned, yes.

Q. Yes, but the report of the capture of the prisoners was made to you the following morning, as Adjutant of the Battalion, wasn't it? *A.* The report comes from the company and I pass them on.

Q. Yes. So that all matters having to do with prisoners of war insofar as your battalion is concerned come to your attention in one way or another? *A.* They come from the companies to me, yes.

Q. And if there are any special orders to be given to the companies having to do with prisoners of war, it is your duty to pass them, isn't it? *A.* I get the orders from Regiment.

Q. Yes, and it is your duty as Adjutant to pass them on to the Company Commanders, isn't it? *A.* Yes.

Andrew: Just a question sir. I would like the Court's permission to ask this. This is cross-examination on something that was not brought out in my examination-in-chief.

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Macdonald: I do not see how it can be put now.

Andrew: I did not bring that out in my examination.

Judge Advocate: You can just re-examine the witness -

Andrew: I am just re-examining him, but I just want to get permission to do it in that manner?

Andrew: *(Re-examining the witness) Q.* Do you know for a fact whether or not the prisoners captured by the companies on the night of the 16th and 17th – *A.* No, I do not know that.

Andrew: I have not finished my question yet.

Macdonald: He has already answered the question before you finished putting it.

Andrew: I have not finished my sentence yet.

Macdonald: But he has given you the answer.

Andrew: Sir, I would ask the Court to ask this witness if he actually knows whether the prisoners taken on the night of the 16th and 17th and who by-passed Battalion HQ actually reached Regimental HQ, whether he knows that for a fact.

President: I think that is a fair question.

Macdonald: He stated it quite positively, that they did.

Andrew: No, he said they by-passed.

Macdonald: That is not inconsistent with anything he has said so far. He was asleep or something and –

President: *Q.* On the night of the 16th and 17th, there were two prisoners captured? *A.* The time or the day on which the two prisoners were made I can not say exactly.

Q. The following morning it was reported to you as Adjutant that two prisoners had been captured during the night? *A.* Yes, but whether it was the 16th or 17th of June, I can't say exactly.

Q. You never saw those prisoners. They by-passed your Battalion HQ? *A.* I was asleep during that night, I did not see them.

Q. So that you do not know, really, that they did by-pass your Battalion HQ? *A.* Yes. On the next morning it was reported by my orderly that two prisoners of war had gone by our Battalion HQ on their way to Regimental HQ.

Q. Did they ever arrive at Regimental HQ? *A.* That I do not know myself. They were first led to the medical centre of the Battalion and from there were evacuated to the Regimental HQ.

Q. So that they actually did not by-pass the Battalion, they were treated in the Battalion Medical Post before being sent – *A.* The road leading from the company to the medical centre passed along Battalion HQ. There was no other road.

Q. So that they were treated at your Battalion First Aid Post? *A.* Yes.

Q. Well, did they ever arrive at Regimental HQ? *A.* Yes. I was told that they had been brought from the Medical Centre or Medical Aid Post to the Regimental HQ.

Q. As far as you know, they arrived there? *A.* Yes.

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(The witness withdraws.)

Andrew: Sir, that is the defence. I just wish to, if I may, address a few remarks to the Court. We are in the position, sir, that many of the witnesses for the defence are no longer living. The other thing is that I requested through the War Crimes Investigation Unit the three witnesses, Gatternigg, Stift, Doldi, who are three people who have been referred to in the evidence. These three were asked for when I first took over at the beginning of November and the War Crimes Investigation Unit has given me every assistance and the War Office, the American Authorities and others have tried to get them. We have made an effort to get them and I just wanted to point that out to the Court. I have witnesses for character at the proper time, sir.

Macdonald: I have a number of witnesses, sir, that I would like to call in rebuttal. Would you like me to start on them now?

President: Yes.

Macdonald: I propose to ask the direction of the Court on this. It may be considered an unnecessary procedure. In the course of the evidence of the accused he said that he had heard of the shooting of certain German prisoners. We had some knowledge in advance of this allegation, because it had been mentioned in previous interrogations of the accused. So on the possibility that it might again be mentioned, we investigated the matter, and have two witnesses and an affidavit to refute the suggestion of the accused that any prisoners had been shot as alleged. It is a side issue. To refute the story may affect the credibility of the accused, but it goes into another matter, and I am not so sure that his evidence on the point in any event justifies a great deal of time spent in rebuttal.

President: I don't think it is necessary to introduce this matter here. I mean I don't think there is any question in the minds of the Court as to that particular incident.

Macdonald: I am in the position of being able to completely refute the suggestion that any German prisoners were killed in the circumstances that the accused has mentioned. If any prisoners were killed as alleged, in any event, it occurred on the night of the 7th of June, long after he says he heard the rumour at his Regimental HQ. If the Court wishes to hear these witnesses they are here but you may consider it unnecessary –

President: I don't feel that it is necessary.

Judge Advocate: My opinion is that it is not in issue at all. It is totally irrelevant. The only thing is that the accused has mentioned that he heard before noon on the 7th of June and this –

Andrew: That came out solely in cross-examination. I made no reference to it in my examination.

Macdonald: I didn't make any reference to it.

President: The Court has decided that we do not need to hear it.

Macdonald: I'm afraid them, sir, that I have been too optimistic. I could have gone on, but if this is not being heard, I have no witnesses available to start with at the moment.

President: Alright. The accused and escort may withdraw. The Court will adjourn until 10 o'clock tomorrow morning.

(The court adjourned at 1620 hours and reassembled at 1000 hours on 22 December 1945)

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B4. Rebuttal

22 DECEMBER 1945

President: I declare the Court open...

FIRST WITNESS FOR REBUTTAL

M. Daniel Lachevre, 27th Witness for the Prosecution, Abbaye Ardenne, Normandy, France, being reminded of his former oath is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *(To the Court)* The first witness for the rebuttal, sir, of three that I intend to call, will deal with three points – one the condition of the Abbaye and chapel at the time of its occupation by the Germans, secondly with the condition of the garden from approximately the 8th until the 11th June, and with respect to bodies in the vicinity of the Abbaye anywhere during that time.

Macdonald: *(Examination)* *Q.* Now, I believe you told us before, witness, that you live at the Abbaye Ardenne? *A.* Yes.

Q. And that you were at your home at the Abbaye when the Germans came there in June of 1944? *A.* Yes.

Q. And how long did you stay at the Abbaye? *A.* Approximately ten days.

Q. That is after the arrival of the Germans? *A.* Yes.

Q. Would that make it then about the 16th or 17th of June that you left there? *A.* Yes.

Q. Now, will you cast your mind back please to the day of the invasion, the 6th of June. Did anything unusual occur at the Abbaye Ardenne on that day? *A.* The Germans arrived during the night from the 6th to the 7th.

Q. Did anything else occur prior to their arrival? *A.* No.

Q. Were there any other persons at the Abbaye other than those who normally lived there on the 6th of June? *A.* Yes. During the afternoon of the 6th there came there approximately fifty civilians who had been evacuated from Caen.

Q. And where were they kept at the Abbaye? Where did thy live at the Abbaye? *A.* In our house in a cellar.

Q. What was the nature of this cellar? *A.* A large ancient cellar.

Q. Now were any of these persons who came to the Abbaye at that time related to you in any way? *A.* Yes.

Q. Were any of these young boys about your own age? *A.* Yes...

Q. After the Germans arrived what was the next thing which you remember of particular interest? *A.* After the arrival of the Germans I saw some Canadians on the 7th.

Q. Now what time of the day was it when you saw these Canadians? *A.* About eight o'clock in the evening.

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Q. Now had you and the other boys who had been evacuated to the Abbaye been allowed to move about the Abbaye premises freely after the arrival of the Germans? *A.* Yes.

Q. Was any restriction ever put upon your freedom of movement about the place? *A.* We were never prevented from moving around up to the 11th.

Q. Well, what happened on the 11th? *A.* On the 11th they came and told us that we were no longer allowed to move about the Abbaye.

Q. And who told you that? *A.* A German officer.

Q. Now in the interval between the arrival of the Germans and the time when you were told that you could no longer move freely about the Abbaye did you have any occasion to go to the small garden connected with the Abbaye Courtyard by a small passageway. I will show you on the plan what I mean. I direct your attention to the garden with these various letters marked on it? *A.* Yes.

Q. I will define that garden a little better for the purpose of the record. It has the letters "E," "C," "D," "A," "B" written on it on Exhibit T-1. Now when did you go to the garden? *A.* I went in three days after the landing.

Q. Can you fix the date at all? *A.* Yes.

Q. Well, what was the date then? *A.* It was the 8th.

Q. And what time of the day did you go there? *A.* About eight o'clock in the evening

Q. Did you go there alone or were there others with you? *A.* We were about four.

Q. Now, do you remember the names of the others with you? *A.* I only remember two friends.

Q. And what are their names? *A.* The first is Andre Lachevre, my cousin, the second is Andre Crochu, who is a mechanic in the Rue Caponiere, Caen.

Q. Now, how old is the boy whose name you have just mentioned? *A.* Sixteen.

Q. And how old is your cousin, Andre Lachevre? *A.* The same age.

Q. Now why did you go to this garden? What was the purpose of your going there? *A.* There were horizontal bars and swings and we went to play on them.

Q. Now, will you look at the plan and tell me where in the garden these swings and parallel bars were and will you mark it with a red pencil please on Exhibit T-1. *A.* Here. *(Witness [marks] an "X" with red pencil over the letter "B" and then over to the side on the plan included in Exhibit T-1)*

Q. Now, how long did you stay in the garden on the 8th of June when you went there? *A.* From half an hour to three-quarters of an hour.

Q. And while you were in the garden did you move down to the...

Andrew: Now this is a leading question. It has been for a while. I have not said anything about it but I would just ask my friend...

Judge Advocate: I do not think the questioning has been leading up to now.

Macdonald: *(Continuing examination) Q.* Did you move about the garden at all while you were there? *A.* Not very far. We only went as far as here *(Witness indicates point "D" on plan in Exhibit T-1)*.

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Q. Now, while you were in the garden did you observe anything that appeared to be unusual? *A.* Yes. I noticed that they had built a shelter at the entrance to the park – at the entrance here. *(Witness indicates passageway leading from garden to courtyard marked "DD" on plan in Exhibit T-1.)*

Q. Now, did you go back to the garden at any other time after the 8th? *A.* Yes, I returned there on the 9th and 10th.

Q. And what time of the day was it on the 9th and 10th when you went there? *A.* At about the same time.

Q. The same time on each occasion? *A.* Yes.

Q. Did any of these other boys go with you on the other two occasions that you went there? *A.* Yes.

Q. Now did you on either of these occasions, apart from this shelter which you had seen constructed, see anything which appeared unusual to you? *A.* No.

Q. Now you left the Abbaye on the 16th of June. Did you, from the time the Germans arrived until you left on the 16th June, see any dead bodies around the Ancienne Abbaye? *A.* No, I saw no bodies.

Q. Now do you mean by that that you saw no bodies of either Germans or Canadians? *A.* Neither Canadian.

Q. And are you now speaking of anywhere at all around the Abbaye premises? *A.* Anywhere.

Q. Now if there had been any bodies in the garden on the 8th, 9th or 10th when you were there, would you have seen them? *A.* Yes.

Q. Did you see any bodies around the Abbaye at any later time? *A.* Yes. When we returned on the 14th of July there were German bodies lying here and there.

Q. Do you remember the condition of the chapel when the Germans arrived there? *A.* Yes.

Q. Now, will you tell me what entrances there are to the Abbaye through which vehicles could be put? Will you look first at Exhibit T-1? *A.* With vehicles you could come through here. *(Witness indicates entrance marked "EE" on plan in Exhibit T-1.)*

Q. Now, were there are other entrances through which vehicles could be taken into the Abbaye? *A.* Yes. There was another one here but it was barricaded.

Q. Will you mark that now with a red "X"? *A. (Witness marks other entrance.)*

Q. And is that entrance at the opposite end of the building from the one which you first indicated? *A.* No, it is on the left.

Q. Alright. Now was there at that time any wall or barricade of any description across the main entrance – "EE"? *A.* No, there was nothing.

Q. How do you know that? *A.* No, because there were vehicles inside the chapel.

Q. When was that? *A.* It was on the 7th. It was between the 7th and the 11th.

Q. Now when you speak of there being a barricade across this entrance which you have marked with a letter "X" what do you mean by that? Will you describe it? *A.* It was a barricade made of carts and casks – barrels.

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Andrew: *(Cross-examination) Q.* Witness, you have played in that garden prior to the invasion, have you not? *A.* Yes.

Q. On many times? *A.* No, not very often.

Q. You are familiar with that garden, you know it very well, do you not? *A.* Yes, very well.

Q. And you would have noticed anything unusual with the grounds and trees and so on the night that you went in to play with your four friends, is that right? *A.* Yes.

Q. You would have noticed if anybody had been digging around the ground or had been cutting down trees, wouldn't you? *A.* Yes.

Q. And you would have noticed any little things that were wrong in the grounds or with the trees or the bushes, would you not? *A.* Yes.

Q. Now, in the chapel, there was an entrance to the chapel, was there not, on the right hand side as you stood in front and looked? *A.* There was an entrance here. *(Witness indicates point "EE".)*

Q. And that is the front of the chapel? *A.* Yes.

Q. And then there are two doors that lead up into the towers, are there not? *A.* Yes.

Q. And then when you go to the right hand side of the chapel there is an entrance near the front of the right hand side, is there not? *A.* Here there is no entrance, it is blocked up.

Q. Now, on the left of the chapel, as you go in and to the front on the left there is a tower, as you have marked it "X"? *A.* Yes.

Q. And it is a small door that people can go in, is it not? *A.* It is a wide carriage door.

Q. That is up here a little more actually isn't it, up here towards the centre of the chapel a little more, isn't it? *A.* No, it is exactly here.

Q. And there are no doors in the back of the chapel, are there? *A.* No.

Q. And you cannot get vehicles in the back of the chapel where you see the arrow, can you? *A.* No, there is just room enough for a man to go there.

Macdonald: *(Re-examining) Q.* Witness, looking at that chart, that shows a solid wall on either side, does it not, and an entrance at the rear? *A.* Yes.

Q. And is the chart correct then if it shows an entrance where it does and a solid wall where you marked the red "X"? *A.* The plan is not exact here *(Indicating wide door at rear of chapel)* and wrong here *(Indicating spot marked "X" in red pencil)*.

Macdonald: I should like to explain to the Court so that it is fully on the record that this Exhibit is a reproduction from a book produced in which the Abbaye is described and it is a book evidently that was published a long time ago so that the plan is not absolutely precise. It has not been surveyed by an engineer to ensure that it is correct in every detail. I did not put the book in as an exhibit but if the court wishes this to be done I am quite willing to do so. However, it is the only one obtainable and the Vicos would like to get it back.

President: I do not think it is necessary to enter the book as an exhibit. Make the alterations on the chart which we already have as an exhibit.

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President: *(Questions witness) Q.* At the time you went into that little garden beside the Vico Chateau was the ground covered with bits of broken branches that had been shot off the trees from Artillery fire? *A.* No, it was bare.

Q. You said that when you went into the garden on the 8th you noticed for the first time a shelter? *A.* Yes.

Q. Will you describe that shelter, how was it made and what was it made of? *A.* It was dome shaped, its top was 30 centimetres from the top of the passageway, it was made of rocks and earth.

Q. On the 8th, did you look in it? *A.* No, I did not go in.

Q. Or on the 9th? *A.* No, nor on the 9th.

Q. Or 10th? *A.* No.

(The witness withdraws.)

Second Witness for Rebuttal

Jean Marie Vico of Abbaye Ardenne, Normandy, France, the 19th witness for the Prosecution, having been reminded of his former oath, is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Q. Now, M. Vico, I think you told us when you gave evidence before that your home was at the Abbaye Ardenne? *A.* Yes.

Q. And that you left the Abbaye in December 1943? *A.* Yes.

Q. And returned there on the 17th July 1944? *A.* Yes.

Q. Now, when you left there in December 1943 do you remember whether there was any barricade or obstruction of any kind across the main entrance to the chapel? *A.* Oh no.

Q. And was there any there when you returned on July 19th, 1944? *A.* No.

Q. Now, is there more than one entrance to the chapel through which you can put vehicles? *A.* Yes, there are two.

Q. Where is the second one? *A.* Here. *(Indicating spot marked "X" on the plan Exhibit "T-1".)*

Q. Can you describe the second entrance? *A.* Yes, it is, I should think, about 3 metres 50 wide, it is a wide carriage door, it is the same size as the front door.

Q. Now, are you familiar with the little garden adjoining the main courtyard which I now indicate to you as the garden marked with the letters "E," "C," "D," "A," and "B" on Exhibit "T-1." *A.* Yes, very well.

Q. Now, do you know whether there were any things in the garden for the use of children or others? *A.* Yes, to play around with there were horizontal bars, parallel bars, and swings.

Q. Now, will you indicate on this plan, Exhibit "T-1," where these swings and parallel bars were? *A.* Here the fixed bar.

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Q. That is the bar running from the tree, letter "A," is that towards the right? *A.* Yes, and the swing is here under the big branch. *(Witness indicates position just above letter "B" on the Exhibit.)* Parallel bars here *(Indicating opposite side of tree at far end of garden)*.

Q. Had you anything to do with placing those swings there? *A.* Yes, I put them up myself.

Q. Now, where is your home, where did you live prior to December 1943? *A.* Here. *(Witness indicates house... immediately adjoining the garden.)*

Q. Now, were you familiar with the passageway leading from the courtyard in front of your house to this little garden? *A.* Yes.

Q. And when you lived there in December 1943 were you able to walk quite freely from the courtyard into the garden? *A.* Yes.

Q. Now, when you came back on July 1944 were you still able to walk easily from the courtyard into the garden? *A.* No, there was a huge shelter there.

Q. Now, I show you Exhibit "T-30" and "T-32." Will you take a pen now and draw on there as nearly as you can the shelter which you say was constructed in the passageway? *A. (Witness draws dome like shelter in passageway.)*

Q. Now, were those stone steps there when you left the Abbaye in December 1943? *A.* No, I made those myself.

Q. Now, when did you do that? *A.* A month to a month and a half after we had returned perhaps.

Q. Well then, did you at that time remove this shelter which had been constructed there? *A.* Yes.

Q. So that this picture then of this passageway has been taken since you removed the shelter and reconstructed it? *A.* Yes.

Q. Now, would it have been easy to pass from the courtyard into the garden before you removed this shelter? *A.* No, you had to climb up the side of it. The young people often went through there but for older people it was not as easy as that.

Q. Do I take it then that the back of the shelter, that is the side towards the garden, was completely closed? *A.* Yes, practically.

Q. I mean was there any entrance or doorway to the shelter from the garden? *A.* No, there was a very small chimney like passage from the shelter to the ditch, I suppose it was to get out in case the shelter would have fallen down.

Q. Now, can you give us some idea of the dimensions of this chimney like hole that you have spoken of? *A.* It was very small, about as wide as this, it was just enough for a man to crawl through on all fours.

Q. Have you any idea when this shelter was constructed? *A.* I do not know anything about that.

Q. Did you find any things in the shelter when you went to demolish it? *A.* Yes, when we were demolishing the shelter we found German camp beds made of pine, we found articles of German equipment, I remember that there were some German tins, mess tins. Besides that the construction of the shelter itself was German in style, it was just like other shelters around.

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Q. Now, what sort of material was used in the construction of this shelter? *A.* There were below ties, like railroad ties. Above there was earth, there was a mattress also, then a great mound of earth and over that stones and some bath tubs.

Andrew: *(Cross-examination) Q.* Just one question. When you left the Abbaye in 1943, where did you get your water supply from? *A.* From a cistern and from a well.

Q. Did you use a pail to dip the water up with? *A.* At the well, yes, but at the tank there was a pump.

Q. Where was that pump? *A.* Here...

Q. And where was that pump? *A.* It was here...

Q. In the passageway to the garden? *A.* Yes, right at the corner.

Q. You used that pump to get water all the time. That was the usual place to get your water is that right? *A.* Yes.

Re-examination by Macdonald: *Q.* Did that shelter come out as far as the pump or was the shelter just at one end of the passageway? *A.* No, the shelter just stopped flush with the end of the passageway. There was just a certain amount of earth which went beyond the end of the passageway inside about a metre, thirty. It was the side of the shelter.

Q. Was this shelter constructed entirely at the garden end of the passageway? *A.* It was exactly at the end of the passage. It blocked the ditch and prevented entrance and exit from the garden.

Q. So that it was constructed on the garden side [and] not the courtyard side of the passageway? *A.* Yes.

Q. And the shelter actually, then, did it consist of the passageway plus the additional part that had been built on the garden side? *A.* No.

Q. Well, where was the entrance to the shelter? Was it at the garden end of the passageway? You drew the doorway on the photograph on the passageway side. Where was the door with relation to the passage at the end of the passage, half-way down the passage, or where? *A.* It was just where this wall is and there was a plank there to stop the earth which was piled up there from tumbling down into the passage.

Macdonald: *(Flush with the wall shown at the back of the passageway on T-30.)*

Andrew: No questions.

President: *Q.* How many people assisted you in demolishing and tidying up that shelter? *A.* My brother.

Q. How long did it take you to demolish it? *A.* Three days approximately.

Q. Working how many hours a day? *A.* Eight hours easily.

Q. Do you mean at least? *A.* At least, yes.

Interpreter: He really means easily eight hours but you might put “at least.”

President: *Q.* Do you think that six men could have built it in twenty-four hours? *A.* Yes, I think so because there was not much of a hole there. It was not more than fifty centimetres deep. The rest was easy. All you had to do was pile earth up and put planks on top.

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(The witness withdraws.)

Macdonald: I now propose, sir, to recall the witness Jesionek. There is a question of minefields which arose and which apparently is troubling the Court. I would like to ask him some questions with respect to that subject and have him give an explanation. He will also be available in case the Court would like to re-examine him or question him.

THIRD WITNESS FOR REBUTTAL

Sturmann Jan Jesionek, 16th witness for the Prosecution is recalled, reminded that he is still under oath, and is examined by the Prosecutor, Lt-Col B.J.S. Macdonald:

Macdonald: *Q.* Now Jesionek, when you were giving evidence the other day, you spoke of having gone out on a recce on the 8th of June in a schwimmwagen? *A.* Yes.

Q. And that you had to return for some reason to the Abbaye? *A.* Yes.

Q. Now, will you describe the recce and what occurred while you were on it? *A.* We left Regimental HQ in the direction of Cussy and approximately one kilometer away the second schwimmwagen blew up, or flew up into the air. At the same instant about ten meters to our right, two other explosions took place. We at first thought that we had come under artillery fire because about three hundred meters to the left of us an Allied tank was standing. Subsequently I discovered that that tank had already been knocked out. We had a number of wounded, that is we had now a number of wounded, an Oberscharführer had his leg smashed and blood came out of his mouth, and an Unterscharführer had dislocated his wrist – hand, and a Private had some wound on his leg. Then a sentry of the Wehrmacht came up to us and called to our attention that this was a minefield and that there was also a sign there saying it was a minefield. We then looked at this sign. We could hardly any more decipher what was on it. Then they ordered us to carry down the schwimmwagen into a road which was quite nearby. One of the remaining schwimmwagen drove back with the Oberscharführer and the Unterscharführer who had sprained – dislocated his wrist and the private who had some sort of a wound on his leg. We were sent back to Regimental HQ.

Q. Why were you sent back to Regimental HQ? *A.* There were too many men and too few vehicles and I was supposed to help these two wounded.

Q. Now were there any officers with you when this occurred? *A.* Yes, Untersturmführer Fehling.

Q. Did you hear any explanation why you got into this minefield? *A.* Yes. The sentry from the Wehrmacht, he apparently was said to have been asleep there. We did not know there was a minefield there.

Q. Well, did you hear the officer say anything about it? *A.* Yes, he said there was a minefield.

Q. Was this before or after the schwimmwagen blew up? *A.* Afterward.

Q. Did he have any conversation with the sentry, or guard? *A.* Yes, he [roared] at him and said it was his duty to be there and that he had been asleep.

Macdonald: That is the only point on which I propose to re-examine him on sir, if the Court would care to ask any questions.

Andrew: I have a couple of questions, sir.

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President: Any connection with these mines?

Andrew: Yes sir. *(Resumes cross-examination) Q.* The men who were in the schwimmwagen that were blown up, how many would there be? *A.* A driver, the Oberscharführer, and Unterscharführer.

Q. And were they the ones, the wounded men you speak of, were the ones in this schwimmwagen? *A.* Yes.

Q. They were not hit by shell fire, it was the mine? *A.* It was the mine, yes.

Q. And what did you do with the dead bodies that were killed by the mine? *A.* There were none killed.

Q. Yes, and the schwimmwagen, are you sure they were on the minefield – the schwimmwagen that were blown up? *A.* Yes.

Q. Now, then this guard that was on the minefield. Was there only one man or two men guarding the minefield? *A.* I only saw one.

Q. And was he there to warn you not to go on the area? *A.* Yes, he was to be there.

Q. And he was to warn people this was a minefield and to keep off there. That was his duty? *A.* Yes.

Q. And he was asleep? *A.* Yes, he was asleep.

Q. Where was he asleep? *A.* Left of the minefield there was a road and on the left of that road there were bushes and he was in the bushes. Anyway he came out from those bushes.

Q. And usually on German minefields they have a man standing to tell you not to go on the minefield, is that right? *A.* No, there is not, but we knew nothing about that minefield. Perhaps the Wehrmacht had put down those mines. Perhaps that is why they put a man there.

Andrew: That's all sir.

President: *Q.* I am going to show you a large scale map of the area of Cussy and I would like you to point out on it, if you can, the actual spot where your schwimmwagen blew up. It is the middle one on Exhibit T-2. Trace on that your route. *A.* It was approximately here...

President: Q. When your schwimmwagen blew up, will you describe the extent of damage that was done? *A.* The car went right up in the air and the men who were sitting in it went up too. A few of the wheels fell off, or flew off the car, and the car started to burn and we at first thought that the men who had gone up in the air like that were all dead, but the Oberscharführer at first did not move at all, and then we helped him to his feet but he could neither stand nor walk.

Q. You yourself were not blown up by a mine? *A.* No. I was in the third car. It was the second car that blew up.

Q. Now, you took these wounded people back in your schwimmwagen, did you, to the Ancient Abbaye? *A.* I did not own a schwimmwagen at that time.

Q. Didn't you say you were driving the third one? *A.* I didn't drive. I drove with him. I sat in the third car.

Q. How long were you – let me see – you were wounded on the 9th? *A.* Yes, during the night of the 8th to 9th...

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Q. Do you remember when you saw this NCO fire his pistol from the little passageway – do you remember a shelter that was constructed there? *A.* In the passageway?

Q. Yes. *A.* No, I cannot remember that.

Q. You said that when you blew up – at least when you hit this minefield near Cussy, that there was a burned-out British tank over on your left flank? *A.* Yes. There was a little rise there and on that rise was the tank.

Q. Will you indicate on this map where you think that tank was sitting? *A. (No audible answer.)*

Macdonald: Witness indicates with a large dot on Exhibit T-2.

President: *Q.* When you returned to the Ancient Abbaye and these photographs were taken – I refer to Exhibit T-32...

Macdonald: Sir, I think perhaps I should explain that only some of these photographs were taken when the witness was there, and I think that one was not taken when he was there but by Col Campbell later. I think he appears in most of those that were taken when he was there. They are of a more rectangular shape.

President: And T-30?

Macdonald: No, neither of those were taken when he was there.

President: *Q.* Looking through the passageway one sees a vertical wall and a flight of steps to the right of it. Now, when you say this shooting occurred, you were looking through there. Was that flight of steps and that vertical wall there then?

Macdonald: Would you like to show him the photograph, sir, so that he knows what you mean?

President: Yes.

Jesionek: *A.* That one could see the steps I know for sure because one could quite well walk through right in to the park there. It is possible that on the left side of the passageway there may have been standing some implement, that I cannot say today.

Interpreter: I think he means an agricultural implement.

(The witness withdraws.)

Macdonald: Sir, may I say with respect to the last question, if there is any doubt, that I got it from the witness Vico that he had constructed the steps shown in the photograph, but I understand that there were steps there prior to this which had more or less been demolished in the destruction of the shelter, but there were steps at this particular time, of a different character perhaps. [He] can be recalled if there is any doubt about that.

President: Have you got somebody else?

Macdonald: I want to read three excerpts from the SHAEF Report and then I am through.

President: I think that we had better adjourn now for ten minutes.

Macdonald: There is one other witness, sir, that I had overlooked. I had read an affidavit as a part of my case from Pte Dagenais who, I understand, at that time was on his way overseas and was on the high seas. He

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has arrived since then and is available if you wish him to be produced in Court or if my friend wishes to cross-examine.

Judge Advocate: Do you want him?

Andrew: I do not know. The evidence that he is going to produce isn't in yet.

Macdonald: Yes. I have read his affidavit.

Andrew: Oh. No then.

President: The accused and escort may withdraw. The court will adjourn for 10 minutes.

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President: I declare the court open...

President: Now, could we recall that young French witness?

Macdonald: Which one? The boy?

President: The boy.

Judge Advocate: Lachevre.

First Witness for Rebuttal

Daniel Lachevre, Abbaye Ardenne, Normandy, France, 27th witness for the prosecution, is recalled by the court, reminded of his former oath and questioned by the President:

President: *Q.* Now, you have stated that on the 8th of June in the evening you went into the garden? *A.* Yes.

Q. And on that occasion you noticed a shelter in the passageway? *A.* Yes.

Q. Are you very sure that that shelter was there on the 8th? *A.* Yes.

Q. How did you get into the garden? *A.* By a breach that opened into our property.

Q. Will you show us that breach on the plan T1? *A. (Witness indicates breach in wall by red line drawn through wall on Exhibit T-1.)*

Q. Now, on the subsequent occasions when you went into the garden to play with this apparatus did you always use that breach in the wall? *A.* Yes.

Q. Did you ever go into that garden using the passageway? *A.* No.

Q. Were there any other ways of getting into that garden? *A.* Yes. We could have gone through here *(Witness indicates place with the letter "Y" ..., and marks "Y-1" at the entrance to the garden itself).*

Q. You said that up until the 11th you were allowed to move freely around the area of L'Ancienne Abbaye? *A.* Yes.

Q. Did you on the 7th of 8th see German soldiers build that shelter? *A.* No.

Q. Are you very sure? *A.* Very sure, sir.

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Q. Have you any idea when it was built? *A.* I suppose that it was on the 7th or on the morning of the 8th.

Q. When the Germans moved into that area at first what was the date? *A.* They arrived during the night of the 6th to 7th.

Q. Were there very many of them? *A.* There were a few hundred.

Q. And what did they proceed to do when they first came? *A.* They put themselves up in our field here and in M. Huard's house.

Q. When did you first notice that they had overflowed into the Vico end? *A.* There were very few Germans at the Vico place.

Q. Did they move into the Vico premises on the night of 6-7th? *A.* I do not think so.

President: *(To the Prosecutor)* Will you show the witness photographs exhibits 33 and 34?

President: *(Continuing examination) Q.* Now you will notice there that the grass and the undergrowth is thick? *A.* Yes.

Q. Now ignoring the broken trees lying in the foreground was the ground in that garden in that condition in June 1944? *A.* There were no trees then and branches and there was less grass at the time.

Q. Was it a well-kept garden? *A.* No. It had been left wild for some time then.

Macdonald: *(To the court)* Sir, there is just one question which might be of assistance to the Court; if the witness would indicate where his home is so that it will be seen what the natural way would be for him to go to the park.

President: *(Continuing examination) Q.* Will you indicate where your home is on the plan? *A.* Our house was this house here... we lived over here on the first floor *(Witness indicates building marked by letter "N")*.

(The witness withdraws.)

Macdonald: I would like to read a portion of the SHAEF Report in respect to the time when the accused made the statement which he eventually gave in Court in respect to these charges. I refer to the ***SHAEF Supplementary Report Exhibit No. 8, page 41***... 26th of March 1945 and the 27th March 1945. On the first day the accused was asked this question:

"*Q.* Were any Canadian or British prisoners ever executed, to the best of your knowledge, in the 12th SS Division in supposed retaliation for the shooting of SS or German prisoners? *A.* Not under my command. I have never heard of it in any case. I might add that during June I received an inquiry as to whether Canadians had been shot in my sector. I made the inquiry and was able to reply that while I had been in command there had been no such case...

Q. I show you these volumes (President indicates 5 bound reports of Court of Inquiry) which contain evidence given by men of your own division, civilians and escaped prisoners who saw these things, evidence of medical experts who have examined the bodies, and there can be no doubt that what we have found actually occurred. *A.* From my division? In what sector can these things have taken place? I find it impossible to believe.

Q. Every one of these volumes contains a record of atrocities which occurred in your division when it was commanded by you, or when you were in command of the 25th Regiment of your division.

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A. I can only say again that I gave no orders in connection with any such thing and have never heard anything of these atrocities, nor has any official report been made to me about them...

Q. It is difficult to believe that these things could have been done without knowledge coming to you, at any rate after the event? *A.* I have never heard anything about these things.

Q. And you have never taken any disciplinary action in relation to occurrences of this kind? *A.* I reply, as I said yesterday, that whenever discipline seemed to be lessening I took energetic action. The incident in which I had a man shot for breach of discipline should be an example of that.

Q. That is one example of a matter of a totally different kind. Can you quote any single example where you took action to restrain any members of your division from the improper treatment of prisoners of war? *A.* I have no experience, have not been and have had no reports of improper treatment of prisoners of war."

President: Court will adjourn until 2 o'clock.

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President: I declare the Court open...

President: Now, in view of the fact that the written record of the evidence that has been taken down, runs to a very large amount of typing, and in view of the fact that the Judge Advocate, the Prosecutor, and the Defence Counsel will have to have in their possession copies of that in order to prepare their closing addresses, and in view of the fact that Christmas is almost upon us, it will be necessary to adjourn this Court until 10 o'clock on the morning of the 27th December. The accused and escort may withdraw.

(The court adjourned at 1410 hours and reconvened at 1000 hours on 27 December 1945.)

B5. Addresses

27 December 1945

President: I declare the Court open...

President: Defending Counsel, have you a closing address?

Andrew: Yes sir.

President: Will you proceed?

Andrew: ***(Closing address)*** May it please the Court.

This trial is unique in the history of British law. Brigadeführer Kurt Meyer, Commander of the 12th SS Panzer Division, and at one time Commander of the 25th Panzer Grenadier Regiment, appears before you on five charges under the War Crimes Regulations, Canada, upon any one of which, if convicted, he may suffer death or such less punishment as set out in the Regulations, as this Court may deem proper to pass upon him.

The learned Judge Advocate will instruct you in the law, before you retire to reach a verdict, but there is one point of law which I take now, the liberty of emphasizing. In British Courts of criminal jurisdiction the accused is innocent until proven guilty. It is [incumbent] on the Prosecution to prove this

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guilt beyond all reasonable doubt. That onus upon the Prosecution is constant. May I quote the following excerpt from the case of *Rex v. Beal*, *8 Cr App R.95*:

"To justify a conviction in a criminal case the evidence of guilt must not be a mere balance of probabilities but must satisfy the jury beyond reasonable doubt that the prisoner is guilty."

I respectfully submit that the Prosecution has not proved the accused guilty upon the evidence adduced, beyond reasonable doubt, and it is now my intention to show this to the Court by briefly referring to a few points arising in evidence.

Now then, as the First Charge:

"Committing a War Crime, in that he, in the Kingdom of Belgium and Republic of France during the year 1943 and prior to the 7th day of June 1944, when Commander of the 25th SS Panzer Grenadier Regiment, in violation of the laws and usages of war, incited and counselled troops under his command to deny quarter to Allied troops."

In support of this charge the Prosecution read the evidence of Grenadier Frederick Torbanisch. Now I would ask the Court to place little weight on such evidence. Torbanisch did not appear before the Court where he would be subject to cross-examination by the Defence and questioning by the Court itself, in order to test the truth of his statements.

My friend read to the Court what Torbanisch says were secret orders read to the 15th Company by [an] NCO, Unterscharführer Hagetorn, a man who defrauded the Wehrmacht by disposing of military property to civilians.

Apart from the orders themselves let us examine how they were given to the 15th Company. At a parade at 1800 hours one night, which parade was held in the street of a town with undoubtedly civilians passing to and fro, in the absence of any officer on parade, Hagetorn, this NCO, gathers the ranks of the 15th Company a little closer to him and reads the secret orders. Torbanisch said they were read once, had to be memorized and then signed.

From the standpoint of pure common sense and our military knowledge such a proceeding where a secret military document is involved is ridiculous in the Canadian Army, and I submit also in the German Army. The accused Meyer gave a proper explanation as to how secret orders were given to the troops, an explanation that coincides to the method used in our own Army. He stated in evidence that a responsible officer signs for the secret order. The Company Commander then, in an appropriate setting, where secrecy is ensured, tells the troops what the order contains. The accused did, however, state that quarterly an order relating to Security of Information was read to the troops, which they had to sign. I submit that this is the order that Torbanisch had to sign at Le Sap and not the one he calls "Secret Orders."

As for the supposed secret order itself, the witness Helzel on his examination disagreed with each paragraph of the so-called secret orders. Dealing with paragraph 4 particularly, Helzel says "SS troops were to take prisoners. Also the prisoners were not to be executed after interrogation."

He also was asked the following question by my learned friend "What was the nature of the orders which were given to you by Stabscharführer Hatetorn?" Answer: "In the main it was about the behaviour towards the French civilian population." And then he goes on to say these orders had to be signed. Now this answer corroborates the evidence of the accused. As I have already stated Meyer described the quarterly security orders that had to be signed. They dealt with the non-disclosure of military matters to the French population, also with the subject of espionage. The Court will remem-

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ber the accused's evidence regarding this secret order concocted by Torbanisch. Remarking on paragraph 6 of the order he states that these are tactical thoughts he said to his troops during inspections. It does not take much imagination to understand that. He says with reference to paragraph 3 that it is practically a verbatim translation of the ordinary sentry instructions of the German Army. To the military man that is not hard to understand either.

Torbanisch deserted from the German Army on or about 7 April 1944. He went to Belgium to the home of some contacts he had evidently made during the Regiment's stay in that country. He arrived there in June or July, according to his statement. He dictated to one of the Belgian underground the contents of this so-called secret order that he had heard once read at the beginning of April, two or three months previously, a feat that would tax the mind of the greatest student of Polmanism. As I said before Torbanisch is a deserter, he had killed a man in order to facilitate his escape; he was in a bad position with the German Army. I submit that Torbanisch found it in his interests to ingratiate himself with the Belgians. He would give them secret information to show how sincere he was in wanting to help the Belgian resistance movement. He concocted that order as part of his plan. I submit that the accused struck the truth about Torbanisch's so-called secret order when he says in his evidence "That what I have here in my hand is the product of imagination of a deserter who probably with this piece of paper, with the Belgian guerilla wanted to obtain bed and board."

On this first charge, also my friend has introduced evidence concerning speeches supposed to have been made by the accused at Beverloo, Le Sap and elsewhere. Now, the evidence on this is confusing. The witness Helzel is not quite clear whether or not he remembers any such speeches and it was with the greatest difficulty that my friend tried to stimulate the witness's memory on these events. Meyer is alleged to have stated "My unit takes no prisoners." In some instances the witnesses say that the words were "My unit makes no prisoners."

On cross-examination the witness Helzel is not very sure what was said by the accused at Beverloo or elsewhere. When asked "Is it not possible that Brigadeführer Meyer said 'I do not want any of my troops to be made prisoners'" the answer was 'That I can today no longer say.'" May I now refer to the evidence of the nimble-witted Jesionek on the speech made by Meyer at Le Sap. He seems to have remembered more of the speech than any of the other witnesses. On Jesionek's cross-examination I referred to his previous evidence given at his interrogation by the War Crimes Unit. May I read with the indulgence of the Court from… the Record of Evidence – Referring to Meyer's Le Sap speech: "*Q.* Can you not remember the exact language that he used? *A.* As well as I can remember he said something running along the following lines "We must not believe in a new weapon; we must look after the retaliation ourselve because our German cities have been destroyed. We must remember that the women and children have been destroyed" and he mentioned the fact that he as giving us a new Company Commander who had fought for a long time in Russia and that we could rely upon the new Company Commander. He gave the order that when officers ran away we had the right to shoot them" – and the last sentence is as follows: "We would have to retaliate against the prisoners." *Q.* What form did you understand that retaliation would have to take? *A.* We should have to look after the retaliation ourselves rather than believe in a new weapon." and then the next sentence – "We should retaliate against the prisoners." *Q.* Did he use the word "prisoners?" *A.* He used "Englishmen" but his speech was so worded that it was understood that no prisoners were to be taken. The exact words I can not remember. Do you remember making those answers? *A.* Yes. *Q.* Are they correct? *A.* Yes."

I now refer to a portion of the speech as given again to the Court by Meyer. I read from… the Record of Proceedings: "*Q.* Well, will you tell as far as you remember this portion of your speech in which you are reported – you are wrongly reported here in the Court, so you say? *A.* I first want to give the

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statement of the deserter Jesionek. Jesionek says I had incited my men to take reprisals against prisoners of war. That is not true. The word 'prisoner' was not mentioned. I did say 'Soldiers, you now hear form the press and through the radio the slogan 'V-weapons' and things in connection with V-weapons. You hear the words 'Revenge' and 'Reprisals.' We are soldiers and must see the situation as it presents itself to us and we can only reckon with facts. The fact is that we are here in Normandy, and we here, in our fists have the weapons of the German people. I know that rocket weapons are in preparation but I do not believe that these so-called wonder weapons will take the fighting out of our hands. If the Allied Forces take a stand for the invasion then reprisals or revenge will not be achieved through V-weapons but revenge will be achieved through our personal action, through our blood, through our spirit of attack, offensive spirit and through the annihilation of the enemy forces. We can speak of a revenge when we have crushed the invasion and have placed our weapons at the coast as defensive weapons.'" That was the contents of this part. The gist of the speech as given by Jesionek is much the same as given by Meyer, not to rely on new weapons but their own resources. Now Jesionek says "He used 'Englishmen' but his speech was so worded that it was understood that no prisoners were to be taken. The exact words I cannot remember." He was asked if this statement was correct and he answered "Yes." Again with this witness there is a doubt as to what actually was said by Meyer.

We have much evidence of the same prosecution witness which definitely tends to show that no statement "My unit takes no prisoners" was ever said by the accused. Meitzel, Bergmann and Meyer himself have stated that there were standing orders that prisoners would be taken, that these orders were re-issued just before the invasion and again two or three days after the invasion started. Meitzel and Bergmann both tell of Tactical Exercises without Troops on the subject of the proper handling and interrogation of prisoners. Helzel, as I have already pointed out, said "SS Troops were to take prisoners." Heyer in his cross-examination when asked "Were you ever told by any of your officers or NCOs to shoot prisoners?" answered "I cannot remember to have heard such a thing." And again, the Court will recall Heyer stating that an order was issued granting eighteen or twenty-four days leave if prisoners were taken. On cross-examination, Heyer was asked "What would happen to you if you took a prisoner, in your own mind what would happened?" and the answer was "Apparently nothing because I know of those two prisoners who were taken and none of us were punished. I heard nothing about it." Then I referred to the alleged speech of Meyer at Beverloo and what it meant to the witness. His answer was "During action we did not think about it rightly at all. During action we no longer thought about it." Now my friend, at the close of the case for the Prosecution, read Helzel's evidence taken on his interrogation by the War Crimes Investigation Unit. One of the questions was whether or not the 15th Company had ever been told to take prisoners. The answer was "That we were told by the Section leaders and NCOs that it was better to take prisoners." I wish to refer to the evidence of Helzel again. On examination my friend asked the following questions and received the following answers: "*Q.* And who was Company Commander (that is the Chief Commander) of the 15th Company? *A.* It is Hauptscharführer Baederkel. *Q.* And what did he say to you (re instructions relating to taking of prisoners)? *A.* That if prisoners are taken they are immediately brought back, to be treated decently, as it is of great value if the prisoners make statements." If Meyer ever made such an alleged order that "My unit takes no prisoners," and the Court has heard from various witnesses especially Bergmann, how precise and definite Meyer was about the carrying out of his orders, does it reasonably follow that his men would take prisoners without fear of punishment and that the Chief Commander of the 15th Company and also NCOs and officers would tell the men to take prisoners?

I respectfully submit that Meyer never gave an order not to take prisoners and I also submit that the evidence to which I have referred shows that, suppose the statement was made by Meyer, no weight was placed in it by any under his command. To incite and counsel a person to do a thing is to force-

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fully exhort and vehemently urge that the thing be done. There is absolutely nothing here that suggests such action on the part of Meyer. I submit that the prosecution has failed to prove the first charge and that the verdict be not guilty upon it.

Now, then the second charge – "In that he in the province of Normandy and Republic of France on or about the 7th day of June 1944 as Commander of 25th SS Panzer Grenadier Regiment, was responsible for the killing of prisoners of war, in violation of the laws and usages of war, when troops under his command killed twenty-three Canadian prisoners of war at or near the Villages of Buron and Authie." It appears that this charge is laid under sub-section 4 of Section 10 of the War Crimes Regulations. There are two things to be considered under this Section, firstly, are you going to accept the evidence as prima facie evidence of the responsibility of the accused for those alleged crimes and secondly, if so, what is the degree of responsibility of the Commander?

On 7 June 1944 about 1530 hours the vanguard of the North Nova Scotia Highlanders took the village of Authie after capturing the village of Buron. In support of the infantry was the 27th Canadian Armoured Regiment, Sherbrooke Fusiliers. According to the evidence of the Commanding Officer of the North Nova Scotia Highlanders and Maj Learment, the vanguard Commander, the Regiment was opposed by troops of the 21st Panzer Division. This corroborates the evidence of Meyer, Meitzel, and Wuensche. These latter witnesses also state that elements of the 716 Coastal Division and the 202 Heavy Anti-Tank Battalion with Flak troops from Carpiquet airport were also in the area on the 7th of June 1944. Meitzel says that a Battalion from the Coastal Division remnants was formed and fought with the 25th Regiment on the 7th. Much stress was placed on the type of dress worn by these various German troops on the 7th. We find from evidence that the 25th Regiment wore a camouflage uniform. The 21st Panzer Division also wore a similar uniform. The Flak people wore the blue air force coloured uniform and the Coastal Defence people wore the ordinary blue-gray German uniform. An important point is that troops on both sides for the main part were new to battle and therefore subject to all the nervous tension and expectancy of the average soldier in a fight for the first time.

After clearing Authie 'the vanguard' above referred to under the command of Maj Learment dug in just south of Authie. The enemy had suffered heavy casualties in the Authie fighting according to the evidence of Maj Learment. From his evidence we find that about 1830 hours the enemy attacked the position and overran it. Shortly afterwards the enemy captured Buron. Now from the evidence of the defence witnesses we have learned that three battalions of the 25th Panzer Grenadier Regiment took part in an attack on the Canadian positions north-west of Caen on the 7th June 1944. Maj Learment and about seventeen to twenty other Canadians were taken prisoner and marched to Buron where they were lined up and searched. One of these prisoners, who was standing next to Maj Learment, a Pte Metcalf, who had a grenade in his blouse or on his belt, was shot. The prisoners had been lined up against a wall and Maj Learment thought that the guards meant to shoot them. "But," he says "a German soldier whom I took to be an NCO of some description, arrived on the scene and from his actions I judged he prevented the shootings." Sgt Dudka in his evidence also bears this point out. Sgt Dudka also states on his cross-examination that there was fighting going on in the immediate vicinity.

This party of prisoners was then taken to the Abbaye Ardenne, the Tactical HQ of the 25th Panzer Grenadier Regiment. Here, according to Sgt Dudka, the prisoners were allowed freedom, and to smoke. He also states that the treatment afforded them at the Abbaye was the ordinary treatment that prisoners received even at his own Regimental HQ. Dudka further states that when the group of prisoners was going back from Buron they were passing through advancing German troops and that there was "quite heavy shelling." Now about the incident of the NCO stopping any shooting. I should like to read from the evidence of Pte Talbot of the North Nova Scotia Highlanders about it. I am starting

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about half-way down the long paragraph. "While we were standing there the German soldiers started to move out into the centre of the road still facing us. Just as they started to move a mortar bomb landed about ten yards from me down to my right. It burst alongside a tank, knocking three or four German soldiers who were standing around – knocked them down. One of these soldiers who had been knocked down got up in a crouching position, drew his pistol and started towards us. The intention seemed quite obvious to make us pay for what had happened just then. I watched him while he took a few steps towards us and all of sudden he stopped and brought his pistol down and started to turn back. Then I heard a shout up at the other end of the line in German and I looked up and these men were standing in the middle of the road covering us with their weapons. My first impression was that they had intended to shoot us. This man from whom the shout came appeared to be an officer or a NCO. He appeared to come from around a building to the left. The German soldiers began to shift about uneasily while this man came right up to them and appeared to be reprimanding them for something they had done. Immediately after he despatched, I believe, two of them away from there and motioned for the three remaining men to march us back behind the lines. Then we moved off towards Authie."

I want to dwell for a moment on the evidence of Sgt McKay. He was captured just south of Authie on the afternoon of the 7th of June 1944. He was wounded in the face and arm. His captor took him to Authie. This captor had a wings emblem on his camouflage tunic. Now we have heard of Flak people being in this neighbourhood. They were troops of the airport in Carpiquet. McKay's captor placed him in a doorway and left him unguarded for some time. McKay during this time says he saw seven Canadian prisoners shot but outside the fact that their guards were wearing camouflage uniforms he could not identify [the] formation to which they belonged. The guard of McKay then motioned McKay in a northerly direction. McKay says that upon enquiry later he was told that the troops who took him prisoner belonged to the 21st Panzer Division. On cross-examination Sgt McKay says that the troops who shot the seven Canadians in Authie were from the 21st Panzer Division, that is the troops of the same formation that captured him.

I wish now to deal with the evidence of Cpl McLeod, taken prisoner on the south edge of Authie. Cpl McLeod on cross-examination states that the German troops who fired on the prisoners and who were advancing to the attack had their view obstructed as they approached the prisoners. The officer leading the attack did not have a camouflage suit on and McLeod is unable to state how the troops were dressed. When the shooting started McLeod states "The guard that was out in front, sir, he didn't do anything, he was hollering a lot, it seemed to me he was trying to stop the shooting."

The Court will remember the evidence of Pte Richards of the North Nova Scotia Highlanders. He was taken prisoner at the north end of Authie. His story is that his German captor motioned him to the road and when he advanced a few yards down the road he was shot at from the rear and the bullet entered his lung. The guard had shouted something at him and he paid no attention to it. Then he heard the shot. Maj Rhodenizer came up to him then, and also a German officer. The German officer called something to stretcher-bearers and Canadian stretcher-bearers came and attended to Richards. He was then assisted down the road to the main batch of Canadian prisoners. Here he was laid on the ground and a German soldier gave him water to drink.

Lastly, I would like to refer to the evidence of Guilbert, who states that he saw a soldier, dressed in a gabardine, bayonet a Canadian soldier lying on the ground in the village square of Authie. At the same time the Germans were firing across the street at the church. About fifteen years away from the Canadian soldier was an automatic weapon.

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Now, I respectfully submit that all this evidence brings out the following points: – Firstly, there were not only 25th Panzer Grenadier Regiment troops in the area of Buron and Authie on the 7th of June 1944, but troops of other formations. Witnesses for the prosecution, Lt-Col Petch, Maj Learment, and others state that there were 21st Panzer Division troops in the area. McLeod says that the leader of the German troops who fired at his party of prisoners was not in camouflage dress and we have it from the defence witnesses that all officers of the 25th Regiment wore camouflage suits in battle. Guilbert saw a soldier dressed in a gabardine in the park or square in Authie. McKay says that the guards whom he alleges shot the prisoners in Authie were from the 21st Panzer Division. I respectfully submit that the Court should accept this fact that there were other troops than the 25th Panzer Grenadier Regiment in the area Authie and Buron on the 7th June 1944. Even without the defence witnesses, Meyer, Meitzel, and Wuensche, who declared that the advanced HQ of the 21st Panzer Division and Coastal Division were north-west of Caen in a quarry and that troops of both formations were in the area, and also that the Regimental HQ of the Rauch Regiment were in Cussy on the 7th of June 1944, we have sufficient evidence from the prosecution witnesses to verify this point.

Secondly: If Canadian prisoners of war were killed in the area Authie-Buron on the 7th of June 1944 they were killed by certain individuals in German uniform and there is nothing definite as to the identity of the formation to which they belonged. The evidence also shows that the alleged shootings were not part of a general plan sponsored by the commander of the 25th Panzer Grenadier Regiment or committed by 25th Panzer Grenadier Regiment troops in particular. The whole evidence shows, as stated above, the presence of other troops in the area. They might have been the perpetrators of the alleged atrocities. To rebut the presumption of a general plan idea is the evidence of Maj Learment and Sgt Dudka. Both state that a German NCO or officer stopped any intended shooting by the guards of the Canadian prisoners. Sgt McKay although wounded was certainly not shot by his guard but placed in shelter in a doorway. Pte Richards when shot was given assistance by a German officer who called stretcher-bearers to his aid. A German soldier gave him water. Sgt Dudka says that at the Abbaye prisoners were allowed to smoke and move about. The same treatment that they gave prisoners of war at his own Regimental HQ

Thirdly: there is the evidence of Meitzel concerning the accused and his treatment of prisoners, that is, taking 150 of them into his own HQ to give them shelter. This is not the action of a man who has trained his unit to kill prisoners. About 200 Canadian prisoners of war were taken on the 7th June 1944. Why would not the German troops kill them all if it was a general idea in the 25th SS Panzer Grenadier Regiment that prisoners would be shot? They did not require two hundred prisoners for interrogation purposes.

I respectfully submit to the Court that once a Battalion Commander let alone a Brigade Commander submits his companies to the attack he has no control over the individual actions of the members of that company. On the 7th of June 1944 and subsequently Meyer was the commander of a formation equivalent to our Brigade. In his own words he tells us it was a hard battle and all his thoughts were on the battle. He had nothing to do with the alleged killing of prisoners of war. He had no control over the troops of other formations in his area. He knew nothing about such alleged killings, nor did he know [until] it was mentioned to him in England. I submit that it is only by the greatest stretch of the imagination that the accused can be held as responsible for this accusation.

Now, coming to the third and fourth charges, the third charge reads "in that he at his HQ at L'Ancienne Abbaye Ardenne in the Province of Normandy and Republic of France on or about the 8th day of June 1944, when Commander of 25th SS Panzer Grenadier Regiment, in violation of the laws and usages of war gave orders to troops under his command to kill seven Canadian prisoners of war, and

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as a result of such order the said prisoners of war were thereupon shot and killed." And the fourth charge – "in that he in the Province of Normandy and Republic of France on or about the 8th day of June 1944, as Commander of 25th SS Panzer Grenadier Regiment, was responsible for the killing of prisoners of war in violation of the laws and usages of war, when troops under his command shot and killed seven Canadian prisoners of war at his HQ at L'Ancienne Abbaye Ardenne."

The evidence submitted by my friend relating to the 8th of June 1944 is a bit confusing. The chief witness for the prosecution relating to these allegations is the witness Jesionek. Now without belabouring his evidence before the Court I shall deal with one or two specific things briefly. However, I wish to state that there are many inconsistencies in the evidence of Jesionek given in Court and the evidence on his interrogation by the War Crimes Investigating Team.

From Jesionek's evidence we learn that he was on outpost duty the night of 7th and 8th June with 15th Company. He had been, prior to that time, the driver of a schwimmwagen which was destroyed by low-flying planes on the way to Caen. He was therefore attached as a rifleman to whatever platoon of 15th Company that needed assistance. On the morning of the 8th of June we find him, so his story goes, in the chapel yard at Ardenne Abbaye or in its vicinity. A detachment of 15th Company was sent out on a recce; along with them went Jesionek. In the direction of Cussy one of the schwimmwagens, the second in the line, ran into a minefield and was blown up. It went right up into the air and some wheels came off. Then it caught on fire. Three men were wounded, one had a sprained wrist or ankle. None were killed. There was a guard on this Wehrmacht minefield but he had been asleep. That is the reason for the accident. There were too many men then for the number of vehicles and Jesionek was chosen to return to the Abbaye with the wounded. According also to his evidence he got back about the middle of the morning at approximately 0900 hours. He was given a motorcycle upon his return by a Platoon Commander and told that he was to be a [Dispatch Rider]. He was with this motorcycle outside the Abbaye grounds near a hedge. About fifteen minutes after his arrival from the recce seven Canadian prisoners came along with two guards. Figuring from the times he states in his evidence this would be between nine and ten o'clock. He followed the prisoners of war into the courtyard of the chapel and directed one of the guards to the Commander, Brigadeführer Kurt Meyer, who was supposedly in the chapel. Jesionek followed the guard into the chapel to get his towel and soap that were in the schwimmwagen of his friend von der Berg.

As I said before I have pointed out the many inconsistencies of Jesionek's interrogations and his evidence in the Court on his cross-examination. I want to stop at this point for a moment and make a few observations.

Firstly, about the minefield in the direction of Cussy. Meitzel, Meyer, and Wuensche all said that they knew where the minefields lay and that there were no mines in the area of Authie, Buron, St. Contest, and Cussy on the 7th or 8th of June 1944. Nor were there any protective minefields placed by forward troops till the position became static. There were mines, however, near the coast and around the 21st Panzer Division Tactical HQ over near Caen.

Secondly, in order to go to the chapel to get his soap and towel and to hear the alleged conversation of Meyer, it was necessary to get von der Berg's schwimmwagen into the chapel, because it contained the soap and towel. The Court will recall the chart of Ardenne Abbaye Exhibit T-1. Jesionek pointed out to me in cross-examination the position of 15th Company vehicles about the Abbaye, outside the wall, along a path to the south-west of the Abbaye, spaced out and others in a cornfield just beyond, also spaced out and each vehicle camouflaged with boughs according to his evidence. Just after he returned from the recce with the wounded men, there was an air raid alarm given by Brigadeführer Meyer, and the witness said that Meyer ordered the vehicles pushed into the chapel.

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Jesionek had been examined at length by my friend and many references were made to this particular chart. On cross-examination I asked Jesionek the following questions and received the answers: -

"*Q.* Can you point out on this plan (Exhibit T-1) where the amphibious cars were before you put them in the Abbaye? *A.* Yes. Here was a wall... here was an entrance..., here a field path went along the wall... and a number of amphibious cars stood here on the field path here, and here, in the courtyard, near the chapel, there were also some and the other vehicles stood here in the field (marked by X's) and my motorcycle stood here (marked "motorcycle") and when low-flying planes came we had to move the vehicles which stood here (pointing in the corn field) and here (pointing to the courtyard) here on the path and they had to be taken into the chapel from this side here (entrance marked with an arrow) and here in the chapel were some and here on the other side of the chapel there were also one or perhaps two (marked with "X" in the chapel)."

I would draw the attention of the Court to the sides of chapel where he marks the X's. He knows what are the sides of the chapel.

"*Q.* And the vehicle in which you had your washing material, was it in the chapel before the air attack? *A.* No.

Q. After the air attack? *A.* It was also standing outside and we had to put in the vehicles."

Now, it will be seen that Jesionek made no mistake in his mind as to what supposed entrance was used to push the schwimmwagen into the chapel. He knew what was the end and which were the sides of the chapel because he has placed crosses along the inside of the chapel to indicate the schwimmwagen.

From the evidence of other witnesses including the prosecution witness Lachevre we find there is no entrance at the rear of the chapel where Jesionek's arrow indicates. I refer the Court to Exhibit T-28 and there you will find long windows untouched and also solid wall below. Now, I respectfully submit that from these two points alone Jesionek's evidence is not sound. From the time he made his first statement, to his giving his evidence in Court, his whole story has been changed and enlarged upon – his reporting of the arrival of the prisoners of war personally to Meyer and being told to report back to his unit. His statement that Meyer ordered the prisoners to be shot immediately after they were announced. The story about his father writing the authorities to have Jesionek taken out of the SS and then stating here in Court that his mother wrote the letter. The description of Meyer dressed in the long rubber coat on the morning of the 8th. The Court need only read the evidence of Jesionek to see those inconsistencies throughout his whole experience with the Canadian authorities.

Thirdly, the witness Helzel says that after the fighting on the 7th of June the 15th Company took up a position till the attack on the 8th of June 1944 on the Caen-Bayeux road. Meyer in his evidence says that the 15th Company was partly on outpost duty along this road and partly on recce in the general direction towards Bayeux and Carpiquet Airfield and area round about it. I submit that 15th Company were not in the area of the Abbaye on the morning of the 8th of June.

The witness Wetzel on cross-examination states definitely that there were no vehicles in the chapel on the 8th of June. He should know because he was there on duty. To proceed with Jesionek's story with reference to the conversation in the Abbaye wherein Meyer is supposed to have made the statement: "In future no more prisoners are to be taken." Regarding these words I wish to read from the Record of Evidence page 349:

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"*Q.* Now, I want to point out in the last answer I read that your words are "I seem to remember-" *A.* What should we do with these prisoners? They only eat our rations" and then you go on to say "I seem to remember that he said that in future no more prisoners would be taken. He said this at the time he was in the chapel." At the time you gave that evidence you were not quite sure as to what Meyer did say, were you? *A.* The sense I know but not the precise arrangement of words. If the Defending Officer was there he too after one year would not have known the precise language.

Q. I can assure you of that. Now, Jesionek, will you say that the words as you gave in this court room today as coming from Meyer on the morning of the 8th were the exact words that Meyer said on that occasion? *A.* As far as I know they are right.

Q. Are you sure? *A.* Yes. *Q.* Positive – no doubt? *A.* Without a doubt that it is the right meaning."

The witness is not positive of what was said by Meyer because, I submit, he neither saw nor heard Meyer on that morning.

After the chapel episode Jesionek says he saw the seven persons shot by an Oberscharführer. Then he, and some comrades who had been standing in the Abbaye courtyard, went to see the bodies – on examination he was asked the following question "And did you see the bodies at that time?" Answer, "Yes, all of us saw it and we all made a big semi-circle around because the whole place was full of blood." Young Lachevre, a witness for the prosecution, says that he went with two or three boys to play on the swings and parallel bars that had been erected in the garden where the prisoners were supposed to have been shot about 2000 hours that same evening. He told the President of the Court that the grass in the garden was shorter than what appears in the exhibits. He also told on cross-examination that he was very familiar with the whole garden. He saw no signs of digging or any disturbance of any kind in the garden. He entered the garden by an entrance at the south-east end. He also saw a shelter that was built in the passageway leading from the chapel yard to the garden. Therefore he must have covered practically the full extent of that small area. Yet, he saw no disturbance of any kind and the grass was much shorter than shown in the pictures. Jesionek said there was blood all over and that he and his chums made a large semicircle to view the bodies.

Again in rebuttal, my friend introduced evidence of Vico that there were no steps leading to the garden when he left the Abbaye in 1943. The witness states he built the steps when he returned in July 1944. Now when questioned by the President and shown the picture of the entrance to the garden, Jesionek answered "That one could see the steps I know for sure because one could quite well walk through right into the park there." Vico says when he returned in July 1944 it took he and his brother three days to dismantle the shelter in this opening and therefore at that rate of going it would take six men a whole day to build it.

Now, I submit that the prosecution has raised a considerable amount of doubt about the happenings on the 8th of June 1944 in its own case. To the middle of the morning there was no shelter in the passageway because Jesionek had a clear view through it. Between the middle of the morning and eight o'clock at night when young Lachevre and friends saw the shelter, it had been erected, seven bodies had been buried in the garden and the large pools of blood seen by Jesionek completely obliterated. All traces of graves and blood had vanished – no loose earth – just completely normal.

I submit that this is a bit far-fetched. Now, to proceed with the Defence evidence – Meyer, according to his evidence went at a very early hour in the morning on his rounds of the Battalions. He made certain recce of the ground over which he was going to fight that evening in the attack on Bretteville. He returned to the Abbaye shortly after noon and went to the tower. He was dressed in camouflage suit and not in a long rubber coat.

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Meitzel, as Liaison Officer or Ordonannz Offizier No. 1 at Division, was supposed to receive periodic reports, every two hours to be exact, during the course of battle from Regimental HQ. He did not receive the report for eight or ten o'clock on the morning of the 8th because the Adjutant could not contact Meyer either at the Abbaye where the Sigs officer was or at Regimental HQ which was situated on the main Caen-Bayeux road as indicated on the Exhibit T-2. Around noon Meitzel went to the Abbaye himself and saw Meyer. Meitzel says that Meyer had been that morning to the Battalions and had their positions marked on his map. From Meyer's map, Meitzel marked his own map.

Now, I would submit to the Court that they accept the evidence of Meyer and Meitzel on this point. From your own experience after a battle the night before, in which your units or formations are engaged, to visit Battalion or Formation HQ in the morning and find out the dispositions on the ground or at least see the Battalion or Formation Commander personally is a natural thing to do. Meyer had another battle on his hands that same evening. Naturally he would make the recce he says he did in the morning. From the beginning of the battle on the 7th till the tidying-up of the front on the ninth, Meyer's every thought would be on the task in hand. As a Regimental Commander he was directing the operations of large bodies of troops. He is a good soldier and being such would act as I have just described above.

On the afternoon of the 8th Meyer was visited by Wuensche. They talked over the plan for the evening attack, Wuensche left, and Meyer had some sleep. Then he went into battle with the 15th Company.

Now Meyer states that on the 11th of June 1944 his doctors Gatternigg and Stift whom we have tried to find and bring to this Court, reported to him some dead bodies, that they suspected as having been shot, in the garden at the end of the Abbaye grounds. Meyer went to look at the bodies and stood in the passageway, at the immediate entrance to the garden to see the bodies, after had sent his Adjutant Schuemann to check on this report. He says in his evidence that he was greatly incensed at what he saw and ordered the bodies to be buried. Now, my friend will argue that Meyer couldn't see the bodies because of the shelter, but my friend's witness Vico says that one could enter the garden by climbing alongside the shelter. Now Meyer gave the order to bury the bodies to a Staff Officer, his Adjutant. After giving such an order how many Brigadiers would go and check to see if the order had been carried out? It is a task that a Staff Officer might check on but not the Brigadier. Regarding this point I might call the attention to Meitzel's evidence and also that of Bergmann wherein Meyer had given orders previously to the First Battalion Commander Milius and to Division about the burial of the dead. What did Meyer do in consequence of this discovery? He told Scheumann he was relieved of his duties and to break in a new Adjutant. Bergmann and Meitzel both state that Scheumann left the Regiment while Meyer was still in command and went to a platoon of the First Battalion, a demotion for Scheumann. As junior officers they did not know the real reason why Scheumann was relieved of his duties except that he was not suitable as an Adjutant. Dr. Tiray, the Legal Officer for the Regiment, was ordered to make an investigation as also was Scheumann. Brigadeführer Witt was told about the incident by Meyer and they discussed the matter on two occasions. Witt wanted a written report but the perpetrators of the deed were not found by the time Witt was killed and Meyer took over Division.

Now, my friend will argue, why did not Meyer give me the statement about the seven dead Canadians when I first interrogated him? Meyer answered that question in Court as any Commander would do who had no grounds for pointing his finger at his own troops for doing this deed, without definite proof. He said "I do not know today who really committed the deed and I have no idea of incriminating my Regiment without exact information."

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In summing up on these charges I wish to do so briefly: Firstly, Jesionek was familiar with the Abbaye grounds, he had been there at some time or other. He also either saw or heard about the seven Canadians but I submit that his story does not ring true regarding Meyer or the events of the morning of the 8th of June. Jesionek does not know what Meyer is supposed to have said. He never heard him give an order to shoot the prisoners. I suggest with all due respect that the whole story is a fallacy and I would ask the Court to accept the evidence of Meyer and Meitzel who corroborates it in his evidence as to the whereabouts of Meyer and true events of the eight.

Secondly, again it is for the Court to say what the responsibility of the Commander is for this act. There is no evidence as to who shot the seven Canadians. There is no identification of what Regiment the person or persons belonged to. I submit that the Court cannot rightly find any person responsible on these two charges.

The fifth charge – "in that he in the Province of Normandy and Republic of France on or about the 7th of June 1944, as Commander of the 25th SS Panzer Grenadier Regiment, was responsible for the killing of prisoners of war in violation of the laws and usages of war, when troops under his command killed 11 Canadian prisoners of war (other than those referred to in the Third and Fourth Charges) at his Headquarters at L'Ancienne Abbaye Ardenne." This charge is much the same as the second charge. It is for the Court to decide the responsibility of the Commander.

I have already referred to the evidence of Maj Learment where he states that German police took over his party at the Abbaye. In the evidence of Cpl Campbell of "A" Company North Nova Scotia Highlanders we have him stating as follows "While we were at the Abbaye three or four German military police came in. They asked for ten volunteers," again "They wore a metal disc on their chest. At each side there was a chain attached which went around their neck and afterwards I was told by one that it was the German Military Police." Again "I took one of them to be either an unteroffizier or an officer because he wore a dark, shiny coat, which looked like a rain coat."

The Court heard evidence that these police were attached by Division to the 25th Panzer Grenadier Regiment during battle for the purpose of handling prisoners. I suggest that if any suspicion for the alleged killing of the eleven prisoners of war mentioned in the charge should be [leveled] at anyone it should be in their direction.

We have the evidence of Doolan, Cpl McLeod and Cpl Campbell stating about the pay books being returned to the Canadian prisoners of war at the schoolhouse in Caen on the morning of the 8th. If a member of the Staff at the 25th Regimental HQ at Ardenne Abbaye had anything to do with these killings, or knew about them, would they return the pay books with the others to the schoolhouse, in the morning? I submit that they would not. They would have found out the identity of the prisoners of war and destroyed the pay books. It is not reasonable to suggest that anyone in authority would be that foolish. Again may I suggest that all traces of identification would have been removed from all bodies before burial if any authoritative person had anything to do with the alleged shootings.

To sum up on this fifth charge. There is no definite evidence as to who did the alleged shootings. Two witnesses state that their parties of prisoners of war were handled by Feldgendarmerie. Were they responsible for the shootings? I submit to the Court that there is nothing to show who perpetrated this alleged deed and therefore the finding on this charge should be not guilty.

(The court adjourned at 1110 hours and reconvened at 1120 hours on 27 December 1945.)

President: I declare the Court open...

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Macdonald: ***(Closing address)*** May it please the Court, Sir, I should like first to take advantage of this opportunity on behalf of the Prosecution of expressing to the Court our appreciation of the patient and attentive hearing which you have given to this case during these past two weeks. I should like also to congratulate Counsel for the Defence on the very able manner in which he has conducted his case. Coming into the matter at a comparative recent date, he was very thoroughly mastered the subject, and can now speak with an assurance and authority surprising to us who have been engaged in the same matter for a much longer period. I think it is apparent to all who have been in constant attendance at the proceedings throughout, that the trial has been conducted with that dignity justice and fairness which was prescribed, and that everything possible was done to see that the accused received a fair trial.

In considering how best the argument for the Prosecution could be presented to the Court, so as to assist you in your deliberations, we eventually came to the conclusion that if we would direct our efforts chiefly to satisfying you with respect to the guilt of the accused on the First and Third Charges, or, let us say, the First, Third, and Fourth Charges, that it would be considerably easier then for you to decide his guilt with respect to the other two charges. I would therefore particularly ask that in your deliberations you consider the First and Third Charges as more or less inter-dependent. If, for instance, you should find that the accused did incite his troops prior to the invasion to deny quarter, then I should think you would have less difficulty in deciding the truth of the matter in respect to the occurrences on the morning of the 8th of June. If, on the other hand, you find that on the latter occasion, the 8th of June, the accused did order the shooting of the seven prisoners, then I think you would have less difficulty in deciding the probabilities as to whether or not he had incited his troops prior to the invasion itself.

Now with respect to the evidence, first then, on charge number one. I would like to remind the Court that the Prosecution has not undertaken to establish that Meyer issued a direct order to deny quarter. We say merely that he incited and [counseled] his troops to deny quarter. It may well be that on the evidence you have heard, you may reach the conclusion that he did, in fact, give such an order, but that conclusion is not essential to reach a finding of his guilt on this particular charge. If any of his conduct, or any of the conduct which can be ascribed to him, or that comes near or close to him, through his officers can be described as inciting or counseling the troops to deny quarter, then without anything further you are justified in convicting.

Evidence in support of the charge, however, is found in two different forms, one in the evidence as to his own personal statements to troops and to officers to the effect that "My Regiment takes no prisoners," or "My Unit takes no prisoners," and secondly, in similar orders issued by his officers, that is, firstly, his former adjutant, von Buettner, who became Commander of the 15th Company; secondly, orders, which were issued by the 15th Company Stabscharführer Hagetorn; thirdly, the orders which were issued by the Company Commander of the 1st Battalion Oberleutnant Fuchs; and lastly the statement of the accused himself to one of his Wehrmacht officers, Hauptmann Steger, with respect to his Meyer's own actions in another theatre, as to the taking of prisoners.

Now, considering that evidence a little more carefully. I think we should keep in mind throughout the natural reluctance of soldiers to give this type of evidence, and the small number of prisoners available, in comparison with the troops participating from whom such evidence could be obtained. If the evidence, as I submit it is here, is mutually corroborative, then I should say that despite what appears to be a small amount of evidence, it is very good evidence. The wonder should probably be not that we have so little evidence, but, considering the difficulties and possibilities, the more surprising thing is that we have as much evidence as we have.

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Now, I am quite prepared to agree, that other Nationals, and persons who might be described as deserters, might perhaps talk more freely than would regular SS troops, for obvious reasons, and I suggest that the evidence of the type of witness must be scrutinized carefully. On the other hand if we have corroboration from other witnesses who cannot be looked upon with that suspicion, or if we have corroboration in the circumstances themselves, then I say we should give full value to that evidence no matter from what source it is received.

The evidence starts first with the interrogation of Torbanisch by the SHAEF Court of Inquiry, and it is an unfortunate handicap that we have not got that witness here. That is one of the difficulties in the prosecution of war crimes cases, which was anticipated a long time ago. It caused the creation of the SHAEF Court of Inquiry, so that evidence of that type might be preserved in suitable form, so that it could be used later at trials of the witnesses themselves were not available. I can assure you that if he had been available, he would have been here. We have brought every witness we could lay our hands on to this Court because we realize that the kind of evidence which is given here, personally before you, and is subject to cross-examination, is the best evidence which can be put before you. I say therefore that that evidence should not be discounted because he is not here, if we can find corroboration for it in the evidence of someone who has been here before the Court.

He, Torbanisch, says that at Montague, just prior to their departure for France, the Stabscharführer Hagetorn, on one of the usual six o'clock evening parades, read secret orders to the 15th Company, as to their conduct in France and in action. In describing it he says that the Company was drawn up in a tight formation (that is the language he used) so that passing civilians would not hear what was said, and the orders were read to the Company, and then each member of the Company signed an acknowledgement that he had heard the orders and understood them. Included in these orders were orders that the SS would not take prisoners, and that if they did take prisoners they would shoot them after interrogation.

Now Meyer's answer to this evidence takes the form, first of an admission that Hagetorn actually was the Stabscharführer and had been for a considerable time; and secondly, that secret orders were in fact read to troops at regular intervals, and a signature was obtained from each member of the company at the time. And, strangely enough the nature of these secret orders is the very nature of the orders Torbanisch talks about. In other words they had to do with espionage, and the particular necessity for vigilance at all times. Fourthly, Meyer admits that, before the departure of the troops for France, he had himself given special orders intended to sharpen them up, to make them more alert in these matters before moving into this new country.

When asked to criticize the orders, as reproduced by Torbanisch, he agrees that they are correct to the word in some cases. He agrees moreover that they correctly embody tactical instructions which he had at various times given to the troops, and this admission deals with the third, fifth, and sixth orders out of the six. His criticism of the first and second orders is that the examination of suspects under apprehension is not to be carried out by the field police but by the secret field police. I think a careful reading of the order will indicate that Torbanisch does not say precisely who did do this job, but it is perfectly obvious that if things like this occurred, somebody dealt with it. We all have a sufficient knowledge of what happened in occupied countries to know that.

Now the fourth one is the only order with which Meyer seriously takes issue. In this order we find that there is an instruction that the SS troops will commit suicide, rather than be taken prisoner. Here then is one more thing we can eliminate from the controversy because Meyer admits that he gave such instructions to his troops. Now the other thing, with which we would naturally expect him to disagree, is that SS troops will take no prisoners, or that they will kill prisoners after they had been in-

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terrogated. We would hardly expect him, under these circumstances, to say anything other than that. On the other hand, as I have said before, we must keep in mind what did happen, when these troops got into action in Normandy.

Does it not seem strange that, almost as if the orders had been carried out word for word, we find that seventeen, eighteen, nineteen or twenty prisoners were executed at his HQ under circumstances which would suggest that they had been first interrogated? And we also find that on the first two days a number of prisoners had been shot either immediately after their surrender, or some time before they reached the Regimental HQ. The third sentence in dispute is to the effect that the British do not take SS prisoners. Now I suggest that follows with the others, because that is something which would naturally be inserted as a particular bolster or salve to the conscience of the persons to whom the order was addressed. If they thought that the British did not take prisoners, they would be more inclined not to take prisoners themselves, if they were given that order.

Meyer, however, somewhat naively, says that such an order would not be read out... [In] the Evidence he says "I would not commit such an order to writing." Well now, perhaps he did not, but possibly the 15th Company Commander did not have such foresight as he had, and perhaps he thought he was doing a good job in summarizing in his own words, the orders which he had received at various times from the Regimental Commander, and then in having these orders read out on parade by the Stabscharführer, who was one of those individuals whose duty it was to read out orders to the company. I suggest to you that no Stabscharführer, in other words, a Company Sergeant Major, would undertake to read orders out of this kind, unless he had had some authority from his superiors to do so. Especially would he not require a signature for orders of that kind, unless they were from a very high level.

Now, if this evidence stood by itself I quite agree that it would not be sufficient on which to convict the accused. We should have Torbanisch here, and it has been said that he was a deserter and perhaps had reason for giving this type of information. However, it is confirmed in every respect by what I submit is actually the best evidence obtainable. On this point there may be a difference of opinion, but I would like to suggest this is an approach to the question. What I mean by the best evidence obtainable is that of another avid Nazi, a man who says on his interrogation that he would join the SS again, if he had the opportunity, and I refer now to the witness Helzel.

In the peaceful surroundings of Hull, Quebec, this young man, quite freely and voluntarily, without the slightest compulsion or hope of advantage, confirmed in every material respect the evidence of Torbanisch; and here is the significant thing – he had not seen Torbanisch since the former's desertion 15 months previously. Moreover, he goes further that Torbanisch did, and he says that the Company Commander von Buettner, just prior to the invasion, told the company that they were not to take prisoners, and that indeed Meyer himself had said to them: "My unit takes no prisoners." This additional evidence respecting von Buettner and Meyer is itself confirmed by the evidence of Jesionek and Heyer, neither of whom knew Helzel nor had any opportunity of talking to him about this evidence.

Now it was not unexpected that when these SS witnesses came face to face with their former commander Meyer, they would wobble a bit in their evidence, and you will appreciate the pains we took to see that their evidence was entirely voluntary. It was all read back to them on another day; they had an opportunity to change anything they had said; and they then identified the evidence by putting their signatures on it. We were afraid that some such thing as happened in the case of Helzel would happen at the trial and there would be an effort made to deny everything when the witness eventually came to court.

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This is what happened to Helzel when he saw Meyer. He became confused, and decided to find some escape from his dilemma by denying his previous evidence. Then when faced with his own signed statement he had to admit that what he had previously said had been said of his own free will and was true. Now, I suggest that in these circumstances particular weight should be given to the original interrogation; because, it is now so obvious that he had no reason for manufacturing evidence against the accused. Of all the witnesses who have been before the court, he I think is most clearly in that position. If he had suggested for a minute, himself, that the circumstances under which he gave his original evidence had resulted in the telling of an untrue story, then the original interrogation would be open to doubt; but nothing of that kind is alleged or even suggested by the witness.

Heyer, another member of the SS, confirms this story, and he tells that Meyer himself told the whole regiment, "My regiment takes no prisoners." And then again on the way to Caen on the 6th of June, he tells how his Company Commander, Oberleutnant Fuchs, came around and addressed each platoon in turn, saying among other things that they were not to take prisoners.

Jesionek, perhaps because he was frequently away from the company as a driver, on courses, or with the demonstration platoon, can only confirm the fact that von Buettner gave the orders, as alleged by Helzel, and that Meyer's speech at Le Sap was interpreted by himself and others of his comrades as a direct incitement to retaliation against prisoners for the burning of German cities. As a test of the accuracy of Jesionek's recollection of that speech, one has only to read Meyer's own account of what he said on that occasion, and compare it with Jesionek's own evidence, given on interrogation as to what Meyer said. We find that it is a very close [reproduction] of that speech.

Now, he is an intelligent lad, and there can be no doubt that he interpreted Meyer's real meaning on that occasion, no matter how Meyer tries now to alter the language used on that occasion. A person by inflection and emphasis can convey an impression, and it is apparent that that impression was obtained not only by Jesionek, but by others, that what he meant was that they should retaliate against prisoners. I think on this point it is rather a striking commentary on Jesionek's reliability as a witness. He did not confirm everything that was said with respect to Meyer, and perhaps he did not have the opportunity, as I pointed out, to hear all that was said. But if he really had an axe to grind, do you not think he would be quick to seize upon this opportunity to say something further which would be damaging to the accused?

Meyer says that he referred merely to the annihilation of the enemy. Well, those of us who are familiar with the use made by the Germans of the term "annihilation" or "extermination," as Hitler himself used it in his order about the paratroopers and commandos, realize that that sort of thing goes a long way. It does no mean simply to destroy the enemy, in the way we mean it, according to the laws of war, but the word "annihilation" means exactly what is said.

Now my friend criticizes Torbanisch's orders, and says that secret orders would not be passed out in that way. I ask anyone of military experience how one would pass out secret orders to troops. You might not give it in written form, that is quite obvious, but someone has to pass on the written or verbal orders, and if someone is going to do that through a Company Sergeant Major the latter has to be briefed or hold something in writing in his hand. If you had to give these orders to troops, the natural thing to do, and I am sure everyone of us has experienced it prior to the invasion, is to get our troops together in small groups, in tight formations, and talk to them quietly and tell them what these secret orders are. I submit that this is exactly what happened on this occasion, and it is the only way in which it could have been done.

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We have, therefore, the evidence of three witnesses, that Meyer said his regiment was not to take prisoners; the evidence of two that the company commander, Meyer's adjutant since the organization of the Regiment, von Buettner, had said the same thing just prior to the invasion; and we have the evidence of two witnesses that secret orders were read by the Stabscharführer which included this same instruction. We have no evidence, other than Meyer's denial respecting himself, that this evidence is untrue. If we accept his story we must at the same time say that all the other four witnesses have perjured themselves, and that, for three at least, there is no apparent reason why they should have.

However, apart from this, Meyer's cool admission in this connection is rather illuminating. He agrees that he probably told Hauptmann Steger, one of his officers who appeared in Court as a witness, something, and I quote…:

> "Now, did you say in the officer's mess to Capt Steger and other officers in Beverloo, that when you were in another theatre you frequently had to shoot prisoners? *A:* It is possible that I have said that. I can't recall it but it is completely possible, I can recall at that time I had a recce company battle group that operated up to 150 kilometres behind the enemy lines."

Now, I ask you to consider what the effect of such a statement would be on this, then, company commander. No explanation is volunteered by the accused, either in court, or apparently at the time to Steger himself, that this practice would not, however, prevail in [Western] Europe. It is, I would suggest, most impressive evidence of incitement, on which alone he could be convicted on the first charge. What could he himself say to Steger afterwards, if after that casual admission, Steger himself shot prisoners later in action? Perhaps, however, this was what was intended, for Steger, while a member of the Wehrmacht, and one who had been highly decorated, was a newcomer to the SS, and perhaps Meyer thought he should have the true SS point of view on these matters. Those old comrades of Meyer's of the Leibstandarte, who had served with him in other campaigns, did not need to be told these things. Such an old comrade and friend was von Buettner, and he required no instruction.

Whether Meyer meant exactly what he was reported to have said, I cannot be sure, but he puts the situation very aptly in his evidence…:

"*Q.* And this order is reported to have been read to the 15th Company by their Company Stabscharführer? *A.* The order was not read out and could not be read out because I never commit such an order to writing. *Q.* You were much too astute for that were you? What is your answer to that? *A.* Such soldier matters, where it is a question of character and heart, you cannot give to them with a written order. However, when you have enough old comrades in such a company, they know how the Commander fights, and on this basis of mutual confidence you can say something like this."

Now Commanders do not usually go around expressing themselves so openly, on such matters of policy. But when they do, it is a matter of the greatest significance to all of those serving under them. Apart from what he is alleged to have said himself, the closest one can usually get to the workings of a Commander's mind in the absence of some direct expression is what his "alter ego," his senior staff officer or Adjutant, has to say on the subject. That von Buettner made a very clear statement to the 15th Company just prior to the invasion is unchallenged, and for that statement, in the circumstances and under the Regulations, I submit that Meyer himself is responsible.

Now, if however, despite all this evidence, there is still any hesitation to find the accused guilty on the First Charge, I ask you to consider carefully what occurred on the 7th and 8th June and on the 17th of June, in other words, on every occasion that the 25th Panzer Grenadier Regiment had the opportunity to take prisoners, after they got into action and until they were eliminated as a fighting force. When you consider the overwhelming evidence as to the shooting of prisoners of war that then oc-

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curred, ask yourselves the question: "Is it possible that such things could occur without incitement or counsel?" We have seen the results. Do they not support the evidence as to the cause?

And I ask you to apply your military knowledge to the consideration of this problem. If it was Meyer's intention to tell his troops that they were not to take prisoners, do you not think that the evidence would be very much of the kind that we have heard? We might be inclined to agree that these young soldiers would not, on their own initiative, shoot prisoners; but we have no reason whatever to doubt, with their background and experience in the Hitler Youth, that they would do whatever was suggested to them, or ordered by their superiors, even if done reluctantly. We must also bear in mind the fact that the skeleton or the backbone of this formation, if you like, came from the Leibstandarte Adolf Hitler. If the shootings which occurred were not committed by the young soldiers, they were, in all likelihood, committed by these hardened veterans of other campaigns. The solution to the problem is found in the personality of the Commander of these troops himself.

If there had been, anywhere at all, evidence to the effect that Meyer had said these former members of the Leibstandarte, or to Steger when he told him about the shooting of prisoners in another theatre, that that sort of thing would not be permitted in Western Europe, then we could listen with greater credence to his denials of the evidence given by his men. Had the shootings not occurred as they did, we would have had little to complain of, even if the orders had been given. Had there been the slightest evidence offered to this court that Meyer disciplined anyone, at any time, anywhere, for shooting prisoners, other than his story about Schuemann with which I shall deal later, then that would be evidence of his good faith. It would be evidence that perhaps he did not issue the orders. It might mean that if he said something of the kind, that he was misunderstood by his men. But despite the fact that he had knowledge of these atrocities, and had ample opportunity after his discovery of them to take disciplinary measures, there is no evidence that he ever did so.

He makes a feeble effort to suggest that following this discovery he spoke to the battalion commanders. Yet Bergmann, the Adjutant of one of these battalions, the battalion primarily concerned in most of these atrocities, gives the lie to that statement, by saying that subsequent to the 8th of June he received no orders whatsoever with respect to the treatment of prisoners, either from Milius or Meyer, although it was his duty to see to these matters in his own battalion.

Throughout the course of the trial certain things I think have become established as facts, and I believe I can refer to them as free from doubt on either side. They are, *first* of all, that shortly after noon on the 7th of June 1944 Tactical HQ of the 25th Panzer Grenadier Regiment was established at the Abbaye Ardenne and remained there for the following month.

Second, that the remainder of the Headquarters moved into the Abbaye during the 8th of June.

Third, that the accused was commander of the regiment during the relevant time, and probably until noon on the 17th of June when he became divisional commander.

Fourth, that the accused and his Adjutant, Schuemann, were at the Abbaye on the evening of the 7th and the morning of the 8th of June, and while not continuously there, the accused was there except for excursions which he made to the battlefield, and the Adjutant was there for at least part of the time on each of these days.

Fifth, that on the 7th and 8th of June at least 41 Canadian soldiers, after having been taken prisoner, were killed by German troops.

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Sixth, that the troops responsible for the killing of these prisoners were serving as part, or, at least, under the command of the 25th Panzer Grenadier Regiment at the time.

Seventh, that all surviving prisoners, by whomever captured, in that area on those days were evacuated through the Headquarters of the 25th Panzer Regiment at the Abbaye Ardenne.

Eighth, that 18 of the prisoners so killed, were killed at the Abbaye by head wounds, all 18 were missing in action on the 7th of June and six of them were seen alive and unwounded at the Abbaye on the evening of the 7th of June.

Ninth, that the bodies of all 18 had been buried in five carefully concealed graves in a garden at the Abbaye, and the spoil left over from such graves removed from their vicinity; that none of the graves were found for 7 months, and despite a search made that the last of these graves was not located until 11 months later.

Tenth, that of the five graves one contained six bodies and another one.

Eleventh, that some time after the arrival of the Germans a shelter had been constructed at the garden end of the passageway connecting it with the adjoining courtyard, which was of such a character that passage over it between the courtyard and the garden, while possible for a child, was at least difficult for an adult. That was the language which the witness used.

Twelfth, that Lieut Williams, one of the Stormont, Dundas and Glengarry Highlanders, was captured by the 3rd Battalion of this Regiment along with a L/Cpl Pollard, in the early hours of the 17th of June; that they were taken to Regimental HQ, and that the exposed and decomposed body of the former was found a month later, bearing fatal head injuries; that the body was found within 50 yards of the command post at the Headquarters There is also evidence that on the morning of the 16th or 17th of June – and I distinguish here between established facts and evidence – on the morning of the 16th or 17th of June, shots were heard at the Headquarters, between the hours of four and six o'clock, and that the NCO in charge of the Feldgendarmerie there was informed by the Headquarters that a prisoner of war had been shot; that shots were later heard the same day at the Headquarters, and an explanation was given by a sentry, that a prisoner who refused to make a statement was probably being shot. The body of L/Cpl Pollard has not yet been found.

Now, with that background of facts, I should like to come to a consideration of the Third Charge. I submit that to reach a finding on this Third Charge, the Court will have to do almost exclusively on the credibility on the evidence of the witness Jesionek and the accused Meyer. If you believe Jesionek and disbelieve Meyer, the accused should be convicted on this charge. If you disbelieve all or part of the evidence of Jesionek, and accept part of the evidence of Meyer, then, the accused might be found guilty of the Fourth Charge, but could not be convicted of the Third.

If you believe all of Meyer's evidence he is not guilty at all. So far as the Third Charge is concerned, we cannot accept both stories however. One of them is definitely lying and there is no escape from that. Now what can be the motives of either one of them for perjuring himself at this trial?

So far as Jesionek is concerned, he is a Pole who was forced into the SS, but who only deserted at a time when even German Generals were trying to surrender. There has been no evidence or even serious suggestion that he has any personal grudge against the accused, or that he ever was punished by him. His record would suggest rather the opposite. Apart from the fact that his father spent a few months in prison, it would appear that he has nothing against the SS generally, because his father was freed, and not disturbed again. This was done because the boy was himself a member of the SS.

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Jesionek was apparently highly regarded in his company because he was one of those specially selected, not only for it, but later for a special demonstration platoon, and was also sent away on various courses.

Now, what on the other hand would be Meyer's object in lying at this trial? Of course there is the very obvious one; that of a desperate man on trial for his life. Would you expect him to do otherwise than to deny the damning evidence which Jesionek has given with respect to him?

Giving credit, however, to both, for telling the truth in most matters unconnected with the shooting itself, and both perhaps being wrong in connection with some minor details, let us seek to find significant flaws in their testimony which would indicate which of these two witnesses is actually telling the truth on the main issue.

First as to Jesionek: Is it fair to say that this boy, who had been at the Abbaye only once in his life, and then only for a matter of a few hours, could never, to use his own expression, "have invented such a story" as he has told here?

The answer is not in the first statement, garbled and ill-prepared as it was, by three busy people of different nationalities, whose main duty was to interrogate daily hundreds of people. The significant thing to look to is the sketch which he himself drew at the time, to describe how this shooting occurred. That sketch, with but one minor error, is an amazingly accurate reproduction and indicates an almost photographic memory on the part of Jesionek. I think the Court will agree that it is utterly impossible for a person who had not been there, or who had not seen what he relates, to have drawn such a sketch, and to have described so vividly everything that happened. All of this was corroborated to the hilt, when the witness was eventually taken to the area and described the incident on the ground.

It is now abundantly certain, even to the accused himself, that not only were the seven prisoners shot whom Jesionek saw, but that a total of eighteen altogether were shot at that Headquarters after Meyer moved there on the afternoon of 7 June. The point upon which less corroboration exists is the evidence that Meyer himself said "What shall we do with these prisoners? They only eat our rations," and then said something to an officer who was standing beside him, and then announced "In future you will take no prisoners." This corroboration can only be obtained circumstantially from the point of reasonableness of the occurrence as alleged.

Jesionek does not give the hour that the shooting occurred but it would appear to have been late in the morning, from what he had done that morning and from what he himself says about it. My friend made some reference to that, and I should like to correct him on it while we are on the point.... Jesionek… giving evidence on cross-examination is asked this question:

"And what time did you come back from your recce?" *A.* "It may have been nine o'clock in the morning" and the next question, "and what time were the prisoners brought in?" *A.* "Towards noon approximately."

Andrew: If you read the cross-examination you will get the correct meaning.

Macdonald: *(Continuing address)* Now it may well have been that this shooting did not occur until after Meyer's return from his visit to the battalions, and there is nothing which Jesionek says which is inconsistent with that. There is no evidence to support the fact that Meyer did make a tour of the front that morning, but that is what he would probably do in any event, and there is no quarrel with that suggestion. It is clear, however, that he arrived back in sufficient time to go up in the tower, and be there at the time Meitzel arrived at twelve o'clock or shortly thereafter.

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Now when Meyer was first told about Jesionek's story he said it was thoroughly possible that he was in the chapel at the time, and that the prisoners had been announced to him. He also confirmed Jesionek's evidence that that morning there had been low-flying aircraft, and that it was quite possible he had told the troops to get the vehicles out of sight; but he of course denies that he had ordered the shooting of the prisoners. He has admitted in the course of his examination, that by reason of attacks by aircraft en route to Caen that the troops were short of ammunition and petrol, but that the food situation was not bad. Jesionek says, however, that they were quite short of food and that when a British food container was dropped in the vicinity of the Abbaye many of the troops went to this container to get food, because they were hungry. In these circumstances, if there were such shortages of supplies, is it surprising that Meyer should say "What shall we do with these prisoners? They only eat our rations."? The previous day many prisoners had been taken, and if they consumed any German rations they must have used a lot. Is it surprising that Meyer should follow this remark with a further one "In future no prisoners will be taken."? This after all is only a reiteration of what he had said to the troops in training, and now in his judgment the justification was more apparent than ever.

Is it surprising then that, having made these statements, he should speak to an officer in a low tone and give to him certain instructions which could not be heard by others present? Jesionek said that this person went to the prisoners and spoke to them in English. Meyer says that such interrogations as were conducted at his HQ were conducted by the Adjutant, whose duty it would be to look after this, and he was the only one in any event who understood English.

Jesionek says during the interrogation the officer laughed at the prisoners in an unpleasant manner, and that he saw tears in the eyes of one of them. In view of what happened therefore, is it unreasonable to assume that the officer was telling the prisoners what their fate was to be? If this be so then this is further evidence of the causal connection between Meyer's remarks in the chapel, and the actual shooting of the prisoners which then followed, with an NCO acting as the executioner.

We have therefore in the evidence itself established an opportunity for the situation to have occurred, as Jesionek has described it. He has provided sufficient necessary detail, whenever he has been required to do so, to make the story appear most convincing. Captain Pootman's evidence as given to the Court shows how clearly he was able to describe on the ground immediately when he was taken there, all the things he gave in his evidence, and how consistent his story and evidence have been throughout.

Actually this evidence is not, of course, met by any other evidence than by Meyer's bare denial. Now, does Meyer's denial sound like a thoroughly reasonable one? Taking it as firmly established that the shooting did occur; the only other explanation would be that someone at the Headquarters, with Meyer's knowledge or approval, carried it out within a hundred meters of his command post, in broad daylight, and at a time when he could have been and probably was there. This presupposes that the persons committing the deed either felt secure in the knowledge that the Regimental Commander had either ordered the shooting, or had approved it, or that the perpetrators had no fear of disciplinary consequences if they should be found out.

You have seen the accused. You have heard of his reputation as a strict disciplinarian. Can you honestly believe for a moment that any person would have dared to commit this offence, under his very nose, without his approval expressed or implied? Moreover can you believe that not only were these seven so killed, but that eleven others were similarly done to death in the garden, probably on the preceding evening or early in the morning of the eight, without such approval, expressed or implied?

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Despite the most rigorous cross-examination of Jesionek, his evidence has not been shaken in any material respect. I submit that he has given to us an honest and convincing explanation of an occurrence which is scarcely creditable in any other circumstances.

Now on the other hand let us look at Meyer's evidence on this point. When examined with respect to atrocities by the SHAEF Court of Inquiry on the 26th and 27th of March last, he denied all knowledge of such occurrences. True, he was at that time a prisoner of war, and he was not on oath. On the 15th of October, he was again examined, and by this time the war had ended, and he was examined on oath which he said was binding on his conscience. Despite his squirming and evasion at the trial, I submit that there can be no doubt in the mind of any disinterested reader of the evidence, that on that day he flatly and unequivocally denied any knowledge of any atrocities whatsoever. On the 15th October he was told that he would probably have to stand trial, and the offences with which he was charged were detailed to him. He was given a full explanation of what the evidence was which had been obtained from Jesionek, and it was after hearing this that he made these denials which he repeated again on the 17th of October.

Judge Advocate: Is that in evidence Col Macdonald, that the accused was told the charges and so forth?

Macdonald: Not the charges but the evidence. He was told precisely what was found, that eighteen bodies had been found and so on.

Judge Advocate: Is that in the evidence before the Court?

Macdonald: Yes.

Macdonald: *(Continuing address)* It was not until the 26th of October, nine days later, that he advised us that he wanted to make a statement. On the 28th of October his new statement was obtained, after he had been advised against making it at that particular time.

Now, instead of saying he knew nothing about atrocities, he did admit that he knew about the shooting of eighteen prisoners, and said that it was reported to him by his Medical Officers on the 10th or 11th of June, and that is the story he has told in this court. His story told here is that when the report was made to him, he eventually went to the garden, and from the garden end of the passageway connecting the courtyard and the garden, saw there the bodies which he was told numbered eighteen or nineteen and bore head wounds. He says he disciplined his Adjutant for it, and sent him back to his unit, and that had it not been for the fact that he had not been continuously at the Abbaye on the 7th and 8th of June, he would have turned him over to the Divisional Commander.

Despite the fact that the occurrences could only have taken place three or four days previously, their efforts to locate the perpetrators were entirely without result. When he was asked by a superior formation for a report of any shooting of Allied prisoners, with this knowledge in his mind, he submitted a nil return.

Now, the implications of the evidence of the accused himself, I submit, are almost as devastating as the original evidence given by Jesionek. If this story is to be believed, it means that whoever shot these eighteen prisoners was so little concerned about the risk of disciplinary action that he was prepared to carry it out openly at the Headquarters, within ear-shot of the Commander, and more than that he was prepared to leave the bodies lying around for several days to be eventually discovered. Does this sound like a reasonable story with fifty civilians about the place? Does it sound probable that if the whole eighteen were buried at one time that they would be buried in five separate graves? Does it not

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sound more reasonable that they were buried after each shooting and that four separate shootings or killings took place?

I submit, however, that we do not have to concern ourselves with these considerations, for the accused has out of his own mouth condemned himself as a perjurer before this Court. The evidence of the Lachevre boy and Monsieur Vico establishes beyond a doubt that not only were there no bodies in the park on the 11th of June, when Meyer says he saw them there, but there had been none on the evenings of the 8th, 9th, or 10th of June; and moreover that between the early afternoon of the 8th of June and the eleventh of June there had been constructed across the passageway, a shelter of such dimensions that it is improbable that the accused went to the garden as he said he did, or was able to see the bodies from that position if he did.

It is perfectly obvious that he has concocted this whole story after his interrogation on the 17th of October, and that he had probably never at any time seen the bodies. He is completely and finally exposed I say by this fabrication, and herein lies the solution to the whole case.

It may now be said that if this be true, does it not make Jesionek out to be lying, for how could he see this shooting if the shelter were there at that time? First we must say that if he could not have invented such a story and drawn such a sketch,… then the shelter had not been constructed until the afternoon of the 8th of June. Then you say if it took two French boys twenty-four hours to demolish, tidy up the place and build new slate steps, could it have originally been constructed in an afternoon? There are three answers: first Lachevre says he went to the garden three days after the invasion, which would be the 9th of June and not the eighth. However, he has said the date was the 8th and perhaps we are bound by that. He might, however, be mistaken. Secondly, if so, that is, if he was there on the 8th, is it possible that the burial took place on that day and the spoil left over was piled at the end of the passageway and Lachevre merely assumed, because much later he found that a shelter had been constructed there, that it had been completed that day. He did not inspect it at that time, and he did not inspect it on any of the succeeding days. Finally I leave it to the members of the Court, who have had Headquaters and who have had to make frequent moves themselves. Is it not possible that a shelter like this could be completely constructed in a few hours by a gang of men working under the urgency of shell fire and air activity? The Rear HQ moved into the Abbaye that day in the afternoon and evening, and only then did it become necessary to start getting dug in and arranging for permanent installations. There was a handy spot, a ditch, and the necessary spoil to provide the cover and sides – a very easy job for any group of soldiers.

Now one outstanding thing about Jesionek's evidence is that it is so reasonable and lacking in vindictiveness. Is there a word which he has said which has been contradicted by anyone but Meyer himself? Is there anything he has said which does not fit perfectly into this whole picture of atrocities generally? He reports the shooting of seven prisoners. On investigation we find that not only seven but eighteen had been shot at the same place, and probably two later at the same Headquarters. Everything he has said has stood up to the closest examination.

One thing more. If he really was out to get Meyer, why would he not have said, Meyer, in so many words, ordered the shooting of the prisoners? But examine his first interrogation. When asked to quote Meyer's words he did not include a direct order. It would have been so easy to do so. All he says is from what he heard and saw, he inferred, as we would too, that Meyer told the officer to have the prisoners shot. This is certainly consistent with what Meyer was heard to say.

My friend makes some references to two errors which Jesionek is alleged to have made in his evidence. I submit that these errors are most inconsequential errors, if they are errors at all. First of all,

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he says that Jesionek must be mistaken about the minefield, and that that is a concoction I assume. Now, I think you are all aware that in a fluid battle, protective minefields are put out by either side and these are not usually charted, and if they are charted, it takes some time to get these plans back to HQ, and for the Headquarters to inform all the troops concerned where these minefields are. Then this is at the very beginning of battle in Normandy. It was on the second day of the battle, and it is a very significant feature that a Canadian tank was seen in the near vicinity of this minefield. That is some evidence that the area had been occupied at some time by Canadian troops. We have evidence by Meyer that, on the afternoon of the 7th, there was a Canadian tank, which fired into the Abbaye, so is it not possible that the mines which were put out, were ones which were put there either first as a Wehrmacht minefield for some purposes before, or a Canadian minefield of 75 grenades? There is nothing to suggest otherwise, and there is no sense of making a big point that Meyer and Meitzel say there was no minefield there. We all know how easily a person can be mistaken about a matter of that kind.

The other thing is that, when asked to indicate the entrance to the chapel through which the schwimmwagen were put on the morning of the 8th, the witness looking at this old Plan T-1 which is not accurate, knowing full well that they were put into the building at the opposite end from the main entrance, selected the only feasible spot rather than suggest a place where there was a solid wall. I presume he was misled through the error in the plan. He knew there was an entrance there just around the corner from the end of the building, which he marked. I think that is a most inconsequential error, and there is further confirmation of his story in the fact that Lachevre and Vico come along and say that this entrance was frequently blocked up by vehicles and carts and things of that kind. One of the things which Jesionek said is that in order to get the schwimmwagen into the Abbaye they first of all had to push these vehicles and carts out of the way.

Another thing, instead of his father writing to get him out of the SS, it was his mother. I do not know what the true explanation of that is. It does not seem to be of great consequence to anyone. The original story comes from Jesionek and the contradiction that his mother wrote comes from the same witness. I do not know who else there is who knows about it, or what sinister [thing] there is about who did write it. I think his explanation of this is probably a reasonable one.

Now, while I think that the evidence with respect to the examination of these bodies amply demonstrates that the Court is unable to place reliance upon the evidence of the accused, I would like to mention just a few other indications to support that suggestion. First of all, the Court could hardly have failed to observe the effort which the accused has made to improve a bit on his original story with respect to the shooting of German prisoners at Rots. When he first mentioned this matter to the SHAEF Court, he said he had not learned of it until the 9th of June. At this trial, however, hoping to provide apparently some justification for what happened on the afternoon of the 7th of June, he found that he was informed of this affair at his rear HQ before noon of that day. In reference to the questions I asked, the answer indicated that there was no confusion about the occasion he meant and the meaning he intended to convey. That was the occurrence he was referring to, and we know without going into it, how impossible it would have been for the story to be true. Apparently [this was] just another instance of rigging his story for the trial.

Secondly, his inability to give any story whatsoever with respect to the shooting of Lieut Williams at his HQ on the morning of the 17th is another example. He simply says he knows nothing about it. Now, considering the urgent need for prisoners for interrogation purposes, does his story ring true? That he had not been informed that an officer and NCO prisoner had been brought to his HQ in the

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early morning hours? Moreover is it likely that an alert and active commander such as the accused would have failed to learn of the firing of shots at his HQ at that time?

While it is understandable that the accused may honestly have difficulty in saying when precisely he became Divisional Commander, I must admit to a suspicion that he has a good reason for his inability to fix that date. Is it possible that it has to do with some other atrocity, or has it to do with some other matter into which we will soon inquire. With all the goodwill in the world I find it difficult to believe that the accused could not say whether he commanded his regiment for four days or eleven. There is a great deal of difference between four days and eleven days. However, he has, on various occasions, given five different days for this important date when he became Divisional Commander: the 10th, 11th, 13th, 15th, and 17th. Despite the fact that he has had since last March to form some opinion of his own, for some reason he prefers to disclaim any personal knowledge and to let it rest on the evidence of others.

On top of all this the Court must have been impressed by the evasive and shrewd way in which he answered the questions put to him, which touched directly on the matters in issue. This is not the manner of a person having a clear conscience and having nothing to conceal. So much for the accused and his evidence.

Turning to charges two and five; can you believe that these offences would have occurred but for Meyer's policy. It has been suggested that some occurred in the battle area and are excusable as such. There is no evidence to suggest that those killed were not prisoners and that is no excuse. There is some suggestion that they were killed by other troops than the Panzer Grenadier Regiment. There is no positive evidence of this. In all cases the perpetrators appear to have been dressed in full camouflage suits, and some who had greatcoats had SS badges on their uniforms. In every case except the Nichols and unknown one in Authie, the troops were wearing camouflage [uniforms]. In any event these troops were all serving under Meyer's command and all the survivors who were evacuated through his HQ at Ardenne where he gave the orders as to their disposition. It means he is responsible to a lesser degree if any of these offences were committed by any other troops. That simply affects the question of punishment.

It is suggested that some officers tried to stop some of the shooting. Well we do not suggest that there were not some in the Regiment with decent instincts. There were some from the Wehrmacht and there may well have been many, as suggested by Jesionek, who did not agree with Meyer's policy with regard to prisoners. As to the possibility that some of the shooting might have been accidental – it is impossible that Metcalfe, Arsenault, McKinnon, Hargreave, Davidson and his section at the side of the road in Authie, Orford and those with him were killed in the course of battle or by any mistake. With regard to the killing of the eleven at Ardennes, we know that six and probably ten were killed with rifle butts or a club, (which was suggested by the medical testimony) after interrogation, and this occurred at Meyer's HQ as did the seven. How or when, we do not know except that evidently three graves were dug for the eleven which suggests separate killings. Lieut Windsor and his tank crew were among the very first prisoners taken to the Abbaye, and were certainly there at the time when Meyer was. Now Lieut Windsor, if you remember, was the one who was slapped because he said that he would only answer three questions. It would rather appear that his execution took place after his interrogation or his unsatisfactory interrogation had ended.

And do not let us think these murders only occurred on the first few days. It has been said that there was an offer made to the troops of a thirty-day leave for them if they could capture prisoners. Well, I think the evidence has well established by this time, that this offer only came out after the flow of prisoners dried up, and when there was a very great need of prisoners for interrogation. When they

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did capture prisoners, the few that they did get, we know at least from what happened to Lieut Williams and L/Cpl Pollard what their fate was.

Now, to refer to some further arguments of my friend. He quoted certain officers who say that there were no vehicles in the Abbaye. Well, I don't know who would be the most observant in these matters, but I suggest that the boy Lachevre would know whether there were vehicles there, and examine the evidence of Jesionek as to moving the schwimmwagen in, the reasonableness of it, and the fact that Meyer himself thinks it is possible. It is suggested that because Lachevre saw no signs of digging in the garden that there cannot have been any graves there at the time. Well, I suggest to you that observant as he might have been, he would not have observed digging if it took seven to eleven months for Vico to discover the existence of those graves, and that they must have been well concealed from the very outset. I further suggest that if at the same time he saw a pile of earth down at the end of the passageway, that it would readily explain to him any further disturbance of the soil, as having been the result of the removal of earth for this shelter. Now, I do not remember that Vico said there were no steps in the passageway before. He said that there were steps but of a different type, and that he constructed better ones, I assume, when he removed the shelter.

Now, if we are going to accept the argument that the passageway was there at the time of the shooting, then I do not know where we will get because evidently then the shooting did not occur at all, and somebody must have smuggled the bodies there. I cannot think of any other answer to the argument. With regard to the punishment of Schuemann for the shooting, I should like to read you… where on cross-examination Meitzel is asked the question:

"*Q.* Was any explanation ever given to you, Meitzel, as to why Schuemann was relieved of his post? *A.* I was always of the conviction that he was not competent for that post. *Q.* And in what respect do you mean? *A.* Meyer was used to von Buettner who was the most capable adjutant in the Division, and in contrast to von Buettner, Schuemann was a young and inexperienced officer. *Q.* And so far as you know, was that the reason why he was relieved? *A.* I have always assumed that was the reason."

Now, I point out that Meitzel was not an uninformed or unimportant officer by any means. He was one of the most important staff officers in the Division and, if he didn't know all about it, why this particular Adjutant was removed, it would be remarkable. The Adjutant was the man at Regiment with whom he made contact constantly and he would make it his business to know why he had been removed.

Now, at Bergmann's evidence... Bergmann was another Adjutant, and a man who dealt frequently with the Regimental Adjutant, and, he would be the one who would have a special interest in this particularly as his own assistant, Brieholz, became the new Regimental Adjutant.

"*Q.* Do you know why Scheumann was relieved of his appointment? *A.* No, the reason is not known to me."

And then Meyer's own evidence…:

"*Q.* Where was von Buettner buried? *A.* Ancient Abbaye.

Q. And he left the post of Adjutant, I understand, to become Commander of the 15th Recce Company? *A.* Of the 15th Company.

Q. And was he succeeded by Obersturmführer Schuemann? *A.* Obersturmführer Schuemann.

Q. What was Schuemann's first name? *A.* That I cannot say, I don't know.

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Q. With what unit had he previously been serving? *A.* In the 1st Battalion as Platoon Commander.

Q. And was he still Adjutant up until the time that you were appointed Divisional Commander? *A.* I relieved him before that. *(Witness says he wants to think it over carefully.)* He was a few more days Adjutant once I took over the Division and then he was relieved.

Q. Was he relieved by your successor Milius? *A.* Yes. *Q.* Do you know why? *A.* Milius took over my troops. Then Milius took out of his own troops men whom he knew personally (humanly) better. Also Schuemann did not really lend himself so well to the post of Adjutant and Schuemann then again became troop officer."

Now, that does not suggest that he was removed after a very stormy scene and as a matter of discipline at all; simply that he was merely not a satisfactory Adjutant, perhaps to Meyer and perhaps also to his successor Milius, and Milius wanted a man with whom he was more familiar.

Now, I wonder if the reason which Meyer gives as to why he did not tell about these atrocities when he was interrogated really rings true. If his story is to be believed that he disciplined Schuemann about it, would he have disciplined Schuemann if somebody in his command, in his opinion, was not responsible for what occurred there? He says the he was not going to admit it because he had no evidence that his troops were responsible. Why then was he prepared to send Schuemann back to his unit where as a consequence Schuemann was eventually killed?

Now, one further word, with respect to the Second Charge, raised by my friend. It is said that McKay was captured by a soldier who wore wings on his camouflage jacket. I point out that this however happened to be his own guard. It was not the uniform worn by the soldiers who shot Cpl Davidson and his whole section on a street in Authie. They were dressed in camouflage uniform, the evidence shows, and it also suggests that if the soldier who was guarding McKay did not belong to the 12th SS, that he was a much more humanly minded person than many of the others because he looked after McKay extremely well. He also appeared to be in considerable doubt or confusion as to exactly what he was to do with his prisoners, and I think that there is some support for this theory that he did not belong to the 12th SS.

I am not going to say that there were no other troops in the neighbourhood at the time, I don't think that can be contended. I don't know enough about it to be certain about it, and I don't know that anybody else knows enough about it. Our troops were briefed before they came over, that they were going to encounter the 21st Panzer Division and they did, but they encountered them on a previous day; I submit that by reason of that briefing and encounter they were confused about the matter and that is why they have given the evidence which they have. I do not think our people are the correct people to give precise or correct information on enemy formations who were in that area at that time. None of them were staff people who would be fully informed. But if there were other troops involved, the only place where I see that they may have been responsible for any of the atrocities that we complain of was in Authie, in the incident described by Guilbert, and it would appear that the officer who did the bayonetting there wore a coat. Whether that meant that he didn't belong to the SS I don't know. But that does not surely affect the charge, because not only have we established that there were 23 prisoners killed on that particular day but we have added at least two more to that number. And, it is said that in connection with the shooting later in which Cpl McLeod is involved and Ptes Conrad and Doolan, that McLeod was not quite sure of the dress of the troops who were advancing. Well, he might not have been, but Conrad also gave evidence on that point, and his quite definite that they were wearing camouflage uniforms.

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Now, as to the Fifth Charge, my friend suggests that we ought to blame the Feldgendarmerie for what occurred there. I would point out again that this was at the Headquarters of the accused where this offence took place. He had been in occupation of that Headquarters since just after noon of the 7th of June. These prisoners could not have been killed before the late afternoon of the 7th, and the Feldgendarmerie are obviously anyway under his disciplinary control at his own HQ.

With regard to the question of pay books I think that is expecting a little too much in the way of efficiency. I presume that they did not make a nominal roll of those whom they were going to kill, and carefully abstract their pay books from other pay books which they might have had. The whole matter was handled in quite a different manner, I should imagine, and they simply brought back all the pay books that they had taken away.

If, as alleged, there has been any conflict in the prosecution evidence, I should ask the court to remember that it is our duty to present the evidence to you as we find it, and that the evidence is not always completely in harmony is to be expected if it is honest testimony. The things we have got to look for is to see that on the essential points they are in corroboration and in agreement.

Now, one word as to the law, and may I again make it clear that what I have to say in this regard must, of course, be subject to what the learned Judge Advocate may say to you on the topic. I think, however, that when his turn comes to instruct you, he will not disagree with me, when I say that the War Crimes Regulations (Canada) contemplate that on the proof of certain facts, set forth in Regulation 10(4) and (5), which provide that where more than one offence has been committed by troops under a single Commander, or, where, at the time of the commission of an offence, or immediately preceding it, there is present an officer or NCO, such evidence may be received by the Court as prima facie evidence of the responsibility, i.e., guilt, under the charges here laid, of an accused Commander.

That prima facie evidence, of course, can be rendered of no effect if the accused produces an answer or explanation which raises in the mind of the Court a reasonable doubt of his responsibility or guilt. This is the absence of any positive evidence, directly implicating the accused. If super-imposed upon this statutory presumption, however, there is other evidence of a positive character which the accused has been unable to meet, then of course no reliance need be placed upon the statutory provision at all, and that is the situation in which we here find ourselves. I merely wish to point out that, as a matter of law, we could disregard entirely the Jesionek evidence and, if the accused had not raised a reasonable doubt of his guilt, rely entirely upon the provisions of the Regulations, and the Court would be justified in convicting on that alone. However, that is not our case here. Our case rests upon positive, unimpeached evidence, not only of Jesionek himself but of Torbanisch, Helzel and Heyer, and the circumstantial evidence which corroborates what they all have said.

Just a word further as to the meaning of the term "reasonable doubt." This is a term which almost defies definition, but one thing it does mean is that it should be a real, a serious, a genuine doubt, based on the courts' practical experience of the world and of men, and particularly should this reasonable doubt be based upon the military experience of the court. Factors which to a civilian might appear as of little consequence, to a person of military experience, may be of the utmost significance. In that connection, I mean particularly such things as the chain of command. Everyone knows, for instance, that a Commander does not go around doing things himself, he gives orders to his subordinates, and those are his officers and NCOs. If we find that his chief staff officer, or others near him, are issuing certain orders or doing certain things, in military experience we assume that these things are being done with the approval, and on behalf of the Commander himself. It might, for example, not appear to a civilian to be of importance that von Buettner, Meyer's Adjutant, said certain things, or that Schuemann, his later Adjutant, interrogated prisoners and that thereafter they were shot. That, how-

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ever, cannot fail to have significance to one of military experience. Again the reasonable doubt does not mean a fanciful doubt. An ingenious person can always manufacture or conjure up a doubt about anything, but that is not what is meant. Actually, in this case, however, very little law is involved.

We looked to the accused for an explanation sufficient to shift the burden placed on him by the Regulations, and the positive evidence of the prosecution. If his only explanation is a denial of knowledge, and a story shown to be utterly false, I submit he has failed to raise that reasonable doubt of his guilt which is essential if he is to escape the consequences of the Regulations. It resolves itself simply to this question: Does this Court, composed as it is of senior military personnel of great experience, believe that we have established beyond a reasonable doubt that the accused is responsible as charged? Can it be possible that 41 to 46 prisoners came to their deaths at Buron, Authie, and Ardenne in a well disciplined unit, without someone being responsible? Can you come to any other conclusion than that it is the accused who by commission or omission, or both, is responsible for what occurred?

We cannot produce a photograph of the accused standing over the dead bodies of prisoners with a smoking pistol in his hand, nor can we produce verbal evidence to the same effect. That sort of thing doesn't happen. We do not produce a written order signed by the accused ordering the execution prisoners, and that too rarely happens in any army. No commander who had such intentions would personally implicate himself where there is no need to do so, especially where he has, as Meyer puts it, "comrades who know how the commander fights," to carry out his wishes. If we had been able to bring before the court the soldiers who actually fired the shots, they would, of course, be here. But we are doing something better than that, we have brought before you the officer in whose mind was hatched these crimes to be executed by others. He is the greater menace, and the one in such case to be held responsible and above all others to be punished. Punishment applied to him will be punishment directed to the source, and the greatest possible deterrent for the future.

We have been taken on tours of the battlefield, and we have listened to inspiring addresses to young soldiers. We have been impressed by the proficiency of the accused. He knows his job. He knows how to lead, inspire and discipline men. With his eloquence they are formed into whatever mould he wishes. He agrees that there are no bad soldiers, only bad officers. "By their fruits ye shall know them," and the fruits of this man's training and policy were the cowardly murders of helpless, unarmed prisoners – and don't let us forget that.

We have heard much of his personal courage, a good deal of it from the accused himself, but I have no intention of belittling that. No, he undoubtedly has physical courage. But let us not become so lost in admiration as to think that he has any monopoly on that virtue.

Can any Canadian have failed to experience a feeling of pride, as he heard of Lieut Windsor on his interrogation defying his captors and going to his death because he would be no traitor? Could we help being moved, as we listened to Jesionek's description, of the manner in which the seven prisoners died on the morning of the 8th June? How they, with full knowledge of what lay before them, each in turn shook the others by the hand, and then walked quietly and bravely to his death.

It is for us, who have been spared their fate, to see that those who committed these foul murders are found, and when they are, that they receive that justice which we owe to their victims, and those dear to them, and to all who in future combat, by our action, can be saved from a similar fate.

The prosecution respectfully submit that we have produced before you, in the person of the accused, one who is supremely responsible for the murder of these 41 Canadian prisoners. We ask, therefore,

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in the name of justice, if you agree with that submission, that without fear or favour, the accused, on the first, second, third and fifth counts on the charge sheet, be declared guilty.

President: The accused and escort may withdraw. The Court will adjourn until three o'clock this afternoon.

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President: I declare the Court open...

President: We will now have the ***Judge Advocate's address***.

Judge Advocate, Lt-Col W.B. Bredin, sums up: It is now my duty as Judge Advocate to sum up in this case, that is, to advise the Court upon questions of law and to make such reference to the evidence as may be necessary. A complete transcript of the evidence has been provided for each member of the Court and therefore the Court will no doubt refer to that transcript rather than rely upon my recollection or the recollection of the Prosecutor and Defending Officers of any particular part of the evidence. We are concerned now with the First Charge Sheet only. After the Court has made its findings upon the charges in that charge sheet, the accused will be arraigned upon the charge in the Second Charge Sheet.

I will first explain briefly the nature of this Court and its jurisdiction to try the accused. This is a military court convened by the General Officer Commanding 3rd Canadian Infantry Division, Canadian Army Occupation Force, for the purpose of trying the accused, a former officer of the German Army, for alleged violations of what are called the "Laws and Usages of War." There is no question of the right of a belligerent to try a member of the armed forces of an enemy belligerent for such violations committed with respect to its own armed forces. But International Law does not provide for any particular type of Court which must be constituted for such trials, or for the procedure to be followed or the evidence which may be received. All that International Law requires is that the trial should proceed in accord with civilized standards of justice. Para 449 of Chapter XIV of the *Manual of Military Law* says "Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment and the utmost care must be taken to confine the punishment to the actual offender." Accordingly by a Privy Council Order known as the War Crimes Regulations (Canada) regulations have been made by Canada to provide for the custody, trial and punishment of persons charged with violations of the Laws and Usages of War. Those Regulations have the force and effect of law and are therefore binding upon this Court and should be referred to. It is under those Regulations that this Court has been convened. It should be noted Regulation 5 provides that the Army Act and Rules of Procedure made thereunder relating to Field General Courts Martial shall with certain exceptions apply to military courts, constituted under the Regulations, so far as applicable and practicable. It should also be noted that the Regulations do not add to or create new International Law. The provisions they contain relating to procedure and evidence are quite proper because since International Law is silent upon these matters every State is entitled to make such regulations as it may deem necessary and expedient, subject to the requirements of justice. Even Regulation 11 which deals with punishment is not an addition to or extension of International Law, but rather declaratory of that Law, under which it has been settled that the punishment of death or a lesser punishment may be awarded for the commission of a war crime. Similarly Regulations 10(3), (4) and (5), to which reference has been made, must be regarded as declaratory in nature as stating Canada's concept of the law and therefore binding upon this Court. In effect those particular Regulations provide or at least are based upon the assumption – an

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assumption which is entirely reasonable and which the Court must accept that an officer or soldier may incur liability as a war criminal for a war crime though he may not himself have actually committed or taken part in the act constituting such crime. That, I think, is the real significance of Regulations 10(3), (4), and (5). I will deal later with those Regulations as they affect the evidence required to establish such vicarious responsibility.

It is necessary first to understand the nature of the charges with which we are concerned. Each charge against the accused is that he committed a war crime. The expression "War Crime" is defined in Regulation 2(f) as violation of the Laws and Usages of War committed during any war in which Canada has been or may be engaged at any time after September 9th, 1939. I should point out that the term "War Crime" does not mean a crime in the ordinary sense and our criminal law does not come into the picture at all. Para 441 of Chapter XIV of the *Manual of Military Law* is as follows:

> *"The term "War Crime" is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment on capture of the offenders. It is usual to employ this term, but it must be emphasized that it is used in the technical military and legal sense only and not in the moral sense. For although some of these acts, such as abuse of the privileges of the Red Cross badge, or the murder of prisoners, may be disgraceful, yet others, such as conveying information about the enemy, may be highly patriotic and praiseworthy. The enemy, however, is in any case entitled to punish these acts as war crimes."*

The test of criminal responsibility is therefore not properly applicable, and the issue upon any charge is not did the accused commit a crime as we understand the word "crime" under our criminal law, but did he violate the laws and usages of war, or as far as the second, fourth and fifth charges are concerned, was he responsible for a violation of the laws and usages of war?

The laws of war consist of treaties made between different States, or declarations or conventions to which they have subscribed, and also customary rules which are legally binding. In addition there are usages of war which through custom may become laws of war. It is today a universally recognized rule of war, long-established by custom and also set forth in treaties, that the killing of unarmed enemy prisoners of war is forbidden. The *International Convention Relative to the Treatment of Prisoners of War* signed at Geneva in 1929, which is shown as Appendix 24 to Chapter XIV of the *Manual of Military Law*, contains detailed provisions respecting the treatment of prisoners of war and specifically provides that they shall at all times be humanely treated and protected. A similar provision is contained in the Regulations which form part of the *International Convention Concerning the Laws and Customs of War on Land*, signed at the Hague, in 1907, which is shown as Appendix 6 to Chapter XIV of the *Manual of Military Law*. *The Convention of 1929* was ratified by Germany and by Canada and the Convention of 1907 was ratified by Germany and Great Britain whose ratification may be deemed to be ratification on behalf of the Dominions as well as herself. It may therefore be said that by treaty as well as by custom and usage the killing of prisoners – that is of combatants who have laid down their arms and surrendered – is a war crime punishable by the belligerent concerned.

Before dealing with the specific charges I will remind the Court of certain fundamental principles of British justice. Those principles are as applicable in this trial as they are in every trial held under British law when an accused stands charged with the commission of an offence. There is no difference in this respect between a trial by a military court held under the War Crimes Regulations and a trial by a Court-Martial. It follows that it is not for the accused to prove that he is innocent of all or any of the offences with which he is charged. He comes before the Court entirely innocent in the eyes of the law and he may not be convicted unless the prosecution proves that he is guilty. That is to say the burden lies upon the prosecution to prove the guilt of the accused, not upon the accused to prove his innocence.

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Further, such guilt must be established beyond a reasonable doubt. Therefore, if having considered all the relevant evidence both for the prosecution and for the defence the members of the Court entertain in their minds a reasonable doubt as to whether the accused did in fact commit an offence, that is as to whether the facts necessary to justify a conviction have been proved beyond a reasonable doubt, he should be found not guilty of that offence. A reasonable doubt does not mean a fanciful or imaginary doubt but rather such a doubt as would affect your decision upon some important matter respecting your private affairs – that is a conscientious doubt for which reasons may be given. The Court's findings on each charge should be made having regard to these principles.

I should also remind the members of the Court that they may consider only the evidence adduced at this trial and must relegate from their minds everything they may have heard concerning this case elsewhere than at this trial. They may draw upon their knowledge of human nature and the common experience of men in battle, and they may take judicial notice of matters within their general military knowledge and also of the laws and usages of war, but insofar as the particular allegations of fact set forth in the charges are concerned they must disregard anything they may have heard or read in connection with this case. Further the Court should exclude from its deliberations any consideration which might affect its judgment which is not relevant to this trial. The accused is not to be prejudiced because he is a member of an enemy force and the Court is not concerned with public opinion expressed in the press or elsewhere or with questions of policy or expediency. This is a judicial enquiry conducted according to our conception of justice, that is to say conscientiously and impartially, without fear or favour.

I should also point out that all questions of fact are for the Court to determine. It follows that the weight and value of the evidence of each witness – that is to say the reliability of the testimony of the witnesses – are matters solely for the Court's determination. My function here is to advise the Court and nothing more. Therefore if in the course of my remarks I indicate any opinion upon any question of fact the Court should disregard that opinion. I should also remind the Court that with regard to documentary or other evidence, such as "hearsay" which would not have been admissible but for the provisions of Regulation 10(1), it is for the Court to consider what value and what credibility it will attach to such evidence. It should take into consideration the circumstances under which any document which as been filed with the Court or from which extracts have been read, was obtained, and any other matters affecting reliability and then give to that evidence such weight or evidentiary value as it may consider proper.

I will now refer to the Charge Sheet. It is important that the particulars of each charge be read with care because the Court must be satisfied, before it finds the accused guilty of any charge, that the facts alleged in the particulars have been proved. If, however, the Court finds with respect to any of the charges that part only of the particulars have been proved, it may make a special finding of guilty specifically omitting the allegation in the particulars not found to be proved, but in any such case the Court must be satisfied that the allegations which are found to be proved constitute a war crime. For example, it is competent for the Court to find the accused guilty of any charge with the exception that a specified lesser number of prisoners were shot and killed than the number alleged in the charge. I would refer the Court to RP 44 (D) and (e) and to the form of special finding at page 753 of the *Manual of Military Law*.

The First Charge is quite clear and I advise the Court that the particulars in that charge allege or constitute a war crime. As it is an offence to deny quarter to prisoners I think an officer may be convicted of a war crime if he incites and counsels troops under his command to deny quarter, whether or not prisoners were killed as a result thereof. It would seem to be common sense to say that not only

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those members of the enemy who unlawfully kill prisoners may be charged as war criminals, but also any superior military commander who incites and counsels his troops to commit such offences. It will be necessary to consider the evidence of Helzel, Torbanisch and Jesionek and the evidence of the accused in order to decide whether words were uttered by the accused which in the circumstance amounted to an incitement or counsel to his troops to deny quarter to Allied troops.

The Second Charge alleges that the accused in Normandy, France, on or about the 7th day of June 1944 as Commander of the 25th SS Panzer Grenadier Regiment was responsible for the killing of prisoners of war, when troops under his command killed twenty-three Canadian prisoners of war at or near the villages of Buron and Authie. The questions which the Court must determine are first, were twenty-three Canadian prisoners killed at the places on or about the date alleged; secondly, if they were, did the troops under the accused's command commit those atrocities; and thirdly, if they did, was the accused responsible for those war crimes?

Evidence has been adduced to prove the killing of the prisoners and there is nothing for me to say upon the question. As to whether the prisoners were killed by troops under the command of the accused, that is, by members of the 25th SS Panzer Grenadier Regiment – which is an important question as affecting the accused's responsibility – the Court will no doubt consider carefully the evidence and the arguments of the prosecuting and defending officers upon the question. If you do find that those prisoners, or some of them, were killed by members of the 25th SS Panzer Grenadier Regiment you will have to decide whether the accused was responsible for those acts. The key words in the Second Charge are "was responsible for." The same words are used in the Fourth and Fifth Charges and therefore what I have to say now regarding responsibility will apply equally to those charges.

It is hardly necessary to say that if an officer or soldier takes part in the commission of a war crime or if he was present aiding and abetting its commission he may be found guilty of that crime. Further, if an officer, though not a participant in or present at the commission of a war crime, incites, counsels, instigates or procures the commission of a war crime, and, a *fortiori,*[4] if he orders its commission, he may be punished as a war criminal. In all such cases his conduct is clearly culpable and his wrongful acts, something he has said or done, can be specifically alleged. The first and third charges fall within these cases. But the broad question "When may a military commander be held responsible for a war crime committed by men under his command in the sense that he may be punished as a war criminal?" is not so easily answered.

I have said that Regulations 10(3), (4), and (5) recognize the liability to punishment of a military commander for violations of the laws and usages of war by men under his command. But those regulations also state that when certain evidence is adduced, that evidence may be received by the Court as prima facie evidence of responsibility. "Prima facie evidence of responsibility" means that upon certain facts being proved – namely the facts referred to in any one of those regulations – the responsibility of the accused may be presumed and the Court is, in the absence of any explanation given by or on behalf of the accused, justified in convicting. But if an explanation is given by or on behalf of the accused which raises in the mind of the Court a reasonable doubt as to his responsibility as a military commander, he is entitled to an acquittal, because if upon the whole of the evidence in the case, the Court is left in a real state of doubt the prosecution has failed to satisfy the onus of proof to which I have referred. Because of the wording of Regulations 10(3), (4) and (5) it is unnecessary, as far as the Second, Fourth, and Fifth Charges are concerned, for the prosecution to establish by evidence that the accused ordered the commission of a war crime, or verbally or tacitly acquiesced in its commission, or knowingly failed to prevent it commission. However, the facts proved by the prosecution must be such as to establish the responsibility of the accused for the crime in question or to justify the Court in inferring such re-

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sponsibility. The secondary onus, the burden of adducing evidence to show that he was not in fact responsible for any particular war crime, then shifts to the accused. If he fails to give such evidence, he may be convicted. If he gives evidence which raises a reasonable doubt in the Court's mind as to his responsibility, the accused is entitled to be acquitted.

In this case there is evidence of several separate occasions of the killing of prisoners, though as I have said, there may be doubt whether the prisoners were in each case killed by troops under the accused's command. There is also evidence that several graves were discovered at the Headquarters occupied by the accused and that such graves were concealed. There is also evidence, to which I will refer later, that the accused either ordered the killing of certain prisoners on the 8th of June 1944 – the subject of the Third Charge – or that they were killed at his HQ immediately after they had been brought before him, in a garden adjacent to buildings occupied by the accused as his HQ.

The Defence has adduced evidence some of which is in direct conflict with the evidence of the Prosecution. I refer particularly to the evidence of the accused denying the truth of Jesionek's evidence respecting the Third Charge.

The accused also denies that he incited and counselled troops of his Regiment to deny quarter to Allied troops as alleged in the First Charge, and he says, in effect, that he did not approve or acquiesce in the killing of prisoners. As I have endeavoured to explain, the Regulations do not mean that a military commander is in every case liable to be punished as a war criminal for every war crime committed by his subordinates but once certain facts have been proved by the Prosecution, there is an onus cast upon the accused to adduce evidence to negative or rebut the inference of responsibility which the Court is entitled to make. All the facts and circumstances must then be considered to determine whether the accused was in fact responsible for the killing of prisoners referred to in the various charges. The rank of the accused, the duties and responsibilities of the accused by virtue of the command he held, the training of the men under his command, their age and experience, anything relating to the question whether the accused either ordered, encouraged or verbally or tacitly acquiesced in the killing of prisoners, or wilfully failed in his duty as a military commander to prevent, or to take such action as the circumstances required to endeavour to prevent, the killing of prisoners, are matters affecting the question of the accused's responsibility. In the last analysis it is for the Court, using its wide knowledge and experience of military matters, to determine, in the light of all the relevant factors and the provisions of the Regulations, the responsibility of an accused in any particular case.

The Third Charge alleges that the accused at a certain time and place gave orders to troops under his command to kill seven Canadian prisoners of war and that as a result of such orders the prisoners were thereupon shot and killed. This charge needs no clarification and the material evidence of Jesionek and the accused has been dealt with exhaustively in argument. The Court must decide whether Jesionek is a truthful witness. Such considerations as the consistency or otherwise of his story, any motive he may have for not speaking the truth, whether the fact that he does not say that he heard the accused use words amounting to the order alleged is consistent with a desire to incriminate the accused, and whether he gave his story before he knew of the discovery of the grave where he said he saw the prisoners shot, whether his story as to the vehicles in the chapel is to be believed, are all material to the credibility of Jesionek and the value of his evidence. Similarly you must test the accuracy of the accused's evidence respecting this charge. The accused says the bodies of some Canadian soldiers who had been killed were there in the grounds, visible to him. Does that mean that the prisoners had been killed at the Headquarters without any serious attempt to hide that fact from the accused or from his staff officers? Is there any significance in that, either as to the truth of the accused's

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evidence, or, as to his responsibility for the killing of the prisoners, whoever may have committed those crimes? Is there any significance in the fact that the graves were, according to the evidence, concealed? Why was this done? Why were there several graves? Were there several shootings? It is for the Court to analyze the two entirely contradictory accounts of Jesionek and the accused. The facts are for the Court to determine.

There is no evidence that anyone heard any particular words uttered by the accused which would constitute an order, but it is not essential that such evidence be adduced. The giving of the order may be proved circumstantially, that is to say, you may consider the facts you find to be proved bearing upon the question whether the alleged order was given, and if you find that the only reasonable inference is that an order that the prisoners be killed was given by the accused at the time and place alleged, and that the prisoners were killed as a result of that order, you may properly find the accused guilty of the third charge. I should add that it is not necessary for you to be convinced that a particular or formal order was given but you must be satisfied before you convict that some words were uttered or some clear indication was given by the accused that the prisoners be put to death. I will read part of paragraph 42 of Chapter VI of the *Manual of Military Law* respecting circumstantial evidence: "Before the Court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act," that is that he gave the order, "but that they are inconsistent with any other rational conclusion than that the accused was the guilty person."

I now refer to the Fourth Charge. You will note that the Fourth Charge is laid as an alternative charged to the Third Charge. I must remind you that an accused may not be found guilty of more than one of two or more charges laid in the alternative, that is to say, in this case the accused may be found not guilty of the Third and Fourth charges or guilty of one of them only, even if you find that the particulars alleged in both those charges have been proved. It follows that if you find the accused guilty of the Third charge you must find him not guilty of the Fourth charge. I suggest you consider the Third Charge before you consider the Fourth Charge. If you find the accused guilty of the Third Charge, it will not be necessary for you to consider the Fourth Charge, but if you find the accused not guilty of the Third Charge you must then consider your verdict upon the Fourth Charge.

With respect to the Fourth Charge, the question which you must determine is the same question as is raised by the Second Charge – namely – "Was the accused responsible for the shooting of the prisoners?" You will bear in mind what I have already said upon the question of responsibility. You should, when deliberating upon this charge, consider both Regulations 10(4) and 10(5). As provided by Regulation 10(5) if the accused or an officer or NCO of his Regiment was present when members of his Regiment shot the seven prisoners then you may accept that fact as prima facie evidence of the accused's responsibility for that crime.

The Fifth Charge alleges that the accused in Normandy, France, on or about 7th June 1944 as Commander of the 25th SS Panzer Grenadier Regiment was responsible for the killing of prisoners of war when troops under his command killed eleven Canadian prisoners other than those referred to in the Third and Fourth Charges. This charge must also be regarded as referring to prisoners of war other than those mentioned in the Second Charge. In view of the observations which I have made respecting responsibility I do not think it is necessary for me to say anything further with respect to the Fifth Charge. Similar considerations apply to that charge as apply to the Second and Fourth Charges.

This has been a difficult trial by reason of the nature of the charges and the extent of the evidence and also because we have been governed by Regulations which have not been the subject of previous discussion in our courts. Much of the evidence has been given to enable the Court to appreciate the

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background, the state of the battle at the times material to the several charges, and the circumstances under which the alleged offences were committed. As experienced soldiers you will appreciate these factors, some of which are particularly relevant to the question of guilt and others to questions of mitigation of punishment should you find any of the offences proved.

Let me conclude by reminding the Court that it is their duty to give judgment upon each charge in accordance with the evidence given before this Court, that upon questions of fact the accused is entitled to the benefit of any sincere doubt upon the whole evidence, and that each member of the Court should banish completely from his mind any considerations that might prejudice the accused from receiving a fair and just verdict upon the evidence. This Court is not trying the German nation, nor the Nazi Party, nor the Hitler-Jugend, it is trying Kurt Meyer.

President: The accused and escort will withdraw. The Court is closed for the consideration of the findings.

(The court adjourned for consideration of findings at 1330 hours and reassembled, pursuant to adjournment, at 1615 hours on 27 December 1945.)

President: I declare the Court open...

President: *(To the accused)* Brigadeführer Meyer, the Court has found you not guilty of the Second and Third Charges. You will sit down please.

President: *(To the prosecutor)* Now, in order to give the Prosecution time to decide as to whether they wish to proceed with the Second Charge Sheet or not I think we will adjourn the Court until tomorrow morning.

Macdonald: Very good, sir.

President: *(To defending officer)* And that likewise will enable the Defence to get their evidence as to character. The accused and escort may withdraw. The court will adjourn until 10 o'clock tomorrow morning.

(The court adjourned at 1620 hours and reconvened at 1000 hours on 28 December 1945.)

28 December 1945

President: I declare the Court open...

President: *(To Prosecutor)* Is the prosecution prepared to go ahead with the second charge-sheet?

Macdonald: I have been authorized, sir, by the Convening Officer not to proceed on the second charge-sheet.

President: *(To the Prosecutor)* Have you any evidence to produce as to the character of the accused?

Macdonald: No, sir.

President: *(To the accused)* Do you wish to produce any evidence as to your character?

Plourde: Yes, sir.

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B6. Character

FIRST CHARACTER WITNESS FOR THE DEFENCE

General Hanz Eberbach, German Army, being duly sworn is examined by the Defending Officer, Captain R. Plourd:

Q. Will you tell the Court your rank, name and particulars, please? *A.* General Hanz Eberbach.

Plourde: *(To the President)* Pardon me, sir, General Eberbach speaks English fairly well. Would you rather he gave his evidence in English, sir?

President: No, I would rather he gave it in his own language.

Plourde: *(Continuing examination) Q.* Do you know General Kurt Meyer? *A.* I know General Kurt Meyer from one inspection during training, further from the period beginning of July to the beginning of August 1944, when I was his Senior Commanding General, and lastly for a period of about three months when I was with him in a prisoner of war camp.

Q. What was your command in June to August 1944? At that time what was your command? *A.* I commanded the Panzer Gruppe West.

Q. Now, will you carry on and tell the Court about your different experiences with the accused? *A.* I request I may make some observations about the Division Hitler-Jugend because that has some bearing on the experiences with Meyer, on the character of Meyer. The Division Hitler-Jugend was formed in August 1943 from volunteers with a good reputation. People, for example, who had stolen were not kept in the Division. Practically, however, not all members of the Hiter-Jugend could be regarded as volunteers. In order that the SS got the best people in its Division there was a certain amount of pressure exercised. The Army itself protested because of this and further there were a number of tensions between the Army and SS troops. The officer cadre of that Division could not be supplied by SS alone. Therefore approximately forty officers of the Army were posted to the SS Division Hitler-Jugend. As there was a certain amount of rivalry between Army and SS it is my opinion that only good officers of the Army were posted to the SS. The remaining officers of the Division Hitler-Jugend may be divided into two categories. One category are the young people who from sheer idealism joined the SS and the other category I would like to describe as brawlers and bad mercenaries. I wish to state in conjunction also with General von Geyr that the Army itself regarded Divisional Commander Witt, as well as Meyer, as well as Wuensche to be numbered among the idealists. In contrast thereto some other Commanders, and I would like here to mention Mohnke and Bremer, were counted among the bullies and brawlers. The training of the Division Hitler-Jugend was a particularly intensive and modern one. Especially General von Geyr pushed that very much but I wish to add here that education and disciplinary matters were issues in which an Army officer could not interfere. The Division may be described as one of the best German Armoured Divisions when after one year of training it entered the fight. I would like to add that General von Geyr due to his personality would, even if he had not been entitled to do so, have interfered with the education of that Division had he felt that the education was not at all proper or tending towards criminal tendencies. Shortly before the invasion General Geyr called all the ICs (G3I's) of the Divisions under his command together and told them about the treatment of prisoners of war and the humane attitude towards them. Of Meyer, during my visit during the training period, I had a positive impression. He was well-informed and had a sufficiently fatherly attitude towards his people and it was known to me that he looked after his men. When I took

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over the Panzer Gruppe West from General Geyr, he and I discussed the Divisions, especially the Divisional Commanders and the capabilities of each Division. I asked whether Meyer who now had taken the place of killed Witt was not a bit too young for the job in hand, but Geyr described Meyer as one of his best Divisional Commanders. At that time the success figures – by that I mean knocked out enemy tanks, captured enemy prisoners, captured enemy-machine guns, were approximately three times the success [figures] of the 21st Panzer Division and double the figure of the Panzer Lehr Tank Instructional Division. General Geyr said to me that it was frequently only to be ascribed to the Division Hitler-Jugend if the front in Normandy was held. He also said that, as far as he knew, there had been no atrocities committed by either side and that the war had been fought fairly on both sides. The Division Hitler-Jugend was by that time already more or less bled white. However, due to the situation they could, up to the Falaise pocket, not be pulled out. In spite of these heavy losses it remained the corset-stay of the other Divisions who were less efficient. I had the following disciplinary experience with the Division. Shortly after I took over the Panzer Gruppe I started an officer patrol to patrol the rear Army areas. The Division Hitler-Jugend showed up as a good average in reports submitted to me by these patrols – that means there were less reports about the Hitler-Jugend Division than about many of the other Divisions. It is interesting to state that of the Generals in command in Normandy, General Geyr, Obstfelder, General Schimtf, General Gausse, Sievers and Schack, they never heard anything about atrocities committed. Concerning the character of Meyer I request permission that I may read what is my opinion of his character which is also the opinion of General von Geyr:

"Young, fresh, dashing man of position, quick in resolution, better in attack than in defence, ambitious, conscious of his abilities but always eager to learn. As a soldier – outstanding soldier, well caring for his boy soldiers, brave, good trainer, believer in the revolutionary ideas of training which Geyr taught him, self-made man – as far as Geyr and I know without hate against Canadians. Murder of prisoners not in his line."

It seems to me, in order to elucidate the character of Meyer, I may be allowed to tell of an incident which I have heard. Unless this affair is known here it concerns the raping of a woman by one of his soldiers.

Plourde: No, we do not need that.

Eberbach: *(Continuing answer)* I never had to reprimand Meyer for any tactical mistakes. From the good elements of the soldiers under him, especially by the young soldiers, he was loved and honoured. I wish to state this about his character, during hard and difficult times he always provided accurate reports. Every old soldier knows that in critical times leaders who have a weak character are inclined to paint the picture darker than it actually is. The leader in question endeavours by such means to get support of ammunition and so on. It seems to me a good indicated of an upright and straight character that Meyer never painted a black picture. I am fully aware of the fact that after my first interrogation, deeply moved by the atrocities I had been informed of [and] by the evidence of the witnesses, I am fully aware, I repeat, that I then said that if those witnesses were one hundred percent correct I would have to admit the possibility that Meyer knew about the matter. After thinking it over I have come to the conviction that even if I had committed an error in appraising Meyer's character that Meyer could not possibly be so stupid, so unintelligent to commit such a deed. Meyer knew that we had no recce planes at that time, we had no useful espionage system. Prisoners were the only source we had to tell us about the presence of Divisions in the invasion, and Meyer is much too experienced a soldier to block up this, our only source of information. Moreover, there had been quite definite orders about the importance of prisoners and the necessity of speed in leading them back and Meyer is not the man to go counter to an order. I may also add that since Meyer became Divisional Commander, as far as

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I know, no more atrocities were committed. I mean, in other words, that Meyer had a beneficial influence upon the Division. Had he had the reputation of not being too exact about the lives of prisoners, then, in my opinion, once he took over the Division the number of atrocities would have increased and, in addition to that, I can assert that while I was in command in Normandy that Division brought back the most prisoners and brought them back quickly. That is all I have to state.

Macdonald: I realize, sir, that it is not customary for the Prosecution to cross-examine in matters of character but I do think the witness has gone into other things indirectly which affect the Prosecution and I should like to ask one or two questions on those particular points affecting his knowledge of affairs within the Division.

President: Well, has it to do with the facts of the case, because, after all, we have finished with that? It is only evidence with regard to the character of the accused.

Macdonald: I do not think I will pursue the matter, sir.

(The witness withdraws.)

Plourde: The Defence asks the indulgence of the Court. Our next witness is Mrs. Meyer, who has already arrived and I had given orders before the Court opened that she be kept outside. The order has been misunderstood and she has been allowed in. With the permission of the Court, in the circumstances, I should like to call Mrs. Meyer as our next witness.

Second Character Witness for the Defence

Mrs. Kate Meyer, being duly sworn, is examined by the Assistant Defending Officer, Capt F. Plourde:

Q. Will you tell the Court your name? *A.* Kate Meyer.

Q. You are the wife of General Kurt Meyer? *A.* Yes.

Q. And for how many years have you been married? *A.* Eleven years we are married.

Q. And you have lived with your husband all during that time, except sometimes when he was away fighting? *A.* Yes.

Q. And how many children have you? *A.* Five children.

Q. And would you tell the Court their ages? *A.* I have four daughters and one son, the eldest daughter is eleven years, the second nine years, the third six years, the fourth two and a half years and the young boy is ten months.

Q. And where is your home now? *A.* I am now staying with my mother-in-law.

Q. And your children? *A.* The children too, but my second daughter is here with me now.

Q. And will you tell the Court your own impressions of your husband as a man and as a father? *A.* I have a very good husband, I am very happily married. My husband is also a very good father of a family. I cannot say anything else but that I am supremely happy with my husband and that the children are very attached to their father.

Q. How is he for the children, how is your husband for the children, do the children love him, admire him, respect him? A. The children love their father very much. They cried when I had to leave them

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and could not take them all along. The children were very happy when my husband, their father, was at home for a few days and they said they could see how happy he was with us.

(The witness withdraws.)

Third Character Witness for the Defence

Hauptmann Fritz Steger, 3rd Battalion, 25th Panzer Grenadier Regiment, 12th SS Panzer Division (Hitler-Jugend), having been reminded of his former oath, is examined by the Assistant Defending Officer, Capt F. Plourde:

Q. You have already told the Court your name? *A.* Yes.

Q. I would like you to tell the Court what you know about General Meyer pertaining to his character as a man and as a soldier? *A.* The name of Brigadeführer Meyer was known to me before I came to the Division Hitler-Jugend. Brigadeführer Meyer was known to the entire German Army as one of the most competent and dashing officers of the SS. As army officers we appraised very critically the achievements of that Division. General Meyer is a man of great resolution who, in his Regiment, had the very greatest discipline. His care of his men was excellent and he had understanding for all the difficulties and worries of is young people. His men were proud of being in his Regiment. He did everything in order to give his Regiment the highest possible training. He demanded much of his men but there was nothing that he did not show them himself. He was a man full of dash and enthusiasm who carried his men with him. In private Meyer was very comradely and his men were part of his family. From this worry for his family he always told his subordinate commanders to lead the men with the greatest possible sense of responsibility and sense of duty.

Q. Were you a Hitler-Jugend or a Wehrmacht officer yourself? *A.* I am a Wehrmacht officer.

(The witness withdraws.)

Fourth Character Witness for the Defence

Capt J.A. Renwick, 28th Canadian Armoured Regiment (B.C.R.), being duly sworn, is examined by the Assistant Defending Officer, Capt F. Plourde:

Q. Will you tell the court your rank and name, please? *A.* Capt J.A. Renwick, 28th Canadian Armoured Regiment (B.C.R.).

Q. Do you recognize the accused, General Kurt Meyer, in this room? A. Yes, I do.

Q. Will you tell the court the circumstances under which you previously met General Meyer, and please confine your evidence solely as to character, as to your impressions of him as a man? *A.* The evidence that I shall give covers a period of approximately three hours on the evening of the 9th of August 1944. I was taken prisoner and escorted back to a position about a thousand yards from the front where was present a high ranking German officer, the accused. I saw the accused at that time at the front and again when I was driven by him from what I presume was the Regimental HQ back to his own HQ. During my interrogation the accused was present for approximately half an hour. At that time they produced to me a copy of *The Maple Leaf* newspaper containing a news item covering an Order of the Day issued by General Crerar regarding the alleged killings of Canadian soldiers on the 8th of June. The officer who interrogated me in the presence of the accused stated that they did not wage

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war that way. The accused then spoke to me for about fifteen minutes through an interpreter, saying that he could not understand why we were fighting them and that it appeared that we might be winning the war at that time, and he expressed the doctrine of the Nazi Party in such a way as to show that he was a firm believer in the objects for which they were fighting. He then left the caravan where I was being interrogated. I have not seen him since and my impression at the time I was his prisoner was that he was an able and capable officer who believed in what he was fighting for and that at no time was I subject to any threats or intimidation by him or his officers or men. That's all.

Q. What was you opinion of him as a man? I mean, was his behaviour that of a gentleman? *A.* Yes, his behaviour to me at all times was perfectly correct and was that of a gentleman and an officer.

(The witness withdraws.)

Plourde: The accused, sir has requested that he be allowed to address the Court very briefly.

President: That is the finish of your character witnesses, is it?

Plourde: Yes, sir.

President: Right. Has the Prosecution any character evidence?

Macdonald: No, sir. I have none.

President: *(To the accused)* ***Do you wish to address the Court***?

Meyer: Yes. Mr. President, I am very nearly 17 years a soldier. Of these I was in battle for five years. During these five years I have, with short intermissions, done my duty as a troop officer. It is to be assumed that a man who has such a host of soldierly experience is in a position to train soldiers. I have endeavoured to fulfill my task in Beverloo in such a manner as can be expected from a soldier. It was my objective to form for my nation a hard-hitting, fight-willing Grenadier Regiment. I endeavoured to train them in a spirit closely resembling actual battle conditions and drawing on the experiences which we made in battle. I wished with this Regiment to give an example of the youthful power of a people. I have asked much of my young soldiers and I think I gave much to my young soldiers. I worked during the time of training in Belgium and France and trained them according to the international soldierly ordinances. To train a troop to become a band of murderers is a crime against one's own people. Such a troop becomes a total loss to one's own nation; every single individual becomes a total loss. I endeavoured to train my men, not only as soldiers, but to give them a backbone for their entire life. The battles in Normandy, the battles of the invasion showed that the spirit of those troops was good. These young people of 17, 18 years fought for three whole months without any relief, without a night of sleep. During the first four weeks of the battle my division had between four and six thousand people of bloody losses. The divisional sector became not smaller but became bigger. The burden on the individual soldier and on the individual officer, the responsibility grew day to day. This division fought in these months against four well trained, well equipped divisions; against the 3rd and 4th Canadian Divisions, against the 51st British Division, and against the Polish Tank Division. If a troop can stand a quarter of a year of such attacks and also air attacks, then the mass of this troop must consist of good soldiers. I have here, during these proceedings, been given an insight into things which, in the aggregate, were unknown to me up to now. I wish to state to the court here that these deeds were not committed by the young soldier. I am convinced of it, that in the Division there were elements who, due to the year long battles, due to five years of war, had in a certain respect become brutalized. As Regimental Commander and as Divisional Commander I take every responsibility for what I, in the framework of tactical possibilities, ordered. I, during the battles in

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Normandy, as Regimental Commander and as Divisional Commander, bore a responsibility which cannot be compared with the ordinary tactical possibilities in armies. The situations for me were basically unnatural. Thus the responsibility was an unnaturally big one. I wish to assure the court that I lived and fought as a soldier, that I gave no order to annihilate defenceless people, neither in written form nor orally. I have endeavoured as a Divisional Commander to give to my young soldiers also the appearance of a picture of a well behaved unit, and, in this framework, I did not refrain from the most stern punishment against both men and officers. How far a commander can be held responsible for individual misdeeds of individual members of his troop the Court should decide as it consists of old soldiers. I expect your verdict. I have a clean conscience as a soldier. I, here, in front of the German public, wish to say that in the Canadian Army I was treated as a soldier and that the law proceedings were fairly conducted.

Plourde: That is the end of the evidence for the defence.

President: The accused and escort may withdraw. The Court is closed for the consideration of the sentence.

(The court adjourned at 1120 hours for the consideration of the sentence and reassembled at 1145 hours on 28 December 1945)

—

President: I declare the Court open...

President: *(To the accused)* Brigadeführer Kurt Meyer, the court has found you guilty of the First, Fourth, and Fifth Charges in the First Charge Sheet. The sentence of this Court is that you suffer death by being shot. The [findings] of guilty and the sentence are subject to confirmation. The proceedings are now closed.

SENTENCE

The Court sentence the accused Brigadeführer Kurt Meyer to suffer death by being shot.

The Court being re-opened, the accused is again brought before it.

The Convening Officer not having otherwise directed, the findings of Guilty on the First, Fourth and Fifth Charges of the First Charge Sheet and the sentence are announced in open Court by the President.

The President announces in open Court that the findings of Guilty and the sentence are subject to confirmation.

Signed this 28th day of December 1945 at Aurich, Germany.

(Signed) Lt-Col W.B. Bredin, Judge Advocate
(Signed) Major-General H.W. Foster, President

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Endnotes

1 Editors' Note: No "Third Witness" for the Prosecution was identified in the proceedings.

2 Editors' Note: Whitsun or Pentecost is observed on the seventh Sunday after Easter.

3 Editors' Note: "corn" refers to what North Americans call "wheat."

4 Editors' Note: "with even stronger reason" or "all the more."

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After the Trial



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B7. The Prosecutor's Report on the Trial

Lt-Col B.J.S. Macdonald, , O.C. 1 Cdn War Crimes Investigation Unit, to Deputy Adjutant General, CMHQ, 12 January 1946.[1]

RE TRIAL OF BRIGADEFUHRER KURT MEYER

1. Pending receipt of a complete transcript of the evidence and record, I submit hereunder a brief report on the marginally noted trial.

3. Of the charges on which the accused was tried, he was found guilty on all except the second charge. Of the third and fourth alternative charges, he was found guilty on the latter.

4. *FIRST CHARGE*

Evidence: Four German soldiers, members of 25 Panzer Grenadier Regiment, swore, that during training, Meyer had said to his troops on different occasions: "My regiment takes no prisoners"; that the order was repeated by Meyer's Adjutant, and also in secret order read to a headquarters company by its senior NCO, for which orders all had to sign an acknowledgement. These latter orders included instructions that if prisoners were taken, they were to be shot after interrogation. Further that another German Commander, on the day of the invasion, addressed his troops and gave them the order that they were to take no prisoners. One of his Regimental officers swore that Meyer had told him that in another theatre he frequently had to shoot prisoners. The accused denied the main charge but admitted that statement made to the officer. The prosecution also contended that the behaviour of the accused and his troops in battle, and later at the Regimental Headquarters, was further evidence that such an order had, in fact, been given.

Finding: Guilty.

5. *SECOND CHARGE*

Evidence: Undisputed evidence was adduced that a total of more than 23 prisoners had, on more than nine separate occasions, been shot at or near the villages of Buron and Authie following an attack made by Meyer's troops on the 7 June 44. The defence contended that troops other than those belonging to his Regiment participated in this attack, and, being similarly dressed, may have been responsible for some of these murders. It was also argued that all these offences occurred in a forward area in the heat of battle, and at, or very soon after, the prisoners had been captured, when conditions were still confused. While in some cases it appeared that officers may have taken part in the atrocities, in others there was evidence that they had interceded to prevent additional offenses.

Finding: Not Guilty.

6. *THIRD AND FOURTH CHARGES*

The accused was here charged with ordering the shooting of seven prisoners at his Regimental Headquarters on the morning of 8 June 44 and, alternatively, with responsibility for such shooting.

Evidence: A German soldier swore that when the presence of the seven prisoners was announced to the accused at his Headquarters at Abbeye Ardenne... that [Meyer] said: "What shall we do with these prisoners, they only eat our rations… in future we will take no prisoners"; that he spoke in a low tone to a staff officer who then went to where the prisoners were some 100 metres away. This officer, who on the evidence was in all likelihood the Adjutant, interrogated the prisoners and then left. Thereafter the prisoners were taken out individually to an adjoining garden, and shot by an NCO attached to the Headquarters. This occurred in daylight and other troops saw the shooting and bodies afterwards.

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The witness was wounded on that night, and did not again return to the area until taken there by an Investigating Team a year later. It was then found that 18 bodies of Canadian soldiers had just previously been discovered, in five concealed graves in the garden. All bore fatal head wounds, eight had evidently been shot while the others appeared to have been killed with a blunt instrument. The accused admitted that all 18 had been shot at his Headquarters, but said it had been without his prior knowledge, and he denied the evidence as to any orders given. He said that on 11 June the presence of the bodies in the garden had been reported to him, that he went and verified the facts by looking at the bodies there, but had been unable to discover who the perpetrators were.

This evidence was refuted by testimony of French civilians, which established that the bodies were not visible in the garden on the evening of 8, 9 or 10 June and therefore must have been buried the day the prisoners were killed. They therefore could not have been there on 11 June when the accused said he saw them there. Other evidence also showed that an obstruction had been constructed on 8 June at the spot where the accused said that he had stood when he had seen the bodies, which obstruction was of such a character that he could not have seen into the garden as alleged from that position on 11 June. It was also brought out that the accused, on all his interrogations, had denied any knowledge of the murders, until after he had been told by an Investigating Team the detailed evidence as to the finding of the bodies, and that he was to be put on trial for these murders. It was some days later, that he volunteered the statement denying his previous testimony and describing how he saw the bodies on 11 June.

Finding: Not guilty on the Third Charge. Guilty on the Fourth Charge.

Comment: The court evidently did not believe Meyer's explanation but did not believe that the evidence for the prosecution went far enough to establish that Meyer had actually ordered the shooting of these specific prisoners as alleged in the Third Charge. They must, however, have accepted the evidence of the prosecution witness as to what did occur at the headquarters and as to the circumstances generally, which evidence was corroborated in other material respects. Having regard to their finding on the first charge, i.e., inciting and counselling troops to deny quarter, it is apparent that the Court believed that the accused directly and/or indirectly, within the meaning of the Fourth Charge, was responsible for these prisoners being killed.

7. *FIFTH CHARGE*

This has to do with the murder of the remaining 11 of the 18 prisoners whose bodies were found in the garden at the Regiment Headquarters of Ardenne.

Evidence: It was shown that these prisoners were all missing on 7 June, and, that at least six of them, previously unwounded, had been specially interrogated at the Abbaye Headquarters on the afternoon and evening of that day. It was shown that the accused and his Adjutant and staff had been at the Abbaye, and that it had been the advance Regimental Headquarters at all material times. These bodies had been buried in three separate graves suggesting separate shootings.

Finding: Guilty.

8. *OTHER EVIDENCE*

It was established that very few prisoners were captured by this Regiment after 8 June and that special inducements had been given for the capture of prisoners for the purpose of interrogation; that on 16/17 June an officer and NCO on patrol were captured wounded, and evacuated to Regimental Headquarters at Ardenne. Shots were heard there, and an explanation was given to the NCO in charge of the Feldgendarmerie that a prisoner had been shot. A month later, when this Headquarters was taken, the unburied body of the captured officer was found lying within 50 yards of what had been at the relevant time Meyer's own command post. The body bore fatal head injuries. The body of the NCO has not yet been discovered, but evidence was given that shots were heard at a later hour of the day on which they were captured, and it is possible that one of the two was killed and buried at that time.

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The evidence adduced for the prosecution was fully up to our expectations, and the defence brought in no testimony that had not been anticipated. One German prosecution witness, Helzel, endeavoured to alter the evidence given by him originally on his interrogation. He was declared hostile however, and on cross-examination reaffirmed his original evidence. This, I believe, proved eventually helpful in demonstrating the truthfulness of the first testimony and the absence of any sinister motive for giving it.

9. *SECOND CHARGE SHEET*

This concerns the shooting by a large firing party of seven Canadian prisoners at Mouen on the afternoon of 17 June. The shooting was organized and deliberate, following an interrogation by an officer. There was no evidence, however, directly connecting the accused with these murders, and as the evidence at the trial seemed to indicate that he had not taken over command of the Division until noon on 17 June, it was thought unlikely that a conviction would be obtained on this charge. A recommendation was accordingly made to the Convening Officer that authority be given not to proceed on this charge on the present evidence, and authority was given accordingly.

10. *GENERAL*

… The Court… conducted the trial with great dignity and impartiality. The Judge Advocate carried out his responsibility and difficult duties in a judicial and highly satisfactory manner to all concerned. Lt-Col Andrew, who had been detailed as Defence Counsel, vigorously and ably defended the accused and did all that was possible on his behalf...

12. Over 30 witnesses were heard, 11 of whom were German, four French, and the balance service personnel, some of whom were already civilians. Many of the witnesses were brought from Canada and some of the German witnesses were brought from prison camps in the United States. The main prosecution witness, Jesionek, a Polish conscript, is anxious to become a Canadian citizen and this is being discussed with Canada House. In addition a large number of report, affidavits and other documents were referred to or read.

13. The only phase of the matter which, in my opinion, was not satisfactorily handled concerned the press accounts of the trial published for the benefit of the Occupation troops. This opinion is shared by defence as well as prosecution counsel. Perhaps it was unavoidable that the stories should be inadequate in a case lasting 14 days and involving unfamiliar questions of law, evidence and enemy organizations. Having regard to the available space in the columns of The Maple Leaf for this purpose, it is no reflection on those responsible for the production of the news that much of the testimony was misunderstood, and that portions of the evidence, of fundamentally greater importance, were neglected in favour of less important but more interesting and sensational parts of the case. Owing to the limited accommodation at the trial for the public, and to the fact that very few were able to attend more than two or three days at most, there was little opportunity for many to get the complete story.

14. As a consequence it was found, in conversation with some officers and other ranks who had to depend solely upon the Service paper for their information as to the evidence adduced at the trial, that a serious misconception existed as to what had, in fact, been established. It was suggested by some that the evidence was merely to the effect that the accused had said certain things in the course of training, somewhat similar to statements which had been heard in the course of their own training, with respect to the necessity for killing the enemy, and that the accused was in fact being held responsible for something over which he actually very little opportunity for personal control. When it was explained to those persons that the evidence went far beyond this and established that 18 unarmed prisoners after interrogation had been killed at the personal headquarters of the accused far behind the line; that there was evidence uncontradicted except by the accused that he not only had knowledge of some of the shootings but had, in fact, done and said things from which it could be inferred that he either ordered them to be shot, or approved and condoned the offence, they altered their opinion, and wondered why these facts had not been more clearly brought out in the press accounts. Having heard further that the evidence given by the accused himself in explaining or justification, had been discredited and shown to have been a complete fabrication, they were even more ready to agree

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with the conclusion reached by the court, who had heard all the evidence and seen the witnesses, and who had themselves occupied in battle a similar position of responsibility. Having caused the death of 18 prisoners, it was then clear to them, that only one penalty was adequate either as punishment for the offence or deterrent for the future.

15. That the trial was fairly conducted in all its aspects is evident from the fact that no appeal was made from the findings of the court, and that the accused himself, at the conclusion of his address to the court, said: "I here, in front of the German public, wish to say that in the Canadian Army I was treated as a soldier, and that the law proceedings were fairly conducted."

16. I think, therefore, we may in all modesty say that Canada's first Military Court has given a convincing demonstration of justice and firmness in the treatment of war criminals, which should commend itself to all who, at any time in the future, have need to study its proceedings.

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C. The Decision to Commute Meyer's Sentence

C1. Petition of Major-General Kurt Meyer against the Sentence of a Military Court to Major-General C. Vokes, C.B., C.B.E., D.S.O., General Officer Commanding, 3 Canadian Infantry Division, Aurich, 31 December 1945.[2]

Sir,

In making this Petition against the sentence imposed on me I am not thinking so much of myself as I am of my reputation as a soldier, of which I am proud, and also that of my troops, of which I am prouder still. I am also thinking of my family. Of my beloved wife who has been a constant, faithful and loving companion and a devoted mother to my children for the eleven years of our married life and who now, alone, will have to bear the heavy responsibility of bringing up our five children and be their sole support and comfort. Of my children whom I have loved dearly and who have also learned to love me during the short periods of time that the war permitted me to be with them. It is of them I am thinking in taking advantage of this, my last opportunity not to beg for my life but for the life of my children and the reputation of my troops and myself as soldiers.

In this, my last appeal, I wish to drop the mantel of formality adherent to Court proceedings and to address myself to you as man to man and as soldier to soldier.

I KURT MEYER, having been convicted by a Military Court on the Twenty Eighth day of December, 1945, and sentenced to DEATH BY SHOOTING, HEREBY SUBMIT A PETITION AGAINST THE SAID SENTENCE.

Through the statements of former troops of my Unit I have been accused of inciting and counselling my men not to take prisoners. That accusation is untrue. Those statements were made by two deserters of Polish and Czechoslovakian Nationality. One did not appear in Court because he had disappeared. Another witness, also a former member of my Unit and a Czechoslovakian National, denied his previous statement and in the course of his examination in chief and cross examination, emphatically contradicted the purported contents of the so called secret order. Another witness stated definitely that he could not recall the exact wording of what I am purported to have said but that 'he had understood it like this.'

During the same period when I made these speeches to my Unit, I issued a special Regimental Order to my troops about the exceptional conduct of a captured Allied airman. In this order I pointed out that I had had a conversation for about half an hour at the fire place of the Mess with this captured airman and pointed out the exemplary, and soldierly conduct of this prisoner as an example to my men. Through my attitude with this prisoner and others, one can see clearly my attitude towards captured soldiers. It is not likely that an Officer should, on one day, incite his troops not to take prisoners and, on the next day, treat a prisoner to tea in his own Mess.

Of all the men in my Unit who are now Prisoners-of-War, either in England, Canada or America, only five were found to testify against me and I feel confident that if all the other hundreds of them were to be questioned on the subject of the charges on which I have been convicted, their statements would be such that the evidence of these few would stand out so conspicuously as to be unworthy of credence.

The evidence shows that my Unit did take prisoners, and in large numbers, from the first day that it went into action, and that those prisoners are still living, and that one, an Officer, even though repatriated and released from the Army, volunteered to come from Canada and testify on my behalf at the trial. My Unit not only did take prisoners, but took three times as many as any of the other Units, and this statement was given to the Court by my former Panzer Group West Commander.

I re emphasize that I have trained my soldiers according to International Regulations and that I have done my duty to the best of my knowledge and ability and as a true Officer. I endeavoured to fulfill my task as could be expected from a soldier, but my task was a difficult one and my responsibility greater than normal. The Invasion battles in Normandy showed that the spirit of my troops was good. We were thrown into the battle at a moment's notice, were heavily bombed by low-flying fighter-bombers on our way up to the front, and we were the spearhead Unit of the Division in the initial attacks. Our sector was abnormally large and I had no knowledge whatsoever as to what bodies of troops were being

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formed in support. Our left flank was exposed and I had to continuously keep in mind the air-field in our sector where parachute and glider borne enemy troops were expected to land any minute.

My young troops of 17 and 18 years of age fought for three whole months without any relief or hope of relief and without a night's sleep. After the first four weeks of battle my Division had between three and four thousand casualties and the sector became bigger instead of smaller. If my troops could stand a quarter of a year of such ground and air attacks, then the mass of these troops must have consisted of good and well-trained soldiers.

I can only say once again that at no time have I ever incited or counselled my troops, either during their training, before the invasion, at a time when neither myself nor they themselves knew on what front we would be committed to action, nor during the fighting, after the invasion, either by word of mouth or orders, secret or otherwise, nor by inference or suggestion through my general conduct and behaviour.

That I may be held responsible for the actions of some of my troops, that I can well understand, and also that I may be punished as such. But as there invariably must be certain degrees of responsibility, so also must there be corresponding degrees of punishment. Responsibility may be immediate or mediate and it therefore follows that a Commander would not be responsible for the individual, perhaps momentarily impulsive act of one of his troops on a distant outpost to the same degree that he would be, for the actions of one of his Staff Officers, in his immediate entourage. Would not that degree of responsibility be also affected by the normality or abnormality of the situation and generally by surrounding circumstances? Can the Commander of young inexperienced troops committed to action for the first time under unexpected and abnormal conditions, covering too large a front with exposed flanks, continuous shelling and air attacks, without sufficient supplies and no hope of immediate reinforcements or support, constantly threatened by the landing of parachute and air borne troops, can that Commander be held responsible for the individual actions of his troops to the same degree as the Commander with experienced troops, on a normal, static front and generally normal conditions with full control of his troops and having the opportunity to better observe, guide and control them?

I wish to reiterate again that if atrocities did happen, they occurred during the first days of the battle when conditions were abnormal and chaotic and at a time when remnants of Coastal Units and of the 21st Division were still in my sector. That they took place at a time when I was only the Regimental Commander and not in a position of authority to control other troops but my own. That after my appointment to Command of the Division, when I received full authority over the Divisional sector and conditions became more tolerable, there were no more crimes committed. That even at the time when I was Regimental Commander and during the early strained days of battle, I issued orders for the immediate burial of the dead, both our own and the enemy's, and when I discovered that these were not effective, I asked that Divisional Orders be sent out.

I have addressed myself to you, Sir, as to a Soldier with many years of service and considerable battle experience, in the hope that you will understand the conditions under which I was fighting and the resulting situation in which I now find myself.

Although I have been found guilty on the said charges, they are based on actions and conduct which involve certain degrees of responsibility and guilt. I have always felt and am still convinced that I am not responsible and guilty to a degree which warrants the imposition of the death sentence.

I therefore pray that the sentence imposed on me be reviewed with a view of reducing it to conform with the actual degree of responsibility and guilt.

31 Dec 45
(Sgd) K. Meyer
AURICH, GERMANY

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C2. Secret Message from C. Vokes, HQ 3 Cdn Inf Div CAOF to Murchie, CMHQ, 5 January 1946.[3]

I have on the advice of JAG and after careful consideration confirmed the finding and sentence of the court which tried Maj Gen Kurt Meyer.

re your A134 British interrogating Meyer on 6 Jan.

I had ordered execution on 7 Jan but in view of recent telephone conversations I have stayed execution pending my further orders.

I will refer you to section four para one and section twelve and section fourteen War Crimes Regulations Canada which impose on me as senior Canadian combatant general officer in enemy occupied territory the responsibility of convening confirming and dealing with matters arising out of conviction and sentence. With this view Orde fully agrees.

BAOR has asked whether supreme commander has any authority in considering petition against finding and sentence and they have been advised in Negative. In this connection see DEFENSOR JAG 965 relayed here through CANMILITRY.

Possibility BAOR may question my authority under Cdn War Crimes Regulations and therefore Cdn law vis a vis C in C authority as supreme commander British Occupied Zone. Meyer tried under Cdn law which aspect should I suggest be considered having regard to fact that operationally I am under comd C in C and that German political and other implications are involved which may have material effect on future.

My view in which Orde concurs is that foregoing is matter which involves important question of highest policy and should be referred DND for consideration if necessary by government.

Orde and myself consider matter should be discussed fully with Massey and yourself 8 Jan 46 in London and if necessary Orde prepared proceed Canada by air to lay matter before DND and return with decision.

You will appreciate position in which I am placed having regard my military responsibility to C in C who controls British Zone of Occupation in which Cdn troops only participate in sense of forming part of occupational force under his command. For this reason I am sending a copy of this message to C in C for his information.

C3. Major-General C. Vokes to Dr. Wilhelm Schapp, Aurich, 6 January 1946.[4]

Dear Sir:

Your letter dated the 3rd January 1946, addressed to the Regierungspräsident in Aurich, in the matter of the sentence passed by the Military Government on the 28th December 1945, on Brigade Fuhrer Kurt Meyer, has been forwarded to me and I have given the most careful consideration thereto.

I have noted everything which you have stated, but I am bound to say that it is my responsibility and duty in matters such as this to administer and carry out the laws of Canada as duly enacted, and I am sure that you will appreciate my position in this regard.

I can only conclude by expressing my appreciation of the temperate character of your petition and to thank you for having written so fully in the matter.

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C4. Memorandum re Conference held at 10.30 hours, 9 January 1946, in the Office of the High Commissioner.[5]

PRESENT:

The Right Honourable Vincent Massey, P.C., High Commissioner for Canada

J.E. Read, Esq., K.C., Legal Adviser, Department of External Affairs

Lieut-General J.C. Murchie, C.B., C.B.E., Chief of Staff, Canadian Military Headquarters

Major-General C. Vokes, C.B., C.B.E., D.S.O., GOC 3 Cdn Inf Div CAOF

Brigadier R.J. Orde, C.B.E., Judge Advocate General

Lt-Col W.B. Bredin, DJAG, 3 Cdn Inf Div CAOF

1. The purpose of the meeting was to discuss certain considerations arising out of the conviction and death sentence passed by a military court convened under the War Crimes Regulations (Canada) on Brigadefuhrer Kurt Meyer at Aurich, Germany, on 28th December, 1945.

2. General Vokes stated that he, as Confirming Officer under the War Crimes Regulations, had received a petition from Meyer against the sentence and he had not seen fit to grant the said petition. The petition raised no legal considerations and acting on the advice of the [JAG] that the proceedings of the court were regular, the findings properly made and the sentence according to law, he, General Vokes, had confirmed the findings and sentence but had instructed that the same be not promulgated to the accused and the sentence not carried out pending his further orders.

3. General Vokes further pointed out that the case in question was the first one of its kind which had arisen involving the responsibility of the commander of a formation for war crimes committed by men under his command where the commander had not given any direct order and had not actively participated in the commission of such crimes. He also pointed out that Meyer had been acquitted of the one charge specifically alleging that he had ordered the shooting of Canadian prisoners.

4. General Vokes also pointed out the implications which the carrying out of the sentence of death in this case would entail, particularly the effect on the German public. He also drew attention to the effect it might have on superior commanders in any future war. General Vokes, therefore, considered it desired to lay these considerations before his military superiors. He, therefore, referred the matter to the Chief of Staff who in turn referred it to the High Commissioner.

5. After considerable discussion the unanimous opinion was that the sentence which should be imposed on the commander of a formation for war crimes committed by his subordinates should be regulated as closely as possible to the degree of accountability in the sense that the extreme penalty of death would only be justified in a case where the offence was conclusively shown to have resulted either from the direct act of the commander or by his omission to act when he knew that if he did not act a war crime would be committed.

6. General Vokes stated that he fully appreciated the responsibility for dealing with the sentence rested entirely with him, and that in the circumstances the case under discussion was one wherein he would be warranted in commuting the sentence of death to one of life imprisonment and he advised that this would be the course of action he would adopt.

7. The High Commissioner suggested, and this was concurred in by all present, that in the circumstances it would be expedient for General Vokes to issue a short statement through the Public Relations Officer setting out very briefly the reasons for commutation.

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C5. Letter, Maj-Gen C. Vokes, GOC 3 Cdn Inf Div CAOF to CMHQ, 13 January 1946.[6]

Re: War Crimes – Trial of Bde Fuhrer Kurt Meyer

Further to previous correspondence emanating from these HQ on the marginally named trial.

I proceeded to London for conference with the Cdn High Commissioner, Mr. John Read of the Dept External Affairs, Canada, the Chief of Staff CMHQ and the JAG Cdn Army, for advice re confirmation of sentence of Kurt Meyer.

In the discussion which took place, I was advised as the confirming authority under the Cdn War Crimes Act, that it would be in order to commute sentence of death by shooting to one of life imprisonment, because the degree of personal responsibility was not such as to warrant the death penalty.

I have therefore taken that course; and the commuted sentence will be promulgated at 0900 hrs 14 Jan 46. At the same time I have cancelled my previous orders issued on 2 Jan 46 which dealt with the procedure for carrying out the death sentence.

The prisoner will be conveyed in due course to Canada to serve sentence in a Cdn prison.

At the same time I was advised to issue the attached statement to the Cdn Press, which statement was "vetted" by the Cdn Authorities in London.

"The Confirming Authority, after thorough review of the proceedings of the Military Court which tried Bde Fuhrer Kurt Meyer whereby he was found guilty and condemned to death for responsibility in connection with the shooting of Canadian prisoners, but NOT guilty of issuing any direct orders for such shooting, considers Meyer's degree of responsibility was not such as to warrant the extreme penalty. The Confirming Authority has therefore seen fit to commute the sentence of death to one of life imprisonment which senetence will be served in a Canadian prison."

C6. Top Secret, Cabinet Conclusions, Ottawa, 16 January 1946.[7]

War crimes; sentence of Major-General Kurt Meyer

1. *The Acting Minister of National Defence* (Mr. Brooke Claxton), referring to the action of the Canadian Commander in commuting the death sentence imposed by a Canadian Military Court upon Major-General Kurt Meyer of the German Army, submitted a draft press statement which had been prepared for release as a result of public criticism and misunderstanding of the facts involved.

2. *The Secretary [to the Cabinet]* (Mr. A.D.P. Heeney) reported that the Legal Division of the Department of External Affairs had advised that the commutation of sentence, having been lawfully ordered by Major-General Vokes as the "senior combatant officer of the Canadian forces in theatre in which the trial took place," could not now be altered to the prejudice of the convicted man.

   In the ordinary course under the War Crimes Regulations (Canada), Meyer would be returned to Canada to serve his sentence of imprisonment. It was understood that the prisoner had already been flown to the United Kingdom, enroute to Canada. It might be desirable to instruct appropriate military authorities to hold Meyer in custody overseas, pending consideration of arrangements for his permanent imprisonment. It was assumed that the report that Meyer's family might come to Canada was completely without foundation.

   (External Affairs memorandum for the Deputy, Jan.16, 1946).

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The Cabinet, after discussion, agreed:

- that instructions be sent at once to appropriate military authorities overseas requesting that the prisoner be held in custody there pending consideration of arrangements for his permanent imprisonment; and,
- that the draft press statement, as amended in the course of discussion, be approved for immediate release.

(National Defence press release (revised), Jan.16, 1946).

C7. National Defence (Army) Public Relations, Press Release (PN 47-46), issued at 1815 hrs 16 January 1945.[8]

OTTAWA, Jan 16: The Department of National Defence today issued the following statement relative to the trial of Major-General Kurt Meyer, of the German Army, whose sentence of death by a military court has been reduced to that of life imprisonment.

"Major-General Kurt Meyer, former commander of a German division, was given the death sentence by a Canadian Military Court. Under war regulations the matter is required to be reviewed and confirmed by the convening authority."

"Major-General Chris Vokes, as the General Officer Commanding the Canadian Army Occupation Force in Germany, was the convening authority and in accordance with the regulations reviewed the proceedings without reference either to the Government or Military Authorities in Canada and reached the conclusion that the conviction should be confirmed but the sentence reduced to life imprisonment."

"The Canadian Military Court did not find that Meyer personally had ordered or authorized the killing of the prisoners. What is not generally appreciated is the fact the court had expressly found him not guilty of issuing any orders for such shooting. In view of this the reviewing officer found that there had not been that degree of complicity which could be regarded as justifying a death sentence under the laws and usages of war. On the other hand, there was a failure on Meyer's part to take adequate measures to prevent the murder by forces who were under his immediate command and control."

The Department also stated that Major-General Vokes, in coming to a decision, had the assistance of leading military legal advisers overseas but the decision rested entirely with him. The Department stated that under the regulations there need not be, nor was there, any prior reference to National Defence Headquarters or to the Government of Canada, and consequently the procedure followed by General Vokes had been quite correct.

The place of Meyer's imprisonment has not yet been decided. The report that his family might come to Canada is entirely without foundation.

C8. Secret Telegram, 21.19.46, Vincent Massey to External Affairs, January 21, 1946.[9]

Following for Norman Robertson from John Read. Begins. I have consulted Massey and Rive who were present at meeting with Vokes and have examined report on meeting by Orde.

It is clear that Vokes was informed and understood that under the War Crimes Regulations the sole responsibility for confirmation of commutation of sentence was upon him and that there was no way in which that responsibility could be transferred to any other authority. He was informed that it was his duty to do what he considered to be right and just in the circumstances as he saw and understood them.

I do not believe that Vokes could have told the press that he was advised to commute or not to commute by me or any other person present.

Chief of Staff is requesting Vokes to make no more statements of any kind on the subject. Ends.

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C9. Letter (translation), R. Martineau, Montreal, to Minister of National Defence, 16 January 1946.[10]

Mr. Minister:

I read in the press about this horrible absurdity – Kurt Meyer's trial – who is a Nazi gangster by profession.

As a citizen of this dominion, I am asking myself whether we have any justice in our country!

Youngsters, who are at present committing criminal offences against society, when they realize that atrocious crimes are not justly punished, might find themselves justified in killing people, and robbing banks.

For the sake of decency, and justice, and in the name of thousands of Canadians, I request that this bandit be put to death. We do not want him to live here in Canada, like a pasha, out of taxes we are compelled to pay.

Death to the Nazi gangster!

C10. Letter, A.J. Windell, Clerk, Village of Port Rowan, to Department of Justice, 16 January 1946, re: commutation of sentence Nazi General Kurt Meyer.[11]

I have been instructed by the Council of the Village of Port Rowan to forward the following resolution to you; -

THAT – this Council go on record as protesting the reduction in the sentence of Nazi General Kurt Meyer and should the present sentence be carried out that he not be transported to this country.

C11. Official Statement, Major-General"C Vokes," GOC 3 Cdn Inf Div CAOF, Germany, 21 January 1946.[12]

Cdn War Crimes Act
Trial of Bde Feuhrer KURT MEYER
Remarks by the Confirming Officer

1. During the trial of Bde Feuhrer Kurt Meyer by the Canadian Military Court convened by my order under the mandate imposed on me, I purposely kept aloof from the trial. In perusal of the evidence (written), and in matters of law, I was guided throughout by the personal advice of the Judge Advocate General.

2. In this way I was in no way influenced by the military bearing of the accused, or his behaviour during the trial. I have never laid eyes on Meyer or any member of his family. To me, therefore, he was and is merely a German, and quite beyond personal sympathy.

3. The Court acted within its prerogative in finding Meyer "guilty" and in condemning him to death by shooting. This procedure was quite legal. It rested with me, however, to review the proceedings before finding and sentence were confirmed by me. This is ordinary military procedure. It was also my duty to hear any petition submitted by the accused against sentence.

4. The charges on which Meyer was found guilty are attached.

5. Meyer, on the conclusion of the trial, made a voluntary statement admitting a fair trial. He did, however, file a petition with me, not against the finding, but against the severity of the sentence. I considered this petition, but as it was merely an appeal for sympathy from one soldier to another, I refused it.

6. In case my ultimate conclusion confirmed the finding and death sentence, I instituted arrangements for shooting tentatively for 7 January 1946, so that the act could be completed with dispatch. These arrangements were secret.

7. By 5 January 1946, my conclusion had reached the stage whereby I did not consider that guilt on the First charge warranted the death penalty, nor did I consider that the degree of guilt on the Fourth and Fifth charges, which in

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my opinion were of more serious consequence, warranted the extreme penalty. In my consideration of these charges, I was influenced to some extent by the fact that sentence of death in this case would set a precedent, whereby a commander in the field could be held responsible with his life for the acts of his subordinates. The responsibility of a commander is not denied in that he is responsible for the actions of his troops. Unless, however, he gives a direct order for the carrying out of an act this responsibility must of necessity be vicarious. It was my opinion that Meyer's responsibility on the Fourth and Fifth charges was vicarious in that it was not proved, except by inference, that he gave a direct order for the killing of prisoners, nor was it proved in evidence, to my satisfaction, that he knew that the executions recorded in the charges were taking place.

8. Feeling the weight of my responsibility in this matter, both to the Canadian people and to myself, I sought the advice of higher Canadian authority – both civil and military. I therefore arranged for an interview in London with the Chief of Staff CMHQ, the High Commissioner, a representative of the Department of External Affairs Canada, the Judge Advocate General of the Canadian Armed Forces, and the judge advocate at the trial. In the meantime I had postponed all arrangements for execution on the 7 Jan pending my further orders.

9. The meeting took place in Canada House on 9 January 1946. After considerable discussion, those present at the meeting were unanimously of the opinion that the death penalty should be commuted to life imprisonment and it was suggested that I could act accordingly with a clear conscience.

10. On return to my headquarters in Germany, I confirmed the Finding and Sentence, but commuted the sentence to life imprisonment.

11. Confirmation of the finding and sentence were promulgated to Meyer at 0900 hours 14 January 1946. At the same time he was informed that sentence would be served in a Canadian prison.

12. At the same time, I issued a brief statement to the press, as confirming authority. This had also been advised.

13. Finally, I was motivated throughout my deliberations by a desire to see justice done. Meyer had a fair trial. The finding and sentence of the court were within the law, but the severity of the sentence was not in my opinion in keeping with Canadian justice, having regard to the degree of responsibility. I therefore felt it my duty, under the powers granted me, to commute the sentence.

C12. Top Secret, Army Message, 22 January 1946.[13]

We were informed yesterday by High Commissioner that a [message] from External stated editorials in Globe and Mail quoted Vokes as stating that before commuting Meyer sentence he had advice from Mr. Reid of External we telegraphed Vokes pointing out that at a meeting with Massey Reid Murchie Orde and Bredin it was made clear to Vokes that responsibility for dealing with this sentence rested with him. Also suggested that if he were pressed for further statements he should merely refer back to statement he made on Monday 14 January and refrain from adding to it.

… Vokes has replied as follows "GS 260

Para 1. I am sending you tomorrow 22 January by hand of [officer] arriving 23 January remarks in form of memorandum setting out my reasons for arriving at conclusion which I put up to you and the others for advice and counsel. Suggest copy be sent to minister DND.

Para 2. I cannot understand what grounds *Globe and Mail* base statement. However I would say that meeting in London is common knowledge to Cdn press rep here. My only official statement to the press was that prepared in London copy with Maclin. However I think this statement could be enlarged upon now.

Para 3. Only press rep I have seen was Boss Cdn press at 1100 hrs today. He informed me he had been ordered to prepare personal opinion on the sentence as had other war correspondents such as Ross Munro and Ralph Allen. Boss

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showed me the personal opinion which he intended to despatch which was most favorable and should stop much of present controversy. I am sending you a copy.

Para 4. The responsibility for commuting sentence is entirely mine and there will never be any attempt on my part to shirk this responsibility. I was well aware that individuals at meeting were merely expressing own not views of Government and therefore I felt myself at liberty to act as I saw fit. That their views coincided with mine merely confirmed conclusion previously arrived at by myself. My personal feelings in reviewing sentence were subordinated to a sense of justice and fair play. I think someone should assure the press and therefore the Cdn public that commutation of sentence was not motivated by pity but based on the evidence produced at the trial. That the court chose to pass the death sentence in open court did not make it mandatory for the confirming authority to confirm this sentence. If court had not given maximum penalty it would have tied the hands of confirming authority.

Para 5. I would say that this business is nine day press wonder but I am prepared to make a public statement that the commutation of sentence was my responsibility that I merely sought other opinion to confirm in my own mind that my conclusion was right. I would have taken the course I did whether the advice had agreed or not as I am convinced of the rightness of my action.

Request earliest advice as to whether you think Vokes should make statement as indicated his Para 5. View here is that matter is probably a dying issue but we do not know that pressure is being brought to bear by press in Canada for further statements on it.

CANMILITRY
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C13. For the Deputy, External Affairs, Excerpt from the Globe and Mail, 24 January 1946.[14]

Mr. King's First Duty

Is it not a fact that the Department of External Affairs at Ottawa participated in International negotiations for setting up of machinery for trial of war criminals?

Is it not a fact that these negotiations covered arrangements for the trial by a Canadian military court of Maj.-Gen. Kurt Meyer as a murderer of Canadian war prisoners?

Is it not a fact that these negotiations were conducted on behalf of the department by Mr. John E. Read, named by Maj.-Gen. Chris Vokes, commander of the Canadian Army Occupation Force, as the officer of the External Affairs Department he consulted before commuting Meyer's sentence to life imprisonment?

Is it not a fact that Mr. Read reported to Ottawa, either before or after commutation of the sentence, that he had been consulted by and had advised Gen. Vokes?

The *Globe and Mail* has the best of reasons for believing the answers to these questions are in the affirmative. This being so, neither the Government nor Prime Minister King, who is the zealous head of the External Affairs Department, could possibly have been quite so ill-informed on the Meyer case as they would have the people believe.

This newspaper submits that it is Mr. King's first duty to furnish the public with his answers to the above questions. They place the Meyer case on an entirely different level, and no longer can it be pleaded it was a case with which Ottawa was not concerned. Nor can it be pleaded that Mr. Read when consulted by Gen. Vokes, was not speaking as an official of the Government. The very fact that he reported to Ottawa can be accepted as ample evidence he felt he was speaking

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with Government authority. The Government can hardly throw Mr. Read overboard as quickly as it washed its hands of Gen. Vokes.

This brings the case back to Ottawa where as this newspaper has contended, it should have been in the first place. It is absurd to pretend that finality was reached on the level of Gen. Vokes, or with his ruling, had not Ottawa willed it so.

C14. Letter, Betty Glass, Secretary, Women of the Moose, Chapter 271, Windsor, Ontario, to War Department, Ottawa, 25 January 1946.[15]

We, the members of Chapter #271, Women of the Moose, Windsor, Ontario, are sincerely grieved to learn that General Kurt Meyer has been sentenced to life imprisonment only and is to serve said sentence in one of our institutions.

Many of us have sons who served their country during this last world war. Several paid the supreme sacrifice.

We feel that it is a discredit to their efforts, and a blight on their otherwise glorious record to allow said intermment [sic] here and hope that you may alter your decision to allow said General Kurt Meyer pay his debit [sic] to human society in his own country.

C15. Malcolm MacDonald, High Commissioner for the United Kingdom, Ottawa to the Rt. Hon. Viscount Addison, Secretary of State for Dominion Affairs, 28 January 1946.[16]

I have the honour to report that the trial and subsequent commutation of the death sentence passed on Kurt Meyer, a former German S.S. Divisional Commander, had been followed in Canada with the closest interest.

Meyer was tried by a Canadian Military Court at Aurich, Germany in November on the charge of responsibility for the murder of Canadian prisoners of war in Normandy in 1944. He was convicted on three out of five charges against him and sentenced to death by shooting. Meyer petitioned against the death sentence. This was disallowed by Canadian military headquarters in London but an announcement was made from the Canadian Army Occupation Force on the 14th January that the death sentence had been commuted to life imprisonment in Canada. The statement intimated that the sentence had been commuted on the ground that the evidence showed that Meyer, as an individual, was not responsible for the killing of the Canadian prisoners of war by his troops, but that he was considered responsible as a Divisional Commander though not to a degree warranting the death sentence.

This announcement at once led to a storm of protest in Canada, Resolutions of protest were passed by branches of the Canadian Legion, Veterans Associations, Civic authorities (including the Toronto City Council) and Labour Progressive (i.e. communist) members of Parliament. Simultaneously, the press throughout the Dominion carried indignant editorials against the commutation of the sentence. The publicity arrangements for the announcement were badly handled and in two respects this served to fan the flames. In the first place, the original announcement did not make it clear by whose authority the sentence of death had been commuted. Secondly, the announcement was accompanied by suggestions in the press that Meyer could earn remission of his sentence by good conduct, that his family might come to Canada and that, on completion of his sentence, he might decide to remain in Canada. Matters also were not helped by interviews accorded by Major General Foster the Chairman of the Military Court in Germany, immediately upon his return to Canada. In these he was quoted or misquoted as having said that "Meyer was a Nazi and should have been shot" and that Meyer was a magnificent soldier and deserved a better fate than life imprisonment, but which he subsequently stated, he meant death, not further mitigation of his sentence.

Subsequently, an announcement was made by the Defence Department that Major General Vokes, Officer Commanding the Canadian occupation forces in Germany, was the convening authority and that, in accordance with regulations, it was he who had reviewed the trial proceedings without reference to the Government or military authorities in Canada and had reached the conclusion that the conviction should be confirmed, but that sentence should be reduced to life imprisonment. The statement added that General Vokes, in coming to a decision, had the assistance of leading military

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legal advisers overseas, but that the decision rested entirely with him. The statement concluded that the procedure followed by General Vokes had therefore been quite correct.

With the publication of this statement the public clamour has tended to die down and indeed some commentators have justified the decision made by General Vokes. It has been pointed out that Canadian justice and the whole system for the trial of war criminals are involved in the issue. For example, the *Ottawa Citizen* in a leading article said, "In the natural-enough indignation that Nazi criminal should not receive the penalty which the Nazis themselves so often meted out to innocent thousands, two things, in the interests of human decency, must not be disregarded. One is that Canadian justice must not be polluted or it ceases to be justice. It cannot be used for revenge; for that way lies mob lynchings and the negation of all law. The other is that General Vokes' procedure has been correct. It is based on the evidence that it is clear that he came to his decision after consultation with the best legal and military advisers obtainable. He assessed Meyer's degree of guilt exactly as any Canadian judge would have done. And that was his simple duty."

In a similar vein, the *Ottawa Journal* argues: "Trial before an international court of the leaders of a nation for plotting and waging war against society, and for committing crimes in the process outside the pale of war's rules, creates a precedent in history. It is therefore most important that such precedent be rested firmly upon the basis of strict justice. To hold otherwise would be to argue for extermination for an unbridled vengeance repugnant to civilization."

I am sending a copy of this dispatch to the United Kingdom Ambassador at Washington.

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D. Transfer to Canada and Imprisonment at Dorchester Penitentiary

D1. Memorandum for the Secretary of State for External Affairs, January 1946.[17]

Imprisonment of Kurt Meyer

At a meeting of the Cabinet on January 16, 1946, it was agreed that instructions should be sent to the appropriate Overseas military authorities requesting that Major General Kurt Meyer be held Overseas, pending consideration of arrangements for his permanent imprisonment.

Regulation 16 of the War Crimes Regulations (Canada) provides that any sentence passed by a military court shall, *so far as practical*, be carried out as of the person so sentenced were a member of the Canadian military forces. If the practice followed in Canadian courts-martial were adopted in Meyer's case, he would of course be brought to Canada to serve his sentence of life imprisonment in a Canadian penitentiary.

Advice from the United Kingdom reveals that it would not be expedient to hold Meyer in England much longer. He was, until February 7th, 1946, held in Reading Gaol and then transferred to Headly, where it appears that the facilities are inadequate and Meyer's presence an embarrassment to the Commandant. The Deputy Minister of National Defence has, moreover, urged that an early decision be reached as to the disposal of Meyer.

Advice from the United Kingdom also indicates that unless special arrangements are made, it would not be feasible to commit Meyer to a civil prison in the United Kingdom since he is not a member of the Canadian army.

German war criminals sentenced to imprisonment by United Kingdom military courts are confined to civil prisons in Germany, operated by Germans but supervised by the Control Commission; no provision exists for their imprisonment in the United Kingdom. It is understood that a corresponding situation exists in respect of German war criminals sentenced to imprisonment by United States military courts.

Having in mind the controversy which recently arose in connection with the commutation of Meyer's death sentence, it would seem advisable that he be held Overseas for as long as conveniently possible. It would also seem desirable, in the absence of any international agreement concerning the disposal of convicted war criminals, that he be imprisoned, if at all possible, in his own country.

In view of the foregoing, it is thought that you might wish to recommend to the Cabinet that the United Kingdom Government be approached as to its willingness to make arrangements for Meyer's imprisonment in a civil prison (in the British zone of occupation in Germany) operated by Germans but under the supervision of the Control Commission, in the same manner and subject to the same conditions as a German war criminal sentenced to imprisonment by a United Kingdom military court. In making the request, it could be made clear that the Canadian Government would be prepared to assume any costs involved in such an arrangement, and that the question of Meyer's permanent imprisonment would be jointly reviewed prior to the withdrawal of United Kingdom controls from the area of Meyer's imprisonment in Germany.

D2. Memorandum, Brigadier W.H.S. Macklin, Deputy Adjutant General, Canadian Military Headquarters, to Canadian High Commissioner, London, January 1946.[18]

Imprisonment – KURT MEYER

It will be recalled that at a meeting on 22 Jan 46 between the High Commissioner, Mr. Read of External Affairs, and the Deputy Adjutant General, we discussed a message form External asking us to make informal inquiries as to:-

What disposition are the British making of German war criminals sentenced to penal servitude?

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If the Canadian Government undertake to pay for the expenses of holding Meyer in a British prison would the British be willing to accept him along with their own?

Telegram 190 dated 21 Jan to External refers.

This matter has been taken up informally with AG 3B at the War Office. This branch stated that at the present time all Germans sentenced to penal servitude by a British Court Martial for war crimes are being imprisoned in civil prisons in Germany. These prisons are operated by Germans, but are supervised by the Control Commission. No German sentenced for a war crime has been brought back to the UK.

Apparently the reason behind the practice is that there is no authority in the British regulations for the removal of Germans sentenced for war crimes to penal institutions in the UK. It would seem that no decision has yet been taken concerning the disposition of such criminals when the British troops leave Germany.

AG 3B cited the case of a girl of 18, known as Lillian Smith. She was a British national who, it is understood, was living in Belgium. She became an ardent Nazi and was induced by the Germans to spy on the British troops. She was caught, convicted and awarded seven years penal servitude by a British court martial. It was impossible to commit her to a British military prison because there was no provision for females, and there was no authority to bring her to England after conviction by court martial. It seems that she was held for a short while, probably irregularly in a Belgian civil prison, and was then released because no other course was open.

Under these circumstances it would seem to be quite pointless for us to ask the British to keep Kurt Meyer with their own war criminals, unless we are satisfied to let him be committed to a German civil prison, in which case Canada presumably would have no control whatever over his destiny.

Under the regulations respecting war criminals, we are entitled to treat any person sentenced by a Canadian military court in every respect as though that person were a member of the Canadian military forces on whom a like sentence had been passed by a Canadian court martial. Superficially, it would appear that, under these regulations, we could commit Kurt Meyer to a British civil prison in precisely the same fashion as we commit a Canadian soldier who has been sentenced to penal servitude. However, this angle has been explored with the [Vice Judge-Advocate General], CMHQ. He points out that under the law, when we commit a Canadian soldier to a British prison in the UK, his committal is dependent entirely upon the willingness of the British to accept him. This willingness has been expressed in blanket form in accordance with the provisions of the Visiting Forces Act. The VJAG, however, advises that this acceptance cannot cover Kurt Meyer because the Visiting Forces Act is limited to "members of the Visiting Forces." In no sense is Kurt Meyer a member of the Canadian Army.

It would seem that the only other line of approach would be to explore with the Home Office the possibility of their willingness to take Meyer into a British civil prison. Preliminary inquiries made along these lines lead us to expect, however, that, while they might take him for the term of the sentence. It is possible that you may be in a better position to explore this line further than this HQ.

Will you please advise as to this point.

D3. Memorandum, Deputy Minister (Army) to Under-Secretary of State for External Affairs, 13 February 1946.[19]

Re: Disposal of Kurt Meyer

I believe you are aware that the question of disposal of Kurt Meyer for the purpose of serving his sentence is now causing the overseas military authorities some concern; and the following message has been received by the Adjutant-General from the Canadian Military Headquarters overseas:-

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LONDON ENGLAND 11103OZ/FEB/46

A 1569
UNCLAS
YOUR ADGEN 30 D 16 JAN AND MY A 1148 OF 28 JAN HAS ANY DECISION YET BEEN TAKEN ON FINAL DISPOSITION OF MEYER. READING GAOL WHICH WAS NO 4 MIL PRISON AND DET BKS HAS BEEN CLOSED AND MEYER TRANSFERRED TO NO 3 AT HEADLY ON 7 FEB. FACILITIES FOR SEGREGATION AND HANDLING THIS PRISONER AT HEADLY DO NOT COMPARE WITH READING AND HIS PRESENCE THERE IS AN EMBARRASSMENT TO THE COMMANDANT.

PARA TWO
MEYER CANNOT BE DRESSED IN ANY FORM OF CANADIAN UNIFORM... REQUEST INSTRUCTIONS AS TO CLOTHING TO BE WORN.

The Adjutant-General advises me that, from the purely military point of view, there is no objection to Meyer being brought to Canada and committed to a penitentiary here, in compliance with paragraph 16 of War Crimes Regulations (Canada), and the normal practice applied to members of the Canadian military forces on whom a like sentence has been passed by a Court-Martial.

The Military authorities are quite prepared to dispose of Meyer in this way if this procedure should be acceptable. They are, however, holding Meyer in the United Kingdom to permit consideration of all aspects of the problem by the appropriate government authorities here.

I understand that you have been investigating the possibility of committing Meyer to a civilian gaol in the United Kingdom authorities; and that you wish to make inquiries regarding a suggestion that convicted war criminals may serve their sentence in German civilian prisons under the auspices of Allied Control, or in a special international prison set up for the purpose under Allied Control, and the considerations involved in these courses.

So far as this Department is concerned, there are no objections to any of the above-mentioned courses, and whichever is decided to be the best solution will be acceptable.

It is considered that such further inquiries as you may require to make in this regard might be made through the High Commissioner in London.

In view of the awkward situation now obtaining overseas with regard to Meyer's custody, I consider it important that a decision should be reached at an early date, so that I may instruct the Adjutant-General as to the course to be followed.

D4. Top Secret, Cabinet Conclusions, Ottawa, 21 February 1946.[20]

War crimes; imprisonment of Major-General Kurt Meyer

18. *The Prime Minister* (Mr. King), referring to the discussion at the meeting of January 16th, submitted a proposal that arrangements be made with the U.K. government for the imprisonment of Meyer in a civilian prison in the British zone of occupation in Germany in the same manner and subject to the same conditions as those sentenced by U.K. military courts.[21]

It was important that an early decision be taken in this matter since facilities in the United Kingdom for Meyer's detention were inadequate.

(External Affairs memorandum, Feb. 21, 1946).

The Cabinet, after discussion, agreed that it would not be advisable to follow the course suggested.

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D5. Memorandum for the Secretary of State for External Affairs, February 1946.[22]

Imprisonment of Kurt Meyer

On February 21, 1946, a memorandum (a copy of which is attached) was prepared in this Department recommending that the United Kingdom Government be approached by its willingness to make arrangements for Meyer's imprisonment in a civil prison (in the British zone of occupation in Germany) operated by the Germans but under the supervision of the Control Commission in the same manner and subject to the same conditions as a German war criminal sentenced to imprisonment by the United Kingdom military court.

The above-mentioned memorandum was considered by the Cabinet on February 21, 1946, and the view was then expressed that the least objectionable course would be for Meyer to be returned to Canada to serve his sentence of life imprisonment.

Meyer is still being held in England. The time is now rapidly approaching when arrangements must be concluded for his removal from the United Kingdom.

I feel that I should draw to your attention certain considerations bearing upon this problem which did not exist in February of this year. For instance, further trials are now proceeding in Germany of war criminals accused of atrocities against Royal Canadian Air Force personnel. It is my understanding that three such trials have now been held, that one sentence of life imprisonment has been imposed, and that two of the accused have been sentenced (subject to confirmation) to death. It appears, therefore, that the Meyer case will not be unique; there is at least one other case of imprisonment, and there may be others in the future. It may also be questioned whether it would be desirable to have Meyer moved to Canada at this time in view of the publicity which would inevitably attach. Moreover, the problems that might arise out of the distance which will separate Meyer from his wife and family might be avoided if arrangements were made to hold Meyer in Germany. It is understood that no war criminals, whether European or Far Eastern, are being returned either to the United Kingdom or to the United States for imprisonment at the present time.

I am wondering, therefore, whether you feel that the attached memorandum of February 21, 1946, might again be brought to the attention of the Cabinet in order that, prior to the actual return of Meyer to Canada, the views then expressed may be confirmed or approval given to the recommendation contained in the final paragraph of the attached.

The Department of National Defence has agreed that a further review might usefully be made in confirmation or otherwise of the Cabinet decision of February 21.

D6. Letter, Mrs. Nellie Winter, Secretary, Canadian Corps, Ladies Auxiliary, Saskatoon, to Department of National Defence, 25 February 1946.[23]

At a regularly constituted meeting of our Corps, it was regularly moved that we "protest to the Dominion Government against the bringing of the German, General Kurtmeyer, to this our Canadian Country, as we consider it is not fair to our soldiers to do this without their sanction."

D7. Order, Lieut.-General J.C. Murchie, Chief of Staff, Canadian Military Headquarters, 16 April 1946.[24]

ORDER THAT A PERSON SUBJECT TO CANADIAN MILITARY LAW SENTENCED BY A MILITARY COURT OUTSIDE CANADA BE TRANSFERRED OR REMOVED TO CANADA TO UNDERGO SUCH SENTENCE OR THE BALANCE THEREOF

... Now therefore, I, the undersigned, a competent military authority, do hereby, in pursuance of the Army Act, the War Crimes Regulations (Canada) and General Order 131 of 15 Mar 44 (being Order-in-Council PC 1304 of 4 Mar 44) and of all other Acts and Powers enabling me in this behalf, order that the said Brigadefuhrer Kurt Meyer shall be as soon

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as practicable transferred and removed to Canada and there committed to Dorchester Penitentiary, Dorchester, New Brunswick, there to undergo his sentence or the balance thereof according to law...

D8. House of Commons Debates, 7 May 1946, p. 1273.

KURT MEYER – Incarceration in Canadian Penitentiary

Mr. GORDON GRAYDON (Peel): There have been many rumours, semi-official press reports, and reports in the press which seemed almost official, in regard to the eventual disposition of General Kurt Meyer, who was brought to Canada last week. I wonder if the Minister of National Defence would consider making an official statement to the house in behalf of his department and that government so that we may know and the public may be informed as to exactly what is going on in connection with this man. I raise the question today because some veterans in my own constituency have been somewhat agitated over it, and they are anxious that someone in the House should raise the question in order that the government may have an opportunity of making a statement as soon as possible.

Hon. DOUGLAS ABBOTT (Minister of National Defence): Perhaps I can answer the question now. The person in question, Brigade Fuehrer Kurt Meyer, is confined in Dorchester penitentiary, as the House is aware from statements that have appeared in the press. The Department of National Defence no longer has anything to do with the matter of his custody, which is now the concern of the Department of Justice. He is incarcerated in Dorchester penitentiary under the same conditions that apply to any other criminal; and whether he stays there or is moved to another penitentiary is a matter which I assume would be dealt with by the Department of Justice in exactly the same way as they would deal with the care and custody of any other prisoner.

Mr. POULIOT: Is it true that the government will build him a mansion?

Mr. ABBOTT: No.

D9. Letter, Kurt Meyer, Drawer "A," Dorchester, to Colonel Andrew, 30 June 1946.[25]

When last we met in my cell at Aurich, we shook hands for the last time in this world.

Now I am in your country and I wish once again to thank you for your efforts in my defence. I know that your duty as my defending officer must have been difficult. I was after all one of your country's enemies, and I have the greatest respect for you as a soldier and as a man.

I have lived and fought as a soldier and my actions have been no different from those of any other officer in [a] similar position.

I have respect for the Canadian Army, especially for the fighting officers and men, but I cannot understand why the Canadian Officers Corps allows me to be imprisoned in a penitentiary with ordinary criminals, murderers, sexual perverts, etc.

During my trial I was conscious of the limitations imposed upon my case by the fact that I would not descend to the employment of counter charges in my defence.

The hysterical wave of newspaper propaganda having now subsided, the time is ripe for me to tell you a few things.

First, the long war and bitter political struggle has brought on in all armies incorrect and unchivalrous methods of fighting.

As you know the act for which I was held responsible occurred within the first twenty hours of the battle. You know also that the case for the prosecution was based upon the statements of two deserters, one a Pole the other a Czech, who besides being a deserter was also a [murderer], having previously killed a German officer.

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Speaking of unchivalrous methods of fighting, we both know that certain individuals on both sides indulged in most unseemly practices, and I am in a position to give you the names and rank of eye witnesses of the Canadian Army who saw German prisoners of war killed, but I also know that the great majority of both the German and Canadian Armies fought fairly.

I do not tell you this with any idea of making accusations, but merely for your own information, so that you will understand how I feel about the justice of my case.

I personally am convinced that the Canadian Army did not willingly find me guilty, but was forced to do so by political pressure.

I bear my fate as a soldier should with head up, and hope for the future. The greatest trial I have to bear is that I know nothing of my family's welfare, but I do know they are homeless and have neither food nor clothes.

I greet you in the certainty that our peoples and our nations will one day work and agree together against communism.

D10. Letter, Kurt Meyer, Dorchester Penitentiary, to Mrs. Kate Meyer, Germany, 11 August 1946.[26]

Dear Kati,

I am thinking of you on this Sunday. I have just returned from Sunday service and enjoyed the flowers on the altar. I am still waiting for a long letter from you. Perhaps your letters and my own find their way into the waste paper baskets. The newspaper reports I read about Germany make me sick. It is an endless representation of sadistic reports. I must say that the gentlemen of the newspapers have a choice vocabulary to describe the sufferings of our women and children. I had hoped that the tragic history of Europe would have taught a lesson to the world, but I know better now, after having read the political news. The asses' path leading through egoism and greed is still being followed. I believe that we are now having a breathing space before the next great tragedy. Do not lest us waste our time in useless dreams, but let us look into the cruel future with open eyes. In this world there won't be any sunshine for our generation or for our children.

I have no change to report so far as I am concerned, and the treatment continues to be good. From my window I can watch the men work in the field, and I often think of our walks on which we talked to our children about the great wonders of nature. I am yearning for a plough and a horse, and the smell of the good earth. Do you remember when we helped Fritz bring in the rye crop, the day on which our Inge walked for the first time. Yes, my dear, we have had happy days together. I can scarcely believe that we have been living apart from each other for several years now. My dear Kati, continue to be my brave comrade and face the future with courage. Please give my love to Mother, Fanny, Alfred and our dear girls. Be strong and do not lose faith in justice.

love and kisses
(sgd.) Kurt

D11. Letter, Kurt Meyer, Dorchester Penitentiary, to Lt.-General Guy Simonds, Ottawa, 5 December 1946.[27]

Sir:

I write to you because I believe you are the first representative of the Canadian fighting soldier.

I believe it was your influence that was responsible for my sentence being changed from death to life imprisonment.

In the following pages I would like to bring to your attention two points which I believe were not fully reviewed at my trial. These points are:

(1) The prosecution stated that I gave orders in the battle in Normandy that no prisoners were to be taken and that all were to be killed;

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(2) That I had trained my troops to disregard the provisions of the Geneva Convention.

To (1) the evidence at my trial showed that I gave no such order, and the Court found that I was not directly guilty of the death of the Canadian [soldiers].

To (2) – I took over my regiment at [Beverloo] in Belgium in Oct. 43, I found that the regiment consisted of boys from 16 to 17 years. These young boys were worthy volunteers from all classes of people in Germany. My officers and I tried to train these young troops according to our own war experience. I, myself, used every opportunity to arouse their real and fighting spirit. I did my best to train them for life, as well as for war. The whole scheme of training was so designed as to lay emphasis on the attack.

At different times I was congratulated by Field Marshals V. Rundtedt, Rommell and V. Kluge, on the training, discipline and spirit of my men.

The Prosecution stated that it was during the time my regiment was in training at [Beverloo] that in a speech to my troops I said that no prisoners should be taken – the truth is that I never uttered such a statement.

As to evidence to the contrary, allow me please to present the following while conducting officer training in the neighborhood of [Beverloo], an air battle developed overhead, and an N.C.O. of R.A.F. [parachuted] to earth and was made prisoner. I personally conducted him to my H.Q. mess and sat him before the fire where we drank coffee together and smoked cigarettes. Our only conversation was on the stupidity of war between England and Germany, and when he had warmed himself, I sent him to the next higher command. His behaviour was such that I issued a special order to my troops the next day holding him up as a picture of what a good soldier should be. At the same time that this airmen was captured, my officer took several other airmen, all wounded, to the nearest hospital.

Had such an order as the Prosecution charges been issued it would have been impossible to treat these airmen as we did.

The Canadian prisoners who were killed were shot a short distance behind the lines, and within the first day of the battle, I had the bad luck to move my H.Q. to this spot, a short time later, and this gave rise to the story that they were shot at my H.Q.

At the time these Canadians were killed more prisoners were coming out of the battle zone. I spoke with some of them, including Major Larinen (?) I think. I must tell you here that 75% of all Canadian P.W. at Caen and Falaise were taken by my division. I can show where I as Div.Commander picked up wounded men on the field under heavy fire, and transported them to safety.

Some days later, I took over 100 P.W. in to my H.Q. to get them out of the rain and let them warm up. We gave them cigarettes and I spoke with some of them.

The opinion of Canadian officers taken by my troops you can get from Capt. Fenwick R.C.A.

If I had given orders to take no P.W. my troops would have obeyed and the fact that we did take them and that today they are back in Canada is the best evidence that no such order was ever given.

Sir, my division bore the brunt of all the fighting of Caen. These young troops with nine months training fought for five months without a break or rest, and most of them died for their country. They fought the whole time against heavy odds and against the strongest air attacks in history.

Only good troops of high morale and sound training could have done that, certainly not an army of murderers.

I myself am most unhappy about the incident as it cast a shadow over the reputation of my dead soldiers. When the shooting occurred, I was on the battle field and the situation was by no means clear. I was forced to lead my troops blindly as I had no reports from the ? Division, and no reports from the Luftwaffe. My left flank was open, and I had to

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cope with an airborne landing at Cormquet [sic]. While all this was going on, the 18 Canadians were shot by one or two well up near the front line, and I was sentenced to death for responsibility.

Sir, if all commanders were sentenced for incidents of this kind, 75% of all Commanders in all armies would have to be tried. You know as well as I that occurrences like this happen in every battle. This is not just empty talk. I have the evidence of others, and saw the same thing happen to my own comrades at the time of my own capture.

I am now in a penitentiary, with all types of criminals, every one of whom has the right of periodic visits by his family. This is not possible for me, and I am practically buried alive. I have been away from home for eight years, except for short leaves. I know that my case is at present before the public, and that nothing can make much change in my situation at the present time, but I believe it is possible to send me back to the British Zone in Germany amongst my own people, where it will be possible to see my wife and children.

I appeal through this letter to you as leader of the Canadian fighting officer corps to use your influence to bring about a revision of my case.

I do not see much justice in my sentence. If I am guilty I should be shot, if not, then my sentence is unjust.

I know that I am no more guilty than thousands of other officers, and would ask you to consider this letter carefully and I am sure you will see the reasonableness of my appeal.

Yours respectfully
sgd. Kurt Meyer

P.S. For every point mentioned in this letter I have witnesses.

D12. Letter, Gisellier Reutshce, Peine, to Kurt Meyer [translated], 10 March 1947.[28]

My dear Comrade Kurt Meyer,

We are back from the camp and our thoughts are with those who are not reunited with us. Our first letter is to you, Kurt Meyer, our Panzer Meyer, etc. Do not forget that we remained your comrades and are standing by you. I know there are people who cannot understand our thoughts. Present conditions show that. This shows us the way we shall have to follow one of these days. In the meantime, we bear the burden of collective guilt but we have not lost our pride, for we know that we have lived as soldiers. For the time being we must stand aside. Most Germans are absolutely disinterested in the future. They are like children whose toys have been taken from them and who can no longer play. Some others work tirelessly on reconstruction by all and any means. But where do we stand. No law has been passed which allows us, the younger people, to be grouped amongst the guiltless, and then we would have to turn to the left and create the workingman's Paradise. We will never do this. If we did we would consider ourselves as criminals, etc. Our future will be difficult, etc. I am sometimes ashamed of my countrymen. What helps me is the belief that the world will find out one of these days that our eastern campaign could have been a basis for what is to come. Any time I am needed in the East, you may be sure that I shall go there immediately. If there is anything that you think I could do for you, please write. I hope that you will be glad to have heard from me.

Best regards,
Your old comrade,
Gisellier Reutshce,
One of your boys.

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D13. Letter, Dr. Schapp, Lawyer & Barrister, Aurich, to General Kurt Meyer, Dorchester, 16 June 1947.[29]

In my capacity as your defence-counsel I unfortunately had no chance to get personally acquainted with you, as you had to leave Germany so soon after having [your sentence commuted]. But since this time I always have kept an eye on your affairs and maintained the connection with your mother and your dear wife. Only some weeks ago your mother paid a visit to me. We once again discussed the matter thoroughly and particularly spoke about 2 points, viz. the petition for mercy and your eventual transfer to a camp in Germany.

I prepared a petition for mercy to be directed via the Pope to the Canadian government. I hope that the Holy Father will thoroughly sponsor this new petition in remembrance to His Eminency, Cardinal and Bishop Graf Galen of Munster, who died unexpectedly on a trip to Rome and who warmly advocated the first petition for mercy. I furthermore hope that such an advocacy will not fail to impress the Canadian government.

Moreover I am considering the plan of getting through with a reopening of the trial. I fear, however, that such a retrial will be very difficult, as the law, pursuant to which you have been condemned, does not provide for a reopening of the trial. But a retrial is not expressly excluded in this law either.

As to the application for your transfer into a German camp or a German prison I have scruples at present whether I shall submit a relevant application on account of the bad food-situation in Germany. Your wife sent me all letters she has got from you. I thoroughly studied these letters and tried to form an opinion about your present conditions of living. According to your letters the material conditions seem to be tolerable but all other conditions seem to be rather unfavourable. I should advise you to disregard a transfer to Germany for the time being and to fill your time in that prison usefully in spite of the pressure under which you have to live, if this should be possible for you.

I do not know, however, whether I do not go out from completely false suppositions. You are still young and you have, so hope I, still a long time to live. I could imagine that you can fill the spare-time remaining to you in the prison with studies which would give a sense to your life there and would be valuable also for the time when you will have been released from prison. I should advise you to study topics which divert your thoughts from the sad reality. History and philosophical studies would not meet this aim. Studies in mathematics, sciences and languages, however, would be more suitable for this purpose. Unfortunately I cannot say from here which studies are particularly suitable for you. Just for that reason I regret so much that I had no opportunity to get personally acquainted with you, in order to be able to help you in selecting material for you studies.

For the purpose being most important for [your] studies of ancient languages would be more valuable than e.g. those of new languages. You would, however, mainly depend on self-teaching. But there exist excellent textbooks [therefore] and I do not doubt that a human prison will allow that books from Germany which I certainly will be able to get for you in some way are sent to you. I gave you the advice to make use of the proved syllabus of our secondary schools and later on of those of our universities. You would more easily overcome the time in prison and create for yourself a base on which you can continue to work.

Although I am unable to form a picture about your gifts and abilities in science, I have no doubts on account of the acquaintance with your mother that you will [have] important results in science, the only sphere which is left to us still today.

The point is, however, to build on the foundations and to continue systematically. Among our great men in science there are so many self-taught persons that in view of your energy I do not doubt that you will achieve good results in this sphere by yourself.

If you have not had sufficient spare time for such an occupation so far, I hope to be able to achieve a change in that respect. If the milieu in your prison should be particularly depressing, I hope that also this can be altered.

I enclose a certified true copy of the opinion of Cardinal and Bishop Graf Galen, as I do not know whether you have got this important document at the time.

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D14. Letter, Kurt Meyer, Dorchester, to Dr. W. Schapp, Aurich, 5 August 1947.[30]

I wish to thank you for your letter of June 16, which I received on July 31. I also regret that we did not have the opportunity to become acquainted with each other, but as a result of what my wife told me about you, you have my full confidence. Your readiness to help and your interest in the fate of my family had given me a ray of hope at the time I was in Aurich. You were the first German to take my part and to have been successful in doing something for my dear wife. I shall never forget your kindness.

Cardinal Galen gave me his blessing in 1940, and on the 1st of May of the same year I made the acquaintance of His Eminence is Salzbergen. The community of Salzbergen, I am sure, still remembers my troop. I was quartered in the home of the Parish Priest. I read the petition signed by His Eminence 24 hours before my removal by the British. This document, so far as I am concerned, is an official confirmation of my belief that my country has not and will not abandon me. Your intention of addressing another petition to the Governor General is welcome news, and I share your hope that the Holy Father will support you. I am convinced, however, that any change suggested in my situation will meet strong opposition. An over-zealous propaganda has pushed me into the witches' [cauldron] of politics. I believe, however, that time will bring a change… in objective evaluation of the facts. In view of the uncertainty of present political conditions, the time is not yet favourable for the re-opening of the case. I beg you, however, to collect additional facts in the meantime and to get in touch with the Adjutant of the 12th Panzer Division (Rothermund) and the Commander of III./25./12th Division (Zepten, Steeger). These two gentlemen are in a position to assist you in your attempts and will give you additional details. Two important witnesses would be Dr. Gotternigg and Dr. Stift. Unfortunately, they were not available at the time of my trial. So far as I know, Stift is now in England and Gotternigg in Germany.

Until May 1, 1946, I was a prisoner of the Canadians and was treated correctly. On May 1, I was handed by the army to the Warden of this Penitentiary and was considered as a criminal from then on. This institution is under the jurisdiction of the Minister of Justice and is comparable to the penitentiaries of Europe. Treatment, lodging and food are similar to what they were in German penitentiaries until 1939. Since May 1, 1946, I thus have been living among murderers, crooks and the most repulsive criminals. What oppresses me so much is not the fact that I am behind bars but the decision taken by responsible men to allow a healthy person to go under among the underworld. It is a terrible thing to live your days in such conditions. However, I found out that these poor devils are willing to help. I am employed in the library and sleep in the hospital. My cell is roomy and sanitary and I am allowed to work without disturbance. My studies are limited to English literature, language and history. Needless to say, I would greatly welcome some German reading material. My request for transfer to a German camp is based on the following reasons:

Since the spring of 1939 I have been separated from my family and have been continuously at the front except for a few days of leave now and then. You are aware of the fact that my wife had to flee and is now completely destitute. The home of her parents, where my family could have found refuge, is closed to them, since it is located in the so-called "Red Zone." It is only due to a fortunate incident that my wife is living in my mother's home. Our children are scattered in 3 different places and my wife has a serious heart condition. I am, of course, aware that this condition cannot be considered as exceptional these days. It may be even considered as quite normal, but I really believe that my wish is quite reasonable, for I would have the opportunity to see my family once in a while. The fact of seeing them would make things much more easy for me mentally. Furthermore, my children would have the opportunity to become acquainted with their father. Should the Canadian Government be of the opinion that a transfer to Germany cannot be permitted, they would perhaps permit my wife and our boy to come to Canada. I am not asking for special favours, but I know that even the lowest criminal is allowed to remain in touch with his relatives. The present situation is nothing else but inhuman and it belongs to the caveman era. It is brutal and in contradiction to Christian principles.

May I add, for your information, that I have written twice to the Minister of Justice. In my first letter I asked for permission to see a Canadian solicitor, and in the second I applied for permission for my wife to come to Canada. Nothing

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has been done in connection with my request as yet. In reply to my second request, I was told that no permission could be given for the time being. I am under the impression that my requests have been handled by a subordinate branch.

In order to give you a free hand, I shall not write after this to the Canadian authorities and shall act only according to your instructions.

May I beg, in conclusion, that you act only in the interests of my family. So far as I am concerned, I shall submit to my fate.

I remain, with best regards,

Yours gratefully,
(sgd.) Kurt Meyer

D15. Letter, Segretaria di Stato di Sua Santita, Vaticano, to His Britannic Majesty's Legation to the Holy See, Rome, 4 February 1948.[31]

The good offices of the Holy Father have been requested with a view to obtaining a revision of the trial... [of] German General Kurt Meyer...

In the request directed to the Holy Father it is asserted that General Meyer had not given the order for the shooting of the prisoners, that he was unaware that the shooting was to take place, and that when informed of the matter later he did not express his approval of the regrettable incident.

In requesting His Britannic Majesty's Legation to inform the competent military authorities of the receipt of this petition by the Holy Father, the Secretariat of State avails itself of this occasion to renew to His Britannic Majesty's Legation the assurance of its High consideration.

D16. Letter, E.R. Hopkins, for Acting Undersecretary of State for External Affairs, to Deputy Minister of Justice, 16 June 1948.[32]

Re: Request of Mrs. MEYER to visit her husband at Dorchester Penitentiary

I refer to your letter dated April 27, 1948, enclosing a copy of the application made by Kurt Meyer to the Commissioner of Penitentiaries that his wife be permitted to visit him at Dorchester penitentiary. A similar application has been made by Mrs. Kurt Meyer through the Canadian Military Mission in Berlin.

2. This is to advise you that this matter has been given very careful consideration by this Department and has also been referred to the Cabinet which decided that the Government could not acquiesce in the granting of a visa to a person of enemy nationality. I presume that you will have this decision made known to Mr. Kurt Meyer. This Department will advise Mrs. Kurt Meyer through the Canadian Military Mission.

D17. Confidential Report, H/Major James R. Millar, Eastern Command Chaplain (Army), Halifax, re: visit with Kurt Meyer at Dorchester Penitentiary, 15 March 1949.[33]

KURT MEYER

1. The Command Chaplain's monthly visit was made to Kurt Meyer on the 10th March 49 and the following report is herewith submitted: –

2. The interview began with the usual pleasantries being exchanged and Meyer said that he is feeling quite well, his food is excellent and he has no complaints whatsoever with the treatment accorded him. However, the tension of being imprisoned on a dynamic character like Meyer is difficult. In this regard Meyer said, "I am kept alive by the

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love of my wife and children... if it were not for my family, I would not be alive. It is impossible for you to know the mental and emotional agony of this imprisonment. But I have not lost faith, and I keep strengthening myself with the hope that one day all will be well."

Q. "What books have you read recently?"

A. "I have just finished reading "Crusade In Europe" and "The Gathering Storm." "The Gathering Storm" is excellent. In my opinion, Churchill has the greatest mind in western politics. He is the most brilliant Englishman in English history."

4. *Q.* "What do you think of the Berlin Air-lift?"

   A. "In a technical and political way the Berlin Air-lift is nothing short of wonderful. England and the USA have demonstrated that it is possible to feed, clothe and heat one half of a large city like Berlin by air, but more important they have demonstrated forcibly that they are not going to let the Berliners down, nor succumb to the blockade. This is a Western victory over the East, in itself. However, the final political success of the air-lift is doubtful. Actually all that can be said, is that the air-lift is keeping the people alive.

   The whole Berlin affair is a "play" by the Russians to embarrass the Western Powers. But to the West it is a major political question. The West is now committed and they cannot stop, or else they will lose face.

   The important thing now is, what is coming in Western Germany? Russia will never recognize Western Germany. Also, the Communists have strong sympathizers in the Ruhr and their job is to create strikes and political unrest, and they will try to smash any new Government that may be set up in Western Germany."

5. *Q.* "In your opinion, what must by done?"

   A. "The only way to defeat the Communists in the West is to show in a practical way that Democracy is better than Communism – raise the living standard, put the people to work, pay them decent wages – deeds, not words nor idle platitudes, are necessary. The Germans are emotionally, politically and mentally ready for any Saviour – they are ready for only that which they can see, weigh, touch and measure – promises of "pie in the sky bye bye" will not suffice."

6. *Meyer* – "May I say something further about Communism?"

   "Yes, certainly you may."

   Meyer – "In the light of what is happening in the world, and, in view of my experience of three years on the Russian front, I feel keenly on this subject, and so I wish to make the following observations."

   "The Communist parties in Europe were born in the wake of the First World War, and were Christened with the blood of thousands of peoples. The driving force in these parties is not only a political philosophy but a deadly fanaticism. The leaders of these parties are trained in circumstances very different from that of the American communists.

   The background of the European communists is in most cases hunger, unemployment, strikes, and bloody fights with their political enemies. The European Communist Leader is trained and schooled to use every means at his disposal to disrupt and destroy the present order, without fear of the consequences. His fundamental purpose is to obstruct and overthrow the present government of the individual nations, without regard to the welfare of the freedom-loving peoples.

   This kind of Communist is an unscrupulous rogue with a brutal, obedient mentality. His salient thoughts are those of the dictates of the Cominform, and he has no conceptions of the moral of Christian brotherhood. He has no con-

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science, – only loyalty to the Kremlin. His children advance towards maturity without the love and fear of God. They have hate in their hearts and destruction in their minds."

7. *Q.* "In your opinion, do the Communists outside Europe differ from European communists, that is, are they more or less committed to their cause?"

   A. "In my opinion, the North American Communist is nothing more than an idealistic dreamer who firmly believes that the idea of Communism would be of more benefit to the masses than their present form of government. He is fed propaganda and distorted facts, but has never had the opportunity to experience the true action of Communism.

   I believe also that the majority of these political dreamers would be cured for all time if it were possible to place them in a position similar to that of the Russian people. Nevertheless, the illusions of these men are dangerous to the welfare and safety of the North American people; because the North American Communist is nothing more than a tool in the hands of Stalin. They are party men, but not fanatics."

8. *Q.* "In your opinion, what must be done to curb the spread of Communism in Europe?"

   "The ideal weapon with which to combat Communism is, of course, a better government; with freedom without fear for the individual, and the maintenance of a higher standard of living in the western European countries not at present under Communist domination.

   This is especially applicable to those nations within the sphere of Soviet influence. Of course it is easy to raise the standard of living by artificial means; but this kind of political tactics is bound to crash with terrible consequences, and must lead to a deadly depression. A healthy standard of living can only be built by work production, and the establishment of free world trade...

   The question of stopping the Communist flood in Europe is not a German, English, or French question. I do not believe it is possible to stop the teachings of Karl Marx by national means of the European nations. However I do believe that the recovery of Western Europe can be reached only by restoring that part of Germany not under Russian domination...

   The peoples of Europe must know, one and all, that they are "in the same boat," and will doubtless drown in the tidal-wave of the Red Flood, if they are unable to live, learn, and work together in unity.

   It is my firm belief that the recovery of Europe, the successful defence against Communism, and the health, happiness and peace of Europe are only possible by the creation of the United States of Europe, with the incorporation of the parts of Germany and Austria not under Russian domination."

   Following an interview last October Meyer fainted and upon being revived he said, "The three Buckingham cigarettes I smoked were too much for me." During this last interview he became pale and shaky. He was asked if he felt alright and he replied, "I feel faint." The window was opened and in a few minutes he felt quite better. However, it was noted that he appeared listless and that he was forcing himself to be bright. Upon pressing him further about his health, he replied: – "I received two head injuries during the war – once when I was wounded in the head by shrapnel and again on being struck with a rifle. I never had time to receive adequate medical attention and my head bothers me."

   This is the first time Meyer mentioned not feeling well. Being the spartan that he is, he has never uttered a complaint about his physical welfare.

11. Meyer attends his prison Chapel Services regularly and reads his Bible. He attended Sunday School as a boy and attended Church with his parents. Meyer and his wife were married in the Church and their five children were Christened in the Church.

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D18. Confidential Report, Eastern Command Chaplain (Army), re: visit with Kurt Meyer at Dorchester Penitentiary, 9 May 1949.[34]

KURT MEYER

The Command Chaplain (P) visited Kurt Meyer at Dorchester Penitentiary on the 7th of May 49 and the following report is herewith submitted: –

The visit included Mr. Fred Lichtenberg of Moncton, N.B. For three years Mr. Lichtenberg has periodically made application to visit Meyer and on 3 May 49 permission was received from the Department of Justice for Lichtenberg to visit Meyer in company with the Command Chaplain. As Mr. Lichtenberg was a friend of Frau Meyer in pre-war days, Meyer was extremely happy to see him. Also, since Meyer's imprisonment Mr. Lichtenberg has been sending parcels of food and clothing to Frau Meyer and her five children, and thus Meyer was delighted to meet the benefactor of his family.

On 5 May 49 Meyer received notification that the Department of Justice has granted him permission to see a Canadian attorney. This has made him very happy.

Meyer is in excellent spirits and he says he feels perfectly well physically. In addition to working in the prison library, Meyer is growing flowers in his "Chateau" and reading every good book he can get his hands on.

Meyer: "Field Marshall Kesselring and Field Marshall Milch have both been given periods of leave from British prisons in Germany by the British authorities. Their situations are exactly the same as mine. Will you ask your authorities if I may be granted the same privilege?"

Answer: Your request will be submitted through the Principal Chaplain to the proper authorities.

Meyer: "It is almost five years that I have been behind prison walls, without being out in God's good open spaces, and I have a request to make. When harvest time comes, may I be permitted to work in the hay fields here on the prison grounds. It would be wonderful to get out and do some physical labour, work up a sweat and thoroughly enjoy the fresh air. Will you submit this request to the proper authorities?"

Answer: Yes, your request will be submitted to the proper authorities.

Meyer: "I told you about the flowers I am growing in my "Chateau." Please do not think I will sell them on the black market! I am growing flowers because I love them and they help me with Lovelace to say within my heart, "Stone walls not a prison make, Nor iron bars a cage." Despite the depressing atmosphere of this prison, I try to rise above it mentally, socially and spiritually."

Meyer: "It is wonderful that at long last I am permitted to see a Canadian lawyer. My faith in human nature has been bolstered. My little children continually say to their mother, "Why cannot our father be home with us like other children's fathers," and my wife tries to explain, "Daddy is a soldier who always tried to do his duty and some day he will be home again." I hope my lawyer will be able to help me."

Meyer believes war with the Soviets is inevitable. He said, "The Western Allies must make Allies of Western Germany. Stalin will never, never, never leave Berlin voluntarily, nor will he ever leave Eastern Germany of his own accord. The end result will be war and we of the anti-Communist world must be realistic about the matter. We must remember the next war will not be fought with the weapons of the last war, but the strategy and tactics will not be greatly changed. The strategic bombing fleets may be replaced by shooting rockets with atom heads, the destructive force of all weapons will be increased, but the victory can only be won by the fighting soldier of the attacking army. Weapons can destroy, but never occupy and hold. A modern army without infantry and armour is an impossibility, despite the atom bomb and rockets. The fighting soldier is still the backbone of the army. Therefore the Western Allies and Western Germany must co-operate and build up a strong army of infantry and armour and be prepared for World War III."

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Meyer: "It is good to know the Principal Chaplain will be here to see me in June. All my life I have tried to be a Christian and to teach my family that the only life worthwhile is the life laid down by the Man of Nazareth. Although I was sentenced by a Military Court for inciting troops to murder, I cannot feel that this is the final judgement in the light of what we know was done on both sides. As a Divisional Commander, I performed my duties and carried out orders the same as Canadian Divisional Commanders. Never, never did I give an order that prisoners were to be shot. But I have faith that ultimately all will be well."

D19. Confidential Report, Eastern Command Chaplain (Army), Halifax, to Principal Chaplain (P) (Army), Ottawa, re: visit with Kurt Meyer at Dorchester Penitentiary, 1 November and 2 December 1949.[35]

Eighteen months ago Meyer walked with a smart military step and was full of zip and zest. His mind was "sharp as a razor" and questions were always answered quickly. However, during the past four months there appears a change in Meyer. He does not now appear so dynamic, physically and mentally. His mind is more philosophical and methodical. His movements are slower. This condition is probably the natural result of his confinement.

D20. Ralph Allen, "Was Kurt Meyer Guilty?,"* Maclean's *Magazine, 1 February 1950.

Did Canada give her only war criminal a fair trial?[36] *A war correspondent who was there says "No." But Panzer Meyer is serving life in a Nova Scotia penitentiary*

THE MAN seated at the centre of the dais looks very slowly, almost regretfully, as though he were grateful for the pauses for interpretation.

"The sentence of this court is that you suffer death by being shot. The findings of guilty and sentence are subject to confirmation. The proceedings are now closed."

The man standing at the centre of the floor – his body in its vise of immobility. He took a pace backward and bowed, waited an instance longer for his guards to fall in, and then made a brisk left turn. As he marched from the room his head was a fraction of an inch higher than usual, his drawn face a fraction of a shade paler than usual. His heels rapped against the flat hush like an eerie, far-away gavel summoning the attention of a terrible past and an unknown figure.

The sentence of death against Kurt Meyer, accused and convicted German war criminal, was never carried out.

Nor, four years after the sentence was passed by a Canadian military court, has the extent of Kurt Meyer's debt to the past or the extent of his meaning to the future been really clarified.

The disagreement over the rights, wrongs and maybes of the most bizarre, contentious and possibly significant trial in the history of Canadian law is not quite as loud today as it was when Major-General Chris Vokes, the then commander of the Canadian occupation forces in Germany, precipitated an international furore by commuting the penalty to life imprisonment. But the disagreement is no less deep-seated.

At one extreme there are hundreds of thousands of Canadians who still believe Meyer should not have been allowed to live; at the other extreme some, at least, who believe he shouldn't even be in jail.

Skeletonized, the facts of the Kurt Meyer trial are these:

As *Standartenfuhrer* of the 25th Panzer Grenadier Regiment of the 12th SS Division Meyer commanded German soldiers who, during the first bloody days of the Allied landings in Normandy, shot to death or clubbed to death at least 41 unarmed Canadian prisoners of war.

He is the only enemy soldier who has been tried under the War Crimes Regulations (Canada), an order-in-council enactment of August, 1945, which sought to lay down standards by which enemy war criminals could be judged for their

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actions between 1939 and 1945 and to set precedents which it was hoped might deter their possible imitators in possible wars of the future. Working in collaboration with the United Nations War Crimes Commission, virtually all the Allied nations had adopted similar regulations soon after the end of the war in Europe. Meyer's trial... was the first trial of a German fighting soldier or field commander under any of these enactments – Canadian or otherwise – and therefore it was deemed to be one of significance far beyond the fate of any one man, the proceedings of any one court, or the laws of any one nation.

He faced six separate charges. One of "inciting and counselling troops under his command to deny quarter to Allied troops," one of directly ordering troops under his command to shoot seven Canadian prisoners of war, and four others of being "responsible" for, although not ordering, four separate mass killings of defenceless P.O.W.'s.

One of the charges of "responsibility" was dropped by the prosecution. On another charge of "responsibility," this one involving 23 of the 41 proven victims, he was acquitted. He was also acquitted on the charge of giving a specific order for the execution of specific prisoners. One the other two charges of "responsibility," which applied to the shootings of 18 members of the Third Canadian Division in two separate incidents, he was found guilty. He was also found guilty of the charge of having incited and counselled his troops to deny quarter.

These are the minimum facts. What is the big and ultimate fact? What is the one fact that will matter above all the others long after Kurt Meyer – SS man, proud graduate of the Adolf Hitler Lifeguard, eager warrior, nerveless, desperate prototype of much that was bad and what little there was of good in German fascism – has gone to his final rendezvous with his tortured Nazi gods?

The Precious Principles

Was Kurt Meyer guilty?
Was he proven guilty according to procedures and according to a body of law that will serve as a practical, workable guide for future generations of Canadians without challenging their heritage of Anglo-Saxon justice?

Did he receive a fair trial? Was he tried under impartial rules? Were these rules – impartial or not in themselves – administered impartially by the court that tried him?

As a reporter who covered the Meyer trial I say "no."

I came back to Canada saying "no" to all these questions, and to anybody who would listen – and perhaps it wasn't strange that, in the country's mood of four years ago, with its memories like open wounds and its dead not yet all counted, there weren't many who cared to listen.

I have just been to Ottawa re-examining the records of the trial and I still say "no."

Beneath its gathering dust the record still seems to say what it seemed to be saying four years ago in the alternately hushed and tumultuous little courtroom in northern Germany. Among other things it seems to say:

That, under the mantle of Canadian law, Meyer was tried according to rules which contradict some of the first and most precious principles of Canadian law.

That although these rules paid lip service to the fundamental doctrine that the accused is innocent until he is proved guilty they included a reversible clause which, once it was proved that crimes had been committed (not necessarily by him or by his orders or with his knowledge or consent), made him guilty until he proved himself innocent.

That on such questions as the admissibility of evidence the court was authorized to, and sometimes did, make up its rules as it went along, without real restrictions of any kind and frequently to the disadvantage of the accused.

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That the chief witness against Meyer, a witness without whose testimony the case for the prosecution would have been weakened on the verge of debility, finished his first statement against Meyer with a threat of death hanging over his head. That this witness had been interrogated outside the courtroom at least eight different times and that, under the elastic rules of procedure, the opposing counsels were permitted to read excerpts from each of his eight depositions and to put him on the stand, in person, twice. That, in spite of many months of preparation and rehearsal, he frequently contradicted himself on both minor and major points of evidence. That in its most damaging essentials his evidence was supported by no other witness and at least partially contradicted by half a dozen.

A Voice Across the Abyss

If anyone were to ask, "Did Meyer get his desserts?" the record's answer might be "yes," if only because of what it told, out of Meyer's own mouth, of his place in and his apparently unshaken faith in the violent, demagogic world of Adolf Hitler.

If anyone were to ask, "Did Meyer get full justice?" I believe the record's answer could not be "yes."

In the little paneled courtroom the picture of Kurt Meyer emerged in sombre, evocative flashbacks, like a documentary film narrating the history of German fascism from its rise to its ruin. The dead legions marched again, the supermen strode across the face of Europe with undiminished glory, and an old comrade alternately exhorted and applauded them in a voice that was sometimes strident with pride, occasionally close to tears for the memory of what might have been.

Kurt Meyer, unsuccessful salesman at 16, unemployed coal miner at 18, obscure harness cop at 24, had hitched his wagon to the star of national socialism in 1934. When he was accepted as a 24-year-old volunteer in the Leibstandarte Adolf Hitler, the Fuhrer's personal guard regiment, he was carrying party card No. 316,714 and SS membership No. 17,559.

When the Wehrmacht struck at last Meyer struck with the spearheads. His rise was swift and unquestionably well deserved. There had been a special name for this new, exciting kind of war – *blitz* (lightning). There had been a special name for the young SS commander who rode with the reconnaissance columns – *Schnell* (speedy). The place names along the route were still heavy with nostalgia for Speedy Meyer.

After commands in Poland, Rumania, Bulgaria, Yugoslavia, Greece and Russia, Meyer switched to tanks in Normandy and became *Panzer Meyer*. He received his second wound and his 11th decoration.

To the court he talked well and willingly of his battles. Like a lonely voice calling across a vast and bridgeless abyss, he called again and again to the vanished *kameraden*, pleading for the betrayed doctrines of blood and iron.

Once he sat forward intensely and repeated part of a speech he had once made to the young fanatics of the Hitler Jugend's military arm:

"We are here in Normandy, and we here in our fists have the weapons of the German people... If the Allied forces take a stand for the invasion, the reprisals or revenge will not be achieved through V-weapons, but revenge will be achieved through our personal action, through our blood, through our spirit of attack and through the annihilation of the enemy forces."

Discipline in the Family

And from another speech: "After the end of each war, every prisoner should be in a position to prove that he fell into captivity guiltlessly – I myself have sworn myself, my family and my wife, that I myself would not willingly go into imprisonment. The last bullet belongs to you."

The trial produced no more dramatic scene than the moment, taut, moving and somehow terrifying, when Meyer abruptly dismissed the surroundings from his mind and spoke directly to his wife. With one of their five small children *Frau*

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Meyer had come to Aurich to be near her husband, and on most days she sat alone toward the rear of the courtroom, a pallid, mouse-like woman surrounded by an infinity of sorrow.

She had been allowed to see Meyer briefly in his cell, but always with a guard in close attendance and under instructions that Meyer was not to be allowed to say anything which might have suggested how he wished his children brought up, ideologically.

One day the prisoner expressed a willingness to explain the principles which he had applied in the training of his regiment.

As he began, his blue eyes were alternately hard and caressing as they sought and held the eyes of the woman in the 10th row. He spoke now proudly and demandingly, now gently and persuasively, and the tortured, hopeless face of the woman became radiant and alive.

"The discipline of my young soldiers was good," he said, "and was based on the foundation of the family. Because of their youth, the leadership had to find a new way in the education of these men. Between officers and men, apart from the ordinary officer relationship, there was a brotherly relationship established. Parents were far-reachingly included into the education. For the troops, there was given a prohibition of smoking and of alcohol. Every relationship with women was prohibited for soldiers up to the age of 18."

Meyer paused. He resumed more softly. "In social respects, the ideal of motherhood was held high to my men in the motto: 'The mother fights, lives, sacrifices and dies for the children'… In religious respects, my men had freedom. I called to them: 'God cannot be proved, but He is to be believed. Man only becomes man when, through his conscience, he feels himself responsible to his God. A soldier who does not believe in God cannot fight'... For their fighting motto, my soldiers were given the idealistic point of view of soldierhood, in brief, 'I am nothing, we are everything.'"

So much for the prisoner. What of the proceedings?

Meyer was prosecuted by Lieut.-Col. Bruce Macdonald, of Windsor, and defended by Lieut.-Col. M.W. Andrew of Stratford, Ont., both lawyers in civilian life. Like the court president, Major-General Harry Foster, and the four other red-tabbed judges, both Macdonald and Andrew had served with distinction in combat units of the Canadian Army. Each man pressed his case with skill and vigor. Each man, like the officers of the court, was under an essential handicap; he was working with laws foreign to his experience and his traditions as a Canadian – conqueror's laws, freshly minted and unclarified by a single precedent.

Inevitably, the prosecution claimed, and was granted, advantages over the defense which it would neither have asked nor expected had the new laws been in harmony with the basic tenets of Anglo-Saxon law.

The Canadian War Crimes Regulations, which closely parallel similar regulations enacted at the same time by the United Kingdom, sought to make possible the enforcement and workable interpretation of the "laws and usages of war" as approved by the Hague Convention of 1907 and the Geneva Convention of 1929. All the major Powers, Germany included, had signed the Hague and Geneva agreements, which attempted to define war crimes, but left it up to individual nations to punish them in their own individual ways.

A German Started Hollering

The Canadian regulations specify that the fundamental procedure for a Canadian war crimes trial shall be the same procedure laid down for a field general court-martial. But they authorize a Canadian court trying a suspected war criminal to disregard, if it sees fit, virtually all the rights and safeguards to which a defendant is normally entitled in a Canadian criminal or military court.

The regulations say the court "may take into consideration any statement or 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

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charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a field general court-martial."

The regulations say that "Any document purporting to have been signed or issued officially by any member of any allied or enemy force or by any allied, enemy or neutral government shall be admissible as evidence without proof of the issue or signature thereof."

The regulations say that any statement made before trial by an accused or by any witness at such trial, whether or not such statement was made on oath, and whether made before or after or without the giving of any caution shall be admissible as evidence for all purposes.

The regulations say that once it has been proved that members of a military unit or formation have committed more than one war crime the commander of that unit or formation may be considered guilty of responsibility for those crimes, unless he proves himself innocent of responsibility.

Over and above these specific amendments to traditional Canadian courtroom procedures, the War Crimes Regulations (Canada) close with a clause that takes 21 words to say that anything goes. "In any case not provided for in these regulations," Section 17 says, "such course will be adopted as appears best calculated to do justice."

That disarmed Canadian prisoners were killed in Meyer's battle area during the first week of the Normandy fighting was established even to the satisfaction of Meyer himself. Overrun in Meyer's counterattack against the village of Authie on June 7, 1944, at least 23 members of the North Nova Scotia Highlanders had been shot down by their captors either amid the red chaos of the battlefield or on the way back toward Meyer's regimental headquarters. Now, 18 months later, some of the survivors came to bear witness.

Q: Will you describe anything that occurred as you were being moved away from the place of capture?

A: We were marched perhaps about 300 yards up toward this big field and we passed a German soldier lying down on the ground. He was wounded and was getting the attention of a medical orderly. He started hollering at us and we passed him and went another 40 or 50 yards and we met a wave of advancing Germans and the German that seemed to be in the lead started hollering – I don't know what he was saying but was just hollering there and he pulled out a revolver and started shooting at us and at the same time this wounded soldier, he started shooting at us too with his rifle.

Q: Did he hit anybody?

A: Yes, sir. The boys started falling and I was looking at the wounded fellow and then I was looking at the guy who was doing the shooting up front. A lot of our fellows fell down wounded and when I came up to Lance-Corporal Orford, he grabbed me by the arm and then he was shot...

Possibly because the court knew that, among the men who fought the war at the level of the slit trench, there were "spontaneous" uncalculated and unpreventable shooting of prisoners on both sides, Meyer was acquitted of responsibility for the Authie massacres.

The prosecution used its heaviest and most effective artillery in trying to convict him of the general charge of "inciting and counselling" his troops to deny quarter and to establish his responsibility for two multiple killings in which 18 Canadian captives were killed and secretly buried at his regimental headquarters at the Ancient Abbey of Ardenne, a hamlet northwest of Caen.

On the charge of inciting and counselling to deny quarter there seemed little reasonable doubt that, in their by no means rare moments of grandiloquence and bombast, either Meyer or some of his most trusted officers, or both, had boasted to the teen-aged soldiers they were readying for battle: "My unit takes no prisoners."

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Four alumni of his regiment testified they had heard the remark uttered, although their memories of the circumstances varied widely. One insisted that Meyer had circulated it through the ranks in the form of a secret written order. Another said he made it orally during the course of a drunken speech at a regimental party.

Officers Stopped a Massacre

Whatever impression it had made in the barracks each of the nine German witnesses who appeared were agreed that the remark or order was never interpreted literally on the battlefield, nor, in their opinion, was meant to be. Two of the witnesses who remembered having heard it also remembered that after the unit went into action they were offered special leaves for bringing in live prisoners.

Two Canadian soldiers told of seeing battlefield massacres stopped by German officers or N.C.O.'s.

The defense was able to argue that more than 200 Canadian prisoners passed through Meyer's regimental headquarters during the first few days of the Normandy fighting and came to no harm. If Meyer had ever intended the shooting of prisoners to be a regimental policy, the policy wasn't carried out.

One witness testified, nevertheless, that Meyer had specifically ordered one killing of prisoners. On the morning of June 8, 1944, SS Mann Jan Jesionek, 19-year-old Polish conscript, had been on duty as a dispatch rider at Meyer's headquarters in the ancient abbey.

About 10 o'clock a German soldier marched in seven Canadian prisoners, Jesionek told the court. Jesionek followed the escort into the chapel of the Abbey in time to hear him report to Meyer himself.

"What shall we do with these prisoners?" Jesionek said he heard Meyer say. "They only eat up our rations."

Then, according to Jesionek, Meyer talked in an undertone with an officer. He turned and said, more loudly to the small group of headquarters personnel around him: "In future we will take no more prisoners."

Jesionek went back outside a few moments later and saw a German officer talking to the seven Canadian prisoners. They were talking in English, which Jesionek didn't understand, but it was his impression that the officer was jeering at the prisoners, at least one of whose eyes suddenly "filled with tears."

Then, Jesionek continued, one at a time the seven Canadian soldiers shook hands with their fellow prisoners and walked through a little gateway leading from the courtyard of the abbey to a little garden in the rear. A German sergeant-major waited on the other side and shot each man as he emerged in the garden.

Jesionek had told his story first in an American prisoner-of-war cage at Chartres. Over a period of several months he had repeated its substance several times in interrogations in Paris, London, Bayeux and during a special trip to the abbey itself. Each interrogation was recorded and extracts from all his pretrial depositions were read back to Jesionek by both the prosecution and by the defense.

Although Jesionek never wavered on a major point there were several minor inconsistencies in the several versions of his story. As he told it at Chartres, for instance, he himself had heard Meyer give a direct order to execute the seven Canadians. In another, Jesionek neglected to repeat the alleged order about taking no more prisoners in future.

On many circumstantial details his evidence was incompatible with the evidence of other witnesses. He said that he saw Meyer in the abbey chapel at about 10 o'clock in the morning. Meyer insisted he had been on a personal tour of his battalions at that time, hadn't returned until about noon and then had gone directly to the tower to survey the battlefield. Two German officers supplied partial collaboration.

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Was the Gateway Blocked?

Jesionek said that Meyer had been dressed in a long, black rubber coat in the abbey chapel. Meyer said that he had never worn anything but the standard camouflage uniform of his division.

Jesionek's statements about the disposition of his platoon and its vehicles on the day in question conflicted with the evidence of other witnesses.

A direct challenge to the main body of Jesionek's story hinged around the gateway through which he claimed he had seen the seven Canadian march to their deaths.

A 16-year-old French lad, Daniel Le Chevre, who had been living in the abbey, claimed that the gateway was blocked by an air-raid shelter. Where Jesionek claimed to have seen seven bodies lying in a "pool of blood," and where the bodies were to be found about 10 months later, Le Chevre and two or three of his pals had seen nothing to excite their interest.

Jesionek had mentioned a set of steps at the side of the gateway, but M. Jean-Marie Vico, another former abbey resident, said he had built those steps himself in July 1944 – a full month after Jesionek claimed to have seen them.

What reasons, if any, could Jesionek have had for lying or elaborating? To its credit the prosecution during the numerous pretrial examinations, had probed hard for possible ulterior motives. It had sought out the U.S. Army sergeant who took Jesionek's first statement at Chartres, and questioned the sergeant closely on the details of the young Pole's first examination.

Jesionek himself claimed that soon after he had begun making his first statement about Kurt Meyer an American soldier had entered the room in which he was being questioned and said: "Ah, you are an SS man. We are going to hang you." Then, Jesionek said, he finished his statement.

At first the American sergeant denied flatly that any such threat had been made. Then he admitted it was "possible," finally that it was "probable."

Jesionek said he had been an unwilling conscript and that he had deserted in France. When he was drafted into the SS his father was in a German concentration camp. He concealed this information during his first few interrogations and explained the deception in these words: "I remained silent... so as not to raise any suspicion that because of my father I sought revenge on Meyer."

An Adjutant Was Sacked

Meyer's defence against the charge of responsibility for the second mass murder committed at his headquarters was substantially the same as his defense against the "Jesionek" charges.

There was no eye-witness testimony in connection with this second slaughter – although the defense did not challenge the well-documented evidence that, on or about June 10, 1944, 11 "volunteers" had been selected from a large group of prisoners gathered in the abbey courtyard and clubbed to death in a manner for reasons unknown.

With the onus now on Meyer to prove himself innocent of responsibility the defense built its case around these submissions:

(1) The crimes all occurred during a period of furious and continuous battle and Meyer was too preoccupied with events on the battlefield to make himself personally responsible for what happened elsewhere.

(2) According to Meyer's testimony he first learned of the killings on June 11 when his adjutant showed him the bodies of all 18 Canadians lying in a group in the abbey garden. (The could have been fitted in with young Le Chevre's story, but could not have fitted in with Jesionek's.) When he showed his commander the bodies Meyer's adjutant professed to be ignorant of how they got there. Meyer fired him.

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(3) The 18 Canadians were killed, not by the troops who had been trained and continuously led by Meyer, but by members of the German Field Police, who became responsible for the handling of prisoners on their arrival at regimental headquarters.

Before the verdict was brought down a number of episodes occurred which, whether or not they influenced the court, plainly made its legal adviser uneasy. Faced with the delicate task of interpreting a set of legal directions almost entirely devoid of legal precision the Judge Advocate, Lt.-Col. W.E. Bredin, made frequent and unhappy asides about the prevalence of hearsays, but reminded the court that it was entitled to listen to anything it considered relevant.

Midway through the trial the prosecution announced it had uncovered some fresh evidence concerning the shooting of a Canadian officer at Meyer's headquarters. The defense protested that this shooting was not mentioned in the charge sheet.

The court ruled that Meyer couldn't be found guilty of it, or for responsibility for it, but if the responsibility could be traced to him unofficially it might indicate an increased likelihood that he had been responsible for the other crimes.

The prosecution was allowed to introduce its evidence and thus, in this little trial within a trial, Meyer found himself being tried for a crime of which he hadn't been accused, for which he could not be officially convicted, against which he had had no opportunity to prepare a defense – but which, through its possible inferences, could conceivably have cost him his life.

In Law All Must Be Equal

A similar ruling was made later when the prosecution was permitted to make extended references to a number of alleged murders of prisoners which a Canadian court of enquiry had attributed to the German regiment on Meyer's left flank. No proof of any kind was introduced regarding these other shootings and the prosecution admitted it wasn't trying to link them with Meyer.

In explaining its reasons for allowing them to be discussed the court came close to a pure doubletalk. "Incidentally, for the record," the president ruled, "the accused cannot be held answerable for these incidents which occurred in other regiments, nor can that information which has just been divulged be used to influence the court in this trial here. The purpose of introducing these alleged reports is to show tendency. That is really the prosecution's case."

During his cross-examination Meyer dropped an aside to the effect that, early in the Normandy campaign, he had come across the bodies of half a dozen German soldiers lying on a roadside in circumstances which convinced him they had been taken prisoner and then shot by the troops opposing them.

The Canadian brigade commander operating in that particular area at that particular time had been the president of the court, Major-General (then Brigadier) Foster.

The court listened attentively to Meyer's testimony on the alleged shooting of German prisoners by Canadian troops under Foster's command but when the prosecution announced it wanted to call witnesses in rebuttal, the court decided this wasn't necessary.

"I don't think there is any question in the minds of the court as to that particular incident," General Foster said.

Officially the Kurt Meyer case is closed. Meyer is serving his life sentence in Dorchester penitentiary... There is no procedure under which the sentence of death can be reimposed. The only procedure by which the sentence of life imprisonment can be further remitted is through a petition for clemency to the throne.

Why not leave the case where it stands – filed and forgotten? Because while men live by laws they cannot lively freely and without fear unless all men are equal before those laws.

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The laws under which Kurt Meyer was tried rest not, as all safe laws must rest, on the solid bedrock of firm rules and clearly stated principles, but on the unattainable hope of human omniscience.

If the Kurt Meyer trial was unfair its greatest unfairness wasn't to Meyer himself. It was the final, overriding unfairness to a set of precepts which, if we deny in the face of our enemies, we may yet deny to ourselves.

D21. Letter, Kurt Meyer, Dorchester, to H.P. McKeen [sic], Halifax, 27 March 1950.[37]

Dear Sir:

On Saturday, March 25, Col. Goad informed me of your request. I am only too glad to give you this information and hope that it will be satisfactory for your purpose.

I. The names and ages of my children are as follows:

(a) Ingeborg Meyer, born: October 19, 1935

(b) Ursula Meyer, December 12, 1936

(c) Irmtraut Meyer, September 8, 1939

(d) Gerhild Meyer, August 11, 1943

(e) Kurt Meyer February 15, 1945

II. My family was living in Eastern Germany but fled before the Russians in 1945. Until September, 1945 they were living in a refugee camp north of Hamburg. My wife, our two oldest daughers, and our boy are now living with my mother in Offleben, Kreis Helmstedt, British zone of occupation. Our third daughter is living with relatives in Western Germany, and our youngest daughter lives with her grandparents in the Russian occupation zone.

III. Our family is completely destitute and receives a monthly support of one hundred and thirty-nine marks – the equivalent of thirty-five dollars – from a public welfare fund...

D22. Confidential Report, Eastern Command Chaplain (Army), Halifax, to Principal Chaplain (P) (Army), Ottawa, re: visit with Kurt Meyer at Dorchester Penitentiary, 17 April 1950.[38]

5. *Meyer:* "Mr. Ralph Allen's article in *Maclean's* has made me very happy. It is truthful in every respect. It is an example of good journalism. The significance of this article is for me not only personal satisfaction, but also an important political lesson. It emphasises the power of the press, and has convinced me that free men cannot remain so if they do not recognize the press as a conscience of society. Such an article could not have been printed under the Nazi system; the writer would have been branded an enemy of the state. Several years ago I would have vehemently defended the right of the state, but to-day, with all the bitter experience of the past, I know that the state becomes an irresponsible monster if the conscience of the nation is shackled, and the warning voices silenced. The publication of this article has given me a lesson in democracy where dozens of books have failed."

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E. Appeals and Meyer's Transfer to Germany

E1. Letter, Kurt Meyer, Dorchester, N.B., to H.P. McKeen [sic], Halifax, N.S., 14 July 1949.[39]

Dear Sir:

On the 11th of July I was informed by Major Miller, Eastern District Headquarters, that you have agreed to accept my plea to act as counsel and representative in my truly serious case.

Before I give you a few facts about my case itself, and about my personal background, I wish to express my deepest thanks for your willingness to fight for my freedom. I know that this decision was not an easy one to make, as I am not a citizen of Canada, but of Germany – only recently considered an enemy of your homeland; and as a German, was fighting against your own interests and possibly against yourself on the battlefield. If, despite these facts, you have agreed to help me in my trouble, then please accept my hand as from one soldier to another; and believe me that I was fighting with the same ethical principles as you and your fellow officers; and I did so in the honest belief that I was fighting for home and family; in short, for everything a good soldier stands for.

... On the 6th of June, 1944, the 12th Panzer Division was drawn up in preparation for the expected invasion south of Caën. In the afternoon of the 7th of June, the 25th Reg. was in action north of Caën against the Nova Scotia Highland Regiment... Because this action was the fire Christening of the 25th Reg. I gave the necessary orders at my Headquarters and joined my soldiers on the battlefield, in order to gain their confidence.

In this battle on the 7th and 8th of June, unknown members of the German force killed disarmed prisoners of the North Nova Scotia Highland Regiment. Neither my investigation on the battlefield, nor the work of the Prosecution at my trial, could uncover the culprits. I was informed of the known facts by officers of my regiment, and I, in turn, reported them to my Divisional Commander.[40]

The Prosecution at my trial charged that, at the training period of the 25th Regiment, and in violation of the laws and usages of war, I incited and counselled troops under my command to deny quarter to Allied troops. To this I make the following reply:

(1) Never did I receive, at any time or in any way, an order that was contrary to the established International Laws of Warfare.

(2) Never did I, as Commander of the 25th Regiment, at any time, in any situation, counsel my troops to deny quarter to Allied troops, or to murder helpless prisoners behind the front lines.

(3) In my speeches to my unit, I gave them advice similar to that given by Commanders the world over; in order to build up their fighting spirit and to prepare them for battle.

(4) I was, and I am responsible for everything that I ordered or permitted done by my troops. But it is quite impossible to make a Commander of a fighting unit responsible for the doings of individuals who act on their own initiative without orders from their Commanding Officer.

I hope, Mr. McKeen [sic], that this letter will serve as a foundation upon which our first interview may be based. I think you will agree that it is hardly necessary for me to go into greater detail, when all the facts will be made available to you through the official channels. However, any questions you may wish to ask I shall be only too pleased to answer, when I have the privilege of meeting you personally. Furthermore, I may say that I have, on the 12th Instant, written to the Department of Justice for their approval of my request to consult you.

In closing, I should like to repeat my words of thanks to you and to Mr. Ritchie, for your willingness to help me.

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E2. Top Secret, Cabinet Conclusions, Ottawa, 16 March 1950.[41]

Kurt Meyer; future detention

17. *The Minister of National Defence* (Mr. B. Claxton) reported there had been some public discussion of the continued detention of Kurt Meyer who was at present held in Dorchester Penitentiary. Meyer had originally been sentenced to execution but commutation to life imprisonment had been granted. It was now being suggested, however, that the evidence had not been conclusive, and that release and return to Germany or, transfer to a military detention barracks should be authorized.

Reports from chaplains and prison authorities were to the effect that Meyer's behaviour had been correct and that he was of good character but that he remained an unregenerate Nazi. Release and return to Germany seemed undesirable.

18. *The Secretary of State for External Affairs* (Mr. L.B. Pearson) mentioned that certain war criminals were held in a prison in Berlin under four-power jurisdiction. It might be desirable to ascertain whether Meyer could be transferred there.

19. *The Cabinet*, after discussion, agreed that confidential enquiries be made to ascertain whether it might be possible to arrange for the transfer of Kurt Meyer for future detention with other war criminals in Germany.

E3. Petition of Kurt Meyer, December 1950.[42]

Petition of Kurt Meyer and Memorandum by Counsel re: Trial, Conviction and Sentence:

IN THE MATTER OF: PARAGRAPH 574 OF THE KING'S REGULATIONS AND ORDERS FOR THE CANADIAN MILITIA

-and-

IN THE MATTER OF: THE WAR CRIMES REGULATION (CANADA) AS ENACTED BY CHAPTER 73 OF THE STATUTES OF CANADA, 1946

-and-

IN THE MATTER OF: KURT MEYER, A GERMAN CITIZEN PRESENTLY CONFINED IN DORCHESTER PENITENTIARY, IN THE PROVINCE OF NEW BRUNSWICK.

TO: HIS EXCELLENCY FIELD MARSHAL THE RIGHT HONOURABLE VISCOUNT ALEXANDER OF TUNIS, KNIGHT GRAND CROSS OF THE MOST HONOURABLE ORDER OF THE BATH, KNIGHT GRAND CROSS OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE, COMPANION OF THE MOST EXALTED ORDER OF THE STAR OF INDIA, COMPANION OF THE DISTINGUISHED SERVICE ORDER, UPON WHOM HAS BEEN CONFERRED THE DECORATION OF THE MILITARY CROSS, ONE OF HIS MAJESTY'S AIDES-DE-CAMP GENERAL, GOVERNOR GENERAL AND COMMANDER-IN-CHIEF OF THE DOMINION OF CANADA.

THE PETITION of KURT MEYER, formerly a Major-General in the Waffen SS, a part of the armed forces of the German Reich, a German citizen, presently serving a sentence of life imprisonment at Dorchester Penitentiary in the Province of New Brunswick, in the Dominion of Canada.

HUMBLY SHEWETH:

1. *THAT* between the 10 and 28 days of December, 1945, I was tried before a Canadian Military Court at Aurich, Germany, convened pursuant to the purported authority of Canadian Privy Council Order No. 5831 (War Crimes Regulations, Canada), for committing the five war crimes more fully described in the charge sheet annexed hereto as "Schedule A". The said Court found me to be not guilty of the second and third charges and guilty of the first,

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fourth, and fifth charges. Whereupon I was sentenced to death by shooting, which said sentence was thereafter commuted to one of life imprisonment by the convening officer on the ground that my degree of responsibility did not warrant the extreme penalty...

19. *THAT* on the morning of 7 June, our Regimental Headquarters were located southwest of Caen. I ordered my troops to form up for an attack and conducted a personal recce which took me through St. Germaine to Cussy and thence to Abbey Ardenne where I was able to see from the Abbey tower the terrain to the North as far as the sea. I located myself in the Abbey tower as aforesaid in the early afternoon of 7 June. I then returned to the crossroads at St. Germaine and arranged for my main headquarters to be brought up there. Subsequently, I returned to the Abbey and there established a small tactical headquarters. This was the late afternoon of 7 June. After the Regiment had formed up, I gave the order to attack from the tower. In the vicinity of the Abbey, I saw troops of the 21st Panzer Division, Ack-Ack Units and Coast Defence Battalions. From the Abbey, I could see prisoners of war coming out of Authie in the direction of Ardenne. I could also see the Commanding Officer of the 3rd Battalion at the crossroads between Buron and Authie. I proceeded by motorcycle to interview this Officer, passing through Cussy en route. After I had a short conversation with the 3rd Battalion Commander, I returned through Cussy. At this place I found about 100 Canadian prisoners of war in an orchard. They had their hands up. I told the guard to permit the prisoners to smoke. The guard consisted of military police who were under the direct command of the Divisional Intelligence Officer who was present at the time. There was an elderly officer of the North Nova Scotia Highlanders amongst these prisoners who may have been Captain McConvy. Later I saw this same group of prisoners at the Abbey. The Officer who may have been Captain McConvy was amongst them. I had a short conversation with him. He had pictures of his family which he showed me.

20. *THAT* as I anticipated heavy artillery fire, I told the Divisional Intelligence Officer that it was time to leave with his prisoners. I later noticed that he had given orders to form the prisoners up in marching order. This was the only occasion on which I saw prisoners in the Abbey during the 8 or 9 of June, 1944. The only other time I saw a prisoner was on the 9 or 10 June when men from my 3rd Battalion brought in one Canadian soldier who appeared frightened and famished. I ordered the guard to give him food and I saw him eating. I then ordered the guard to take him to Division.

21. *THAT* from the time I first saw the prisoners in the orchard at Cussy until they left the Abbey, they were under the direct charge of the Divisional Intelligence Officer. The Divisional Intelligence Officer is a Divisional Officer and was in no sense a member of any formation, unit, body or group under my command, nor was I, in any sense, responsible for his actions other than derelictions of duty which I had knowledge and which I could have prevented. I further say that one section of Feldgendarmerie or field police who were divisional troops was placed at my disposal for purposes of traffic control and prisoners of war evacuation during the course of this operation. For purposes of discipline, this section was under the command of its own senior NCO who was directly responsible to Division. As Regimental Commander my control of this section was strictly limited to its operational role and I was in no sense responsible for its training or discipline. I had power of arrest, but not of punishment for military offences of which I had knowledge. Save as aforesaid, the said Feldgendarmerie were not members of any formation, unit, body or group under my command.

22. *THAT* in the event of a breach of discipline or misconduct in my Regimental area by the Divisional Intelligence Officer or the military police coming to my notice, I had no powers of punishment. I could only place the offender under arrest and report the incident to the appropriate Divisional Officer.

23. *THAT* the Divisional Intelligence Officer, whom I saw in charge of the prisoners on 7 June was not wearing camouflage uniform, but was wearing a cap, tunic, riding breeches and high boots. He spoke some English. I believe his name was Poldi.

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24. *THAT* during the night of June 7 and 8, I remained in the Abbey observing the beachhead and doing other work at my table. At this time, I also discussed the situation with the commanders of other formations. During the period of 7 and 8 June the Abbey served me as a Tactical Headquarters and Observation Post. The permanent staff there consisted of my acting Ordannanz Officer,... a signal officer and three or more signallers and my driver. There were of course troops of other units in and out of the Abbey all this while, including Artillery Observers and Feldgendarmerie.

25. *THAT* at first light on 8 June, I climbed the tower and reviewed the front and decided to use my regiment to support that part of my own Division on my left flank in a thrust toward Bayeux. I drove to the Headquarters of the 1st Battalion to direct its Commander to release a company to assist in the Bayeux thrust. I walked with this Commander to the Headquarters of the 2nd Battalion. I then drove through St. Contest to Buron. I walked through the positions on foot and went to the 3rd Battalion's Headquarters. I informed the Commander of the 3rd Battalion that part of the Panzer Regiment supported by the 15th Company would attack in the evening toward Bretteville and that the 16th Company of the 1st Battalion would take up positions on his left and be placed under his command. I went to Gruchy, thence to a chateau west of Authie to visit parts of the 15th Company. From the chateau I went to a flak position near Franqueville where parts of the 13th Company were located. I reconnoitred this area for attack. From Franqueville I drove to a standing patrol of the 15th Company at point 69 one kilometre East of Rots. From point 69, I groped forward to a house south of Caen-Bayeux Road (Caen Sheet: 7 F1 – 1/50,000: MR 958704). From there I drove to the main Regimental Headquarters at St. Germain. There I informed the Adjutant about the plan of attack. I returned to the Abbey between 12 noon and 1pm. Then I went straight to the top of the tower...

26. *THAT* on the tower I discussed the plan of attack with the other officers. I lunched with the Officer Commanding the Tank Regiment and then slept until shortly before dusk, when I arranged to have the tanks go forward to the Franqueville position to be mounted by the 15th Company. From Franqueville I preceded the attack on my motorcycle. In this attack, the Officer Commanding of the 15th Company was killed. My driver was also killed. I was set on fire by petrol. The attack in Bretteville could not be maintained and in the early morning hours of 9 June, I withdrew my troops to the heights near Rots.

27. *THAT* throughout June 6, 7, and 8, I was dressed in camouflage uniform. At no time during this period was I dressed in a long rubber coat as described by the witness Jesionek… I have heard and have read the evidence of Jesionek…, and I say neither on June 8 nor at any other time did a guard or any other soldier report to me in the presence of any prisoners in the Abbey Ardenne, nor was I aware of the events related by Jesionek in these pages or of any like events (save as related in the following paragraph hereof) until I heard them recounted at my trial. If, as suggested, these events occurred on the morning of 8 June, it will be seen from the above that I was not present at the Abbey Ardenne at that time, but was engaged on important duties elsewhere. Furthermore, the alleged shootings took place in an area which was enclosed by a high wall and even had I been present in the Abbey at the time, the noise of battle and the enclosed nature of the area would have made it well nigh impossible for me to hear or heed the sound of shots.

28. *THAT* as to the matters alleged in the fourth and fifth charges against me and on which I was found guilty, I had no knowledge of the circumstances under which the eighteen Canadians referred to were killed, nor did I know they had been killed until about the 11 of June 1944, when the finding of eighteen or nineteen bodies near the Abbey was reported to me by two Officers. I then took such action as the circumstances permitted in that I returned my Adjutant to his platoon for his failure to report the matter sooner and his inability to give me an explanation. I also reported the matter to my Divisional Commander.

29. *THAT* it is true that when first interrogated, I denied all knowledge of the killing of prisoners in the vicinity of the Abbey Ardenne. At that time, the war was still in progress and I felt that if I admitted that prisoners had been killed, such a statement by me would be used for propaganda purposes by the enemy and so to the detriment of my com-

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rades who were still fighting. I adhered to this statement until a subsequent interrogation in October, 1945, when I admitted that I had been informed of the event...

33. *THAT* my said trial was conducted under and pursuant to the regulations and procedure laid down by Canadian Privy Council Order 5831, purporting to be passed pursuant to the War Measures Act, Ch 206, R.S.C. 1927. Though it was unknown to me at the time, I am now advised by Counsel that the said War Measures Act or the said P.C. 5831 had no force or effect outside of Canada at the time I was so tried. Further, I am advised by Counsel that the penalties prescribed by said P.C. 5831 exceeded any penalties provided by said War Measures Act. I, therefore, respectfully submit that my trial, conviction and sentence were illegal.

34. *THAT* I am aware that the War Crimes Act, C. 73, statutes of Canada, 1945, was passed in the year following my conviction, purporting to legalize the proceedings that had already been taken against me. I am advised by Counsel that legalizing an illegal criminal proceeding by an Act of Parliament is without precedent in English or Canadian History.

35. *THAT* as to the "First Charge," of which I was found guilty, I have already denied that in any way whatsoever I incited or counselled troops under my command to deny quarter to Allied troops. I was convicted under the "Fourth and Fifth Charges" of responsibility for the killing of prisoners of war by troops under my command. Even if the killing of prisoners by troops under my command had been established, I submit that I was in no sense criminally responsible for such killing. I am well aware that a Commanding Officer is responsible for the discipline of his troops. I did not know, and I am advised by Counsel it was an unknown principle of law until the time of my trial that a Commanding Officer was criminally responsible for crimes committed by his troops of which he had no knowledge and to which he was in no sense privy. Again, even if it had been proved that the Canadian soldiers referred to in the "Fourth and Fifth Charges" had been killed as alleged by troops under my command, in assessing my degree of responsibility for the same, I respectfully submit that consideration should be given to the following facts:

    (1) The 25th Panzer Grenadier Regiment was composed largely of youths under eighteen years of age.

    (2) The alleged offences took place on the first and second days the Regiment was actually in battle.

    (3) As pointed out above, I was fully occupied all of both days with grave responsibilities and onerous duties which took me to all parts of my Regimental Area on numerous occasions.

    (4) In the circumstances of the battle, there was no way in which I could exercise more control over my men than I did.

    (5) The matter did not come to my knowledge until two days after it had happened.

    If, after considering the above, it is still felt that a degree of criminal or even moral responsibility attaches to me, I submit that five years imprisonment has expiated my crime.

36. *THAT* M.P. MacKeon, K.C. and R.A. Ritchie, K.C., both of Halifax, N.S., have been retained as Counsel on my behalf. I crave leave to submit herewith a memorandum written by them respecting my trial, convicting, and sentence.

37. *THAT* I am a soldier by profession and if my services could be used by the Canadian Government of The United Nations, I would gladly offer them in any capacity providing such service would not conflict with my loyalty to my own country.

THEREFORE Your Petitioner humbly prays:

THAT he be pardoned or that the balance of his sentence be commuted.

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DATED at Dorchester, in the Province of New Brunswick, 8 December, A.D. 1950.

(Sgd) Kurt Meyer
PETITIONER

AFFIDAVIT OF KURT MEYER

I, Kurt Meyer, presently confined in Dorchester Penitentiary at Dorchester in the Province of New Brunswick, make oath and say as follows:

THAT I am the Petitioner named in the foregoing Petition and have personal knowledge of the matters therein set forth;

THAT the statements set forth in Paragraphs 1 to 37, both inclusive, of the said Petition are true in substance and in fact.

SWORN to before me at Dorchester in this Province of New Brunswick this eighth day of December, A.D. 1950.

(Sgd) P.C. Brian *(Sgd) Kurt Meyer*
A notary Public in and for the Province of New Brunswick

MEMORANDUM BY COUNSEL
RE TRIAL, CONVICTION, & SENTENCE OF KURT MEYER

We have been asked to investigate the circumstances surrounding the trial, conviction and sentence of Kurt Meyer, presently serving a life sentence at Dorchester Penitentiary, and to take such steps as may be necessary to obtain a review of his case.

We suggest that the fundamental question to be considered is whether Meyer has been dealt with according to recognized standards of justice. If the proceedings against him deviated from these standards, it is, of course, only axiomatic to say that justice was lacking. In the light of this criterion we have examined the salient phases of the trial.

We have not attempted to comment on a great number of the irregularities that occurred during the proceedings, but have confined our observations to features of the case which we believe offend against a normal sense of justice. In saying this, and in the observations following, we in no sense question the ability and integrity of the Court, the Learned Judge Advocate, or the able and painstaking Counsel who acted for both Prosecution and Defence. When we consider the frequency with which rulings by experienced Trial Judges administering a system of law, which has been their life's work, are set aside as miscarriages of justice, it little wonder that a Court consisting largely of laymen and operating under a set of regulations foreign to all known concepts of procedure and justice, would make many grievous errors prejudicial to the Accused.

We have carefully perused the record, the relevant Statutes and jurisprudence and we believe the subject can be conveniently discussed under the following [headings]:

1. Historical survey based on uncontradicted Evidence.
2. War Crimes Regulations, Canada, P.C. 5831, 1945.
3. The effect of Chapter 73 of 1946 "An Act of respecting War Crimes".
4. Section 10 (1) and (2) of the Regulations.
5. Section 10 (3), (4) and (5) of the Regulations.
6. As to the First Charge of which Meyer was convicted.

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7. As to the Second Charge of which Meyer was acquitted.

8. As to the Third Charge of which Meyer was acquitted.

9. As to the Fifth Charge of which Meyer was convicted.

10. As to the Fourth Charge of which Meyer was convicted.

11. Command Responsibility.

1. HISTORICAL SURVEY BASED ON UNCONTRADICTED EVIDENCE:
… On 30 August, 1945, The War Crimes Regulations (Canada), (hereinafter referred to as "Regulations") were passed by the Governor-in-Council as P.C. 5831. These Regulations were passed under the purported authority of the War Measures Act, Chapter 206, R.S.C. 1927.

In the meantime, Meyer was held at different prisoner-of-war camps and interrogation centres where he was interrogated a number of times by various investigation authorities. He was apparently not cautioned until his final interrogation on October 28, 1945.

… On August 31, 1946, an Act Respecting War Crimes, Chap. 73. 1946, was passed by the Parliament of Canada. This Act re-enacted the said War Crimes Regulations in statutory form and gave them retroactive operation as from August 30, 1945.

2. WAR CRIMES REGULATIONS, CANADA, P.C. 5831, 1945.
It is next pertinent to enquire as to the legality of the Regulations under the provisions of which Meyer was tried, convicted and sentenced.

According to the Privy Council Minute preceding the Regulations, they were passed under the authority of the "War Measures Act... to govern the custody, trial, and punishment of prisoners charged with violations of the laws and usages of war committed during any war in which Canada has been engaged..."

An examination of the War Measures Act fails to disclose any intention on the part of the Legislature to give this Act extra territorial effect, particularly with respect to foreign nationals residing outside of Canada...

As Meyer was a foreign national in a foreign country, it is submitted that at the time and place of his trial, the Regulations had no force or effect, that the Court was illegally convened and that all the ensuing proceedings were illegal and void and consequently unjust.

In this connection, it should be noted that Section 11 of the Regulations authorizes the following penalties:

(a) Death (either by hanging or by shooting);

(b) Imprisonment for life or for any less term;

(c) Confiscation;

(d) A fine.

The penalties authorized by the War Measures Act are set out in Section 4 thereof, which reads as follows:

"The Governor-in-Council may prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and may also prescribe whether such penalties shall be imposed upon summary conviction or upon

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indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or both fine and imprisonment."

Whether the above Section 4 may mean, it does not appear to authorize the death penalty or life imprisonment as prescribed by the Regulations purportedly authorized by this Act. In *REFERENCE RE REGULATIONS (CHEMICAL) UNDER WAR MEASURES ACT, 1943, 1 D.L.R., 248*, the Supreme Court of Canada held that Section 4 of the Regulations made by the Governor-in-Council in relation to chemicals was ultra vires the Governor-in-Council as being in conflict with Section 7 of the War Measures Act. It is apparent Section 11 of the Regulations is in conflict with Section 4 of the War Measures Act. It, of course, follows that Meyer was illegally sentenced to death and to life imprisonment.

3. THE EFFECT OF CHAPTER 73 OF 1946 "AN ACT OF RESPECTING WAR CRIMES".
The necessity of passing this legislation is an admission that the Regulations by themselves were invalid. Meyer's trial, including as it did the abrogation of the laws of evidence and presumption of innocence, the conviction and sentence were all illegal and, therefore, unjust until 31 August, 1946, when the above act became law.

A search through the annals of British and Canadian legal history fails to reveal a similar situation. While the War Crimes act, 1946, may legalize the proceedings previously taken, it does not remove the injustices.

If we are correct on our view that Meyer's trial, conviction and sentence were illegal, it would follow that up until the time that Chapter 73 of 1946 was passed, his conviction and sentence could have been set aside by *habeas corpus* proceedings. The present situation is that Meyer is probably the only person in the English speaking world who is held in prison by virtue of a retroactive Act of Parliament passed more than two years after the commission of the alleged offence.

4. SECTION 10 (1) AND (2) OF THE REGULATIONS.
… Even on the assumption that the Regulations were valid at the time Meyer was tried, it is submitted Section 10 (1) including subsections (a) to (g) imposed an injustice on the accused in that they abrogate the rules of evidence which have grown up through the centuries and apply in every Anglo-American jurisdiction. Referring to similar regulations issued to the American Military Commission which tried the Japanese General Yamashita, Mr. Justice Rutledge of the Supreme Court of the United States said at page 57 *VOL IV LAW REPORTS OF TRIALS OF WAR CRIMINALS*:

"A more complete abrogation of the customary safeguards relating to the proof, whether in the usual rules of evidence or any reasonable substitute and whether for use in the trial of crime in the civil courts or military tribunals, hardly could have been made. So far as the admissibility and probative value of evidence was concerned, the directive made the Commission a law unto itself."

Assuming that Section 10 (1) of the Regulations permitted the Prosecution to introduce hearsay evidence, it could never have been the intention of the Governor-in-Council that this latitude would be used and abused to the extent which the record indicates. We quote a few of the more glaring examples of violations of the hearsay rule.

"*Q:* Now, during the course of action did you hear that any of your fellow soldiers had either refuse to take prisoners or had shot prisoners after they had been captured? *A:* I only know from one case, one Mueller, that he once in my presence mentioned that he, Mueller, had shot prisoners."

"*Q:* Now, who was the Administrative Officer of the Regiment? *A:* Obersturmführer Huffendieck.

Q: And did you have any conversation with him with relation to the matter of prisoners of war? *A:* Yes, Sir.

Q: What did he say to you about it? *A:* He said he heard that the shooting of prisoners was reported to have taken place.

Q: Did he say from whom he had heard that? *A:* No, he didn't say that.

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Judge-Advocate: That is double hearsay.

Q: Do you know where he had heard it, did he mention that? *A:* No."

... That the Prosecution availed themselves to the full of the provisions of Section 10 (1) (a) – (g) is shown by the fact that out of some fifty-five "witnesses" whose "evidence" was presented by the Prosecution only thirty-one appeared in Court and took the stand. The evidence of the remaining twenty-four was presented by means of SHAEF reports, interrogations conducted by the War Crimes Investigation Unit and by Affidavit. To this extent were the proceedings stripped of all semblance of a trial and converted into an *ex parte*[43] investigation?

With regard to these twenty-four witnesses the Accused was denied the right to cross-examine and, therefore, to make full answer and defence. This is fully discussed... below. Of this latter group of absent witnesses not in one instance was any evidence given that the witness was dead or was unable to attend to give evidence. There was no evidence on which the Court could form an opinion that it was not practical for the witness to do so. (See remarks re Torbanisch's evidence below)...

A conviction obtained in a trial where the usual safeguards as to the reception of evidence are lacking should be viewed with great suspicion. It follows that a life sentence imposed in a trial where these safeguards were lacking and at a time when feelings were inflamed, is a proper subject for a careful and sympathetic review, the prisoner having now been confined for upwards of six years.

5. Section 10 (3), (4) and (5) of the Regulations.
… These subsections will be discussed at some length later. Suffice it to say here that they abrogate a fundamental principle of law in that they shift the burden of proof to the Accused commander when there is evidence that more than one war crime has been committed by members of a formation, unit, body or group under the command of such commander (4), or when there is evidence that a war crime has been committed by members of a formation, unit, body or group and that an officer or non-commissioned officer was present at or immediately before the crime was committed (5) without any proof that the commander had in any sense participated in or had knowledge of the crime being committed. Nothing could be more foreign to the well-established principle of law that the burden is on the Crown to prove every ingredient of the offence beyond a reasonable doubt. There can be no more important ingredient than that of participation, which under the above regulation can be assumed when not proved.

In appraising the justice and fairness of Section 10 of the Regulations, it is only necessary to bear in mind the standard set by Lord Sankey in the House of Lords in *MAXELL V DIRECTOR OF PUBLIC PROSECUTIONS, 103 L.J.K.B. 501 at p. 508*, the Lord Chancellor said:

> *"It must be remembered that the whole policy of English criminal law has been to see that as against the prisoner every rule is broken so as to prejudice the chance of the jury fairly trying the true issues? It is often better that one guilty man should escape than that the general rules evolved by the dictates of justice for the conduct of criminal prosecutions should be disregarded and discredited."*

It is a sobering thought that traitors such as Casement, Joyce and Emory, not to mention some of the revolting murderers in history had at their trials the benefit of the "rules evolved by the dictates of justice" to which Lord Sankey refers – but not so Meyer.

6. AS TO THE FIRST CHARGE OF WHICH MEYER WAS CONVICTED
... The following material was tendered in proof of this Charge:

(a) The secondhand statement of Frederick Torbanisch;

(b) Interrogation of Meyer by Canadian War Crimes Investigation Unit;

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(c) The evidence of Horst Heyer;

(d) The evidence of Jan Jesionek;

(e) Cross-examination of Meyer.

It is proposed to discuss the above witnesses separately.

(a) GRENADIER FREDERICK TORBANISCH – Late 15 Coy. 25 P.R.
This man was not called as a witness before the Court, but an alleged transcript of his examination before the SHAEF Court of Inquiry was read into the record by the Prosecuting Officer... It is submitted that none of the Torbanisch evidence contained in the SHAEF Report should have been admitted in evidence on the trial of Meyer.

It is of course unnecessary to argue that there is no process known to law by which the SHAEF Report of what Torbanisch may have said could be evidence against Meyer were it not for the "Regulations."

But it is submitted that, even under the Regulations which must be strictly construed, the SHAEF Report was improperly admitted…

Section 10 (1) (a) of the Regulations provides:
"If any witness is dead or is unable to attend or to give evidence or it is, in the opinion of the court, not practicable for him to do so, the Court may receive secondary evidence of statements made by or attributable to such witness."*

The groundwork to make the Report admissible under this sub-section was not laid. No evidence was given to the effect that Torbanisch was dead or was unable to give evidence…

Particularly it is submitted that the document, Exhibit T3, should have been rejected as evidence for the following reasons:

(1) There is no proof whatever of its origin, authenticity or authorship other than the statement of the Prosecuting Officer that it is a photostatic copy of Orders *dictated* by Torbanisch to Loras Swei;

(2) It was introduced into the SHAEF Report by cross-examination and leading of the most offensive kind – (see question by Col. Macdonald above quoted and appearing [in] the Record.) It will be recalled that at the time this leading question was put to him, this eighteen year old deserter had been recently been captured by the Allies. It is small wonder that when presented with the document and told it purported to be a copy of an order *which he said* had been read to him that he answered in the affirmative.

The fact that Exhibit T3 was introduced by the medium of the SHEAF Report does not make it evidence even under the Regulations. If Torbanisch had been present in Court, the document could not have been shown to him in the way it was by Colonel Macdonald at the SHAEF Court and then marked as an exhibit. Giving the Regulations their widest meaning, it cannot be said they provide the Prosecution with a means of getting before the court under the guise of "statements" questions and answers which would not be permitted or admissible if the witness was on the stand in Court.

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* *Section 10 (1) (d) of the Regulations set out the type of secondary evidence which may be admitted when the provision of sub-section 10 (1) (a) had been compiled with.*

By the Prosecution tendering the SHAEF report of Torbanisch's evidence and the Court permitting it to be read into the record without Torbanisch being called to the stand (no adequate reason being given for his non-appearance), a miscarriage of justice occurred of most grave consequences to Meyer.

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(1) The Prosecution was able to get before the Court a cross-examination of its own witness conducted by the Prosecution on its own behalf;

(2) The Accused was denied the right to make full answer and defence in that no opportunity was afforded his Counsel to cross-examine the witness.

Full answer and defence is the right of every accused person who is being tried in a Court pretending to administer the British system of justice…

As pointed out above, these same observations apply to the evidence of the twenty-three other witnesses whose evidence was read into the record by various means... The record indicates that in only two instances were these absent witnesses cross-examined on behalf of the Accused.

(3) The Prosecution was able to get before the Court Exhibit T3 in its highly damaging form, something that could not have been accomplished if Torbanisch had been called in person.

(b) THE EVIDENCE OF ALFRED HALZEL

… Without the witness being declared hostile, the Prosecutor then proceeded to viciously cross-examine him on his interrogation by No. 1 War Crimes Investigation Unit at Hull, P.Q. in July 1945. By this method, a large number of leading questions that had been asked the witness on his interrogation were introduced into the record of the trial.

We quote the following as an example of this type of examination-in-chief which was permitted of this witness:

…"*Q:* 'He has told us that at Montague shortly before you left for France that Stabscharführer Hagetorn had a company assembly at six o'clock on this particular evening and that at that time he gave you certain secret orders, and you were required to sign that you had heard the orders given to you. The orders had to do with your behaviour in France with regard to the civilian population and what you should do about taking prisoners, and other things'? And your answer: 'Yes, we signed that order'? *A:* Yes.

Q: 'And do you remember that one of the orders gave you at that time was that SS would not take prisoners, and that the British did not take SS prisoners and therefore you would not take prisoners?' Your answer to that was 'Yes, Sir'. Do you remember that question and making that answer? *A:* Yes.

Q: And then this question: 'But the fact is that you do remember an order being given to you that the SS troops would take no prisoners?' This question was asked after you had made corrections in the order as you have today. And your answer to that question was, 'At that time that order was given'? *A:* Yes…

At this point but not before, the Judge Advocate pointed out to the Prosecuting Officer that he was, in effect, treating his own witness as hostile; nevertheless the cross-examination continued.

... The Court made a *nune pro tune* ruling that the witness had been treated as hostile throughout. The whole procedure was irregular and illegal. The Court should not have permitted the Prosecutor to cross-examine the witness, particularly on his interrogation, before he was declared hostile throughout. Apparently, the *nune pro tune* ruling of hostility was based on the apparent contradictions between his evidence and interrogation.

In *REX v MAY 21, D.L.R. 728*, the Trial Judge though that although there was nothing to lead him to say that the witness had proved adverse, yet in order to decide that question he might receive the evidence of a previous statement alleged to be at variance with an answer the witness had just given in the box. The British Columbia Court of Appeal held that the ruling of the Trial Judge that the witness is adverse is a condition precedent to the admissibility of evidence of a previous contradictory statement. The Judge is, therefore, not entitled to admit the previous statement in order to determine whether or not the witness is adverse….

It is, therefore, submitted that Meyer suffered a grave injustice in the following respects:

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(1) By the Prosecuting Officer being permitted to cross-examine his witness, particularly with respect to his interrogation by the War Crimes Investigation Unit;

(2) By the record of this interrogation consisting largely of cross-examination being admitted in evidence and marked as Exhibit T4.

(c) INTERROGATION OF MEYER BY CANADIAN WAR CRIMES INVESTIGATION UNIT.
The objection raised above as to the propriety of introducing the interrogation of Alfred Halzel into the record under the guise of a "statement" applies equally to the action of the Prosecution in introducing as part of its case on the first and other charges interrogation of Meyer by the Canadian War Crimes Investigation Unit. These interrogations contain a great deal of cross-examination of the type particularly frowned on by Courts of Justice. To quote a few examples:

Q: "First of all, I understand that Haupsturmführer von Buettner was your adjutant until about a week before the invasion. Is that correct?"

Q: "And I believe that you, in the course of your introduction, spoke to the troops about the possibility of an invasion."

Q: "And I understand you told the troops von Buettner was an excellent officer in whom you had the greatest confidence."

Q: "Now, I am also told that you regarded the 15th Company in a somewhat personal way, perhaps as your own Company."

Q: "Now, I have been told by officers and men of your unit that it was invariably your practice in fighting to be well forward with the troops."

Q: "Now, on the morning of 8 June, there is evidence that you were at the Abbaye."

Q: "But I have been told that as a consequence of low flying attacks from enemy planes that you thought the vehicles should be put inside the buildings so they would be less conspicuous, etc."

As pointed out above, neither Section 10 (1) nor 10 (1) (g) of the Regulations gives the Prosecution any more right to introduce a "statement" by the Accused in evidence than does Section 685 of the Criminal Code. The Courts have long held that it is improper to obtain such statements by cross-examination,... and that statements so obtained are inadmissible...

Further, the Learned Judge Advocate should have instructed the Court that the answers given by the Accused on these interrogations where he had not been cautioned were of no probative value of any kind, either as going to the credit of the Accused as a witness or otherwise per Ford J.W. in *R. v WILMOT, 3 D.D.R. 359*. No such instructions were given.

Again, it is submitted Meyer suffered an injustice by the Court permitting his interrogations by the War Crimes Investigation Unit to be read into the record.

(d) THE EVIDENCE OF HORST HEYER
This witness was a private soldier, 3rd Company, 1st Battalion, 25th Regiment, 12th SS Panzer Division. He was captured in Caen on 12 July 1944. He could not remember being given instructions during the course of his training with respect to the taking of prisoners – page 82. He said that shortly before action on 6 June, the Company Commander Oberleutnant Fuchs "approximately expressed himself as follows: that we should not take prisoners".

"*Q:* And what was your impression with respect to these order? Did you feel that these were his personal instructions? *A:* I, personally, am inclined to believe that it had some reference to what Standartenführer Meyer had at one time said in an address in Beverloo, but I cannot be quite certain."

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The question and answer are clearly improper, the former as leading, the latter as conjecture, and should have been stricken from the record. He further said that at Beverloo, Meyer had said when addressing the Regiment "My Regiment takes no prisoners". In cross-examination, this witness said he could not remember having been told by any Officers of NCOs to shoot prisoners…

Heyer's evidence is significant in two respects:

(1) His statement that Meyer at Beverloo said, "My Regiment takes no prisoners." It is clear from the first question and answer quoted above that the witness is confused as to whether Meyer said "my Regiment takes no prisoners" or "I don't want any of my troops to be made prisoners."

That he was so confused is borne out by the fact that the statement which he had attributed to Meyer made no lasting impression on him…

It is remarkable that no other witness called by the Prosecution from amongst the troops of the 25th Regiment heard Meyer say at Beverloo "my Regiment takes no prisoners."

(2) The statement attributed to the Company Commander Fuchs on 6 June to the effect that the Company should not take prisoners.

(a) This statement was not made in the presence of Meyer and consequently should not have been admitted.

(b) If, as the witness surmised and as to which he was permitted to give evidence, this statement by Fuchs was connected with Meyer's alleged statement at Beverloo, it is strange the Company Commander waited six months before instructing his Company in accordance with the Regimental Commander's orders.

It is doubtful if Fuchs ever gave any such order because the witness admits that a patrol took two prisoners.

(e) THE EVIDENCE OF JAN JESIONEK
... Jesionek says he heard Meyer say he was now giving this Company to his very best Officer, that they would now soon go into action and that "we on the reprisal should not imagine a weapon which would produce wonders but we ourselves should make the reprisals on English prisoners-of-war."

Jesionek's cross-examination on this point appears:

"*Q:* Referring to Meyer's LeSap speech: *Q:* Can you not remember the exact language that he used? *A:* As well as I can remember he said something running along the following lines: "We must not believe in a new weapon; we must look after the retaliation ourselves because our German cities have been destroyed. We must remember that the women and children have been destroyed" and he mentioned the fact that he was giving us a new Company Commander who had fought for a long time in Russia and that we could rely upon the new Company Commander. He gave the order that when officers ran away we had the right to shoot them.'"

... In view of Jesionek's uncertainty as to the words, his evidence falls far short of proving beyond reasonable doubt that Meyer said "We ourselves should make the reprisals on English prisoners-of-war". Indeed the circumstances strongly suggest that what Meyer said was that *reprisals should be made against Englishmen*. At the time he was endeavouring to enthuse his troops and it would surely be more inspiring for him to tell his troops to "get at" the Englishmen than at prisoners-of-war. There can be no doubt that Meyer would use the most effective language.

Jesionek says that while at LeSap, von Buettner, the Company Commander, said "May others do as they please – our Company takes no prisoners".

If this evidence is believed, it indicates strongly that the order not to take prisoners was not a regimental order, but von Buettner's order to his own company. If it had been a regimental order, von Buettner would certainly have stated the fact

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and would not have said the other Companies could do as they "please". They could not do as they please if a regimental order had been issued.

If von Buettner made such a statement to his own Company it in no way reflects on Meyer, nor is he responsible for it except as made so by Regulations which at that time had no force or effect even under the retroactive provisions of Chapter 73 of 1946.

It is perhaps enough to say with regard to Jesionek that the Court did not believe his evidence on the Third Charge as will hereafter appear; accordingly his evidence relating to the First Charge should receive little or no consideration.

(f) CROSS-EXAMINATION OF MEYER

One of the main reasons advanced by the Prosecution for the conviction of Meyer on the First Charge was that Meyer had stated to one or more of his subordinate Officers that during the Russian campaign it was necessary to shoot prisoners (Prosecutor's address)….

If the Court accepted the Prosecution' contention that this statement of a past even amounted to inciting and counseling troops under his command to deny quarter to Allied Troops, they misunderstood and misapplied the plain meaning of the words. "Incite" means to rouse, to stimulate, to urge or spur on, to stir up. See Oxford Dictionary, *YOUNG V. CASSELS, 1914, 33 N.Z.L.R. 852*. "Counsel" means to advise or recommend; urge the adoption of. See Century Dictionary. It will be observed the Learned Judge-Advocate did not instruct the Court as to the meaning to be attached to words "incite" and "Counsel."

It is submitted that no fair minded person reading the record impartially can avoid the conclusion that less than justice was done when it is considered that Meyer was convicted of this Charge on the welter of inadmissible, self-contradictory evidence some of which was obtained under highly questionable circumstances, and little of which would have been admitted in any British or Canadian Court of Justice.

If the illegal and improper evidence had been excluded as it should have been, the Court could not have found Meyer guilty beyond a reasonable doubt. It is submitted that so far as a conviction under this Charge pertains to the duration of Meyer's imprisonment, it can be safely disregarded.

7. AS TO THE SECOND CHARGE OF WHICH MEYER WAS ACQUITTED.

... An excellent summary of the evidence given in support of the Charge appears in 4 L.R. Trials of War Criminals at page 102. In view of the evidence that troops of other formations were in the neighbourhood of Buron and Authie, the Court had no alternative but to acquit Meyer of this Charge.

8. AS TO THE THIRD CHARGE OF WHICH MEYER WAS ACQUITTED.

... The only evidence given in support of this Charge is given by the Polish deserter Jan Jesionek. His evidence is summarized in *4 L.R. Trials of War Criminals* at page 103….

Jesionek further said that before the prisoners were marched into the park they were interrogated by and Officer. "He was fairly tall, had boots on, riding breeches and tunic". Jesionek had never seen the Unterscharführer who did the shooting before that day. He said that on the occasion, Meyer "wore a motor cycle rubber coat which goes down to the ankles."

A perusal of Jesionek's evidence makes it clear that if the Court did believe him, it would have had no alternative but to find Meyer guilty of "*giving orders to troops under his command to kill seven Canadian prisoners of war*." … It is apparent that the Court did not believe Jesionek, certainly insofar as he identifies Meyer. When one compares the two totally different versions of the alleged occurrences at the Abbey Ardenne which Jesionek gave to the American Authorities when he was captured... and which he gave on the witness stand, it is obvious that little credence should be placed in his evidence.

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Further, Jesionek asserted that the man he identified as Meyer was dressed in a long rubber coat. The evidence is overwhelming that Meyer was dressed throughout in camouflage uniform. This indicates the veracity or at least the accuracy of the witness.

9. AS TO THE FIFTH CHARGE OF WHICH MEYER WAS CONVICTED.
It will be convenient to discuss this Charge before the Fourth Charge because it refers to an earlier event and the evidence adduced in support of the Fifth Charge is of vital importance in discussing the Fourth Charge. Our observations with regard to "responsibility" are applicable to both Charges.

… The evidence in support of this Charge was given by a number of soldiers of the North Nova Scotia Highlanders who were captured in the Buron-Authie area… They were never seen again and their bodies were later disinterred from the orchard adjacent to the Abbaye.

There can be little doubt that a number of Canadian soldiers were killed at or near the Abbaye Ardenne at some time – possibly on or about 7 or 8 June. The medical evidence supports this face. The question for determination, however, is who killed them, and to what unit, formation, body or group of German soldiers did the killers belong. The simple answer, born out by the record, is contained in the evidence of two Canadian soldiers, Major J.D. Learment… and Corporal J.R.B. Campbell…

Not only is there no suggestion in the evidence that the killing alleged in the Charge was carried out by members of the 25th Panzer Regiment, but the evidence of Major Learment and Corporal Campbell… makes it clear that the actual killers were the Military Police or Feldgendarmerie. The prisoners were under the direct charge of the Feldgendarmerie. On this point there is no dispute. If they were in fact murdered it can be assumed that the Feldgendarmerie were directly responsible. In view of Meyer's limited control over the Feldgendarmerie as pointed out in Paragraph 21 of his Petition, it would be a grave injustice to hold him criminally responsible for their actions; particularly would it be unjust to hold him responsible in a degree that would merit him a long period of imprisonment.

10. AS TO THE FOURTH CHARGE OF WHICH MEYER WAS CONVICTED
… Apart from the evidence of Jesionek… there is no evidence which implicates Meyer or proves beyond reasonable doubt or even suggests that the killing of the seven Canadians was carried out by troops under his command as alleged in the Charge.

Although as pointed out in discussing the Third Charge, the Court did not believe Jesionek's evidence to the effect that Meyer was present in the Abbaye when the prisoners were brought in, they apparently accepted his evidence as to the fact of the killings and held Meyer responsible, therefore, by reason of his command.

It is submitted that the evidence of Corporal Campbell quoted above affords the solution to the whole problem. If Jesionek actually saw as officer in a long black coat concerning himself with the prisoners, it was not Meyer, who never wore such a coat, but the Feldgendarmerie officer or NCO officer described by Corporal Campbell. As Meyer points out in Paragraph 21 of his Petition, and in this he is supported by both Major Learment and Corporal Campbell, the Feldgendarmerie had charge of the prisoners at the Abbaye and it would surely be an officer or NCO of this group who would be concerned with their disposal rather than a regimental commander, busily engaged in fighting a battle. If, as Jesionek says, he saw another officer question this group of prisoners before they were shot, the evidence strongly suggests that this was the Divisional Intelligence Officer who could speak some English and whose duty it was to obtain information from the prisoners, and not an officer of the 25th Regiment who, as far as the evidence goes, were dressed in camouflage uniform. Meyer's description of the Divisional intelligence officer in paragraph 23 of his Petition is about identical with Jesionek's description of the officer who he alleges questioned the prisoners.

While the question of Command Responsibility will be discussed under a following heading, it may be pointed out that whatever concept of responsibility the Court may have entertained it is submitted they erred in convicting Meyer on the

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Fourth and Fifth Charges. The groundwork was not laid to establish responsibility on his part in any sense. In other words, it was not proved that the offences alleged in the Fourth and Fifth Charges were the result of concerted action on the part of members of the 25th Panzer Regiment or of any group of persons of which Meyer was a member. It was not proved that any war crime was committed by members of the 25th Panzer Regiment. It was not proved that an officer or NCO of the 25th Panzer Regiment was present at or immediately before the commission of the offences alleged in these charges… It was not proved and the Court certainly did not believe that Meyer knew the offences were about to be committed and could have prevented them (we refer to our observations under the Third Charge). In this connection it is important to note that, apart from Jesionek's identification of Meyer which was not believed, he nowhere suggests that the officers who questioned the prisoners or that the Unterscharführer who shot them were members of the 25th SS Panzer Regiment. Had they been, he would, doubtless, have recognized them…

As submitted above, there is nothing in the evidence that the Court could take as proving beyond reasonable doubt.

11. COMMAND RESPONSIBILITY

In discussing the Fourth and Fifth Charges it is necessary to inquire what concept of the term "responsibility" is envisaged by the Regulations and in what manner the Court understood Meyer to be responsible for the crimes alleged…

As the term is ordinarily used in criminal law "responsibility" means a capacity to commit or be punished for a crime and includes such consideration as age, sanity, free will, etc. It can be assumed the Regulations did not envisage this type of responsibility. In the second sense in which the term is used in criminal law, responsibility means that the Accused was a party to or participated in the crime. This concept is summarized in Section 69 of the Criminal Code:

"Every one is a party to and guilty of an offence who

(a) actually commits it;

(b) does or omits an act for the purpose of aiding any person to commit the offence;

(c) abets any person in commission of the offence; or

(d) counsels or procures any person to commit the offence."

It is, of course, conceded that if an officer knew that a crime was about to be committed and had the power and opportunity to prevent it and failed to do so, he would be morally and legally responsible. It is submitted that it is in this sense that the word "responsibility" is used in the Regulations. The situation would then be that when the prosecution had proved beyond reasonable doubt; (1) that a war crime had been the result of concerted action upon the part of a formation, body or group (10(3)); *OR* (2) that more than one war crime had been committed by members of a formation, body or group while under the command of a single commander (10(4)); *OR* (3) that a war crime had been committed by members of a formation, unit, body or group *AND* that an officer or NCO was present at or immediately before the time when such offence was committed (10(5)) a *prima facie* case is then made out that the Commander of that formation was concerned in the war crime in one or other of the several ways stated in Section 69 of the Code or that he knew a crime was about to be committed and failed to prevent it though he could have done so.

The foregoing is the obvious and simple meaning of the Regulations, harsh and drastic as they may be, in the sense that they do not call upon the Prosecution to prove beyond reasonable doubt that the Accused in any way participated in the crime. If the above interpretation is correct it should have been made clear to the Court:

(1) That in order to make the Regulations apply it was necessary for the Prosecution to prove beyond reasonable doubt that one or other of the conditions set out in the Regulations in fact existed;

(2) That the presumption of *prima facie* case raised by the Regulations could be rebutted by the Accused raising a reasonable doubt as to whether he (a) actually committed the offence; (b) did or omitted an act for the purpose of aiding a

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person to commit the offence; (c) abetted any person in the commission of the offence; (d) counselled or procured any person to commit the offence; (e) knew the offence was about to be committed and could have prevented it.

Instead of following this course the Learned Judge Advocate instructed the Court as follows:

"Similarly Regulations 10 (3), (4) and (5), to which reference has been made, must be regarded as declaratory in nature as stating Canada's concept of the law and therefore binding upon this Court. In effect those particular Regulations provide or at least are based upon the assumption – an assumption which is entirely reasonable and which the Court must accept that an officer or soldier may incur liability as a war criminal for a war crime though he may not himself have actually committed or taken part in the act constituting such crime. That, I think, is the real significance of Regulations 10 (3), (4) and (5). I will deal later with those Regulations as they effect the evidence required to establish such vicarious responsibility."

This statement must have raised in the minds of the Court a third concept of responsibility, i.e., that a Commanding Officer is vicariously responsible for the crimes of his troops by virtue of his command whether or not he was in any sense a party to the offence. This erroneous concept was not eradicated by the Judge-Advocate's further explanation of the matter and must have been strengthened by the remarks of the Prosecuting Officer. We quote in part:

"Subsections (3) and (4) contain actually merely the statement of the responsibility of a commander well understood in the Armed Forces of any country particularly in the German Army. As officers of experience in the command of troops, both in training and combat, we all know, that if something happens in our unit or formations which should not have occurred, that we are held responsible personally by our superior officers. We may be able to escape the consequences of that responsibility, if we are able to show that what occurred was something that was beyond our control or was impossible to reasonable anticipation, or that all reasonable steps had been taken to ensure that the particular thing did not occur. The responsibility, however, is ours to establish that the act complained of, was not the result of any bad judgment, dereliction of duty, or direct act of our own."

With regard to this third concept of command responsibility, it has long been recognized that a commanding officer is responsible for the discipline of the troops under his command. This does not mean and was never held to mean that he is criminally liable for their crimes but that he is answerable to his superior commander for the discipline of his troops.

If the Court accepted the concept of command criminal responsibility as it appears to have done and if that is the concept envisaged by the Regulations, we are forced to the shocking conclusion that Meyer was convicted not because he had done something he should not have done or failed to do something he could have done, but simply because he was somebody – a thought abhorrent to anyone who professes regard for our tradition of justice. Further, this type of responsibility was not an offence until 31 August 1946. Even, giving Chapter 73 its retroactive effect, it was still not an offence until more than a year after the alleged offence had been committed. To quote Mr. Justice Rutledge in the Case of Yamashita:

"It is not in our tradition for anyone to be charged with crime which is defined after his conduct, alleged to be criminal, has taken place, or in language not sufficient to inform him of the nature of the offence." *(4 LAW REPORTS, TRIALS OF WAR CRIMINALS p. 54)*

And Blackstone's commentaries:
"Here it is impossible that the party could foresee that an action, innocent when it was done, should be afterwards converted to guilt by a subsequent law; he had therefore no cause to abstain from it; and all punishment for not abstaining must of consequence be cruel and unjust". (Referred to – *The Law Quarterly Review Vol. 66 p 314 to 317*).

The implications of this third concept of responsibility can be described by way of illustration.

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It is well known that a number of crimes of violence were committed by Canadian soldiers in occupied countries and elsewhere during and after the war. For these crimes – some of them very serious – the soldiers in question stood trial and were properly accorded the full protection of the laws of evidence and of Canadian criminal procedure. A number of these men were convicted and sentenced to long terms of imprisonment – it is understood all have now been released, in many cases, long before their sentences had expired.

Suppose for a moment that the commander, in whose regimental area one of these crimes had been committed had been unable to find the culprit or culprits and that the law under which Meyer was tried had been applied.

In such event the commander of the unit or formation in whose area the crime or crimes were committed could have been tried without any of the procedural and evidentiary protections which are a part of the administration of British justice, and might have been convicted of responsibility for such crime or crimes and personally sentenced on the uncorroborated evidence of a deserter from his unit to the effect that the crimes were committed by Canadian troops in his immediate regimental area. This procedure was of course not applied to Canadian commanders.

It is presumed that the Canadian soldiers who committed crimes during the war and were given fair trial are now reprieved on the grounds inter alia that the condition of moral instability which induced their crimes was a by-product of the conflict in which they were engaged.

To use another and possibly more specific example. On 7 and 8 May 1945, in the course of V-E Day celebrations in Halifax, rioting of a serious and destructive nature broke out. This rioting was spearheaded by naval personnel and in the course of the disorders a large number of serious crimes were committed by naval ratings and others?

Honourable Mr. Justice R.L. Kellock of the Supreme Court of Canada was appointed Royal Commissioner to enquire into the disorders and matters connected therewith and report his findings to the Governor General in Council.

After an exhaustive enquiry, Mr. Justice Kellock submitted his report as of 28 July 1945. On page five he uses the following language:

"The disorders which actually occurred on 7 and 9 May owe their origin, in my opinion, to failure on the part of the Naval Command in Halifax to plan for their personnel in accordance with (1). Once started, the development and continuance of the disorders were due to the failure of the Naval Command to put down the initial disorders on each of the two days, 7 to 8 May. Subsequently the insufficiency of the police forces, service and civilian, employed, as well as their faulty direction on both days, and the passive conduct of the Naval Command in allowing naval personnel to continue unchecked on the afternoon of 8 May without taking any steps to deal with the situation until a very late hour, when the disorders had begun to play themselves out, explain the length of time during which the disorders continued."

This is a definite finding of "responsibility" on the part of the Naval Command. A more direct responsibility than anything proved against Meyer in that the Naval Command were fully are of what was in progress and took no adequate steps to deal with the situation. Yet it was not suggested and could not be suggested that any senior naval officers were in any sense criminally responsible for the crimes committed by the troops under their command.

To pursue the parallel further, a large number of the service personnel involved in the disorders were arrested and charged in the civil courts. After trials in which the Accused had the benefit of all the safeguards which our law affords, a number were convicted and sentenced to terms of imprisonment. In a number of cases these sentences were confirmed on appeal to the Supreme Court of Nova Scotia. After serving but fractions of their respective sentences, the offenders were pardoned.

It is submitted that in assessing the responsibility of Meyer, an enemy national who was denied these same rights at his trial and found guilty of a newly created, vicarious and indirect crime, great weight should be given to the fact that the area in which the Canadians were killed was at the time being commanded by a man engaged in the heat of a battle, upon the ultimate issue of which much of his country's existence was dependent. He was not only occupied in the tactical dis-

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position of his troops but was himself personally engaged in combat, and his young troops were engaged in combat, and his young troops were undoubtedly subject to that same type of moral instability which goes hand in hand with the nervous tension and altered sense of values that are characteristic of a battle of which constant bombardment and the taking and giving of life in combat are an integral part.

If Meyer was "responsible" under the Regulations and he was so found, then it is submitted that it was a "responsibility" which circumstances made it impossible for him or any other commander similarly situated – to discharge.

Meyer was an enemy; he was dealt with as such and for being found guilty of this kind of "responsibility"; he has to date served five years under restraint in a foreign country in the company of murderers, thieves, sexual perverts and other enemies of society.

If it be accepted that circumstances on 7 and 8 June 1944 made it impossible for Meyer to assume the burden of this peculiar variety of "responsibility", previously unknown in the law, and if created at all, then retroactively created by statute, then it is submitted that in the interests of justice, consideration should now be given to the question of whether five years in the penitentiary at Dorchester is not – even for a former enemy commander – an adequate punishment.

It may be said that this concept of vicarious command responsibility was applied by the Military Commission which tried, convicted and sentenced General Yamashita, and that the proceedings of the Commission were upheld by the Supreme Court of the United States. This is not the case. On this point the Supreme Court of the United States simply held the Commission's findings as to responsibility were not reviewable by the Courts *(4 L.R. Trials of War Criminals at p. 44)*.

On the question of the liability of a Commander for the crimes of his subordinates, we quote from the decision of Mr. Justice Murphy, at p. 51 in the above cited case:

"International law makes no attempt to define the duties of a commander of an army under constant and overwhelming assault; nor does it impose liability under such circumstances for failure to meet the ordinary responsibilities of command. The omission is understandable. Duties, as well as ability to control troops, vary according to the nature and intensity of the particular battle. To find an unlawful deviation from duty under battle conditions requires difficult and speculative calculations. Such calculations become highly untrustworthy when they are made by the victor in relation to the actions of a vanquished commander. Objective and realistic norms of conduct are then extremely unlikely to be used in forming a judgment as to deviations from duty. The probability that vengeance will form the major part of the victor's judgment is an unfortunate but inescapable fact. So great is that probability that international law refuses to recognize such a judgment as a basis for a war crime, however fair the judgment may be in a particular instance."

And later:

"The conclusion seems inescapable that the United States recognizes individual criminal responsibility for violations of the laws of war only as to those who commit the offenses or who order or direct their commission."

And again:

"No one denies that inaction or negligence may give rise to liability, civil or criminal. But it is quite another thing to say that the inability to control troops under highly competitive and disastrous battle condition renders one guilty of a war crime in the absence of personal culpability. Had there been some element of knowledge or direct connection with the atrocities the problem would be entirely different."

And on the same point, Mr. Justice Rutledge says at page 54 of the above report:

"Mass guilt we do not impute to individuals, perhaps in any case but certainly in none where the person is not charged or shown actively to have participated in or knowingly to have failed in taking action to prevent the wrongs done by others, having both the duty and the power to do so."

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In conclusion, we believe that the Prayer in the Petition should be reviewed – in the words of another great American – "with malice towards none; with charity for all; with fairness for the right as God gives us to see the right."

H.P. MacKeen
R.A. Ritchie
Halifax, N.S.,
December 12th, 1950.

E4. House of Commons Debates, 5 February 1951, 72.

Kurt Meyer
Representations as to Release from Incarceration

Mr. Donald M. Fleming (Eglinton): May I direct a question to the Minister of Justice? What representations, if any, have been received looking into the release from incarceration of General Kurt Meyer, and what action, if any, is the government taking on such representations?

Hon. Stuart S. Garson (Minister of Justice): The subject matter to which my hon. friend refers is properly referable to the Minister of National Defence.

Hon. Brooke Claxton (Minister of National Defence): The question of what disposition should be made of Kurt Meyer is receiving consideration.

Mr. Fleming: Will the minister deal with the first part of my question? I asked what representations have been made, and from what sources.

Mr. Claxton: Representations have been made by him through legal counsel acting for him in the city of Halifax.

Mr. Fleming: None from the German government?

Mr. Claxton: None whatever.

E5. House of Commons Debates, 6 February 1951, 114-18.

Mr. David A. Croll (Spadina): Mr. Speaker, in the few months since we last met, many things have happened, some inspiring and some discouraging. As tension grows between east and west we in Canada seem to find ourselves in a perpetual crisis. On every side we are beset by dangers and obstacles which are not of our own making, and about which we can do very little…

[The Minister of National Defence, Brooke Claxton] emphasized that we are committed under the North Atlantic Treaty to do our share in the common cause; that we will stand together. Then he went on to translate that to mean that we shall be sending Canadian troops to serve in the European army to be commanded by General Dwight Eisenhower. In that adventure we shall be full partners. Therefore it will become our duty to apply ourselves with others to the most perplexing question of Germany and German rearmament. Today for the first time Canada will be asked to help to find the answer to the German problem. It is a very old problem, and one which apparently must be answered by each generation in turn. During all my adult life we have been either arming Germany or fighting Germany…

We in this country are having a little problem of our own. I notice from the press that Major General Kurt Meyer now wants to get out. He is tired of his confinement in Dorchester penitentiary. An article appearing in the *Globe and Mail* says that Meyer was originally sentenced to be shot, but the sentence was later commuted to life imprisonment. He was convicted in December, 1945, of responsibility for the deaths of eighteen Canadian prisoners of war… The article goes on to say: "The youthful general was said at the time of his conviction to be the personification of national socialism."

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I picked up an editorial in the *Windsor Star* of February 1. It has this heading: "Meyer wants out," and reads in part as follows: "If it were not for counter-excesses allegedly committed by Canadian troops,… Meyer would now be dead, instead of appealing for clemency from Dorchester penitentiary…

Public opinion would not take kindly to the idea of releasing him, although that would not be a reason to hold him if he could establish his innocence. It would be easier to argue that a man so dangerous potentially, as a rallying point for the West German elements, should be kept in protective custody until that danger is past." For our own safety, and in the interests of the west as against the east, we may decided that it is necessary and advisable to rearm Germany. But it must be on our terms.

E6. Top Secret, Cabinet Conclusions, Ottawa, 7 February 1951.[44]

Kurt Meyer; petitions for clemency

12. *The Prime Minister* (Mr. St. Laurent) referred to a statement made in the House of Commons the previous day to the effect that representations have been made requesting that Major-General Kurt Meyer, presently serving a life sentence in the Dorchester Penitentiary, be released.

    It was noted that both the United Kingdom and the United States had pardoned a certain number of Nazi war criminals and increasing pressure might possibly be brought to bear on the Canadian government to exercise clemency with respect to Kurt Meyer.

    It seemed unwise, however, to exercise any such clemency at this time in view of the clear conviction secured in a Canadian court and also having a regard to the temper of public opinion generally.

13. *The Cabinet*, after discussion, noted with approval the Prime Minister's views with respect to the exercise of clemency in the Kurt Meyer case.

E7. W.C. Ross to "Sir (Madam)" [Canadian Members of Parliament], 15 February 1951.[45]

As a veteran of World War II on active service in Europe, I want to express my indignation at the suggestion emanating from Canadian authorities that S.S. General Kurt Meyer may be released from imprisonment. S.S. General Meyer was responsible for the mass murder of over a hundred Canadian prisoners-of-war who were shot on his personal orders. Among these were 35 men from Manitoba, including 6 from Winnipeg, and from such other places as Arborg, Lockport, Camperville, Carberry, Brandon, Pine Falls, Inglis, McCreary, Shorncliffe, Lundar, Elphistone, Headingly, and others. A partial list of those murdered by S.S. General Meyer, as contained in an official communiqué of the National Defense Department, is attached.

It would be violating everything that these boys fought and died for and constitute a slap in the face to their bereaved families if their executioner were now to be released with the blessing of 'let by-gones be by-gones'. Those of us who returned from the battlefields only five years ago are filled with horror and alarm at the idea that men like S.S. General Kurt Meyer be freed, his crimes forgiven, in order that once again he head a German army of mass murderers.

I call upon you as an elected representative of the people to lend your voice to the appeal to the Hon. Stuart Garson, Minister of Justice, and to the Canadian government, that they emphatically reject all attempts being made to have General Kurt Meyer released. S.S. General Meyer and his colleagues must not be permitted to plot the destruction of a new generation of Canadian youth.

E8. James McDonald, President, and John Roach, Vice President, Local Union No. 4481, United Mine Workers of America, Stellarton, Nova Scotia to Hon. Stuart Garson, Minister of Justice, 9 March 1951.[46]

The following was endorsed by Local 4481 U.M.W.of A. and a copy ordered sent to your office.

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Whereas there seems to be considerable pressure emanating from certain people who are few in number but weild [sic]considerable power relating to the release of the Nazie [sic] war criminal Kert Myer [sic].

And Whereas. This man was adjudged guilty in a fair trial during which he was afforded every opportunity to prove his innocence.

And Whereas; The Canadian public[,] particularly labour, and the veterns [sic] of the last war, do not wish to be associated or accused of being associated with Nazism in any form.

Therefore Be It Resolved; That the Nazi war criminal Kert Meyer [sic] found guilty of the wanton murder of Canadians, sons, brothers and husbands including several members of this local union, will serve the full penalty prescribed by law.

Be It Further; That this resolution be sent [to] The Hon. Minister of Justice and the press.

E9. Cabinet Document D304, Secret, Memorandum to Cabinet War Committee, 11 September 1951.[47]

War Criminals

Seven war criminals were tried by Canadian Military Courts established under the War Crimes Regulations (Canada). Of these seven, four were executed pursuant to the sentence of the Court and the remaining three, Kurt Meyer, Johann Neitz and Wilhelm Ossenbach are at present undergoing sentences of imprisonment…

2. From a number of sources representations have been made urging the sentences of the above-mentioned war criminals be remitted in their entirety and it now appears desirable that a decision be reached respecting their disposition.

6. Having regard to all of the circumstances, it is submitted that that following course of action should now be considered:

   a) *KURT MEYER* might be:

      i) transferred to a prison in the British Zone of Occupation in Germany to serve the remainder, or part of the remainder of his sentence; or

      ii) released from custody with the unserved portion of his sentence being wholly remitted;…

E10. Top Secret, Cabinet Conclusions, 12 September 1951.[48]

German war criminals

44. *The Minister of National Defence* (Mr. Claxton) reported that the Cabinet Defence Committee had been considering the cases of three German war criminals, tried by Canadian military courts, who were serving sentences of imprisonment.

    Kurt Meyer was serving a life sentence at Dorchester Penitentiary, where his behaviour had been exemplary, for responsibility in the killing, by troops under his command, of 18 Canadian prisoners-of-war. The evidence on which he had been convicted was unsatisfactory, since it had not been established that he had ordered the killings, although it had been felt that there were grounds for maintaining that he should have known they were taking place. He was understood to be the only German war criminal held outside of Germany by a western ally. The U.K. Occupation authorities in Germany had indicated informally that they would be willing to keep him in a war criminals' prison in their zone. Germany paid the costs of war criminals imprisoned in the western occupation zones as part of the occupation costs. As a change in the relationship between the Occupying Powers and Western Germany was imminent, the Committee had recommended that Meyer be transferred to a prison in the U.K. zone in Germany

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about the end of 1951 if, in the meantime, it were confirmed that U.K. authorities would accept him. If the U.K. and U.S. authorities subsequently carried out a general reduction of the sentences of war criminals in their custody or a general release of such persons, similar action could be taken with respect to Meyer…

45. *The Leader of the Government in the Senate* wondered if it would not be better to carry out the action proposed in the cases of Meyer and Ossenbach after the expected change in the relationship between the Occupying Powers and Western Germany.

46. *The Secretary of State for External Affairs* (Mr. Pearson) pointed out that U.K. and U.S. authorities were continually reducing and remitting the sentences of war criminals in their custody.

47. *The Prime Minister* (Mr. St. Laurent) observed that Ossenbach had really been only in the position of an involuntary accessory to the crime in which he had been involved.

48. *The Minister of Citizenship and Immigration* (Mr. Harris) thought that, if Ossenbach were released immediately, it might be inferred that action in Meyer's case was imminent.

49. *The Cabinet*, after further discussion, noted the recommendations of the Cabinet Defence Committee regarding German war criminals… and agreed that:

    a) Kurt Meyer be transferred to a war criminals' prison in the U.K. zone of Germany about the end of 1951, if, in the meantime, it were confirmed that the U.K. occupation authorities would accept him;

    b) the sentence of Johann Neitz be neither reduced nor remitted;

    c) appropriate steps be taken with a view to effecting the early release of Wilhelm Ossenbach;

    adequate precautions to be taken to ensure that there would be no publicity regarding the action contemplated in the case of Kurt Meyer or with respect to the release of Wilhem Ossenbach.

E11. Top Secret, Minutes From Cabinet Defence Committee Meeting, 12 September 1951.[49]

VI. German War Criminals

49. *The Minister of National Defence* (Mr. Claxton) said that…

    Kurt Meyer was serving a sentence of life imprisonment in Canada at Dorchester Penitentiary for responsibility in the killing, by troops under his command, of 18 Canadian prisoners-of-war. His lawyers and others urged his release. It was felt that it would be best to transfer him to a war criminals' prison in the U.K. zone of Germany and to do this as soon as possible since a change in the relationship of the Occupying Powers to Western Germany was imminent. It was understood that the U.K. authorities would accept him…

    An explanatory memorandum had been circulated.

    (Minister's memorandum, September 11th, 1951, "War Criminals" – Cabinet Document D-304)

50. *The Chief of the Defence Staff* (General Simonds) said that Meyer had been convicted on the basis of evidence that he had known what his men were doing. This evidence, he thought, was far from conclusive. He was familiar with the battle during which the 18 Canadians had been murdered and considered that it was of such a character that Meyer would not have known that his men were killing prisoners or would not have been in a position to stop the killings if they had been reported to him. He had always felt that the basis of Meyer's conviction ran counter to Canadian concepts of justice.

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51. *The Secretary of State for External Affairs* (Mr. Pearson) thought that, as proposed, Meyer should be transferred to Germany as soon as possible.

52. *The Prime Minister* (Mr. St. Laurent) agreed and thought that it should first be established that the U.K. occupation authorities were prepared to accept him. His lawyers might be informed in the meantime that the government could not contemplate releasing him at present and was preoccupied with more urgent questions.

    The circumstances in which Neitz had been sentenced were such as to make it difficult to reduce the sentence without widespread criticism. Ossenbach had merely been in the position of a bystander, might have been court-martialed if he had disobeyed and was therefore in a different category.

53. *Mr. Pearson* thought that the unserved portion of Ossenbach's sentence should be remitted.

54. *Mr. Claxton* suggested that the end of the year would be a good time to carry out Meyer's transfer.

55. *The Committee*, after further discussion, noted the report of the Minister of National Defence regarding German war criminals and agreed to recommend to Cabinet that:

    a) Kurt Meyer be transferred to a war criminals' prison in the U.K. zone of Germany about the end of 1951, if, in the meantime, it were confirmed that the U.K. occupation authorities would accept him;

    b) the sentence of Johann Neitz be not reduced or remitted;

    (c) appropriate steps be taken with a view to effecting the early release of Wilhelm Ossenbach.

E12. Top Secret, Cabinet Conclusions, 21 September 1951.[50]

German war criminals; Kurt Meyer

20. *The Minister of National Defence* (Mr. Claxton) referring to discussion at the meeting of September 12th, 1951, said that the U.K. authorities had now confirmed their readiness to receive Kurt Meyer for custody in a war criminals' prison in the U.K. zone of Germany. In the circumstances, and as there might be a change in the relationship between the Occupying Powers and Western Germany before mid-December, he recommended that approval be given for Kurt Meyer to be transferred to Germany in the immediate future by R.C.A.F. aircraft; an announcement to be made shortly thereafter.

21. *The Secretary of State for External Affairs* (Mr. Pearson) expressed agreement with this recommendation, stating that, while it was difficult to forecast when a contractual agreement with Western Germany might come into effect, this could occur shortly. If Meyer were not already in Germany at the time, it might prove necessary to obtain the consent or the West German authorities for his transfer and they might seek a reduction of his sentence before giving their consent.

22. *The Cabinet*, after further discussion, approved the recommendation of the Minister of National Defence and agreed that Kurt Meyer be transferred from Dorchester Penitentiary to a war criminals' prison in the U.K. zone of Germany in the immediate future by R.C.A.F. aircraft; an announcement to be made shortly thereafter.

E13. Message Form, Canadian High Commissioner, London, to Secretary of State for External Affairs, 5 October 1951.[51]

Subject: Transfer of Brigadefuhrer Kurt Meyer to British Zone

Commonwealth Relations Office today advise me that the office of the Legal Adviser in Wahnerheide are prepared to accept Meyer at any time during the next two weeks, and will arrange to take him over at the airfield on forty-eight hours notice of the date and time of arrival…

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2. Commonwealth Relations Office state that after his acceptance in Werl prison, Meyer will, of course, serve his sentence under exactly the same conditions as other war criminals imprisoned there, particularly with regard to remission for good conduct.

3. Werl prison is in the town of Werl, which is in the Kreis Foest, Regierungsbezirk Arnsberg, Westphalia.

E14. Secret, A.D.P. Heeney, Memorandum for the Minister of External Affairs, 16 October 1951.[52]

The German Ambassador, Dr. [Werner] Dankwort, called on Mr. Ritchie yesterday with regard to the cases of two war criminals, Kurt Meyer and Johann Neitz. Dr. Dankwort said that he was acting on instructions from his Government in expressing the hope that the Canadian Government would see fit to grant a pardon for these two men. He said that he did not wish to enter into the rights and wrongs of the cases but that he wished rather to base his representations on broad political and humanitarian grounds. Dr. Dankwort stated that there were recent instances of clemency exercised in cases of "so-called" war criminals by the United Kingdom and French Governments. He also referred to a statement by the Governor General, paying tribute to the soldierly qualities of Kesserling. He went on to say that he had heard rumours, which he could not substantiate, that the Soviet Government were [sic] about to release some twenty thousand Germans, including diplomats and soldiers, whom they had held in concentration camps in Germany and in the Soviet Union in connection with their records during the war. Such a gesture on the part of the Soviet Union would, he said, make a considerable appeal to the German people. The Ambassador suggested that this was politically a propitious moment for a gesture on the part of the Canadian Government in connection with Meyer and Neitz.

Referring to the humanitarian grounds for his representations, the Ambassador spoke of the excellent record of Meyer in Dorchester Penitentiary and the fact that his wife and five small children were living in great poverty in Germany…

Dr. Dankwort said that he hoped that the Government would not be too much influenced by the outcry from a certain section of the Canadian press and public opinion against a pardon being accorded to Meyer. He felt that some protest was to be anticipated whenever the pardon might be accorded and that this should not be allowed to outweight [sic] the political considerations which he had mentioned in favour of Meeyr's release at the time. Mr. Ritchie remarked that the Canadian Government would no doubt consider the case on its merits.

E15. Top Secret, Cabinet Conclusions, 17 October 1951.[53]

Kurt Meyer; transfer to Germany

12. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of September 21st, 1951, reported that arrangements had now been completed to have Kurt Meyer transferred by plane the following morning... to a war criminals' prison in the U.K. zone of Germany. Meyer's transfer from a federal penitentiary to a service prison in Germany could not be effected without an Order in Council. It was proposed [and approved] that such an Order be passed the following day and that a statement announcing the transfer be made following approval of the Order in Council.

E16. Top Secret, Cabinet Conclusions, 18 October 1951.[54]

Kurt Meyer; transfer to Germany

8. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of October 17th, 1951, submitted a recommendation to enable the commitment of a person, convicted by a Canadian military court, to a service prison either in or outside Canada there to undergo imprisonment.

   The order would permit the removal of Kurt Meyer… to a German prison, which, for the purpose, would be designated as a service prison.

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9. *The Secretary of State for External Affairs* (Mr. Pearson) reported that the German Ambassador had made oral representations urging a reduction in the sentence of Meyer and certain others. He had been given no encouragement that such action would be possible.

10. *The Cabinet*, after discussion, approved the recommendation of the Minister of National Defence and agreed that regulations be made under the National Defence Act to provide that a person convicted by a Canadian military court and sentenced to imprisonment for two years or more may be committed by the Minister of National Defence, or such authority as he appoints for that purpose, to a service prison either in or beyond Canada to undergo his imprisonment or any part of it; an Order in Council to be passed accordingly.

(Order in Council P.C. 5596, Oct. 18, 1951)

E17. Order for Transfer of Brigadefeuhrer Kurt Meyer from Dorchester Penitentiary to Werl Prison, Germany, 18 October 1951.[55]

To: The Warden of Dorchester Penitentiary at Dorchester, N.B.

And to: The officer or officers at any time having custody of Brigadefeuhrer Kurt Meyer

And to: The Warden. Governor, Commandant. or Chief Officer of Werl Prison, Kreis Foest, Regierungsbezirk Arnsberg, Westphalia, Germany

I, Brooke Claxton, Minister of National Defence, do hereby, in pursuance of the War Crimes Regulations (Canada) as reenacted by The War Crimes Act, Chapter 73, of the Statutes of Canada, 1946, The National Defence Act, Chapter 43 of the Statutes of Canada, 1950, as amended, and the King's Regulations and Orders for the Canadian Army, and of all acts and powers enabling me, as committing authority or otherwise, in this behalf, order you, the Warden of Dorchester Penitentiary, to deliver to the officer presenting this order, Brigadefeuhrer Kurt Meyer, who is now in your custody undergoing the punishment of imprisonment for life, under a sentence passed by a military court, constituted and held under The War Crimes Regulations (Canada).

AND pursuant to the acts. regulations and powers aforesaid, I do hereby order the officer, or officers, into whose custody the said Kurt Meyer may be delivered, to keep the said Kurt Meyer in military custody and convey him in military custody to the Werl Prison, Kreis Foest, Regierungsbezirk Arnsberg, Westphalia, Germany, a place designated as a service prison by an Order made by me pursuant to Section 178 (2) of The National Defence Act, a copy of which Order is attached (Appendix "All), there to be held in custody, pursuant to Order in Council PC 5596 dated 18 October, 1951, a copy of which is attached (Appendix "B").

AND pursuant to the acts, regulations and powers aforesaid. I do hereby authorize you, the Warden, Governor, Commandant, or Chief Officer of Werl Prison to receive the said Kurt Meyer into your custody and detain him during the remainder of his sentence, and for so doing this shall be sufficient warrant.

SIGNED at OTTAWA this 18th day of October A.D. 1951

E18. R.G. Rowcliffe, Dorchester Penitentiary, Classification Department, "Classification Officer's Report on 2265 – Meyer, Kurt," 19 October 1951.[56]

Appraisal: During the past four years I have had frequent conversations with Meyer. The following is a summary of impressions during that period.

Meyer is mentally alert and, as far as could be ascertained by the use of scales drawn up for use in the North American culture, his intelligence is Bright Normal or Superior. His interest in world affairs and in sociological problems is intense. He is logical during discussion and generous when bested in an argument. During the past four years there has been a

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noticeable broadening and softening of his cultural ideals. Religion plays a prominent part in his life. Without ostentation he holds sincere beliefs and discussed them freely. He is a Lutheran.

During his term here Meyer worked in the Library. His work consisted of cataloguing and caring for the more serious novels and also the non-fiction. He did a good job. His interest never slackened and he gave much thought to improving the system as he found it and also worked hard in carrying out the necessary changes. Meyer's conduct was exemplary at all times and his manner polite and pleasant without any hint of subservience. He got along very well with Officers and Inmates. His self-discipline is a noticeable characteristic and he has the ability to adjust himself speedily to novel circumstances without any cynicism or bitterness resulting. Meyer's general character bears the strength of aggressiveness but he is always prompt to indicate good points in others and to offer plausible excuses for their shortcomings. This was particularly noticeable in the cases of those who attacked him in print. In summary, Meyer is a dynamic and well-integrated personality. Introversion and extroversion are about evenly balanced. His interests are general and keen, especially in the fields of sociology and the study of human nature in general.

E19. Col. George T. Goad, "Kurt Meyer Was My Star Prisoner,"* Weekend Magazine *(1959).[57]

How did this leading war criminal behave in prison? Here is the inside story, by his jailer

THE NEWS that Kurt Meyer was going to be confined in Dorchester Penitentiary disturbed me.

Meyer was a Nazi general who was sentenced to death for the shooting of 18 Canadian prisoners of war in Normandy. The sentence was later commuted to life imprisonment. Many Canadians did not agree with this action. Meyer had become a very controversial figure.

I got word in the spring of 1945 that Meyer would arrive at the penitentiary in a few days. In any penitentiary he would have been regarded as a problem. But why send him to Dorchester, which lay in the heart of the area from which many of the victims of that Normandy slaying came? It just seemed like inviting trouble.

The only answer I got to that question was that the Prime Minister felt it best to have Meyer in the custody of a soldier who had some experience with German prisoners. During World War II, I had been on leave of absence from Dorchester to act as provost marshal in charge of all internment camps in Canada. This was the only reason, I was told.

Meyer arrived one evening after the penitentiary was closed, accompanied by two Canadian Army officers and two N.C.O.'s. He was a tall, slight, dark-haired man – very military. In his favor, he asked permission to thank the N.C.O.'s who had been part of his escort for some time, for the way they had treated him. The major in charge of the party had no objection. Meyer went over to the men, thanked them and shook hands.

One of Meyer's first acts was to request preferred treatment in the penitentiary. "I am not an ordinary convict but a war prisoner," he said.

I soon put him right about that.

"You'll be treated just the same as the others who are confined here. No better. No worse."

I could tell that he thought this was unfair, but he made no protest and soon accepted the penitentiary routine.

It was explained to Meyer that there would probably be some feeling against him amongst the inmates and he appeared to understand. I put him in a cell on the third floor of the hospital and soon put him to work cleaning cells and corridor floors. He was at first taken aback at being given this sort of work but he never hesitated and did a good job.

Work gangs had to pass the hospital on their way to various projects outside the penitentiary walls. The young fellows did an exaggerated goose step as they passed the hospital, raised their heads in the Nazi salute and shouted "Heil Hitler!" Meyer took this in good part. He thought it was funny.

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AFTER three months of semi-isolation in the hospital, I decided it was time to move Meyer out. The officers had all been on the alert in case of trouble involving Meyer but nothing had occurred. After talking it over with the other officers, it was decided to put him to work in the library where 10 other inmates were at work. By this time Meyer seemed well aware that he would receive no privileges than any other inmate and he didn't ask for any.

We kept a close watch on things in the library after Meyer was moved in there – just to make sure everything would turn out all right. I didn't relish the idea of having the war refought behind the walls of Dorchester. But Meyer's English was coming along well and he seemed to be getting along well with the others.

I was agreeably surprised one day when the others in the library asked if Meyer could be granted permission to instruct them in physical training. Meyer was a great one for keeping in condition and did exercises daily in his cell. I had no objections and the P.T. classes began immediately. Some of the men later told me that the exercises were over-strenuous but that they didn't wish to quit. Meyer soon had them in very good physical shape.

I frequently visited Meyer in his cell, as I did the other inmates. He spent a considerable time reading books on military tactics, being particularly interested in the writings of a British soldier-author who was an expert on tank warfare. Some of these books were not in the prison library but were obtained through special permission from the Parliamentary Library in Ottawa.

Meyer always liked to discuss the war. "General Montgomery," he commented, "was probably a good soldier. But it's not hard to win the battle when you have all the equipment. General Alexander was a far better general. He had little to fight with but he fought and did a good job."

When Meyer wasn't spending his spare time brushing up on military matters, studying English or reading, you'd find him doing physical exercises. Some months after he had been in Dorchester, I visited him in his cell one day and could see that something was puzzling him. I asked him about it.

"I don't understand how this institution runs so well," he said. "There isn't sufficient punishment for offences. And there's not enough distinction between the inmates and the officers."

I laughed. I could see the Nazi mind at work. I always felt that a man was more than a number and that the main role of a penitentiary was not to punish but to reform. I tried to get this reasoning across to Meyer. "You're in Canada now," I told him. "Things are different here."

But I know my brief talk had left him unconvinced.

Shortly after this conversation, Meyer had a first-hand example of our methods of dealing with offenders. He was summoned before the Warden's Court, held daily from noon to 1 o'clock. An officer had filed an offence report against Meyer for "dumb insolence." This officer, who was aware of German disciplinary methods, reported that in response to an order Meyer had bowed very low in an exaggerated gesture of obedience – a sort of salaam. Meyer pleaded not guilty and the case was adjourned for further evidence. When he appeared again, he pleaded guilty. He said he was sorry and apologized to the reporting officer, who accepted the apology. I let Meyer off with a warning.

For a while there were rumors circulating within the penitentiary of a plan to "get Meyer." They probably stemmed from the feeling against Nazis in general and Meyer's war crime in particular. But they never came to anything and, generally speaking, he got along well. He attended the Protestant church regularly and joined heartily in the singing. He enjoyed watching softball but took no active part in the sport.

One day Meyer had a distinguished visitor – a diplomat from Germany who was on his way to the United States. Meyer had been away from his homeland for a long time and I figured would be overjoyed to talk with someone from the Fatherland. I couldn't have been more wrong. The interview was short and the atmosphere politely cool. Later, the diplomat explained, "I came here because it was my duty. I didn't want to. We come from different military schools."

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Meyer was released from Dorchester Penitentiary under somewhat strange circumstances after more than five years' imprisonment there. One day in November 1951,[58] I received a coded message from my superiors announcing that Canadian Army officers would arrive on a certain date to take him away. I was not to tell anyone else in the penitentiary about this plan.

At that time Meyer was occupying a cell in the hospital, adjoining one of the main cell blocks. Outside the penitentiary his name had become a subject of controversy arising from reports that efforts were being made to secure his freedom. In certain quarters, strong objections had been raised to this. The Meyer case was becoming a hot political issue. I could well understand why efforts were being made to keep his departure secret.

On the evening set for his release, I found myself taking part in a cloak-and-dagger drama within the penitentiary which even now seems unreal. In a sense I was being called on to engineer an inmate's escape through the penitentiary's tight security system without the knowledge of any of my officers or guards.

Just before 5 P.M. I gave orders that Meyer was to be brought to my office for an interview. He arrived, accompanied by a penitentiary guard. Just prior to this, two Canadian Army officers had arrived to see me. They were to be Meyer's escort to wherever he was going and they had brought with them a change of clothing for him.

When the guard arrived with Meyer, the two officers hid out of sight in an alcove of my office. We weren't taking any chances of tipping our hands.

"That will be all. Leave the prisoner with me. I'll let the hospital know when to send for him," I said, dismissing the guard.

After the guard had left, the officers stepped into sight and one of the them handed Meyer his change of clothing. It was a Canadian Army battle dress. Meyer seemed surprised at first. He thought he had been summoned to my office to see a visitor. But when he saw the officers and the extra uniform they had brought along for him, he had a pretty good idea of what was happening.

"You're going to leave us, Meyer," I told him. He was aware that efforts had been under way for quite some time to secure his release. He smiled.

As Meyer began to undress, changing from his brown penitentiary garb into the infantry battle dress, my telephone rang. It was the night hospital officer reporting that Meyer was not in his cell.

"It's all right. He's still in my office with a visitor. I'll be responsible for him," I told the officer, and hung up.

Within a few minutes Meyer had made the change. Outwardly, he was now a khaki-clad member of Canada's army. The officers must have told him he was going back to Germany. He was excited.

THE warden's office at Dorchester is on the ground level. My window is a mere four or five feet from the ground. Just a short drop. To prevent detection and a possible leak, this window was used for an exit and a station wagon was parked beneath it. It was beginning to get dark now. The "escape" was well timed. I was informed later that a Canadian Army aircraft was waiting nearby to fly Meyer out of the country.

The two officers climbed through the raised window and beckoned Meyer to follow. He paused for a moment to shake hands.

"About your way of running the penitentiary, Warden…"

"Yes?"

"I guess your ideas are right after all," he said. Then he slid over the window sill, dropped to the ground and disappeared inside the car which took off immediately. That's the last I saw of him. Within a few days the secret was out. But by then it didn't matter.

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Meyer's parting remark still sticks in my mind. I was pleased to know that I had been able to convince a dyed-in-the-wool Nazi that a man is more than a number.

E20. Top Secret, Cabinet Conclusions, Ottawa, 22 October 1951.[59]

German war criminals

14. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of October 18, 1951, pointed out that it would be necessary to reply to a question in the House of Commons as to whether the recent action of the government in transferring Kurt Meyer to a criminals' prison in Germany had resulted from foreign representations.

15. *The Cabinet*, after discussion, noted the report of the Minister of National Defence regarding German war criminals and agreed that:

    (1) the Secretary of State for External Affairs take immediate steps to have the German ambassador informed, in reply to his representations, that the government was unable to agree to remission of the sentences of Kurt Meyer and Johann Neitz;

    (2) in order to dispose of the enquiry in the House of Commons concerning Meyer,

        (a) the Minister of National Defence would table the relevant Order in Council, report his consequential action in designating Werl prison as a Canadian Service prison and committing Meyer to it and explain that German representations for the remission of Meyer's sentence had been received subsequent to the decision and transfer him to Germany; and

        (b) the Secretary of State for External Affairs would then outline his department's discussions with the German Ambassador.

E21. House of Commons Debates, 22 October 1951, 245.

Kurt Meyer
Commitment to Werl Prison, Germany

Hon. Brooke Claxton (Minister of National Defence): Mr. Speaker, on Friday, the hon. member for Lake Centre (Mr. J.G. Diefenbaker) asked a question about the transfer of Kurt Meyer. The hon. member for Lake Centre said:

> *In so far as his incarceration is concerned, was he released or transferred under an order in council, and has there been any communication to the effect that he will now take his place in any army being formed in western Germany?*

An order in council was passed on October 18, which I shall now table, authorizing the Minister of National Defence to commit a person convicted by a Canadian military court and sentenced to imprisonment for two years or more to a service prison, either in or beyond Canada. Pursuant to that order, and with the approval of the cabinet, I directed that Kurt Meyer be committed to Werl prison in Germany, which I designated as a Canadian service prison for that purpose.

There has been no communication to the effect that Kurt Meyer will now take his place in any army being formed in western Germany. It would be impossible for him to do so, as he is still serving the sentence of life imprisonment imposed upon him.

The hon. member for Eglinton (Mr. Fleming) asked this question: Was any request received from any other government for such an order in council?

The answer is no; but I understand that some representations were made to the Department of External Affairs, which may be dealt with by my colleague the Secretary of State for External Affairs (Mr. Pearson).

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Then the hon. member for Rosetown-Biggar (Mr. Coldwell) asked:

> *Because of the importance of the matter, will the minister say whether he is still under the control and the jurisdiction of Canada or whether his incarceration has been transferred to the jurisdiction of another country?*

The answer is that Meyer is still under the control and jurisdiction of Canada. The prison in which he is now incarcerated is under the control of the United Kingdom occupation authorities in Germany, but they have no power to interfere with his sentence. The hon. member for Lake Centre said something about the secrecy connected with the transfer. So far as I know it is quite unusual to give advance publicity with respect to the transfer of prisoners, either civil or military.

Hon. L.B. Pearson (Secretary of State for External Affairs): Mr. Speaker, supplementing what the hon. member has said, I might add that the German ambassador designate, Dr. Dankwort, called on an official of the Department of External Affairs on October 15 to make representations on behalf of his government for the granting of a pardon in the case of the German war criminal, Kurt Meyer.

The Germany embassy has since been informed that the ambassador's representations have been considered by the government and that they cannot be accepted. The German ambassador on this visit made no reference at all to the transfer of Kurt Meyer to the United Kingdom zone in Germany. The announcement regarding this transfer had not indeed been made public at the time of the interview.

Mr. Coldwell: Under what authority was the order in council passed? I am not sure I understand that.

Mr. Claxton: Under authority of section 178 (2) and (6) of the National Defence Act.

Mr. MacInnis: May I ask the minister if Kurt Meyer can now be released without the express authority of the government of Canada?

Mr. Claxton: No.

E22. House of Commons Debates, 23 October 1951, 309.

Mr. J.W. Noseworthy (York South): Over the week end I was approached by a group of veterans from my riding who were very much alarmed at the prospect of [Kurt Meyer] having been spirited away to Germany with the consent of the Canadian government for the express purpose of reorganizing the German army. The veterans, I found, did not take very kindly to the suggestion that this man should be given an opportunity to do just that. The assurance of the minister yesterday… will find favour with those who were disturbed over this situation. Let me say to the ministers that while Kurt Meyer has been removed to Germany, undoubtedly great pressure will be placed upon the Canadian government to release him; and while it might be easier for him to assume a position of leadership in a reformed German army, any section of the Canadian public that I know will look with disfavour upon the granting of any such release by the Canadian government.

E23. Confidential Message, Canadian High Commissioner, London, to Secretary of State for External Affairs, Canada, 7 November 1951.[60]

Subject: Release of German war criminals.

The Foreign Office tells us that the German Government has neither made any representations to the United Kingdom Government for the release of war criminals nor raised the question of a general gaol delivery in the current negotiations with the Allied High Commission…

3. In the course of our conversation, it was intimated to us that the United Kingdom High Commissioner might, as a matter of routine, examine the case of Kurt Meyer along with all the others in the British Zone but that the Foreign

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Office would simply pass on to the Canadian Government the High Commissioner's remarks. It seems most improbable to me, in view of Foreign Office thinking, that our policy in this case would become out of line with that of the United Kingdom in comparable cases.

E24. Petition, Dr. Wilhelm Schapp, Aurich, to the Governor of the Allied National Prison, Werl, 12 November 1951.[61]

By order of Mrs. Kate Meyer of Offleben near Helmstedt I take the liberty of submitting [the] following petition to the Herr Governor.

1. Mrs. Meyer is the wife of Major General (rtd) Kurt Meyer, who is being held in British custody at Werl. After a 7 years' sojourn in Canada Meyer was transferred to Germany on 20-10-51. Some time ago Meyer submitted a petition for clemency to the competent Canadian authorities by the lawyer MacKeen in Canada. No decision has been received as yet on this petition. It led to numerous and minute investigations the result of which cannot be supposed to maintain the judgment. A final decision has not yet been made. Meyer's assumption might be justified, that his transfer to Germany is connected with the policy of the clemency procedure and constituting the first step for his final release. Anyway it is a matter of fact that highest Canadian Governmental and Military authorities recommended the petition for clemency.

2. Mrs. Meyer has not seen her husband for a period of 7 years except for a short visit to Werl. She is alone in bearing the responsibility for her 5 minor children, aged 7 to 16 years. Meyer's mother is sickly. It is urgently necessary for Mrs. Meyer thoroughly to discuss with her husband urgent questions concerning the children's education and the possibilities to raise funds for this purpose.

   From 1939-44 Meyer could see his family on short leaves. Since 1944 he had no connections whatsoever with his family. The two eldest children have only feeble memories of their father. The three younger children know him only from heresay.

3. The situation of the family Meyer is a particularly difficult one, since they are refugees from the East and lost their estate. Also the relatives of Mrs. Meyer are living in the Eastern zone and can give neither material nor spiritual help. Since 1945 Mrs. Meyer has been living on a low public welfare allowance. She would appreciate the granting of leave to her husband in order to obtain his advice in questions really urgent for the children's education and professional training. A leave would also alleviate the great physical strain affecting the family Meyer.

   The German population at Offleben would consider a leave a benevolent act of the Canadian government and appreciate it as such.

4. There is no need to worry about a publication of Meyer's leave in the papers or that political agents would use it for their purposes. I myself as well as the family Meyer would do everything within our power to prevent a publication of the leave granted.

The stipulation stands to reason that leave is given on parole. The undersigned lawyer is ready to stand bail for Meyer's return and to give security for the fulfillment of the conditions. If the Herr Governor is not competent for the granting of leave, I ask [you] to forward it to the competent authority.

E25. Douglas How, "Gen. Meyer Out On Pass From Prison,"* Globe and Mail*, 26 November 1951.

"Imprisoned" German Home With His Family

Offleben, Germany – Kurt Meyer, German major-general sentenced to life imprisonment for war crimes, said Sunday – in the midst of his first freedom in seven years – that he went to Canada as a "fanatical German" and came back to Germany "convinced that all nationalism is dead."

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He was interviewed by a Canadian Press reporter within easy sight of the Russian zone in a meeting that was a surprise to both of them.

At Mother's Home

The imprisoned former SS leader came to his mother's home in this coal-mining village only two days ago under a system which he said allows war prisoners to go home alone on leave from time to time.

This reporter went to Offleben to interview Meyer's wife and was amazed to step into a room where Meyer himself was romping with three of his five children. Neighbors kept a casual watch in nearby homes in case Communists tried to take him behind the iron curtain – only 300 yards away.

The man who is serving a life sentence because he was found responsible for shooting 18 Canadian prisoners-of-war in Normandy in 1944 said he'll return Saturday to Werl military prison where he was transferred recently from Canada.

Ironically, Werl is only a few miles from Soest, where Canada's 27th Brigade is going to be posted in 1952.

These are Meyer's key words:

"I went to Canada a fanatical German. I came back convinced from all I could read and gather from talks that nationalism is dead, whether it be German, British or any other. A united Europe is the only answer."

Hopes for Release

He was told some Canadians think the Canadian government eventually will release him and was asked whether he expects to get his freedom. He said he has had no official word about a release, but this reporter's impression of his reaction was that Meyer entertains considerable hopes of one.

To the question whether he would become a soldier again if given his freedom, Meyer replied:

"I would become a soldier again only as a member of a European army, not as a member of a German army alone. What would be the use of a German army alone? We must train the youth of Europe to think not of Germany or France or Belgium alone but of Europe as an entity."

He did not refer specifically to current efforts to reach agreement on a six-power European army but he said he feels service in such a force would provide the best possible chance to win Europe's youth over to the concept of Europe as an entity.

… He talked affably, occasionally emphatically, in a room where hangs a picture of himself in uniform wearing the Iron Cross.

His appearance has not changed since markedly from when the picture was taken.

Through the window could be seen an open coal-field through which runs the East-West frontier.

Here are paraphrased versions of questions and answers in a talk over the dining-room table in the house where he spent his boyhood before joining the Nazi party in 1933:

Q. Have you any comment about your imprisonment in Canada or about Canada herself?

A. Everybody at Dorchester… tried to help me. They were fair, just, but I am pleased to be back among my comrades in a military prison. At Werl there are eight generals. On one side of me is General Kesselring, on the other General Von Manstein. We are studying English together.

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PAST IS DEAD

Q. Do you still think Hitler was right?

A. The past is dead. History is its own answer about that. I live for the future.

Q. As a veteran of the Russian, Greek and Western fronts, which Allied troops did you find the best?

A. New Zealanders, but Canadians compare favourably. I think the Canadians have less stamina.

I hope there will be no war but I fear there will be and I think all the Western powers must prepare their youth. The army is no welfare institution.

It was a surprise to me to find Canadian youth practically having to be invited to join forces to defend their wonderful country. The Western powers will not long enjoy their freedom under those circumstances. They cannot afford to have a soft youth.

Q. How did you find Canadian generalship?

A. Overly cautious.

NO COMMENT HERE

In Ottawa, there was no comment…

E26. House of Commons Debates, 26 November 1951, 1301-2.

KURT MEYER
Commitment to Werl Prison, Germany – Reference to Press Report of Release to Visit His Home

Mr. George A. Drew (Leader of the Opposition): Mr. Speaker, you will be glad to learn that this is another question of privilege that I propose to raise… Today we read in a Canadian Press dispatch that when a representative of the Canadian Press called at Kurt Meyer's house on Saturday, with the expectation of seeing Mrs. Meyer –

Some hon. Members: Oh, oh.

Mr. Drew: I might say, Mr. Speaker, that the representative of the Canadian Press assumed that the report would be taken with sufficient seriousness that he did not find it necessary to give any other explanation of the fact that he was calling at Kurt Meyer's house, expecting to see Mrs. Kurt Meyer and to obtain from her information about her husband. He found Kurt Meyer playing with his children, explaining that he had been released from prison under an arrangement whereby the prisoners at that particular prison camp are permitted to visit their homes. Remembering that this prisoner is under Canadian jurisdiction, the question arises as to whether the Canadian government has given authority to Kurt Meyer to visit his home at regular intervals in this way.

Right Hon. L.S. St. Laurent (Prime Minister): I understood that the parliamentary assistant to the Minister of National Defence had inquired into this matter and had an answer prepared.

Mr. R.O. Campney (Parliamentary Assistant to the Minister of National Defence): … It is provided by section 178 of the National Defence Act that the minister may designate any prison as a service prison. As announced by the minister in the house on October 22, he so designated Werl prison as a service prison. Order in council P.C. 5596, dated October 18, 1951, was also tabled on October 22, setting out the regulations that govern prisoners in service prisons. Section 2 of those regulations specifically provides that a prisoner who is undergoing punishment in a place designated as a service prison under the National Defence Act shall be dealt with in the same manner as other prisoners in that place, and all the rules applicable to such other prisoners shall, in so far as circumstances permit, apply to him.

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We have made inquiries as to the specific rules dealing with the point raised by the leader of the opposition and have not yet received information as to what the rules in the British prison are. As soon as we have that information we will give it.

Mr. Drew: I would point out that the circumstances under which General Kurt Meyer came under the control of the Canadian government are very harrowing indeed to a number of Canadian families, and they affect the sentiments of a great number of Canadians in regard to the conduct of those responsible for military action. Kurt Meyer was found guilty of the responsibility for the death of certain Canadians. Either he was guilty or he was not. If he was guilty there was a form of punishment provided. If he was not guilty he should be freed. I submit further, Mr. Speaker, that there should be no intermediate stage. I do submit that it is a very surprising thing to be informed now that although the government has full responsibility for Kurt Meyer, whom they arranged to send to Germany, they have sent him to a prison whose rules they do not know. Judging from the answer that has been given, if these rules should provide that a prisoner be absent from the prison for six months, there would be no reason why it would not apply in this case. I would assume also that if the British authorities decided to extend their privilege to General Manstein and other prisoners, including General Kesselring – General Manstein and General Kesselring occupy cells on both sides of General Kurt Meyer – under the explanation that has been given, it would apply to General Kurt Meyer as well.

This is not something that is being raised by way of simply seeking to provoke a discussion. It is a matter of very deep and grave concern to all Canadians. This goes to the conduct of the military forces with which we were engaged in the war. Most certainly, if there was one man above all others who should be under appropriate restraint for life – if that is the penalty – it is the man who was responsible for the death of young Canadians, and most certainly there should be no easy treatment for a man who is guilty of that offence, and guilty under the circumstances that were accepted as evidence at the trial. I can only repeat that what has happened now suggests that the house should have been informed before Kurt Meyer left Canada; but in any event, the government should have been informed as to the regulations at Werl prison before Kurt Meyer was sent there. I suggest now that this whole case be reviewed. Either Kurt Meyer is guilty or he is not. If he is guilty he should receive the punishment that goes with guilt of this kind. If he is not guilty, he should be freed.

Mr. G.A. Cruikshank (Fraser Valley): May I ask a supplementary question of the parliamentary assistant? As an old veteran I do not need the assistance from Winnipeg. I feel keenly about this. If, as the leader of the opposition (Mr. Drew) said, this man as a soldier was found guilty by the courts of the land, as we presume he was, of murdering Canadians, then by no stretch of the imagination, so far as I am concerned, should he be permitted to spent a week end visiting his wife, anybody else's wife, or anyone else. I should like to ask a question through you, Mr. Speaker. We have never yet been definitely assured of what has happened to the man who wrote "Mein Kampf," who caused ruin to this whole world. If he should turn up now, is he to be permitted to visit the little lady friend he had, for a week end or two? I want to know definitely. I feel very keenly about this. Either this man is guilty or he is not.

Some hon. Members: Order.

Mr. Cruikshank: If he is guilty, as I understand he was so found by courts set up under international law, then I should like any veteran member of this House of Commons or any member of the Legion to rise in his place and apologize or approve of some reason why this man should have a week end of leisure at home or anywhere else. The courts of the land have convicted this man of murdering young Canadian soldiers. I do not approve of it. I do not know how strongly to put it, Mr. Speaker, but as a veteran I think it is a blot on the law of Canada and on international law that this should be permitted, that this rat should be permitted to go home for a week end, when at least 19 Canadian mothers are mourning the death of their sons who were murdered.

Mr. Jean Francois Pouliot (Temiscouata): All that has been said –

Mr. Ferguson: This German general was –

Mr. Pouliot: Mr. Speaker –

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Mr. Speaker: Order, I do not know whether the House desires to debate this subject.

Mr. Pouliot: No, Mr. Speaker, I am speaking a different matter.

Mr. Ferguson: I intend to speak about it, definitely.

Mr. Speaker: Order.

Mr. Pouliot: Mr. Speaker, I rise to speak on a question of privilege.

Mr. Speaker: I am in the hands of the house. It is not customary to debate a question of privilege. I realize this is an unusual session… [and] I have allowed a certain amount of latitude. There have been several speeches on the question raised by the leader of the opposition. I do not know whether the house wants to continue that subject…

Mr. J.H. Ferguson (Simcoe North): Mr. Speaker, I will not mention names, but I say that every member in the House of Commons does have a right to voice his opinion about a gentleman from an enemy country who is found guilty of committing acts –

Some hon. Members: Order.

Mr. Ferguson: Instead of being shot he was sentenced to life imprisonment, and the people of this country, the people of Canada, thought that this man was going to serve the sentence given to him by a just court composed of those who know what war is, and who know that these Canadians were young boys who were probably taken because of lack of ammunition. Then they were taken prisoner and were murdered by a man –

Some hon. Members: Order.

Mr. Ferguson: - who was given a sentence that the people of Canada did not believe was quite good enough. But when they were told he was going to be given life imprisonment they did not believe that that life imprisonment meant freedom. They will judge this government by their actions in this case. It is a crime and it is a slur on the people of Canada who fought in the last war – to think that our government would permit this to happen.

E27. House of Commons Debates, 28 November 1951, 1417.

Mr. Ray Thomas (Wetaskiwin): I should like to say one brief word about the Kurt Meyer case. Kurt Meyer was convicted or murdering nineteen Canadian boys during the last war or immediately afterward. He was convicted of ruthlessly slaughtering some of the best men we could have had in Canada. If the government does not agree that Kurt Meyer should be allowed to visit his family they should bring him back to Canada where they can keep an eye on him and have him remain where he belongs. If the government agrees that Kurt Meyer should be allowed to visit his wife and family on compassionate grounds, then they should follow the same line of reasoning and allow every murderer or life termer in Canada to go home for Christmas to see their families… This would apply particularly to those who are under sentence of death, not because they have not seen their families for some time but because when they do hang it will be a long time before they see them again. It is absolutely ridiculous that because a man is a general and is put in a military prison he should be given privileges denied to Canadian criminals. Kurt Meyer should be brought back to Canada immediately and placed in a prison here where the Canadian government can keep an eye on him. After all[,] he has been sentenced, and he should have to serve that sentence.

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E28. Translation of an article published in Westfalenpost on 28 November 1951.[62]

Leave on Parole for SS-MEYER
Lifelong at Werl – "We believe in a European Army"

Hannover, 28th Nov. – The German sentries posted near Helmstedt to guard the zone frontier have been instructed to keep an eye on a former SS-General in their district. This is only a precautionary measure, since "Panzer-Meyer," the former commander-in-chief [sic] of the 12th SS Panzer Division, Kurt Meyer, who is serving a sentence of lifelong imprisonment at Werl, has been granted a week's leave on parole to the zone frontier for a visit to his family.

For the accusations of murder, committed against 18 Canadian prisoners of war, he had been sentenced to death; this sentence, however, was commuted to lifelong penal servitude. Two months ago he extorted by suicide threats his transfer into the German Penitentiary at Werl competent for war criminals. His cell neighbour at Werl is Field Marshal Kesselring, chief of the prison library. Opposite across the corridor is "dwelling" the white-haired Field Marshal Fritz v. Manstein.

Panzer-Meyer is seeing his family for the first time within the last 6 years. He declared during his leave that he was very satisfied with his transfer from Canada to Werl. "In Canada I had to share my cell with people without refinement. Now I am being treated well and with fairness." Acccording to his statements, the study of foreign languages is the hobby of most of his companions in misfortune. The English language is being given preference. "Manstein, Kesselring and myself would daily continue our English studies. We do believe in a European army. That is what we are preparing for. Yet all the European soldiers should form a single unity; they would then be good representatives of the United States of Europe. I left Germany in 1944 as a fanatic national-socialist. At my return after a five year period of absence, I have come to believe that nationalism is a matter of the past. – Whether or not I would again become a soldier? Perhaps, – but I would not again serve in a purely German army. It is, by now, Europe that matters."

E29. Extract from the British Parliamentary Report, 3 December 1951.[63]

German General (Temporary Release)

63. *Mr. Elwyn Jones* asked the Secretary of State for Foreign Affairs what was the circumstances [sic] which led to the temporary release from Werl Prison of the former S.S. General Kurt Meyer; and whether the Canadian Government was consulted or informed before this prisoner was released.

Mr. [Anthony] Eden: Meyer was released from Werl Prison on seven days' compassionate leave. The granting of leave for strong compassionate reasons or to attend to urgent family business is recognised German penal practice, which applies to the war criminals at Werl.

The Canadian Government were not consulted or informed before the prisoner was released on compassionate leave, but a Canadian Order in Council had previously enacted that Meyer would be dealt with in the same manner as other prisoners detained at Werl.

E30. Letter, Kurt Meyer to Lt.-Col. E.R. Vickers, Governor, Allied National Prison, Werl, 4 December 1951.[64]

Report about the incidences with the press during my leave from the 22nd to 30th November, 1951.

I. By reaching the railway-station in Werl on the 22nd of November, I was surprised by two journalists who were trying to get an interview with me. I refused this request, but I could not prevent that my pictures were taken. I had the impression that these reporters had been informed about my leave by some officials of this installation.

II. On Sunday, the 25th of November, I was together with my family in my home at Offleben. At three o'clock that afternoon, my family was visited by two Canadian officers of the 27th Brigade who were accompanied by a Cana-

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dian civilian. These gentlemen were very surprised finding me at home and told me that they did not know about my leave until this fact was learned to them [sic] by people of my home-village. After inviting them in to a cup of coffee, we talked about our past battles in Normandy in a way that soldiers liked to do. During this conversation we spoke also about the future of Europe and the probable international relationship of the European Nations. During this conversation I learned that the civilian was the Canadian journalist Mr. How. After I was informed about this fact, I told the gentlemen that it was not permitted to me to give any interviews. Therefore I asked the gentlemen to draw the consequences.

III. On Monday, the 26th November, I was bothered by a German journalist who came from Hannover. He was informed about my leave by Mr. How. I refused any interview and prevented the taking of pictures of my family, my home and myself. Furthermore I refused the same request of "Life Magazin[e]."

IV. On Tuesday, the 27th of November I was visited by Mr. William Stevenson, who introduced himself by a letter from Sir Basil Clarke, OBE, DSC. I confirmed him my conversation with the two officers of the 27th Brigade and Mr. How, but I refused to give him any information about the "Bruderschaft" or similar questions.

E31. Memorandum, Lt.-Col. E.R. Vickers, British Governor, Allied National Prison, Werl to Office of the Legal Advisor, Wahnrheide, British Army of the Rhine, 4 December 1951.[65]

Subject: Leakage to Press

2. I have had an interview with the German Director and told him that we demand a more rigorous system to be introduced in order to stop the leakage to the Press.

3. In this case, Meyer was informed at 1245 hours that he had been granted leave, the administrative arrangements were made and he left the prison at 1415 hrs to catch a train at 1430 hrs. At the station he was met by two reporters including a camera man. – The Press must have been telephoned from the prison and given the train timings and place of departure.

4. Meyer was asked whether he knew the name of the two Canadian officers who visited him at his house. He did not remember their names but does know they were both of the staff of 27 Canadian Brigade.

5. Meyer having just arrived from Canada, is probably not so much Press-conscious as are the other prisoners in this prison, and he may have been indiscreet. He states emphatically that he was not, and my impression is, he feels aggrieved by the attitude of the Press towards him.

E32. Translation of an article published in Die Welt on 15 December 1951.[66]

Meyer is to "Prove Himself"

Ottawa, 14th Dec. – The Canadian Lt.Col. Macdonald, who was at that time officiating prosecutor in the process against the former general of the Waffen-SS, Kurt Meyer, suggested in a press declaration, the Canadian government should agree to Meyer's release, provided that Meyer declares himself willing to serve in a West European army. In this way Meyer could as well redeem his "misdeeds" as by sitting in prison.

Macdonald is of the opinion that the actual state of affairs is apt to destroy everything built up by Canadian soldiers in Germany in order to base mutual relations on good will on either side…

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E33. Petition, (Miss) S. Pitkanen, Secretary, Lakehead "Unity" Club, National Federation of Labour Youth, Port Arthur, Ontario to Honourable Stuart Garson, Minister of Justice, 14 January 1952.[67]

We, the members of the Lakehead "Unity" Club, National Federation of Labour Youth, strongly protest the transfer to a German prison of Kurt Meyer, Nazi general and murderer of Canadian prisoners of war during the last war.

Bruce J.S. Macdonald, Canada's chief prosecutor at the war-crimes trial of Kurt Meyer, voices the opinion that Meyer should be freed from prison if the Canadian Government is satisfied that he would participate in a Western European army; and this in spite of the fact that Mr. MacDonald still believes that Meyer was legally convicted. What an insult to the Canadian people! to the veterans of the last war! to the victims of Meyer and his fellow-Nazis!

We, as young Canadian citizens, who do not want another war, sharply protest the transfer of Kurt Meyer and demand that he be brought back to serve his life-sentence in Canada.

E34. Confidential Memorandum, Office of the High Commissioner for the United Kingdom, Ottawa, 17 January 1952.[68]

The Department of External Affairs will be aware that discussions have been proceeding between the three Allied High Commissioenrs in Germany about the contractual settlement to be made with the German Federal Government on the question of German war criminals. The Department of External Affairs may already have learnt, through the Canadian High Commissioner in London, of the provisional views of the United Kingdom authorities which are being discussed with the United States and French High Commissioners. The Canadian High Commissioner has been assured that he will be kept in touch with developments in the tripartite discussions, during the course of which the United Kingdom ideas may be modified. Once the United States, France and the United Kingdom have agreed on a line on which to approach the German Federal authorities, the Canadian Government will be informed so that they may decide whether they wish German war criminals under their jurisdiction to be covered by a similar settlement. Meantime it may be useful to Canadian authorities to have the following indication of the views of the United Kingdom Government…

(i) The German Federal Government should accept responsibility for the custody of the war criminals. It should be invited to appoint a representative to an Advisory Clemency Tribunal. The other two members should be a neutral (preferably a Swiss) and an allied representative appointed by the Government responsible for the trial of the criminal whose case the Board was considering. This tribunal would decide all questions of clemency concerning all war criminals imprisoned in the Federal Republic. It would take into account every fact relevant to the remission of any part of any sentence and would aim particularly at introducing as far as possible uniformity in the treatment of offences. It would not be competent to question the correctness of any conviction. The Federal Governemtn would undertake responsibility for seeing that the criminals served the sentences in accordance with the decisions of the Tribunal.

(ii) If, however, contrary to present indications, this solution proved unacceptable, a proposal could be made for the continued detention of war criminals under the control of an international body, which would be responsible for clemency. As regards custody, the responsibilities of the international body would be worked out in negotiations with the Germans. This would raise greater practical solutions than solution (i).

(iii) The present clemency review of the sentences passed on the war criminals in the British Zone should in either case continue as hitherto, pending the conclusion of an agreement with the Federal Government.

(iv) The extradition of war criminals should be brought to an end as soon as possible.

Informal discussion with the German Federal Chancellor during his visit to London has suggested that he would accept a settlement on the lines of (i), (iii) and (iv).

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E35. Letter, Reimund Konar, Hamburg, to Herr Meyer [translated], 3 February 1952.[69]

[Your] letter of 24.12.51 was a fine Christmas present to me. You will excuse the 6 weeks' delay of my letter of thanks. I could not make up my mind to dispatch an elaborate report, already written. Though it contained but personal experiences there are various things which might be misinterpreted in this very strange world of ours. By broadcast news, papers and literature you have certainly been able to observe onto which road we have been led after the total eclipse of the sun. We are naturally interested in the fate of our commander, irrespective of our own troubles. When, by a chance, I read about your case in a magazine and the quintessence was a positive result I felt pleased. In the past years one could, time and again, find reports on you in the papers, such as your transfer to Werl and the 10 days' leave on parole to your family. In a "Hiag"-meeting (the chief task of it being welfare for those still imprisoned) more than 1000 attendants heard hopeful things about our Panzer-Meyer. One day also you will leave that house and forget this time, if this is, at all, possible.

I will admit that life among comrades behind the barbed wire (I have passed through eight camps within three years) has sometimes been less unbearable than life in "liberty"among people who have made hatred their emblem. It certainly requires a lot of courage and vitality to nourish oneself and the children if one counts among those who have been pushed aside on account of a collective guilt.

If it is an ordeal that has stricken Germany there must be, anyway, a sense in it. Such a trial cannot be imposed on us for nothing. Anyway I believe in a compensating justice. Too much shame and humiliation has come to the German people. And this will still last today and tomorrow. But the day after tomorrow the good will come forth, since those who have [borne] the blame cannot stand for it eternally.

With these thoughts and with best regards as a comrade I remain.

E36. Confidential Memorandum for Heads of Division Meeting, Legal/E.R. Rettie/MAW, 4 February 1952.[70]

Subject: Conditions of Custody of War Criminals in Germany Prior to the Termination of the Occupation Statute

MR. BURBRIDGE reported that as a result of action taken with regard to Kurt Meyer and Johann Neitz by the United Kingdom authorities in Germany, who are responsible for their custody, National Defence requested that the United Kingdom be asked to confirm the understanding of the Canadian Government that any question affecting the sentences or the main conditions of custody of either of the two Canadian-convicted war criminals are matters to be dealt with by this Government. After an initial approach to the Foreign Office and the Commonwealth Relations Office, Canada House has reported that we will get unquestioned agreement that anything affecting sentence should be dealt with by the Canadian Government. The United Kingdom understanding of "the main conditions of custody" may be more cautiously worded but question may prevent a reoccurrence of unfortunate publicity with regard to action taken by United Kingdom authorities in Germany. It will be recalled, for instance, that Meyer was given leave of absence in Germany before the Canadian Government had been informed. Since that time we were given advance notice that Meyer would be taken to a civilian hospital under proper guard for medical treatment…

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F. The Decision to Release Meyer

F1. House of Commons Debates, 5 December 1951, 1617-20.

Mr. H.W. Herridge (Kootenay West): I want to speak for a few minutes on a matter that is of great concern to many of my constituents and other Canadians at this time… I refer to the mystery surrounding the possible release of the former nazi general, Kurt Meyer… All members of the group for whom I am speaking have received resolutions from trade unions, Canadian Legion branches, women's organizations, and also quite a number of letters. In addition, the press generally throughout Canada has shown in various editorials considerable concern…

[In late October 1951] a Reuters news dispatch in reporting the reply of Anthony Eden to a question in the British House of Commons stated that Canada was not asked about Meyer. This press despatch read as follows:

> *Foreign Secretary Anthony Eden was asked in the House of Commons Monday if the Canadian government was consulted or informed before the former nazi General Kurt Meyer was released on compassionate leave in the British zone of Germany.*
>
> *He replied that it was not, but a Canadian order in council had previously enacted that Meyer… would be dealt with in the same way as the other prisoners detained at Werl.*
>
> *He added that Meyer was released from Werl prison on seven days' compassionate leave. The granting of leave for strong compassionate reasons or to attend to urgent family business was recognized German penal practice which applied to war criminals of the Werl.*

My point in that connection is that the parliamentary assistant's answer indicated that Kurt Meyer was under the control of the Canadian government. Here we find that he was released temporarily without the Canadian government being consulted. It is obvious that, regardless of the statement made by the parliamentary assistant, Kurt Meyer is in a German prison under the control of the German government, which prison is operated according to German regulations.

The Canadian people are concerned as to the identity of the parties who applied for the release of this former nazi general. On October 22 the Secretary of State for External Affairs (Mr. Pearson) informed the house that the German ambassador-designate was making representations on behalf of the German government for the release of Kurt Meyer while the ladies' auxiliaries of the Legion in this country were preparing for the sale of poppies on November 11, and while the veterans' organizations of this country were making preparations to pay their annual tributes to the war dead of Canada.

I believe it would be wise to put on the record, because many newspapers are easily lost and a good many Canadians are confused in connection with this case by what has been said in so many quarters, what the prosecutor of Meyer has to say. In this respect I am going to quote briefly from an article in the *Globe and Mail* of December 3, 1951. This article is entitled "Prosecutor of Meyer supports conviction." It reads:

> *Bruce J.S. Macdonald, now Windsor's crown attorney, issued a statement in which he said he was supported by Clarence Campbell, president of the National Hockey League, and Mr. Macdonald's assistant at the war crimes trials.*

The statement follows:

> *"It was not my intention to say anything about the return of Kurt Meyer to Germany. There has been much uninformed public comment about the whole matter which could be ignored.*

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However, the statement volunteered by Lt. Col. Dalton Dean of Haileybury, who assisted me at the trial, does call for consideration. I have been in touch with Lt. Col. C.S. Campbell, MBE, K.C., of Montreal, who was assistant prosecutor at the trial, and we are in complete agreement in the following expression of our views.

It will be recalled that Meyer was charged with the commission of five war crimes. On only four he could be convicted (one being an alternative). He was found guilty of three of the four possible charges and acquitted on the remainder.

He was convicted of inciting and counselling troops to deny quarter. This occurred prior to their commitment in action.

The evidence came from German personnel and was amply sufficient to justify conviction in any civil court.

The other two convictions had to do with the shooting of 18 Canadian prisoners at Meyer's own headquarters at a distance of only 100 metres from his command post.

The evidence of a German eyewitness was that seven of these prisoners were individually executed by a senior NCO at headquarters following their interrogation by Meyer's adjutant.

This immediately followed the open statement by Meyer to the adjutant and others present that in future we will take no prisoners and a sotto voce conversation between them.

On this unshaken testimony and much corroborative evidence of a circumstantial character, the court, consisting of five of Canada's most experienced and distinguished field commanders, found Meyer guilty.

The finding and death sentence imposed by the court were then confirmed by the convening officer, Major-General Vokes. Later, after all the presentation had been completed for the execution, General Vokes, as senior theatre commander, for reasons then given, commuted the sentence to life imprisonment."

As I said before, Mr. Speaker, large numbers of Canadians are concerned about this matter, because it is something that is a sort of symbolic act; I refer to the possible release of Kurt Meyer. I understand that the national officers of the Canadian Legion have made representations in this connection. In a recent issue of the *Globe and Mail* I read the following:

"The executive of the dominion command of the Canadian Corps Association said last night in a resolution that the release of Kurt Meyer, German war criminal, 'under any circumstances,' would be a direct insult to present or past members of the Canadian armed forces."

In my own district I know that some of the largest branches have recently had meetings on this question and have forwarded resolutions to our provincial command urging that they ask for a further and immediate investigation into this case. In addition to that, trade unions, women's organizations and a large number of individuals have written to members of this house expressing their opinions in this case. It is obvious, Mr. Speaker, that there has been some continuous effort to release Meyer. I quote briefly from the *Gazette* of November 30, which has an article entitled "Meyer All but Freed says Ex-Nazi's Journal." The article was by Douglas How; and incidentally, Douglas How is a reliable Canadian Press correspondent. The article reads as follows:

"A new German monthly paper, published by former S.S. (elite guard) troops, said today Kurt Meyer came within a hair's breadth of being released by Canada this year.

In its first issue, that paper says Meyer… wrote his wife from Dorchester, N.B., penitentiary last March that he expected to be released soon.

It says further that an Aurich lawyer named Schatt [sic] almost managed to get Meyer out of prison this year but there are circles in Canada who know how to stop an innocent man from getting his freedom."

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In addition, Mr. Speaker, it is obvious that anyone who read the press dispatch in the *Gazette* of November 26, forwarded by Mr. Douglas How, of his interview with Kurt Meyer, will realize that this man is completely unchanged. In my opinion he is an unregenerate nazi. On being questioned as to his opinion of Hitler, here is what he said. He was asked:

"Do you still think Hitler was right?"

His answer was:

"The past is dead. History is its own answer about that. I live for the future."

He completely avoids the issue. Then he goes on to give answers which indicate that he is still a German general, that he still looks at life as a military man and has that point of view. He mentions that the western powers cannot afford to have a soft youth, and so on. In addition to that, friends of mine tell me that the troops who were guarding him when he was a prisoner in Germany, prior to his coming to Canada in 1945 [sic], had discussions with him and found that he was a fanatical nazi; that when they tried to talk with him and discuss the foolishness of the nazi faith he would say, "Oh, the thing is that you men never met the fuehrer." In releasing a man such as Kurt Meyer, Mr. Speaker, I think it is quite obvious that we would not be releasing a man who would make any contribution, in the moral or the spiritual sense, to the defence of democracy…

The release of Kurt Meyer for use in a future German army is, I am sure, in the opinion of the majority of the Canadian people completely morally indefensible. On that basis, if Hitler were alive we could seek his support as an ally in the defence of freedom. Just let us realize, Mr. Speaker, that if this man were released and assumed command of a German division, under the terms of military law Canadian troops serving in Germany would be required to salute this German war criminal when passing him on the street. I am sure there are a great number of Canadians who do not view that situation with any relish.

Mr. Speaker, in view of the circumstances and in view of the concern felt by the Canadian people, the release of Kurt Meyer would be an offence against the memory of our gallant dead. It would be an offence and an outrage against their sorrowing next of kin. It would show a complete lack of consideration of the efforts made and the fighting done by the veterans of this country in two great wars. It would mean the complete disregard of the opinion of the great majority of the Canadian people. His release would be a violation of our declared democratic principles and practices. As a policy it would have, psychologically, most unfortunate effects. It would affect the morale of the Canadian people. It would affect their confidence and faith in our democratic cause. In my opinion, Mr. Speaker – and I speak with some heat on this question – in the long run democracy and freedom can only be satisfactorily defended by people who believe in freedom… In conclusion I say that if we have faith in freedom's truth, let us prove it by our acts.

F2. House of Commons Debates, 6 December 1951, 1637-8.

Mr. R.O. Campney (Parliamentary Assistant to the Minister of National Defence):… Because Meyer was the only German convicted of a war crime imprisoned anywhere in Canada or, in fact, outside Germany, he was in October last transferred to a prison for war criminals in Germany at Werl, under the administration of the United Kingdom. As I stated on November 26, and for reasons therein set out, he became subject to the general discipline and regulations applicable to all war criminals in that prison as administered by the United Kingdom authorities. It was under rules as applied by the United Kingdom authorities to all prisoners incarcerated at Werl he applied for and was granted compassionate leave a short time ago.

Because Meyer by order in council was placed under the rules and regulations of the prison at Werl, his application for compassionate leave was dealt with in the ordinary way and, as it was a matter of prison administration, without reference to the Canadian government. As the Minister of National Defence stated in the House of Commons on October 22,… "the prison in which [Meyer] is now incarcerated, is under the control of the United Kingdom occupation authorities in

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Germany but they have no power to interfere with his sentence." Meyer's sentence was and remains exclusively within the control of the Canadian government, and has been in no way changed.

Mr. J.H. Ferguson (Simcoe North): Mr. Speaker, I have a great deal of respect for the fighting ability of the German soldier. I have every reason to have that regard because I experienced the pleasure of fighting against him. A question has been raised in this house concerning a German major general… This man was tried fairly, I am sure, was found guilty and sentenced to death. One of our generals commuted the sentence to life imprisonment.

Some hon. Members: Order.

Mr. Ferguson: This matter is of vital importance to the people of Canada, particularly those who have served overseas in the various wars. Either this man should have a retrial or he should go to the penitentiary and properly serve his life sentence.

F3. House of Commons Debates, 10 December 1951, 1718-9.

Mr. George A. Drew (Leader of the Opposition): I wish to direct a question to the Prime Minister. In view of the uncertainty which has been created by the statements made by those counsel responsible for the prosecution of Kurt Meyer and those defending him, as well as the statements by counsel more recently engaged, which throw a great deal of uncertainty upon the propriety of what is taking place, will the Prime Minister indicate whether the government intends to take any action?

Right Hon. L.S. St. Laurent (Prime Minister): I am sorry, but I have no comment to make at this time.

F4. House of Commons Debates, 17 December 1951, 2051.

Mr. George A. Drew (Leader of the Opposition): Mr. Speaker, because of the fact that we are obviously approaching the termination of the session, and because it is impossible to raise it in any other way, I propose to raise a matter that I think calls for some statement by the government before we leave. Right across this country a very general feeling of indignation has been expressed in regard to the uncertainty of the future of Kurt Meyer, and I think that before this house leaves we should have a very clear understanding of what is to be done. I think Canadians, without exception, will respect the decisions of our courts, and the decision that may be made in accordance with the ordinary principles of Canadian justice; but there is a strong feeling that there was some connection between the proposal that Kurt Meyer made just before he was arrested, that he be permitted to form a division of S.S. troops to be known as the division Europa, and the course of events which seem to have followed such a strange pattern.

I believe that Kurt Meyer is more than simply another nazi general. He has become a symbol in the minds of Canadians, who have suffered from nazi brutality, of the sort of thing that would raise doubts as to the clarity of our attitude toward the conduct of that kind. I think that, at a time when other young men are being called upon to fight for their country, the people of Canada want some reassurance as to exactly what is going to be done in regard to a case that has followed such a strange course up to this time.

Right Hon. L.S. St. Laurent (Prime Minister): Mr. Speaker, it seems to me rather strange that this should be raised as a matter of privilege. I understand that only matters of privilege can be raised at this stage; but since it has been raised, all I can say to the leader of the opposition is to repeat what has been said. Kurt Meyer is still under the exclusive jurisdiction of the Canadian government, and no decision has been made that would justify the anxiety to which the leader of the opposition referred. There has been no change whatever, other than the transfer of this prisoner to a prison camp in Europe, where he remains, except as to the ordinary administration within the prison camp, under the exclusive jurisdiction of the Canadian government.

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F5. Top Secret, Cabinet Conclusions, Ottawa, 20 December 1951.[71]

Cabinet Defence Committee; report

23. The Minister of National Defence (Mr. Claxton) outlined matters dealt with earlier that day by the Cabinet Defence Committee…

The Committee had also agreed that, in reply to an enquiry from Kurt Meyer's German lawyers, the Ambassador at Bonn indicate that, in approving Meyer's transfer to Germany, the Canadian government had decided against his release as requested in a petition from his Canadian lawyers and that, consequently, there could be no question of his release on bail pending consideration of the said petition.

F6. Ray Gardner, "WANTED for MURDER: S.S. BRIGADEFUHRER KURT MEYER" [pamphlet c.1951].

"Escaped" from Dorchester Penitentiary, Canada, while serving life sentences for complicity in murder of 18 Canadian prisoners-of-war. Believed to be somewhere in Germany. Last seen romping with children at Offleben. Former member of Hitler Gang, may be found in company with remnants of gang. Distinguishing mark: Arrogance. Known to shoot to kill. Is wanted back in Canada.

By Order of the Canadian People

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"My son did not die in the service of his country, he was murdered… He was only a young kid. I didn't want him to go because he was so young. But he said to me, 'Why, Dad, you've been fighting fascism ever sine I was a kid.' I ran out of arguments. He went to fight for our freedom. I wonder?"

– Joseph J. Smith, father of Rfn. R. G. Smith, Royal Winnipeg Rifles, murdered by Kurt Meyer's troops, speaking at protest rally against Meyer's transfer to Germany.

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1. The Freedom Gang

The Abbaye Ardenne Case (as the trial of SS Brigadefuhrer Kurt Meyer is described in the law reports of the United Nations War Crimes Commission) begins in the summer of 1944 with the murder in cold blood of 18 Canadian prisoners-of-war.

But today, as Meyer, the convicted murderer, appears on the verge of winning his release from prison, all the aspects of the case and their significance can be fully understood only when set against a background of certain events which took place in January and February of 1951.

In January, 1951, General Dwight Eisenhower set off on a tour of the West European capitals. This was the genial Ike in his new role of Supreme Commander of the North Atlantic Treaty Forces. President Truman had given him his command, and now it was up to Eisenhower to find the forces to command. Ike had become the West's five-star recruiting officer.

In the course of his recruiting tour of Europe, Eisenhower landed, on January 21, in Frankfurt, headquarters of American occupation forces in Germany. There, at a press conference, "in a bold and clever move to win greater German cooperation on defense (Eisenhower) told the German people he bore them no resentment and declared, 'For my part, bygones are bygones'." (*New York Times, Jan. 21, 1951.*)

For his part, General Eisenhower was willing to forget the unspeakable horrors of Belsen, Buchenwald, Treblinka and a score of other extermination camps with their gas ovens and torture chambers, the lampshades made of human skin

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and the mattresses stuffed with the hair of the dead. (At Treblinka extermination camp a man was stripped and gassed within ten minutes of his arrival. For women it took fifteen minutes as their hair was first sheared off for use in mattresses.)

General Eisenhower, for reasons of his own, was willing to forget the 26 million men, women and children slain by the Nazis.

What were these reasons? The *New York Times* put the principal reason down, black on white:"The Supreme Commander, turning to the question of Germany's part in European defenses, asserted he would like to see the German people and all free peoples building up their strength '*as one gang*' to defend freedom."

These words were not addressed so much to the German people as they were to the remnants of the Hitler Gang, henceforth to be known, perhaps, as the Freedom Gang.

Eisenhower had already been doing some secret plotting with the Hitler generals, as *The Vancouver Sun* reported on January 9:

Hitler's Men Join West's Troop Talks
"*BONN, GERMANY, Jan 9* – Secret negotiations for German soldiers in Gen, Dwight D. Eisenhower's European army got underway today with representatives of the U.S., Britain and France sitting down with three former members of Hitler's general staff.*

Eisenhower has embarked in earnest on the remilitarization of West Germany. While others were charged with the revival of Nazi was industry, his was the job of rebuilding the Wehrmacht. The Hitler generals were to be employed for his purpose, and bygones were to be bygones. The prison gates were to be flung wide to release a flood of the most notorious murderers history has ever known, so they might take their place in the front ranks of the fighters for freedom.

Only two days after Eisenhower's press conference, *Reuters* reported from Frankfurt: "The planned rearmament of West Germany is expected to provoke fresh German demands for the release of more convicted war criminals, particularly Wehrmacht generals." The *Christian Science Monitor* summed the plot up in a single headline: *GERMAN REARMING SEEN AS SPUR TO RELEASE OF WAR CRIMINALS.*

"Allied observers here (in Frankfurt) agree that the more steps taken to rearm Germany, the more strident these demands (to release former generals and admirals) will become," said *Reuters*.

The wholesale release of war criminals began ten days after Eisenhower's arrival in Frankfurt when 29 top-rank Nazis were freed from Landsberg prison on a single day. Heading the list was Alfred Krupp, head of the House of Krupp, instigators of World War I and II. Throughout January and February, the flood continued.

And, in Canada, there was a renewed bid to release SS Major General Kurt Meyer, serving a life sentence in Dorchester Penitentiary N.B., for the murder of 18 helpless Canadian prisoners-of-war.

Kurt Meyer was needed in Germany to take command of a division in General Dwight D. Eisenhower's European Army. The Freedom Gang needed every experienced gangster it could find. Murderers were preferred.

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* *One of these generals was Lt-Gen. Hans Speidel, former chief of staff of Field Marshall Erwin Rommel. Romnel, a Nazi street thug, one of the first SS leaders, member of the 'the Gestapo, an early member of the Nazi Party and roommate of Hitler in his Munich days, is now glorified as a gentleman soldier in the American film, The Desert Fox.*

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2. Murder at the Abbey

SS Major General Kurt Meyer, pictured today as a reformed Nazi, and a willing fighter for peace, remains, in spite of all attempts to whitewash him, a convicted war criminal.

Meyer was given a fair trail before a competent Canadian military court, sitting at Aurich, Germany, and was convicted on three charges of having committed war crimes against Canadian prisoners. He was found responsible for the murder, in cold blood, of 18 Canadian soldiers captured in the Normandy fighting of June, 1944.

The 8,000-word indictment returned against Meyer, based on the Hague Convention of 1907 and the Geneva Convention of 1929 governing the treatment of prisoners-of-war, had taken 15 months to prepare.

Meyer was convicted on these charges:

1. He incited his troops to deny quarter to Allied troops.
2. He was responsible for his troops killing seven Canadian prisoners-of-war at his headquarters in the Ancient Abbey of Ardenne in Normandy.
3. He was responsible for his troops killing another eleven prisoners at his headquarters.

The 18 Canadians were murdered in a most brutal fashion. Eight were shot through the head, the other ten were clubbed to death and all were buried in concealed graves in the garden of the abbey.

The story of the murder of the first 7 prisoners was told to the court by Jan Jesionek, a Polish conscript attached to Meyer's headquarters…

Meyer escaped conviction on a charge of responsibility for the charge of responsibility for the murder of 30 more Canadian prisoners by his SS men. The bodies of 23 of these men were left lying for days on a busy road and were crushed beyond recognition by tanks and other vehicles. Meyer's troops refused to let French villagers bury the dead.

There is no room for speculation on the question of Meyer's guilt. It was proven beyond doubt that he incited his troops to deny quarter to prisoners. That, in itself, is a serious war crime. Moreover, there is no doubt that Meyer was responsible for the murder of 18 prisoners.

Such crimes against humanity can not be passed off as trifling "bygones."

3. The Death Sentence

On December 28, 1945, Kurt Meyer was sentenced to be shot.

In the face of death, the fanatical Nazi, who had boasted "My unit takes no prisoners," begged for mercy.

He appealed against the sentence on compassionate grounds. *Time Magazine* reported, "He said he had no fault to find with the sentence, but asked mitigation on behalf of his wife and five children." Other press reports quoted Meyer as saying he had had a fair trial.

On January 6, 1946, Canadian Military Headquarters in London announced that his appeal had been rejected. Meyer must die.

Eight days later Canada was shocked by the announcement from Germany that Meyer's sentence had been commuted to life imprisonment by Maj.-Gen. Chris Vokes, commander of the Canadian Occupation Force in Germany. The official statement said the "sentence will be served in a Canadian prison." (This is worth noting today.)

A storm of protest swept Canada.

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The Toronto *Globe and Mail* commented editorially that Vokes' decision "holds the whole Canadian system of administration of justice up to ridicule before the world."

The *Vancouver Daily Province* was even more critical: "There was no proper justification for the commutation and Canadian public opinion is right in protesting strongly against General Vokes' decision."

Almost every branch of the Canadian Legion, from Victoria to Nova Scotia, sent indignant protests to Ottawa. One Vancouver branch organized a "Hang Meyer Committee." Labour Councils in Vancouver and Port Arthur joined in the wave of protests. Winnipeg School Board and Toronto Board of Control passed resolutions of protest.

This was January, 1946, and Canadian public opinion was still outraged by the revelations of Nazi atrocities at Belsen and Buchenwald. Nazi war criminals were rightly seen as a menace to peace and to humanity.

In spite of the overwhelming demand that the death sentence imposed on Meyer be executed, he was flown to Canada and imprisoned – for life – in Dorchester Penitentiary.

4. Nazi No. 316,714

Kurt Meyer is an exemplary product (from the Nazi viewpoint) of Hitler's deliberate program of corrupting the youth of Germany. Torn from their homes, regimented in the Hitler Youth, Germany's young men were taught to rape, loot and murder. Meyer eventually became a leader of Hitler Youth, an instructor in the Nazi school of murder.

The most ardent Nazis came from the ranks of Germany's disillusioned youth. Meyer was a typical example. "Kurt Meyer, unsuccessful salesman at 16, unemployed coal miner at 18, obscure harness cop at 24, had hitched his wagon to the star of national socialism in 1934," writes Ralph Allen in *Maclean's*.

"When he was accepted as a 25-year-old volunteer in the Leibstandarte Adolf Hitler, the Fuhrer's guard regiment, he was carrying party card No. 316,714 and SS membership No. 17,559."

This is proof that Meyer was an early convert to Nazism.

Major Milton Shulman, of Canadian Army Intelligence interviewed Meyer in a POW camp. He tells of it in his book Defeat in the West.

"Meyer is typical of the kind of German it would be most dangerous to let loose in Germany once again. A devoted disciple of Nazism and all that it stands for, his mind is so distorted by [pseudo-philosophy], military jingoism and bald lies that no possible experience could ever purify it of its beliefs.

"His first words to us were: 'You will hear a lot against Adolf Hitler in this camp, but you will never hear it from me. As far as I am concerned he was and still is the greatest thing that ever happened to Germany.'

"When he began to wander into the political field, it might have been the reincarnation of Hitler and Goebbels voicing their rant."

Lt.-Col. Bruce Macdonald, prosecutor at Meyer's trial, got the same impression. "There is no other German better qualified to step into the position of the late Adolf Hitler," he said in July, 1946. "Meyer is a fanatical Nazi, an inscriptional leader of the Hitler Youth, young and ambitious, and a brilliant general."

Describing Meyer as "a possible Hitler of the future," Macdonald said: "If he is pardoned in 10 years, or even 20, and goes back to Germany while there is still any [smoldering] remnant of Hitlerism, Meyer could easily become an idol of the German people." *(Mark these words well.)*

At the time of the Normandy murders, Meyer, then only 33, was commander of the 25th Panzer grenadier Regiment of the 12th SS Hitler Youth Division.

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He was accustomed to making "blood and fire" speeches to his troops after the manner of Adolf Hitler. The following is a fair example:

> *"We are here in Normandy, and we here in our fists have the weapons of the German people…If the Allied forces take a stand for the invasion, the reprisals of revenge will not be achieved through our blood, through our spirit of attack and through the annihilation of the enemy forces."*

Before serving in Normandy, Meyer had won eleven decorations while fighting in Poland, Rumania, Bulgaria, Yugoslavia, Greece and Russia. It seems fair to ask how many helpless prisoners and civilians he slaughtered on those fronts where the murdering of prisoners was more a Nazi rule than an exception.

Meyer can not be whitewashed on the pretext that he was merely a professional soldier doing his duty. He was a thorough-going Nazi who well understood the political implications of the Nazi program and who willingly played a leading [role] in its murderous implementation.

5. The Plot Unfolds

There has been, since 1949, a plot afoot to obtain Meyer's release from Dorchester Penitentiary where he was serving as prison librarian and, according to The *Vancouver Daily Province* (Feb. 24, 1949), was enjoying special privileges.

The plot has been foiled so far only by the repeated protests of the Canadian people.

Time Magazine reported in October, 1949, that "an anonymous group of Meyer's friends" had hired two lawyers "to see if he could not be transferred from a civil to a military prison."

"Since Canada has no military prisons it looked like a thinly veiled plot to have him pardoned and sent home," commented *Time*.

Meyer's friends did not succeed for the moment, but when General Eisenhower went to Europe to make friends with the Hitler generals, they tried again. Towards the end of January, 1951, an army spokesman revealed in Ottawa that the government was considering an appeal for clemency filed by Meyer. Press reports referred to Meyer as an "anti-Soviet expert," a qualification he held in common with his late Fuhrer.

An outburst of protests again struck Ottawa and the Meyer case was once more hushed up.

Then, on October 18, 1951 there was a startling development.

The Canadian government announced that Meyer had been transferred to a military prison in Werl, Germany. He had virtually been smuggled out of the country, behind the backs of the people. The transfer had been accomplished by [a] secret order-in-council.

Not daring to reveal its intention of sending Meyer home in advance of the actual transfer, the government had acted in an underhanded manner and had presented the Canadian people with a *fait accompli*.

It had acted in contravention of Gen. Vokes' own order that the "sentence will be served in a Canadian prison." For a Nazi criminal, the government was ever ready to revoke its own orders.

The Canadian government had apparently given in to pressure from the West German government.

On October 22, Lester B. Pearson, Minister of External Affairs, disclosed in the House of Commons that Dr. Werner Dankwart, the German ambassador designate to Canada, had officially requested Meyer's release.

The request had been made on October 15. Three days later, Meyer was transferred to Germany!

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Yet, Mr. Pearson said in the House that the German request had been rejected. The facts would indicate that Mr. Pearson had struck a compromise agreement, for the time being, to placate the Bonn government.

While Mr. Pearson made his explanations, Brooke Claxton, Minister of National [Defence], stated flatly that Meyer was not to be released.

The most shocking scandal of a scandalous case was to break a month later, on November 24, 1951. In search of a human interest story, Canadian Press reporter Douglas How had gone to Offleben, Germany, to interview Meyer's wife "and was amazed," he wrote, "to step into a room where Meyer himself was romping with three of his five children."

Meyer was enjoying ten days' leave from the British military prison at Werl, Germany!

Had How not happened upon Meyer, by chance, as he did, it is likely the Canadian public would never have known of this murderer's vacation.

How gained the impression, he wrote, that "Meyer entertains considerable hopes" of being set free. The *Toronto Daily Star*, of the same mind, reported: "There is no question that Meyer will be released before many months have passed."

How later reported from Hanover that "a new German monthly paper published by former SS (Elite Guard) Troops said… Kurt Meyer came within a hair's breadth of being released by Canada this year." This paper, How reported, "says… that an Aurich lawyer named Schatt [sic] almost managed to get Meyer out of prison this year, 'but there are circles in Canada who know now to stop an innocent man from getting his freedom.'"

The latter part of this statement is an insult to the people of Canada. The allied occupation authorities are empowered to close up newspapers which hurl such insults. Mr. Claxton should perform his duty and see that this SS propaganda sheet is put out of business.

But, more than that, Mr. Claxton should tell us about Mr. Schatt [sic]. What has this German lawyer been up to? Did he almost secure Meyer's release? Mr. Claxton arranged the secret transfer of Meyer to Germany, as was so ardently desired by his friends. What other secret dealings with the friends of this criminal has our defence minister hidden from the Canadian people?

Faced with mounting criticism, Mr. Claxton was forced to reiterate his statement that Meyer's release is not imminent. "There is no *present* intention of releasing Kurt Meyer," he told *Vancouver Sun* reporter Dillon O'Leary, Dec. 4, 1951. He had left himself a loophole. As The *Sun* commented editorially, "Meyer may be released eventually. Mr. Claxton's words don't rule out that possibility."

As the pressure mounted, Mr. Claxton's parliamentary assistant, Ralph Campney, stepped in to carry the ball in Commons, denying again (on Dec. 6) that Meyer was to be pardoned. "His sentence remains exclusively in the control of the Canadian government," he said.

This seemed to conflict with an earlier statement in the British House of Commons by Foreign Secretary Eden that Meyer's release on leave was not within the control of the Canadian government. This alone justifies the demand that Meyer be returned to a Canadian prison.

It also raises the point: If and when a peace treaty is signed with West Germany, will Meyer pass out of our control and into the hands of the Bonn government? Is this the tactic our government has in mind to escape the responsibility for Meyer's eventual release?

By its disgraceful pampering of this war criminal, by the underhanded way in which it has handled the case, our government has caused distrust among the Canadian people. The only way in which it can banish this distrust is to return Meyer to Dorchester Penitentiary, lock the gates and throw the key away!

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6. Democracy's New Hero

Kurt Meyer is wanted out of prison to lead a division in a new Nazi army or to play an even more important role in the re-arming of Western Germany. German young people do not want to fight again, but Meyer could undoubtedly rally a large number of Nazi scum to his banner.

Robert Taylor, Ottawa correspondent of The *Toronto Daily Star*, reported that Meyer's transfer to Germany "is regarded (in Ottawa) as an obvious move to clear the way for him entering the ranks of NATO forces."

"An aroused public opinion in the North Atlantic Treaty countries is about the only thing that will keep Meyer from becoming an important figure in an integrated European defense force, informed sources said here today," Taylor reported Nov. 26, 1951.

Have six years' imprisonment succeeded in transforming the Nazi war criminal of 1945 into a staunch defender of the democratic way of life? The newspaper headlines might lead one to believe that the reformation of Meyer is complete:

CITY BRIGADIER SAYS MEYER COULD FIGHT, WORK FOR PEACE
Vancouver Sun, Dec. 3, 1951.

FREE MEYER TO FIGHT PROSECUTOR SUGGESTS
Vancouver Daily Province, Dec. 3, 1951.

But the headlines are misleading. It is not Meyer who has changed his moral values; rather it appears that certain members of the Canadian officer caste have had a change of heart. The cold war has caused them to revise *their* moral values, downward.

Certain of Meyer's statements, made during his interview with CP correspondent How, prove that Meyer has not reformed.

"Do you still think Hitler was right?" Meyer was asked. "The past is dead," he answered. "History is its own answer about that. I live for the future."

Meyer is still not prepared to speak a harsh word against his Führer.

Mr. How, who is apparently not too familiar with all of Hitler's phrase-mongering, made a great fuss over Meyer's statement that "nationalism is dead… A United Europe is the only answer." The latter part of this statement comes, word for word, out of Hitler's mouth. It was his flimsy cover-up for the conquest of Europe.

Meyer warned the western powers that they must prepare their youth for war: "It was a surprise to me to find Canadian youth practically having to be invited to join forces to defend their wonderful country. The western powers will not long enjoy freedom under those circumstances. *They cannot afford to have a soft youth*."

A more outrageous statement has probably never appeared in the Canadian press. By the statement alone Meyer proved conclusively that he has not shed an ounce of his arrogance.

Here is the man who taught his teen-aged troops to commit murder ("I wished to make my regiment an example of the youthful power of our people," he said, at the time of his trial.) – here is a Hitler Youth leader lecturing Canadian youth for their lack of hardness, and, by broad inference, advocating conscription for them.

Here is a man, who was fit to enter Canada only as a convicted murderer, speaking of our "wonderful" country. Would he dare give such a lecture on patriotism to the families of his 18 victims?

But the headlines say, "Set this Nazi killer free!" Let us examine the stories under the headlines:

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Brig. H. P. Bell-Irving, of Vancouver, a member of the Canadian military court which convicted Meyer, sees him today as a potential champion of peace.

"Kurt Meyer was properly convicted and sentenced for a horrible war crime for which there can be no excuse," Brig. Bell-Irving is quoted by The *Vancouver Daily Province*.

But, he says, "It might well be that with different training and a new set of values, Kurt Meyer could now be as ardent on the side of right as he once was on the other side."

Notice, the brigadier says Meyer is guilty of a horrible crime, but still sees him as a potential ally.

Lt.-Col. Macdonald, the prosecutor at Meyer's trial, put it more bluntly:

"I have no doubt about the legality of Meyer's conviction for the killing of our soldiers within 100 metres of his command post, but the matter should be dealt with realistically… The Meyer issue stands to undo all that our troops are trying to accomplish in good will in Germany… He can better expiate his misdeeds (by working with us) than by languishing in prison."

The colonel reaffirms Meyer's guilt, but he wants us to be "realistic." By which he means, he wants us to abandon principle for expediency.

As he points out, Canadian troops are already in Europe as part of Eisenhower's NATO forces. Within two years Eisenhower expects to have a whole Canadian division. (Canadian Press, Dec. 1, 1951.) Are these troops to have as a comrade-in-arms the man found responsible for the murder of 18 of their compatriots?

Remember, Lt.-Col. Macdonald is the man who said in 1946 that Meyer should never be released as long as spark of Hitlerism continues to smoulder in Germany.

Perhaps someone will refer the colonel to CP reporter How's dispatch from Hannover Dec. 5, 1951, in which he reports: "Chance has dropped Canada's 27th Brigade into the hotbed of Germany's resurgent Nazism." The new Nazi leader, How wrote, is Ernest Remer, like Meyer, a major-general!

7. Bring Meyer Back

The pampering of Kurt Meyer – his secret transfer to Germany, his release on leave – is an insult to all Canadians who gave their lives to rid the world of Nazism. It is immoral.

His release, for whatever reason, would be an even greater insult; it would be a complete betrayal of all those who fought in World War II.

His release for employment in a New Nazi army would be a criminal act, for a Nazi army would represent a grave threat to world peace. Are we to forget so soon that the Nazis plunged the world into history's most criminal and devastating war?

How just can our cause be if we are prepared to enlist in its service the most depraved scum the world has ever known?

The life of Kurt Meyer is not the issue at stake in this case. He should have been long since dead and forgotten. The issue is one of principle and it involves Canada's reputation and future as a nation.

Can we afford such allies as Meyer and the other Nazi generals, and Nazi industrialists such as Krupp? How ill the people of Europe regard our association with these men who razed their homes, pillaged their lands, murderer their wives, husbands and children? Will they be inclined to regard we who associate with Nazis in the same light as the Nazi themselves?

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What possible excuse could we offer it the victims of Nazism were to return to life today and confront us with the question:"What are you doing consorting with these Nazis? Why do you put guns back in the hands of these murderers?"

Would we dare say to them, "Friend, we must be realistic. We let bygones, be bygones. All of us must unite as one gang to defend western civilization."

No we could not say that.

We must remember that an outraged humanity once put the Nazis to rout. Should they arise again, the rage of mankind will be so terrible as to destroy the Nazis and all who associate with them.

That is why it is right and proper, in the interests of Canada, that we demand the return of Kurt Meyer to Canada so we may keep him behind bars where he belongs. If he is returned, we shall awake one morning to learn of his release and his employment in a new Nazi army.

Meyer can be brought back. Here is what you can do to help:

1. Raise the question in your trade union or veterans' organization.
2. Write Defense Minister Brooke Claxton, House of Commons, Ottawa, today, telling him simply: "I want to see Kurt Meyer back in a Canadian prison at once where we can keep an eye on him. You have yet to offer even an excuse for transferring him to Germany."
3. Pass this pamphlet on to a friend, to a workmate, or leave it on a bus. Help spread the facts about the Kurt Meyer case.

Finally, in every way you can, oppose the rearmament of Germany. There can be no justification for it whatsoever.

The rearming of Germany threatens the peace and is not in the national interest. We must unite as one to oppose it.

F7. Memorandum, K.J. Burbridge for Undersecretary of State for External Affairs, Ottawa to the Canadian Ambassador, Bonn, 15 January 1952.[72]

With reference to your paragraph 3, "the (German) petitioners for clemency for Kurt Meyer should be advised that his case is being regularly reviewed by the Canadian authorities and that there is no present intention of releasing Meyer from the sentence he is now undergoing."

With reference to your paragraph 4 you will have noted in Hansard for October 22, 1951, that Dr. Dankwort called on an official of this Department on October 15 to make representations for Meyer's pardon. The German Embassy has since been informed that the Ambassador's representations have been considered by the Government and that they cannot be accepted.

F8. Newspaper clipping, "War Crimes," 5 February 1952.[73]

OTTAWA – For the first time, Canada has quietly slashed the sentence and released one of three German war criminals held prisoner in her name. The move was learned in Ottawa by the Canadian Press today.

He is William Ossenbach... His release leaves just two men in German prisons and under Canada's ultimate control. They are Major-General Kurt Meyer and Leading Seaman Johann Neitz. Appeals for the release of both of them have been lodged with Ottawa a number of times.

The Ossenbach case sets a precedent for Canada in early release of war criminals. Six weeks passed between the time Cabinet approved the release and notice to that effect was given Parliament in brief summaries of a welter of orders-in-council.

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F9. Dr. Wilhelm Schapp, Aurich to Herr General Kurt Meyer, Werl Prison, 27 February 1952.[74]

Dear General,

Having lit a cigar of the best quality I will apply this evening to talking with you about your case and the course of world affairs, as far as connected therewith. I apolog[ize] for numerating my thoughts for sake of order.

I. There is a difference between your case and all other processes known to me because the death sentence imposed upon you was passed by a court which had no power of legislation over you. It could be no less effective if it concerned the Negus of Abessinia. The resolution of Parliament which followed later on is likewise missing legal effect. In the eye of law and justice you are a man who somehow, outside Canada, was seized by the Canadian troops, unlawfully put in jail – together with the mob, and now held at Werl Prison without any legal reason.

II. My efforts to contact the Canadian Government and to discuss your case in my capacity as your defence counsel failed. You know that my feelings of solidarity with the best among the Anglo-Saxons are very strong, not at least owing to my Friesian and Norman ancestors, and that all my steps taken in connection with your defence are based on my hope of finding an echo in those who have power over you at the time being. I will not allow my confidence in the Anglo-Saxon's justice and chivalry to be shaken, even if it must stand a hard test. During a 7 day trial before a Canadian court I had the opportunity to meet influential people who are completely realizing my ideals. Unfortunately no country seems any longer to be able to find the proper men for Government jobs. I am sorry to say that my experiences with the Canadian Embassy at Bonn were negative, so utterly negative that I had better keep silent about it.

III. In your case my only demand of the Canadian Government is the granting of a discussion. The government is carefully side-stepping. I tried to visualize the government's way of considering your case. Perhaps the government thinks that there will be a general amnesty in the course of time and that your case will be dealt with simultaneously. The reason for the government not taking resolute actions of their own accord is unknown to me, though I am naturally giving thought to this.

IV. The idea has now come to me to approach the UNO [United Nations Organization] and to present your case to unbiased people whom the Canadian Government is forced to render account. I am even occupying myself with writing a memorial for the UNO. Unfortunately Germany is so helpless at the time being that she cannot address herself to the UNO, concerning war crimes or crimes against humanity committed against members of the German "Reich."

V. As I learnt in talks with experts there is still another possibility to make the UNO deal with your charge of crimes against humanity. For this purpose you would have to obtain citizenship of one of the UNO states. Egypt, Persia or India might be considered.

The only thing available for nothing is death. Presumably it is only with regard to your military ability that states of this sort are interested in bestowing on you the rights of citizenship. Though your fame as Panzer-Meyer is spread throughout the world this will not be enough to satisfy the states in question. You would have to make up your mind to describe those battles in Normandy, where you and your little group kept at bay, for weeks, a military force which was a hundred times superior to you in human and technical material. This is a point we discussed already. You had considerable objections as this description is apt to throw no favourable light on our former enemies – if I may put it this way. The question is whether you are able to overcome these doubts. I am giving you no advice, neither in the affirmative nor in the negative. But these are the terms for rousing such a strong interest in a foreign state as to bestow on you the rights of citizenship and to take charge of your defence. I mentioned the three states above only as examples. I will not tell you whether there are still other means available to me. Naturally the idea is so far not agreeable to me as I don't like to see other people as judges between you and Canada. Anyway I will develop my thoughts in this direction though I am sure you disapprove of them.

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Please let me know your wishes concerning reading stuff, if you have any. Convey my kindest regards to your comrades, in particular Herr Field Marshal von Kesselring. One of my friends served under Kesselring in Italy and is enthusiastic about his sense of justice and his fair treatment of the native population, even during the most unpleasant periods of time.

F10. Top Secret, Minutes From Cabinet Defence Committee Meeting, 26 August 1952.[75]

VI. German War Criminals

19. *The Minister of National Defence* (Mr. Claxton) referred to the decision of the Cabinet on May 21st, 1952, that when the cases of Meyer and Neitz were reviewed by the Mixed Board in the post-occupation period, a Canadian act on the Board as alternate to the U.K. member. The United Kingdom had now enquired whether the Canadian selected could act as alternate throughout the deliberations of the Board, rather than merely for the two cases in which Canada had a special interest, in view of the fact that the other members of the Board would have full-time alternates.

20. *The Secretary of State for External Affairs* (Mr. Pearson) said it would be unwise for Canada to accede to the U.K. suggestion: Canada did not wish to become involved in other cases, and the effect of Canadian participation in the review of the two Canadian cases would be obscured if a Canadian were acting as alternate throughout the deliberations of the Board.

21. *Mr. Claxton* said suggestions had been made that Canada might release Neitz or Meyer prior to the review of their cases by the Mixed Board. The occupying powers were in the process of reviewing the cases with which they were concerned with a view to facilitating ratification of the contractual arrangements by the Bonn Parliament. Such action by Canada at this time seemed unwise, especially in view of the attention focussed on the Meyer case.

22. *The Committee*, after further discussion, noted the report of the Minister of National Defence and agreed that:

    (a) the cases of Neitz and Meyer should not be reviewed by Canadian authorities prior to consideration of the cases of German war criminals by the Mixed Board to be established in the post-occupation period; and

    (b) the Canadian selected to act as alternate on the Mixed Board should serve only when the Neitz and Meyer cases were considered.

F11. Translated excerpt of a letter, Kurt Meyer to Kate Meyer, early February 1953.[76]

During the last week I have been in a miserable state of health. The last sedimentation of blood showed the hitherto worst result. During the past year the filling speed of my blood has almost doubled. I feel accordingly. Last week I was bedridden for several days as I was incapable of moving. My cell neighbours dressed and undressed me. On Saturday I could not even get into the bath-tub. The bathing warden helped me into it. While over the weekend I was not even able to sit down on a chair – the hip joint was as though paralysed – I can move about without pains today. The treatment at Hemm is carried on, likewise the bathing cure in Mariannen Hospital. I dare not form an opinion as to whether this improvised method can bring about an improvement or not. I told you things bluntly as they are, and would be irresponsible to hide the truth away from you.

Käti, I know you intend to visit me in the near future. Please, don't! As you know from your last visit unpleasant things happened here, which are affecting also our visits. The instructions I received on visit routine allow only a two hour visit under supervision. We will save ourselves this kind of meeting each other.

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F12. Secret Notes on Canadian-German Conversations, Visit of Chancellor, Federal Republic of Germany, to Ottawa, 18 April 1953.[77]

(A) Conversation with the Prime Minister, 10.30-11.30 A.M.

WAR CRIMINALS

1. Dr. Adenauer introduced the topic of war criminals which had been brought up at his press conference immediately before the meeting. Both he and the Prime Minister agreed that the solution by which a Canadian would sit as the United Kingdom representative on the Mixed Clemency Board when the cases of Meyer and Neitz were to be considered was a happy one. There had been talk by President Eisenhower in Washington of setting up this Board before final ratification of the contractual agreements, and Dr. Adenauer would appreciate Canadian help in hastening this process. The Prime Minister said that Canada would not find it difficult to associate herself with this but would not take the first step.

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THE INTERNATIONAL POLITICAL SCENE

4. Dr. Adenauer expressed his thanks that Canada had adopted so open and welcoming an attitude towards European integration. Germany greatly appreciated Canada's interest in Europe and particularly the sending of Canadian troops to Europe as part of the integrated force. He added that he also thought the UK attitude towards the EDC went as far as could reasonably be expected.

Dr. Adenauer saw two reasons for Russia's present policy. The Russians wanted:

(a) to make the USA resort to peripheral defence; and

(b) to win Germany, France, Italy and the Benelux countries without resorting to war so that in time the war-potential which they controlled would be greater than that of the USA. It was always necessary to remind ourselves that the rulers of Soviet Russia took a very long view and were content to wait.

The Prime Minister pointed out that Canada, as well as the US, was defending her own interests. Canadians did, however, feel that they understood Europe perhaps better than the Americans since they had been in longer and closer contact with European conditions. He added that we also knew the Americans pretty well and were convinced that they did not seek to dominate other countries. In his view the age of nationalism was in any case over. Dr. Adenauer assured the Prime Minister that there was no need to fear a resurgence of National-Socialism in Germany…

F13. Excerpts from Brooke Claxton Papers regarding Kurt Meyer, 1953.[78]

In Ottawa this week attended a function for the President of West Germany. Remember when Chancellor Adenauer made his first visit to Ottawa. This was when the Kurt Meyer incident was being stirred up again and Canadian opinion was in a sensitive state. We had just established normal diplomatic relations. I was engaged in negotiations with the German Government regarding our brigade and air divisions which were important for the welfare and reception of our troops – questions like the application of German civil law, treatment of Canadian nationals before the German courts, the availability of suitable land and the terms of purchase, cost of the construction of our camps and a dozen other questions were up for consideration. If we were to play the German national anthem while the Chancellor was being saluted by the guard of honour there was little doubt but that it would have grievously upset some of the mothers of fallen Canadian soldiers, as well as branches of our Legion. It is a strange reflection of human nature that this kind of attitude grows in direct ratio to the distance of the scene of battle…

Speaking of Meyer, it might have been a good thing to have bumped him off in the heat of battle or soon after. Some people may have some doubt as to whether or not he should have been tried or if tried, found guilty or if the sentence

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of death should have been commutted or if commutted, fixed at life imprisonment or if he should have been sent to Canada but here he was and I had to see that something was done with him. All the other Allied governments had already let out, I think, everyone of the people in his category. A reviewing commission recommended that his sentence be commutted. Obviously before long he would have to be let out. This could be done much better in Germany. We shipped him back to Germany where he was put with other people in his class in prison run by the British Government. There he fell sick and in accordance with the practice he was allowed sick leave at home. This was done by the British prison commandant as a matter of course without reference to us. However, one of the Canadian press correspondents looking for a story thought of visiting the home of Kurt Meyer to see how the family lived. Who should open the door but Kurt Meyer himself.

F14. Letter, Dr. Schapp to Herr General Meyer, 27 April 1953.[79]

Dear General,

I asked the Chancellor on the occasion of his visit to Canada to arrange for negotiations with the Canadian Government about your case. The result is not known to me yet.

Your case was taken up on the radio from Bremen in connection with a transmission about the Chancellor's visit to Canada.

I am personally endeavouring to inform the public about our case by means of the Press. The press is showing a very reserved attitude.

I may say, that for several weeks I have been occupying myself with your case only, and I am getting all the data at hand to be ready for the re-opening of your case.

In addition I have certain plans about which I prefer not to speak at the present time. Wahnerheide is refusing me a medical report as to the kind of your illness and the only information they gave me is to the effect that you are receiving adequate treatment for your complaint.

I beg you not to lose patience. The most important thing for you is to recover from your disease and to get completely fit.

Mrs. Meyer will get a copy of this letter.

F15. Letter, Dr. Schapp to the Canadian Prime Minister and affidavit by Luise Schapp, 15 June 1953.[80]

Being defense-counsel of ex-General Kurt Meyer I beg to explain to your Excellency what follows:

Meyer is a dying cripple. In a house of death one does not speak aloud nor much. To cut the matter short, I ask you to discharge him, please. I cannot tell, whether and how this can be done on the basis of Canadian law. Anyhow German law allows the public prosecutor already to grant a long leave for the time being.

Since January 1953, I have negotiated with the British authorities without success.

As evidence for my statements I beg to refer you to the 3 documents attached. May God guide your Excellency's heart to take the right decision.

AFFIDAVIT

My husband, Dr. Wilhelm Schapp, barrister or Aurich, has defended ex-General Kurt Meyer, called Panzer-Meyer, since January 1946. In 1945, Panzer-Meyer was sentenced to death by a Canadian Court Martial at Aurich, because troops under his command were said to have shot Canadian prisoners of war. He was sentenced only, because he was held re-

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sponsible for crimes committed by others. My husband took over the defence after the punishment only. He submitted a petition for pardon and the death sentence was commuted into penal servitude for life. Meyer was retained from 1946 to 1951 in the prison of New-Brunswick, Canada, subsequently. Upon his application he was transferred to Werl in 1951, where he is still living. I understand that the first signs of a very severe ailment become visible on a finger joint on occasion of his transfer from Canada to Germany first, maybe as a result of the long penal servitude. This ailment got worse during the last two years.

Authorized by my husband, I visited Meyer on 11 June in order to discuss a new petition for pardon.

My husband had been troubled about Meyer's state of health for a while already, because he had heard that he was getting constantly worse and very seriously indeed.

As early as on 6 January 1953, my husband had written to the Review Commission at Wahnerheide asking them to inform him of Meyer's state of health and stating that he required this information for a new petition for pardon. The Review Commission replied on 30 January 1953 that my husband could not get any such information as he required, but might be assured that Meyer was getting adequate treatment. Remembering this information I expected to meet a sick man, but I was stirred by what I saw with my own eyes.

I expected Meyer in the consulting-cell, and he came in by a door on the opposite side. Never in my life did I notice such a difference between inner attitude and physical condition. Meyer, a young man of about 40 years of age, was bent like an old man. One could see that each step gave pains to him. Each step made his body incline from one side to the other, so that I got the impression that his hip-joints must be deformed. The poples prevented him from going upright. It looked to me as if the whole body was but loosely connected in the joints and that any movement made the respective joints ache. Then Meyer slowly sat down on a wooden stoll and gradually lifted the upper part of his body. During our conversation he several times changed his position under great pains that became easily visible, and he brought his knees especially in less aching positions. When I asked him for his state of health, he showed me his right arm which he could stretch to 120 degrees only. The joint was red and thick. At the same time he showed me a finger, if I remember rightly, it was the middle finger of his left hand. He could bend it only with the assistance of his other hand. During all the time I observed him, I was under the immediate and certain impression that his soul was trying to remain master of his body and that he wanted to overcome his physical inability. Being a certified social worker – before I studied the law I was a certificated social worker – I believe that I am able to form an opinion on symptoms like these.

My observations agreed with what I could ascertain otherwise during my visit. There had been some doubts as to whether Meyer could be led to the consulting-cell, because this cell was unheated and it was thought the Meyer would not sustain a meeting in the cold cell for long. Meyer himself told me that he often had to be borne to the bathing tub and that his illness had so much advanced that he could hardly go. He had been lying on the bed of his cell for 14 days already. They had allowed him to have a stove. From other sources I learnt that his bed stands at a cold wall and that the sleeping cell is very cold and heating it by a stove is not sufficient for a man who is as severely ill as he is.

When Meyer got up, he had to stretch his limbs gradually into the vertical position, and after he had said good-bye, he left the cell clumsily and stooping. On saying farewell he asked me not to write to his family about his state of health. Since Christmas 1952 he had not accepted the visits neither of his wife nor of the children, so that they do not know about his present state.

Dr. Bamberg, the physician who treated him, refused to continue his treatment, because he felt unable to stop the rapidly developing disease by the means available to him. At present, Meyer is without medical treatment.

Already now he is a cripple and unfit for any occupation. He is sure to die at the time when the disease will reach his heart. This must be expected at any moment.

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I affirm the above under oath. I know the significance of an affidavit. I also know that this affidavit is due to be submitted to authorities.

DR. BAMBERG, MEDICAL REPORT, 12 JUNE 1953

General Kurt Meyer has been under my treatment for polyarthritis since about 2 years. Last year he was taken up by our hospital, because X-ray treatment did not lead to a noticeable success.

His teeth were thoroughly done up and the tonsils cut out. At this occasion he suffered from very severe bleeding afterwards and hardly escaped death. Despite this cure, his state of health deteriorated steadily. After the hospital treatment he suffered from a severe inflammation of his right hip-joint. Besides his poples were affected again, and destruction was beginning. The chronic disease changed into a sub-acute one, which leaps from one joint to the other.

Though I pointed out at several occasions that he should undergo a thorough bathing treatment in a special hospital, nothing has been done yet in order to help the patient who is so severely ill.

I, therefore, declined to continue treatment, because it is impossible to stop the rapidly developing disease with nothing but rays. I emphasize again that I think it absolutely necessary to give the patient a thorough cure in a sanatory in order to prolong his life a bit. Already at this stage the heart muscle has been affected. Under these circumstances it is only a question of time, before he will die.

F16. Petition of Dr. Phil Schapp, Barrister, Aurich, to Her Majesty, Queen Elizabeth II of Great Britain, 8 August 1953.[81]

As advocate of the ex-general Kurt Meyer, called "Panzer- Meyer", I seek Your Majesty's permission to submit the following request:

Meyer is a prisoner in a German prison in Werl, which is under British administration. Meyer is seriously ill. There is the urgent danger that he becomes crippled completely. Only a special treatment, which can not be done in the prison itself, can save him from further crippling and from death. For six months I have negotiated without any result with the British authorities in Germany. The vetting panel in Wahnerheide even refused to give any information about the kind of Meyer's illness.

In the first instance I had made an application to the Canadian Prime Minister in order to obtain a sick-leave for Meyer, which would make it possible to give him special medical treatment. After six weeks I received this reply from the Canadian Ministry of Defence that not the Canadian Government but Your Majesty's government are responsible for Meyer's medical care as far as I understand the reply of the Ministry of Defence.

I enclose the correspondence with the Canadian Government. The question of competence could be left undecided, if Your Majesty's Government and the Canadian Government would make up their minds to grant Meyer a sick-leave.

My urgent request is that Your Majesty give a sick-leave to Meyer corresponding to the recommendation of the attending doctors.

I stress once more that I am willing to give any amount of security for Meyer and to take over all the costs of the medical attendance out of the jail.

In reverence I remain
Your Majesty's obedient servant

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F17. Petition of Dr. Phil Schapp, Barrister, Aurich, to the Prime Minister of Canada, 8 August 1953.[82]

As advocate of the ex-general Kurt Meyer I seek Your Excellency's permission to make the following request referring to my application dated July 15th, 1953.

After waiting anxiously for about six weeks I received a letter from the Ministry of Defence. This letter was dated July 15th, and I was in receipt of your letter not earlier than July 31st. In case I should receive further decisions I beg to ask you in all modesty to send them by air mail as it takes the ordinary mail more than a fortnight to forward a letter from Ottawa to Aurich.

I am without news about Meyer's present state of health as the British authorities refuse to give any information. Therefore I must come, much to my regret, to the conclusion that the illness went on eating into the joints and Meyer's death is approaching according to the medical report I sent you.

I conclude from Your Excellency's secretary notification which I also received not earlier than June 27th, 1953, that Your Excellency has not yet heard anything about my request.

I had sent my request to Your Excellency personally as the first statesman of a great nation. I regret that I did not succeed in breaking through the circle protecting Your Excellency from requests of minor importance. I beg Your Excellency's pardon for making another attempt. Although I am a philosopher and well-known as philosophical writer, I was a soldier myself for eleven years, and from my knowledge of military life I fully understand the decision of the Ministry of Defence. Every ordinary official of a Ministry of Defence in each country of the world would have answered my application in the same way.

I intentionally abstain from saying one word regarding the fact that the Ministry of War characterizes Meyer as a convicted war criminal. Many respectable people in Canada seem to be, like myself, of a different opinion, (Ralph Allan in Macleans Magazine February 1st, 1950, Professor Herman Böschenstein of Toronto on the swiss wireless January 15th, 1950; Canadian Combat Veteran's Association in British Columbia (Inc.) in Vancouver B.C., and many soldiers and officers of the Canadian Army). All the details are summed up in the Petition of the Canadian counsel for the defence (Maclean, Halifax). I do not agree with your view that the Canadian Government are not responsible for Meyer's medical treatment. I do not think this opinion to be founded on a judicial basis. Meyer as a person is under Canadian authority. This authority can not be transferred or derelinquished like the property of an object. The convict too, remains a person and is not an object. Meyer is and remains the prisoner of Canada. Apart from that your Excellency only needed to write two lines to Her Majesty, Queen Elizabeth of Great Britain to render this question of competence irrelevant.

When considering Meyer's serious state of health I can not accept as a real comfort your referring to the mixed amnesty committee. According to newspaper reports such a committee should have been called into existence more than a year ago. I agree that the intention of forming an amnesty committee certainly is based on human principles, but I am afraid that death will save the committee all trouble.

I only know Your Excellency by newspaper reports. These reports encourage me to make this last attempt in favour of a dying soldier and to ask for a personal decision from Your Excellency.

May I stress that, in the first instance, I am only asking for sick-leave for Meyer.

I personally bind myself to give any amount of security and to take over the costs for the medical attendance outside the jail…

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F18. Top Secret, Cabinet Conclusions, Ottawa, 13 August 1953.[83]

German war criminals

14. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of May 21st, 1952, reported that seven German war criminals were tried by Canadian military court at the end of World War II. Of the seven, four were executed in 1946 pursuant to the sentence of the courts, one was released in 1951 and the remaining two, Kurt Meyer and Johann Neitz, were serving sentences of life imprisonment at Werl Prison in the British Zone of Germany. Although they were in the custody of United Kingdom authorities, both remained under Canadian jurisdiction.

In recent months considerable agitation had developed for the release of Meyer and Neitz. This had even been urged by Chancellor Adenauer, particularly in respect of Neitz. In the case of Meyer, the German Federal Ministry of Foreign Affairs had made representations for at least his temporary release in order that he might take hydrotherapy treatment.

Officials of the United Kingdom High Commission in Germany had expressed their embarrassment at the continued detention of Meyer. The number of war criminals held by the United Kingdom had been steadily decreasing and recently the only other prominent German in their custody (General Falkenhorst) had been released on grounds of ill health.

Pending the coming into force of the Contractual Arrangements of May 26th, 1952, and the setting up thereunder of the proposed Mixed Clemency Board, it had been suggested, at a recent meeting of the Foreign Ministers of the United Kingdom, the United States and France in Washington, that Mixed Consultative Boards be established in each of the three Western Occupation Zones to advise on such matters as parole of, or reduction or termination of sentences of German war criminals; it being understood that the Board's functions would be purely advisory and that the final decision would remain with the Power which imposed the sentence in the first place. These Boards would be composed of five members, two being appointed by the German Federal Republic and three by the particular power concerned. The question was whether Canada should replace the U.K. representatives on the U.K. board if and when the cases of Kurt Meyer and Johann Neitz came up for review.

An explanatory note had been circulated.

(Minister's memorandum, Aug. 12, 1953 – Cab. Doc. 164-53)

15. *In the course of discussion* it was pointed out, -

(a) that, inasmuch as the functions of the proposed Mixed Consultative Boards would be purely advisory, it would perhaps be best not to press for Canadian representation; and,

(c) that every effort should be made to have the cases of Meyer and Neitz reviewed at the earliest possible time.

16. *The Cabinet* noted the report by the Minister of National Defence on the proposed establishment of Mixed Consultative Boards … and agreed, -

(a) that Canada should not seek representation on the Board in the U.K. area but should ask to have a Canadian observer follow the proceedings;

(b) that, if the Boards were established, every effort be made to have the cases of Kurt Meyer and Johann Neitz – the only German war criminals remaining under Canadian jurisdiction – come up for review at an early date, although not as the first cases to be heard; and,

(c) that Canadian military authorities in West Germany be instructed to provide whatever guards were required to enable Kurt Meyer to obtain medical treatment outside Werl prison.

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F19. G.C. Crean, Office of the Canadian High Commissioner, London, to P.F. Hancock, Foreign Office, London, 24 August 1953.[84]

I have been requested to inform you that the Canadian Government has now approved the proposal that the Meyer and Neitz cases be reviewed by the Consultative Mixed Board to be set up in the United Kingdom Zone of Germany, provided that a Canadian observer is present at the proceedings when these cases are reviewed.

The Canadian Government also agrees that Kurt Meyer, who is suffering from acute poly-arthritis, should be given any treatment considered necessary by competent medical authorities, even if such treatment would include a cure at a suitable spa, as has already been suggested by his own physicians, on condition that an adequate escort is provided for Meyer.

The Canadian Government would be prepared, in the circumstances, to allow a detail of military personnel from the 27th Infantry Brigade in Hanover to escort him. This suggestion is made since the Legal Adviser to the United Kingdom High Commission in Bonn has previously indicated that escort might be difficult to arrange since trusted non-German guards are now scarce at Werl Prison. He also informed us recently that while the German authorities could not be relied on at present to assist the Occupation Authorities in re-arresting any war criminals who might escape or break parole, the Allied High Commission hoped to obtain firm assurances for their co-operation in administering the parole system when Consultative Boards are established in three zones.

Our ambassador in Bonn is being instructed to make every effort to avoid agitation in Germany in favour of Meyer and Neitz pending the eventual announcement of the decision of the Canadian Government to have the cases of Meyer and Neitz reviewed. He has also been instructed to the effect that the United Kingdom authorities, and eventually the United States and French authorities, are to be consulted beforehand.

I should be grateful if you would inform me at your earliest convenience whether the presence of a Canadian observer at Board sessions, as outlined above, would be acceptable to the United Kingdom authorities.

F20. Telegram from Marienheide to PanzerMeyer, Werl Prison, 27 September 1953.[85]

In the spirit of fellowship sending their best regards the HIAG Comrades Association Gummersbach, Rheinhausen, Cologne, Wuppertal, Limburg, Meinerzhagen, Lüdenscheid and in their midst comrade Harmel.

We are waiting for you.

F21. Medical Report, Colonel R.A. Bennett, Consulting Physician, Headquarters, Northern Army Group, BAOR 1, 10 October 1953.[86]

Subject:- Kurt Meyer – Age 43

I examined the above prisoner in Werl Prison on 8 October 1953. I had previously examined him on 16 June 1953, 21 March 1953 and 4 March 1952. The reports of these examinations are in the file.

There had been no marked change in his condition since I last examined him. He looks quite well, and seems to have put on weight. His symptoms vary – sometimes he can do light work in the garden – at other times his joints are so stiff that he is unable to move. This is typical of a disease like rheumatoid arthritis, which is influenced readily by climatic conditions and also the mental state of the patient.

The right elbow joint and the left knee joint are still swollen and stiff, but worse than at the last examination. Examination of the heart, lungs, and abdomen reveals nothing abnormal.

There has been no apparent deterioration in his condition since last June – in fact his general state is slightly improved.

I have asked for an X-ray of the right elbow and left knee joints, and if necessary I will send a further report.

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F22. Medical Report, Dr. Busch, Prison Doctor, Werl Prison, to British Governor, 30 October 1953.[87]

Subject: Medical Report on war criminal Kurt Meyer, Pris. No. Str. 53/51

The war criminal Meyer is 1.78 m tall and weighs 74 kg. On his admission to this prison on the 20 October 1951 he weighed 73 kg.

PREVIOUS DISEASES:

In 1933	Fracture of his right foot; fracture of both knees; fracture of the upper right thigh;
	Quadruple fracture of pelvis; fracture of the right wrist; crushing of both kidneys
During the war,	head injury caused by a shell splinter
	Twice Commotic
In 1936	appendix operation.

Three weeks upon his admission to this prison, on 16 November 1951, Meyer reported sick for pain caused by any movement of the middle finger of his right hand. An x-ray examination ascertained arthritic changes. He was treated with deep radiation.

On 10 January 1952 an x-ray examination of his toes also ascertained arthritic changes, about to become arthrosis.

On 4 March 1952 an examination was carried out by a British doctor. The result is not known to me.

His condition deteriorated continuously so that he had to be transferred to Knappschaftskrankenhaus Hamm, where he stayed from 20 March to 13 August 1952. At Hamm, Meyer underwent thorough treatment with deep radiation but his condition still deteriorated.

Since his transfer to this prison he has continually undergone treatment in the prison hospital and out-patient treatment at Mariannen-Hospital Werl and Knappschaftskrankenhaus Hamm.

It has been proved that Meyer suffers from a progressing and maligne polyarthritis.

On 10 November 1952 he had to be transferred to Marianne-Hospital, where he stayed until 21 November 52. Upon his transfer to prison he still underwent thorough treatment.

I have several times applied for permission on behalf of Meyer to undergo a bathing cure and I suggested Bad-Aachen for this purpose.

I also reported Meyer to be unfit for detention on account of his health condition.

No other complaints have been observed with him during his detention here.

SUMMING UP:

Meyer is a 43-year old man who suffers from a serious, progressing and maligne polyarthritis, affecting at present the following joints: joint of his left knee, both his elbow joints, joints of his fingers and of his feet.

Meyer suffers exceptionally hard with detention because he cannot receive, at present, the treatment which is normally essential for patients affected by his complaints.

Meyer is unfit for work and unfit for detention.

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F23. Governor's Report For War Criminals' Review Board, 30 October 1953.[88]

Name of Prisoner: Kurt Meyer

1. Particulars of Conviction

28/12/45 convicted of a war crime by a Canadian Military Court at Aurich and sentenced to death subsequently commuted to life imprisonment for life.

Sentenced served in Canada until 20th October 1951 when Meyer was received into Werl Prison.

2. Personal and Domestic Particulars

Prisoner is aged 42 10/12 years. Born at Jexheim near Helmstedt. His father was a policeman and died in 1929 as a result of wounds received in World War I. His mother is alive and is a midwife and follows that profession in a part time capacity.

Prisoner attended the ordinary local school and reached matriculation standard. He states he left school at age of 17 and in October 1929 entered the "State Police" School and was there until 1934. This "State Police" School was in fact an Infantry Training Centre and prisoner states he was in effect already in the Army. In 1934 upon leaving this "State Police" School he was commissioned and posted to the Guards Regiment in Berlin. He served in this regiment from 1934-1943. In 1942 the regiment became an armoured formation. He commanded a battalion of this regiment and [in] 1943 became Commander of the Regiment (strength 3,000). 1944 appointed Commander 12 SS Panzer Division – rank Brigadefuhrer. Promoted Major General Jan 1945 (prisoner was then a P.O.W. having been captured 6 Sept 1944).

Prisoner married 1934. His wife is 42. Five children of the marriage aged 9-18 years. Wife lives with three children in a small hunting lodge near Munchen-Gladbach. Two eldest children are not with wife. One boy (16) lives with prisoner's mother near Helmstedt and attends school there. Eldest daughter (18) nurse in a hospital near Essen.

Prisoner states his wife receives DM 254 per month from Federal German Government. She suffers from heart trouble and cannot work other than in house.

The rent (about DM 90 per month) for the furnished hunting lodge is paid by ex-military friends of the prisoner and friends of the family. German Red Cross and other organisations provide clothing for children and food parcels.

Wife's parents are in a poor position and not able to assist the family.

3. Profession or Employment

Prisoner is a soldier by profession.

4. Intentions on Release

Prisoner states that upon release he would probably [find] work in German industry. He does not consider he is any longer fit for military service having regard to his state of health. If he were fit he considers "German Federal Government would know what to do about me."

5. Contacts whilst in Prison

He writes regularly to his wife and children. He does not appear to have any other regular contacts. Wife last saw him in December 1952. He states that as visits have been supervised by a prison official since January 1953 neither he nor his wife wish visits to take place in these circumstances. He last saw his children in 1952 when he was in

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Hamm hospital. Prisoner states he has been separated from his family since 1939 as a result of military service and being a prisoner.

6. *Employment in Prison*

Prisoner does light work in the so-called "General's Garden." He is not compelled to work – in fact he takes his exercise in the garden and spends much of his time there in fine weather.

7. *Behaviour whilst in Prison*

The prisoner is an arrogant and conceited type of man who expects subservience from other prisoners and from the German Prison staff by reason of his military background. He resents control of any description.

He has abused his written word of honour, given to the British Government, upon three occasions after a warning in each case. The prisoner is now not trusted except under the closest British supervision at all times.

January 1953 – He was of opinion his "military" dignity was offended by the posting of a German Warder in his ward in the Mariannen Hospital at Werl, and he thereupon requested his discharge from hospital and was, in fact, returned to prison.

Prison offences:-

(a) 23/12/52.

(i) Being in possession of prohibited articles ie. a quantity of Schnapps in a bottle,

(ii) Being under influence of drink.

14 days arrest suspended until 1 June 1953 on condition of good behaviour.

(b) 2/10/53. Trafficking i.e. improperly signing two unauthorized documents for the apparent benefit of the German Warder Beukmann, on 19 March 1953.

21 days ordinary arrest suspended forthwith upon condition of good behaviour for 12 months.

Deprived of privileges in association with other prisoner for 21 days (i.e. recreation room and cinema), also deprived of radio set and newspapers.

Further deprived during period of 21 days of non-associated labour i.e. use of garden. To take normal exercise otherwise to be in call.

In the latter case Meyer signed two "testimonials" in March 1953 which were handed to the German Warder Beukmann who later confessed to the systematic trafficking with war criminals over a period of years. Meyer was long suspected of trafficking and was found in possession of liquor at Christmas 1952.

(signed) H.S. Meech, British Governor

F24. Mixed Consultative Board Case Report and Recommendation: Kurt Meyer, 26 November 1953.[89]

Petitions received in the case of Kurt Meyer raise questions about that conduct of the trial, the jurisdiction of the Court and the interpretation of the War Crimes Regulations which governed its procedure. In so far as these petitions criticize the validity of the convictions and claim mitigation of the penalty on that account, it would be outside the scope of the Board's functions to take account of them and the Board in reviewing this case have felt obliged to give no weight to this plea and to express no opinion on the questions raised.

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Examination of the proceedings at the trial shows that the court found - (a) that troops under Meyer's command killed on the 7th and 8th June Canadian prisoners in violation of the laws and usages of war, and (b) that Meyer had during the year 1943 and prior to 7th June 1944, incited and counseled troops under his command to deny quarter to Allied troops; and that the conviction of Meyer on the charge of being responsible for the killing of these prisoners was based on these two findings.

The acquittal of Meyer on the charge of ordering the killing of seven prisoners on 8th June shows that the court rejected the testimony of the only witness whose evidence, if believed, might have justified a finding that on that date Meyer had by some wrongful set or omission promoted or facilitated the killings. Accordingly the conviction of Meyer on the charge of being responsible for the killings on 7th and 8th June, while it emphasizes the gravity of Meyer's offence of incitement and calls attention to the dreadful consequences thereof, does not add a second burden of guilt to the guilt imposed on him by the conviction on the charge of incitement.

Had the conviction on the charge of being responsible for the killings involved a specific finding of any form of complicity at the time on the part of Meyer, the Board would have felt that a sentence of imprisonment for life was appropriate. As, however, this is not the case, the Board feel that some reduction of Meyer's sentence is justifiable.

There are also two other considerations of which the Board have taken account. First, Meyer suffered for a time the additional penalty of lying under sentence of death. Secondly, he has for some time been suffering from arthritis, and for a man in such a state of health, imprisonment is a greater penalty than it would otherwise be.

If the Board had not felt able to recommend that in this case the sentence should be less than 21 years, they would have recommended that the life sentence should be commuted to 21 years – as has been done in all cases of war criminals convicted by United Kingdom Courts – with the consequence that the prisoner can by good conduct earn remission of a third of that period. The Board would have made this recommendation not merely on the ground that parity of treatment is desirable – especially as regards prisoners serving their sentence in the same prison – but on the ground that, however good prison conditions may be, long periods of detention are liable to have a gravely deleterious effect on the mind and character of a prisoner by depriving him of responsibility for the management of his life and of the sense of social obligations.

RECOMMENDATION:

In view of the several considerations mentioned above the Board unanimously recommend that Meyer's sentence should be reduced to imprisonment for 14 years.

During the remaining period of his imprisonment the question of whether it is necessary for the purpose of adequate medical treatment to release the prisoner or to grant him leave subject to conditions, will require the careful attention of the prison authorities. It would be outside the function of the Board to express any opinion on the question, which must be one for the discretion of the Prison Authorities guided by medical advice.

The Board also recommend that the sentence should run so as to include the period of pretrial detention calculated in the same way as in the case of the war criminals sentenced by United Kingdom courts.

F25. Confidential Report, Colonel R.A. Bennett, Consulting Physician, Headquarters, Northern Army Group, BAOR 1, 2 December 1953.[90]

Subject: Kurt MEYER

The above prisoner is suffering from rheumatoid arthritis, which is showing slow deterioration both clinically and radiologically.

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The ordinary patient suffering from the above condition should have the benefit of modern physiotherapeutic measures, and other forms of treatment such as gold, X rays, or cortisone, as the physician considers necessary. All the above treatments are palliative only; none is curative, and therefore cannot be considered essential.

The majority of patients suffering from rheumatoid arthritis have to be content with physiotheraphy, such as heat, short wave disthermy, massage and various forms of baths, and in the long run, those give the most benefit.

I consider that, at least, Kurt Meyer should have the ordinary forms of physiotherapy, and if this can be given at Werl Prison, then it is not essential [for] him to have outside treatment.

The S ray treatment he has been receiving does not seem to have been of any benefit; the other form of treatment mentioned above would require supervision in hospital.

F26. Memorandum, W.D. Allen to Japan and Pacific Department, Foreign Office, London, 15 December 1953.[91]

Mr. Collins of Canada House came to see me today for a talk about the general problem of war criminals. He said that there appeared to be an impression in Ottawa that United Kingdom policy as regards German war criminals was on the one hand, and Japanese war criminals on the other, was showing signs of inconsistency. As regards the former, the Canadian Government found themselves in the position of being asked to agree, as a result of the Review Board's recommendations, to accept certain measures of clemency in regard to the two German war criminals convicted by Canadian courts. In the case of the latter, they had noticed that in the present discussions in Washington about clemency for the major Japanese war criminals, the United Kingdom and the old Commonwealth countries generally, were being far more reluctant than anyone else to agree to clemency. The Canadian Government found this situation embarrassing since, as we would know, the cases in which Canadian opinion was the most interested and most reluctant to agree to clemency were those of the two German war criminals. The Canadian Government would have difficulty in defending a decision to grant clemency to these so long as the old Commonwealth countries were opposing clemency in the case of the Japanese criminals.

I said that I could, of course, no longer claim to speak with any authority on the question of German criminals. I thought, however, that there might be some misunderstanding. The parallel between the two German criminals in which Canada was interested and the major Japanese criminals, which were being discussed in Washington, was not a true one. The two German criminals belonged to the category of so-called minor war criminals, convicted by the courts of an individual allied country and who could be granted clemency on the individual decision of that country. In the case of all such minor criminals, whether German or Japanese, we had followed the same rule, namely that their cases could be examined on their individual merits and clemency granted only in those instances where a good case was made out. The Japanese criminals who were being discussed in Washington, on the other hand, belonged to the category of major criminals convicted by International Courts and in whose case clemency could only be granted as a result of the international decision. In this respect the major Japanese criminals were in roughly the same position as the major German criminals convicted by the International Tribunal at Nuremburg and now held under quadripartite control in Spandau prison. Insofar as in the case of the Japanese major criminals we had already agreed to the 21 years rule for life sentences, plus remission for good conduct and other further concessions, we could be said behave more liberally as regards the Japanese than as regards the Germans at Spandau, and to have been willing to apply to the major Japanese criminals much the same criteria as we ourselves applied in the case of all minor criminals, whether Japanese or German.

Mr. Collins said that the application of the 21 years rule, for instance, in the case of the two German criminals in whom Canada was interested, involved a difficulty for the Canadian Government, because the rule was not the normal practice in Canada as it was in the United Kingdom. Nevertheless he would report back to Ottawa on the lines of my general explanation and see whether he could set their fears at rest. If he found that they wanted to pursue the matter, he would come and see us again. I suggested that if he found it necessary to discuss these matters in more detail with us, the best

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procedure would probably be for me to try and arrange a joint meeting with both Japan and Pacific and Central Departments, at which the whole question could be thrashed out.

F27. Secret, Report of Sherwood Lett, Observer on Behalf of the Government of Canada on the Proceedings of the Mixed Consultative Board (British Zone), Germany, to the Hon. Minister of National Defence, Ottawa, 6 January 1954.[92]

Re: Kurt Meyer and Johann Neitz – War Criminals

1. In accordance with the instructions contained in your telegram of October 22nd, 1953, I attended as observe[r] on behalf of the Canadian Government at the Hearings held by the Mixed Consultative Board (British Zone) in Bonn, Federal Republic of Germany, on November 25th, 1953.

2. My instructions were to act for the Canadian Government as observer at the hearing of the Consultative Board set up to advise the Canadian Government regarding the sentences of Kurt Meyer and Johann Neitz included with other war criminals in British custody, so that the Canadian Government and your Department might have a report from me on the proceedings and my recommendation as to any action that should be taken in consequence of them.

3. The Mixed Consultative Board (British Zone) was established by the United Kingdom High Commissioner for Germany under an Order dated September 1st, 1953…

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5. The task of the Board as set forth in the Order constituting it was "without calling into question the validity of the convictions, to make recommendations for the termination or reduction of sentences, or for parole, with respect to prisoners held in the British Zone as war criminals."

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11. The Board has under consideration approximately 80 cases of which two only were cases of convictions by Canadian Military Courts.

12. In both the Meyer and Neitz cases I was informed the Board had received the required documents and information as set forth…, together with a transcript and full record of the original proceedings of the Military Courts which convicted them.

13. In the case of Meyer the Board received a brief from one Dr. Schapp, Barrister of Aurich, Germany, submitted on behalf of Meyer, a copy of which in English translation form was made available to and examined by me.

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16. Upon completion of their individual studies the full Board met formally at Wahnheide, near Bonn, Federal Republic of Germany, under the Chairmanship of Sir Alexander Maxwell, on November 25th, 1953, to consider the cases of Meyer and Neitz.

17. I was present as observe[r] on behalf of the Government of Canada throughout the proceedings at which the Meyer and Neitz cases were considered, having been required to sign the undertaking referred to above to observe secrecy in respect of the proceedings and deliberations of the Board except in so far as I am required to report to the Canadian Government on such proceedings.

18. As observer I did not advance any arguments for or against clemency or express on behalf of the Government of Canada any opinions as to whether clemency should or should not be granted in either case.

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19. In my opinion the members of the Board in the course of their deliberations and proceedings gave full consideration in both cases to all relevant factors open to it for consideration. I was impressed by the objective and impartial manner in which the deliberations and discussions were conducted throughout by both British and German members of the Board, and the judicial attitude towards their problems displayed by all members. There were no indications that members of the Board were influenced by extraneous considerations.

20. The Chairman, Sir Alexander Maxwell, in the conduct of the proceedings clearly evidenced his judgment and long experience in dealing with clemency matters.

21. As will be seen in the reports of the Board,… the Board recommended that Meyer's sentence of life imprisonment be reduced to imprisonment for 14 years. It also recommended that the sentence should run so as to include the period of pre-trial detention calculated in the same way as in the case of war criminals sentenced by United Kingdom courts. It also noted that "during the remaining period of his imprisonment the question whether it is necessary for the purposes of adequate medical treatment to release the prisoner or to grant him leave subject to conditions, will require the careful attention of the prison authorities. It would be outside the function of the Board to express any opinion on the question, which must be one for the discretion of the Prison Authorities guided by medical advice."

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23. In both the Meyer and Neitz cases the recommendation of the Board was unanimous

24. Under the practice generally prevailing in the British Prison at Werl, I understand that if the recommendations of the Board were approved by the clemency authority the prisoners could by good conduct earn a remission of one-third of the sentence as mitigated.

All of which I respectfully submit for your consideration,

(Sgd) Sherwood Lett, Vancouver, B.C.

F28. Secret, Recommendation of Sherwood Lett, Observer on Behalf of the Government of Canada at the Proceedings of the Mixed Consultative Board (British Zone), to the Minister of National Defence, Ottawa, 6 January 1954.[93]

Re: Kurt Meyer

1. I have considered the recommendation of the Mixed Consultative Board (British Zone) relating to the sentence of Kurt Meyer as contained in the Case Report and Recommendation of the Board… dated November 26th, 1953, and the memorandum of the Board accompanying the recommendation. I also attended as observer on behalf of the Canadian Government at the proceedings of the Board which reviewed his sentence.

2. In considering the recommendation of the Board I have borne in mind that the task of the Board, as set out in the Order under which it was constituted, was to make recommendations for the termination or reduction of sentence, or for parole, with respect to prisoners held in the British Zone as war criminals, but without calling in question the validity of the convictions.

3. I have examined the transcript of the proceedings of the Military Court which tried Meyer… The Court sentenced him to death by shooting. The General Officer convening the Court commuted the sentence to life imprisonment because the severity of the sentence imposed by the Court was not in his opinion in keeping with Canadian justice, having regard to the degree of responsibility.

4. The sentence of life imprisonment given to war criminals convicted by the United Kingdom Courts, were in all cases prior to the setting up of the present Board, commuted to 21 years. I understand that any further clemency recommended by the Board for prisoners convicted by the United Kingdom will be based upon the sentences as so commuted. Meyer's sentence of life imprisonment was not so commuted. I believe that it is desirable that war criminals

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serving in the same prison for similar offences should be accorded parity of treatment, whether convicted by a United Kingdom or Canadian Court.

5. In the case of Meyer I believe the degree of severity of the punishment should bear a reasonable relationship to the degree of responsibility for the wrongful acts committed. The recommendation of the Board in my opinion correlates these two factors in a manner which is more in accordance with British and Canadian concepts of criminal justice than the punishment of death by shooting initially awarded, and as commuted to life imprisonment by the General Officer who convened the Military Court.

6. There may be a difference in some of the principles of justice applicable to persons accused under the ordinary Criminal Law and to persons accused under International Law or the laws and usages of war, but in my opinion the object of punishment is the same in both cases.

The object of punishment is, I believe, authoritatively stated in Halsbury's *Laws of England*, Second Edition (1933)…, as follows:

> *"The object of punishment is the prevention of crime, and every punishment is intended to have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes."*

The principles of criminal justice to be considered in the determination of punishment are set out in a judgment of the Court of Appeal of the Province of Ontario (*Regina v. Willaert* (1953) Ontario Reports p. 282) which states…:

> *"there are three principles of criminal justice requiring earnest consideration in the determination of punishment, vis., deterrence, reformation and retribution.*
>
> *The governing principle of deterrence is, within reason and common sense, that the emotion of fear should be brought into play so that the offender may be made afraid to offend again and also so that others who may have contemplated offending will be restrained by the same controlling emotion….*
>
> *The true function of criminal law in regard to punishment is in a wise blending of the deterrent and the reformative, with retribution not entirely disregarded, and with a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern. Punishment is, therefore, an art – a very difficult art – essentially practical, and directly related to the existing needs of society. A punishment appropriate to-day might have been quite unacceptable two hundred years ago and probably would be two hundred years hence. It is therefore impossible to lay down hard-and-fast and permanent rules."*

If it be true, as I believe it is, that the main object of punishment is the same in the United Kingdom and Canadian Criminal Courts, there would appear to be little justification for different standards of punishment of war criminals, by these two jurisdictions.

It is recognized that the full deterrent effect of punishment imposed upon war criminals cannot in fact be ascertained unless and until similar situations arise. Neither can the element of reformation be conclusively ascertained unless the person convicted is tested by a repetition of the situation existing at the time of the commission of his war crimes. But assuming that the factors of prevention or deterrence and reformation apply in the same degree to United Kingdom and Canadian war criminals convicted of similar war crimes, a deviation by the Canadian clemency authority from such policy of mitigation as may be adopted by the clemency authority of the United Kingdom, in dealing with its war criminals, is open to be construed as placing undue emphasis upon the element of retribution.

7. I believe that the fact that Meyer suffered the additional penalty of lying for a time under sentence of death is a matter which should be properly be taken into account when considering clemency.

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8. I suggest that some weight might well be attached by the clemency authority to the fact that the recommendation of the Board carried the unanimous approval of both British and German members.

9. Based upon the foregoing I am of the opinion that some clemency should be granted to Meyer, and accordingly I respectfully submit the following recommendations:

   (a) If the Board recommends clemency for war criminals convicted by United Kingdom Military Courts similar to that recommended for Meyer, and the United Kingdom clemency authority elects to give effect to such recommendations, then I recommend that the Canadian clemency authority give effect to the Board's recommendation of a reduction of Meyer's sentence to imprisonment for 14 years, and that the sentence should run so as to include the period of pre-trial detention calculated as set forth in the Board's recommendation.

   (b) If the clemency authority of the United Kingdom elects not to give effect to the Board's recommendations for similar clemency for war criminals convicted by United Kingdom Criminal Courts, then I recommend that the minimum clemency to be granted to Meyer be a commutation of his sentence to imprisonment for 21 years with the opportunity for earning by good conduct a remission of one-third of that period…

In making the foregoing recommendation, I have not taken into account the effect which the granting of clemency might have in relation to the sentences of war criminals convincted of war crimes in any theatre of war other than Western Europe.

F29. Memorandum, Office of the Legal Adviser, U.K. High Commission in Germany, Bad Godesberg, to High Commissioner, 7 January 1954.[94]

After considering the case of this war criminal the Mixed Consultative Board made the following observation:

> *During the remaining period of his imprisonment the question whether it is necessary for purpose of adequate medical treatment to release the prisoner or to grant him leave subject to conditions, will require the careful attention of prison authorities. It would be outside the function of the Board to express any opinion on the question which must be one for the discretion of the Prison Authorities guided by medical advice.*

Meyer was convicted of a war crime on December 28, 1945 by a Canadian Military Court, and sentenced to death, later commuted to imprisonment for life. He was transferred to Canada to serve his sentence. On October 17, 1951 the Canadian Minister of National Defense designated Werl Prison as a Canadian service prison and authorized the transfer of Meyer to that institution. Meyer was received in Werl Prison on October 20, 1951. Three weeks later he reported sick with pain in the left middle finger.

Since then, progressive rheumatoid arthritis has been diagnosed and in spite of various treatments both as an outpatient and in hospitals, Meyer's condition has steadily deteriorated. The German prison medical officer, Dr. Busch, supported by German specialists, has been for some time insisting the Meyer is in essential need of treatment at a suitable spa and is unfit for custody. In his latest report Busch wrote:

> *The health condition is still deteriorating. As a doctor I can no longer take the responsibility for not rendering to a patient with such a serious disease the best of therapies. I have informed my superior authorities about my conflict of conscience and have requested their instructions.*

The British Governor observed that Busch had said in clarification that he was still of opinion that Meyer was unfit for detention and unless spa treatment could be granted, the prisoner should be sent to the special hospital at Bad Pyrmont (not a penal institution). Although taking a serious view of the case, describing the signs as those of "a destructive process," in March 17, 1953 Col. Bennett, the Consultative Physician to BAOR, said that Meyer's expectation of life is about normal for his age, death not being likely accelerated by continued detention. Col. Bennett had listed treatments which ought to be available to patients suffering from rheumatoid arthritis, adding, however, that these are palliative only,

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none curative, and cannot therefore be considered essential. He considered that if these could be given locally – as they can – outside treatment was not essential.

There is, therefore, a divergence between British and German medical opinion as to the probable efficacy of spa treatment in this case, and, with no wish whatsoever to cast doubt upon Dr. Busch's sincerity, it must be submitted that, taking into consideration all the circumstances, Col. Bennett's point of view is the more likely to be characterized by objectivity. A fair overall assumption would appear to be that Meyer is suffering from an incurable disease which will take its course whether he is imprisoned or free. Nevertheless, treatment which is available whilst he is still imprisoned can relieve suffering and perhaps delay spread of the disease. There is, further, a chance that treatment at a spa might reinforce these measures. This being so, were the issue a simple one, precedent could be followed and Meyer could be released on parole for special medical treatment – as his lawyer has petitioned – in the hope that he would benefit. Unfortunately there are complications which must be taken to account in consideration of the case.

As Meyer was convicted by a Canadian Military Court the ultimate decision in a matter of this kind seems to rest with the Government of Canada and consultations have taken place with that Government, the Foreign Office being kept informed. The Canadian Government has said that it has no objection to Meyer being allowed to go to a spa for medical treatment, provided he is retained in custody. It is moreover prepared to detach a sufficient number of servicemen from the Canadian Forces in Germany, should this be necessary, to act as an escort. The holding of Meyer in custody while taking a cure would be bound to present administrative and other difficulties, and might adversely affect any value the treatment might have. He could be granted leave under a parole order, but a complication arises from Meyer's own personality and prison conduct. On several occasions he has acted contrary to undertakings given by him in order to obtain privileges. He was found guilty of trafficking with a German warder and illicitly writing him a testimonial. When his kit was searched after return to prison from an outside hospital to which he had been paroled, two bottles of liquor were found. This history of unreliability argues against favorable consideration of leave.

After discussion with Mr. Starnes of the Canadian Embassy, it has been suggested that Meyer should be treated in Werl Prison and as an outpatient in Mariannen Hospital for a further period of six weeks or two months in accordance with recommendations made by Col. Bennett and, if there is then found to have been deterioration in his condition, to examine the possibility of his being allowed parole to undergo treatment at a spa. Mr. Starnes made no objection to the proposal and this course is recommended. Do you agree?

F30. Secret Report, Minister of National Defence to His Excellency the Governor General, 15 January 1954.[95]

The undersigned has the honour to report that

(a) A Mixed Consultative Board, composed of three British members and two German members, was recently constituted in the British Zone of West Germany to review the sentences of all German war criminals held in custody in the British Zone. All members of the Board were required to undertake in writing to observe secrecy in respect of their proceedings and deliberations.

(b) One of the cases considered by the Board was that of Major-General Kurt Meyer…

(c) The Board has unanimously recommended that Meyer's sentence should be reduced to imprisonment for a term of 14 years and that the sentence reduced should be run so as to include the period of pre-trial detention calculated in the same way as in the case of war criminals sentenced by the United Kingdom, that is to say from May 8, 1945, when the person under the sentence was taken into custody before that date. Meyer has been continuously in custody since September 6, 1944.

(d) Brigadier Sherwood Lett, QC, acted as observer on behalf of the Canadian Government during the Board's review of the case of Meyer. Brigadier Lett has reported that in his opinion the members of the Board, in the course of their deliberations and proceedings, gave full consideration to all relevant factors open to it for consideration. The de-

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liberations and discussions were conducted throughout by all members of the Board in an objective and impartial manner and a judicial attitude towards their problems was displayed by all members. Brigadier Lett was further of the opinion that in the event the Board recommended clemency for war criminals convicted by United Kingdom military courts similar to that recommended for Meyer, and the United Kingdom clemency authority elected to give effect to such recommendations, the Canadian clemency authority should give effect to the Board's recommendations for a reduction of Meyer's sentence. It has been ascertained that the United Kingdom clemency authority in similar cases has approved the recommendations of the Board.

2. The undersigned recommends that the sentence of life imprisonment now being served by ex Major-General Kurt Meyer be commuted to one of a term of 14 years computed from May 8, 1945, subject to such reduction, if any, for good conduct as the said Kurt Meyer may have earned or may earn in accordance with the rules in force for the prison in which he is undergoing his punishment.

F31. Top Secret, Cabinet Conclusions, Ottawa, 11 January 1954.[96]

German war criminals

19. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of October 21st, 1953, said a report had now been received from Canadian counsel who had attended sessions of the Mixed Clemency Board in the United Kingdom zone of occupation in Germany….

The Board had recommended clemency in both instances. Specifically, it was recommended that the sentences of Meyer and Neitz be reduced to fourteen years, to include the period of pre-trial custody, and that good behaviour be taken into account in determining the length of time which the sentence would run.

If the recommendation was accepted, it would mean the release of Meyer and Neitz in a year's time. The British and the French had accepted all similar recommendations in respect of prisoners which they held. A submission to the Governor-in-Council was being prepared and would be ready shortly. The two cases had received a good deal of publicity and had been mentioned in Parliament on more than one occasion. In England, no publicity had been given to the release of war criminals. Two things had to be settled. Decision had to be taken regarding the recommendation itself and, secondly, if it were accepted, consideration had to be given to the manner in which any announcement might be made.

20. *The Cabinet* noted the report of the Minister of National Defence and agreed that, on the assumption that the recommendation of the Mixed Clemency Board in the cases of Kurt Meyer and Johann Neitz was accepted by the government, a brief announcement be made by the Minister in the House of Commons stating that the recommendation of the Board had been received and acted upon, and that, while matters of this kind were not discussed normally in Parliament, it was mentioned because the cases had been referred to, there, on previous occasions.

F32. Top Secret, Cabinet Conclusions, Ottawa, 15 January 1954.[97]

German war criminals

1. *The Minister of National Defence* (Mr. Claxton), referring to discussion at the meeting of January 11th, submitted recommendations for the commutation of the sentences for war crimes now being served by Kurt Meyer and Johann Neitz.

Brigadier Sherwood Lett had acted as observer on behalf of the Canadian government during the review of both cases by the Mixed Consultative Board. He reported that the members of the Board had given full consideration to all relevant factors available and that deliberations had been conducted in an objective and impartial manner. The Board had unanimously recommended that both sentences be reduced to imprisonment for a term of fourteen years and that the sentences, as reduced, should run so as to include the period of pre-trial detention.

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Brigadier Lett concurred in the conclusions of the Board and was of the opinion that the Canadian clemency authority should give effect to them. The Minister recommended, therefore, that the sentences being served by… Meyer and… Neitz be commuted to terms of fourteen years, with reductions allowable for good conduct.

Submissions had been circulated.

(Recommendations, Minister of National Defence, Jan. 15, 1954 – Cab. Docs. 11-54 and 12-54)

2. *Mr. Claxton* also submitted a draft statement which he proposed to make in Parliament.

3. *In the course of discussion*, the following points emerged:

(a) The presence of Brigadier Lett, as an observer during the Board's review, would assure to the public, and veterans particularly, so far as possible, that the government was not acting arbitrarily or precipitately if it accepted the recommendations.

(b) In the submission respecting Meyer, it was not made clear that Brigadier Lett had concurred in the conclusions of the Board. The submission should be revised to bring out this point as he had, in fact, given his concurrence.

(c) It would be desirable to indicate in the statement the observer's military rank and distinction.

(d) Control at Werl Prison was in the hands of the United Kingdom authorities, and remission of sentences was granted in accordance with rules laid down by the British Custodian. This point should also be stressed in the Minister's statement.

4. *The Cabinet*, after discussion, agreed that the life sentence now being served by ex-Major General Kurt Meyer, and the sentence being served by Johann Neitz, be commuted to terms of fourteen years, to be computed from May 8th, 1945, and July 22nd, 1945, respectively, subject to such reductions, if any, for good conduct as they may have earned, or may earn, in accordance with the rules in force for the prison in which they were undergoing punishment; the submission respecting Meyer, and the draft statement, to be amended in accordance with the discussion; Orders in Council to be passed accordingly.

F33. Canadian Order-in-Council P.C. 1954-75, 15 January 1954.[98]

The Committee of the Privy Council, on the recommendation of the Minister of National Defence, advise that the sentence of life imprisonment now being served by ex Major-General Kurt Meyer in a prison at Werl in the British Zone of Occupation in Germany, be commuted to one of a term of fourteen years computed from May 8, 1945, subject to such reduction, if any, for good conduct as the said Kurt Meyer may have earned or may earn in accordance with the rules in force for the prison in which he is undergoing his punishment.

F34. House of Commons Debates, 15 January 1954, 1141-2.

Kurt Meyer-Johann Nietz
Statement with respect to review of sentences

Hon. Brooke Claxton (Minister of National Defence): Mr. Speaker, in view of the interest which has been expressed by a number of members from time to time in the Kurt Meyer case, I should like to make a brief statement with respect to his case and that of Johann Nietz, the only two German war criminals convicted by Canadian military courts still serving sentences. Their sentences are being served in a British administration prison at Werl, Germany.

The terms of the agreements between the occupying powers and Germany provided for the review of the sentences of war criminals. In view of the delay in bringing these agreements into effect, some time ago boards were set up in each

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of the British, United States and French zones to review the sentences of all convicted German war criminals still held in custody in those zones.

The Canadian government appointed Brigadier Sherwood Lett, Q.C., C.B.E., D.S.O., M.C., E.D., of Vancouver, to represent it as an observer when the cases of Meyer and Nietz were considered by the board set up in the British zone. This board has reviewed the sentences now being served… and has recommended that in both cases the sentences be commuted to fourteen years.

The recommendations of the board in each case was unanimous and Brigadier Lett has recommended that the government should accept the recommendation of the board.

After the most careful consideration of the circumstances the government has accepted the recommendation of the board.

Both Meyer and Nietz will be eligible for such remission of their sentences as they may have earned or may earn in accordance with the rules in force in the prison where they are confined and which are laid down by the British custodian.

I might add that I understand the reviewing boards' recommendations in each zone have been accepted in each case by the governments of France, the United Kingdom and the United States.

Mr. J.G. Diefenbaker (Prince Albert): Mr. Speaker, I should like to direct a question to the Minister of National Defence arising out of the announcement which he made a moment ago of the reduction of sentence imposed upon Kurt Meyer. Is that reduction not most generous compared to some of the other sentences? Did the government agree with it? Will the minister say when under the present rules now in effect Kurt Meyer will be released from custody?

Mr. Claxton: With regard to the first part of my hon. friend's question, the reduction in sentence is by no means generous in comparison with others. I understand it was made on precisely the same basis as similar sentences have been reduced. Indeed it is a fair thing to say that a great number of men sentenced to life imprisonment for much more serious crimes than this –

Some hon. members: Oh, oh.

Mr. Claxton: – have been released already.

An hon. member: What could be more serious?

Mr. Claxton: With regard to the second point, that will depend upon the rules in effect in the prison in which he is confined, which prison is administered by the British authorities. He will receive exactly the same treatment for good behaviour or whatever service he has rendered as other prisoners who are there.

Mr. Diefenbaker: Does not the minister know when Kurt Meyer will be out on the basis of the regulations that are in effect there?

Mr. Claxton: I cannot tell the hon. member.

Mr. Diefenbaker: Is it not a fact that on the basis of a 14-year sentence he would be available to be released immediately?

Mr. Claxton: It should be some time within a matter of months or a year or so. I cannot give the exact information because we are leaving that recommendation to be made later by the British authorities.

Hon. George Drew (Leader of the Opposition): Mr. Speaker, supplementary to that, I should like to ask the minister what could be more serious than to order the shooting down of young Canadians in cold blood contrary to every rule of war?

Mr. Claxton: I am sorry, but Kurt Meyer was not convicted of ordering the shooting of Canadian prisoners of war.

Mr. Drew: May I ask what he was convicted of, since that certainly was the charge.

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Mr. Claxton: He was found not guilty of that on the evidence as disclosed to the court. The sentence imposed upon him was imposed in view of his conviction of having what would amount to constructive responsibility for this action. It took place in an area where he was in command. I am speaking from memory, and I should not do so in connection with a matter of this kind, but my recollection is that he was not found guilty of actually ordering the shooting.

I think I should make it plain that some people who have been released were in the gestapo or security police in some of the countries and were found guilty of killing, torturing to death or causing to be tortured to death numbers of citizens of those countries. Still they have been released.

Mr. Drew: I should like to ask another question. Is it not correct that Kurt Meyer was found guilty and sentenced to death for his responsibility for the inexcusable shooting of Canadian soldiers under his control?

Mr. Claxton: That is quite a different thing from the first statement made by the Leader of the Opposition. That is substantially correct.

F35. House of Commons Debates, 25 January 1954, 1404-7.

Motions for Papers
KURT MEYER

Mr. George Drew (Leader of the Opposition): For a copy of all correspondence, telegrams, cablegrams, recorded telephone or other conversations between the government of Canada and any other government, authority, person or persons and all documents in the government's possession relating to the trial, death sentence, commuting to a sentence of life imprisonment, the removal from the Canadian prison at Dorchester, New Brunswick, and the further commuting of sentence to imprisonment for fourteen years of Major General Kurt Meyer.

Mr. Claxton: This motion relates to several departments and I have been asked to state the government's position.

Parliament is not the place to try or retry criminal cases of any class and this has always been recognized in the past. Motions for the production of papers relating to trials and remissions of all kinds have not been allowed, as not being in accord with practice or the public interest.

As I stated in the house a few days ago, mixed consultative boards were set up to review sentences of all war criminals still in custody in western Germany. The British high commissioner set up the board to review the cases of all war criminals in custody in the British zone. Meyer and Nietz were among those in custody in the British zone and the Canadian government agreed that they should not be excluded from the review.

The government appointed an outstanding lawyer and a distinguished soldier, Brigadier Lett, as observer during the proceedings and to advise the government.

The board recommended that the sentence be reduced to fourteen years. The recommendation was unanimous and it was supported by Brigadier Lett.

So far as is known, every recommendation of every board in every zone has been accepted by the government concerned.

In this case the Canadian government could either reject or accept the recommendation made by the board and supported by the observer appointed for the purpose. The government of Canada accepted the recommendation. I now table the orders in council giving effect to this decision, dated January 15, 1954, being P.C. 1954/74 and 75. The orders speak for themselves. Of course the government does, as it must, accept full responsibility for them.

For the reasons stated the government is opposing the motion.

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Mr. Drew: Mr. Speaker, I had hoped that this motion might have been accepted by the government because there is no suggestion in this case of a retrial. The circumstances here are not the ordinary circumstances relating to the reconsideration of the punishment due to any convicted member of the armed forces or those who served at one time a former enemy.

Kurt Meyer was found guilty and sentenced to death. Subsequently other steps were taken. We are unaware of the details. Kurt Meyer was transferred from this country under circumstances which left a great deal to the imagination, particularly so far as members of this parliament are concerned. We suddenly found that Kurt Meyer had departed and we did not know whether there had been any previous arrangement. It will be recalled that the suggestion was then made that the spiriting of Kurt Meyer out of Canada at the time was simply preliminary to his subsequent release at an early date. The fears thus expressed have been confirmed by what has taken place.

If there are circumstances which would be disclosed by the material now called for justifying any other decision, then I think we should know of such circumstances. I think it is altogether right and proper, if Kurt Meyer was wrongly dealt with, that his name should be cleared. But a distinction must be drawn between the case of Kurt Meyer and the other cases that were under review.

Those who carry rifles or handle other weapons in the field of battle are entitled to have consideration given to the fact that they are under orders and must obey orders. Officers in command of armies are called upon to interpret the political decisions of governments and there have been cases where that has been given due consideration in dealing with army commanders, even though the conduct of the troops under them may have seemed outrageous and atrocious.

But when an officer in command of fighting troops is found to be guilty of the responsibility, as in this case, extending to the death of young Canadian men in uniform taken prison on the field of battle, that officer must be held responsible for such an act, or the rules of war will be disregarded at will in the future. At any rate there will be encouragement to follow such a course.

Kurt Meyer either was responsible for the death of young Canadians contrary to the rules or war or he was not. If he was not, then his name should be cleared. If he was, then the procedure that has been followed is not consistent with the best interests of the recognized practices of armies in the field. I submit that this parliament, as the supreme authority in this country, should have the opportunity of examining the exchanges that took place.

I submit that we should know whether there was in fact any prior understanding at the time Kurt Meyer left Canada with the authority and assistance and approval of this government. I submit that we should know whether there was in fact anything in the exchange of correspondence that suggested that a wrong was being righted. I think we should know also, and the parents of young Canadians should know, whether that was the case, or whether a man serving a terrible system was in fact guilty but has been brought almost to the door of freedom for purposes which have not yet been disclosed to this parliament or to the people of Canada.

Mr. Claxton: Mr. Speaker, only a word, the occasion of which arises out of what the Leader of the Opposition (Mr. Drew) has said. I think it is evident from what he did say that the purpose for which he is calling for the production of these papers is precisely the purpose for which I suggested that such papers should not be produced. There is no question of the guilt or responsibility of Kurt Meyer involved; that was determined by the court martial. He was found guilty on three of five counts.

The only question involved subsequent to that was what sentence was proper to be imposed on him. The court martial imposed a sentence of death. That sentence was not valid until it had been confirmed and the death sentence was never confirmed. The confirming officer, acting independently on his own authority, Major General Chris Vokes – a fighting soldier if there ever was one – confirmed the sentence with the sentence of life imprisonment.

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Kurt Meyer was transferred to Canada to serve his sentence. With the development of events after he had been here some six years it was apparent that he was the only single war criminal convicted of an offence committed in Germany and punished after trial in Germany who was serving his sentence outside of Germany. It was not in order to treat him separately and differently from anyone else that he was transferred back to Germany but in order that his case might be treated precisely the same as every other case of a man sentenced by a similar tribunal and receiving a similar punishment.

On that account he was dealt with just the same way as all other cases were dealt with by the British, French and American authorities in respect of similar cases. Now a tribunal set up by British authorities in virtue of authority they have and agreed to by us has acted in precisely the same was as tribunals set up by the American and French authorities. In every case, so far as is known to us, the recommendation of the mixed consultative board has been carried out, accepted and acted upon by the government concerned.

And we are in this case going to be the only country to make an exception in respect of this case and treat Kurt Meyer separately and differently from every other war criminal?

Mr. Coldwell: May I say just this word.

Mr. Speaker: Order.

Mr. Coldwell: I think the issue has been obscured. We are not asking the right to judge –

Mr. Speaker: Order.

Mr. Coldwell: – a man, we are asking the right to see papers.

Mr. Speaker: Order. Hon. members will understand that under the provisions of standing order 51 hon. members may put this type of motion on the order paper. If a motion is inscribed under "Notices of Motions for Production of Papers" with an asterisk it is supposed to be disposed of without debate. After the minister explained why he did not want to allow the motion to go through he made the statement and I allowed the mover of the motion to make his observations.

The house divided on the motion (by Mr. Drew) which was negatived on the following division:

YEAS – 63.

NAYS – 102.

F36. Translated excerpt of a letter from Kate Meyer to Kurt Meyer, c.27 January 1954.[99]

Two journalists from Canada came to tell me in the name of the Government that you are due for release in September; maybe even earlier. They were very nice and asked me to let them know what wishes I had. I asked to arrange for your transfer to a special hospital because, as far as I know, dear Kurt, this is very necessary for you. Uschi wrote to me that you look very sick and that you have become very slim. You seem to have no idea as to how worried I am about your health. The journalists were greatly surprised to hear that I have not seen you for over one year. I told them that we won't let ourselves [be] treated as criminals and that I would visit you once every month if the manner in which the visits are conducted changed.

F37. Letter, C.M. Drury, Deputy Minister, Department of National Defence, Ottawa to Dr. Wilhelm Schapp, Barrister and Notary, Aurich/Ostfriesland, Germany, 2 February 1954.[100]

Your letter of January 22, 1954, addressed to the Prime Minister and enclosing a copy of your petition to the British High Commissioner at Wahnerheide on behalf of ex-Brigade Fuehrer Kurt Meyer has been received and referred to me for reply.

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I wish to assure you that the Canadian Government has no desire to increase the sufferings or delay the physical recovery of your client. The question of treatment at a hospital has always been within the discretion of the detaining power in Germany and I wish to assure you, as I did in my letter of October 6th, 1953, that should the competent medical authorities of the detaining Power consider that your client's condition requires that he receive treatment beyond the confines of the prison where he is detained, appropriate arrangements will be made for him to be given such treatment.

I am sending a copy of this letter to His Excellency, the High Commissioner for Great Britain and Northern Ireland in Germany.

F38. House of Commons Debates, 26 March 1954, 3367-8.

Mr. Cameron (Nanaimo): My hon. friend says "How about the Russians?" Quite so; how about the Russians. But I want to remind him again that it was the evil forces in Germany, consisting of the most conservative element in Germany combined with the evil gangster element of a military caste, which attempted to dominate the world… Today these forces are again rising to the top in Germany. We ourselves have some measure of responsibility for that fact. Some hon. members may have noticed that I placed on the order paper the other day questions regarding SS General Kurt Meyer. I did this in response to correspondence from Great Britain where responsible and important military officers who were entrusted by the British government with the task of collecting and collating the evidence against German war criminals have been greatly disturbed by Canada's acquiescence in the release of this man. Today in the paper I see we have gone a step further and now German war criminals are to be released and their identity kept secret… I submit that we would be foolish indeed if we persist in [the current] policy of arming Germany, which, all too clearly now to anyone who studies reports from Germany, is again falling into the hands of that evil combination that has been a disaster to Germany and the rest of the world twice in our lifetime,… a combination which is perhaps exemplified as well as anything by such people as General Kurt Meyer and Mr. Alfred Krupp, a combination that is perhaps best exemplified by all the ex-nazis who are now being released and the Ruhr industrialists, the same people and the same combination that nearly destroyed human freedom in the world… I cannot forget that two generations from this country went to destroy that danger; and to see our government acquiescing in rebuilding that danger today is to see the betrayal of everything that two generations of young Canadians fought for.

F39. House of Commons Debates, 21 May 1954, 4960.

Mr. Herridge: I would now like to turn to something I think should be drawn to the attention of the minister. I am referring to the case of Kurt Meyer, whose kind treatment raised some objection in Canada recently. That matter is now closed. I think we had our legs pulled to some extent by the government in this case. This German general was found guilty of having incited and counselled troops under his command to deny quarter to allied troops and to be responsible for the killing of Canadian prisoners of war. The death sentence imposed by the court was commuted by General Vokes to life imprisonment. A reviewing board without any Canadian members has since granted remission of sentence which will mean that this nazi German general will be released in a few months.

My point is this. If this nazi general can receive that sort of compassion and his sentence can be reviewed by a board with the consent of the Canadian government, surely the same compassion should be shown to servicemen found guilty by courts-martial of far lesser offences during wartime and for which their punishment continues… Officers who were cashiered should have their sentences reviewed with a view to imposing a much lighter sentence than dismissal from the service.

F40. Memorandum, M.P.P. Herchesroder to H.W. Evans, British Foreign Office, 11 June 1954.[101]

… I wrote to the Canadian Embassy in Bonn on April 6 and asked whether the Canadian Government was content to leave the decision [about Kurt Meyer] to the Foreign Office and give them *carte blanche*. The Canadians thereupon suggested that Kurt Meyer might be admitted to a British Military Hospital where he could be kept under guard, as the

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Canadian Government was strongly opposed to any measures being taken which might lead to Meyer's escape from custody.

We then referred the question of Kurt Meyer's admission to a British Military Hospital to the Director of Medical Services, who could not agree. For one thing, the particular treatment recommended cannot be given at any of the British Military Hospitals. The Director of Medical Services, however, supported the Consulting Physician's recommendation that Meyer was in need of special treatment.We have now asked the Canadians whether he could be admitted to one of their Military Hospitals.

On June 8, the High Commissioner had a word about this question of treatment with the Canadian Ambassador. The Ambassador said that he would take up the matter with Ottawa, but was doubtful whether they would change their minds. In order words, they are not at all keen on Kurt Meyer being allowed to go to a spa for treatment.

F41. Memorandum, H.W. Evans, Foreign Office, London to M.P.P. Herchenroder, Office of the Legal Adviser, U.K. High Commissioner in Germany, 21 June 1954.[102]

… The Canadians are being rather troublesome about this and we must know just where we stand. Otherwise there is the danger that Meyer may die in our hands in prison and that we shall get the blame for what was the fault of the Canadians. Accordingly, we suggest that, unless the High Commisioner disagrees, he should speak to his Canadian colleague on the following lines. There are two ways of handling this business. Either the Canadians can give *carte blanche* or they can decide it themselves. In the first case, having received authority from the Canadians to act as we thought fit, we should allow Meyer to go to a suitable institution for treatment. He would not be under any military supervision, but would have to report once a month and his parole would be renewed monthly. In fact, he would be treated just as we treated Manstein. In the second case, it would be for the Canadians to decide whatever they thought fit, as they are entitled to do. But in this case we should have to make it quite clear to the Auswärtiges Amt and (should questions be asked) in public that the decision was a Canadian and not a British one.

F42. Memorandum, Office of the Legal Adviser, U.K. High Commission in Germany, to Acting High Commissioner, 7 August 1954.[103]

Professor Hallstein may raise the case of Kurt Meyer (Panzermeyer) when you see him on August 11.

Kurt Meyer was convicted by a Canadian Military Court sitting at Aurich, Germany, and sentenced to death. The sentence was commuted to one of imprisonment for life by the Confirming Officer. He was for some time in a prison in Canada but was transferred to Werl in October 1951. The Mixed Consultative Board set up in September 1953 recommended that his sentence should be reduced to 14 years' imprisonment: This recommendation has been accepted by the Canadian authorities. If he earns full remission for good conduct, he will be released on September 7 1954.

Kurt Meyer is suffering from polyarthritis. The advise of the German doctors is that he should undergo treatment at a spa. This advice has been endorsed by Colonel Bennett, Consulting Physician, BAOR, and the Director of Medical Services. We have suggested to the Canadians that Kurt Meyer should be released on parole to enable him to receive special treatment at a spa… but the Canadians are afraid of the public outcry in Canada if he were to abscond. We have considered him being treated at a British Military Hospital, but the special treatment (e.g. cortisone) which he needs cannot be given there.

In February 1954 the Federal Government urged that we should allow Kurt Meyer to go to a sanatorium for treatment. The High Commissioner has spoken to the Canadian Ambassador and representations have been made in Ottawa. We do not wish, should there be a sudden deterioration in Kurt Meyer's health, to incur the odium of having prevented him from having the treatment recommended by the doctors.

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Fortunately, Col. Bennett found a remarkable improvement in Kurt Meyer's condition when he examined him on July 8. In the circumstances, the Canadian authorities have decided that nothing should be done in view of the probable release of the prisoner in September 1954.

We cannot tell the Germans that we are not responsible for the decision not to allow Kurt Meyer parole for medical treatment. If Professor Hallstein raises this question with you, I suggest you should merely say that the question of special treatment has been under consideration but in view of the great improvement in Kurt Meyer's health was not considered immediately necessary.

F43. Letter, V.C. Moore, Canadian Embassy, to Mr Herchenroder, Office of the Legal Adviser, U.K. High Commissioner in Germany, 7 May 1954.[104]

Further to my letter of May 3, I am now able to inform you of the decision of the Canadian Government concerning the medical treatment for Kurt Meyer.

There is of course no objection to Meyer receiving suitable treatment under effective safeguards, but the Canadian Government is strongly opposed to any measures being taken which might conceivably lead to Meyer's escape from custody. Apparently no definite assurance can be given that this might not result if Meyer is put in a Spa. This being the case, it would appear to be necessary to arrange for such treatment as can be given in prison or in a British Military Hospital under adequate safeguard.

We have been instructed to emphasize that this is a matter about which the Canadian Government feels very strongly. Even allowing Meyer to leave the prison for treatment at a Spa under adequate safeguard would be misunderstood and widely resented in Canada, since no such privilege is granted to Canadian convicts.

The action would cause widespread indignation and would not help German-Canadian relations.

We should therefore be grateful if you would do your best to arrange for medical treatment in a British Military Hospital under adequate safeguard.

F44. Chairman Remission Board, Remission Board Order, 13 August 1954.[105]

Where as one Kurt Meyer was convicted of the offence of War Crime.
CC High Court by the Intermediate Military Court,
Canadian Military Court, at Aurich and sentenced to

Death commuted to Life Imprisonment
Commuted to fourteen years imprisonment with effect from 8 May, 1945
By Judgement dated the 28.12.45

Whereas the case has now come before this Board and after due consideration of the recommendation of the Penal Authorities it and an allowance made for pre-trial custody served, it is hereby ordered that the said Kurt Meyer be granted remission of sentence for good conduct and industry in prison
and be released on 7.9.54

F45. Report, H.S. Meech, British Governor, Werl Prison to the Legal Adviser, UK High Commission, Bad Godesberg, 8 September 1954.[106]

Subject: War Criminal Kurt Meyer

1. The above-named war criminal was released from Werl Prison at 05.10 hours on the 7th September 1954 through the new gate opposite House II and was conveyed into Werl by British official transport.

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2. There were a number of cars bearing men, women and one child at the end of the private road leading to the main gate of the prison, from a very early hour. The first car took up position at 01.00 hours. At approximately 04.45 hours, some six cars and about twenty persons were observed. Some of the latter were carrying cameras – others flowers and one or two Red Cross armbands were seen. Shortly after 06.00 hours, all cars and persons dispersed immediately following a German Warder speaking to them, and who presumably informed them that the prisoner had already left the prison… As Meyer did not pass through the main gate he was not seen by the persons who were obviously awaiting him and thus any form of demonstration outside the prison gate was avoided…

4. It is now known that some press representatives and others eventually visited the Kurhaus, Werl, where Meyer, his wife and friends were present.

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G. Responses to the Release of Kurt Meyer

G1. "Two War Criminals Released," British Information Services, Press Release – PR/Bonn/653, 7 September 1954.[107]

Kurt Meyer, aged 43, was released from Werl Prison to-day. He was sentenced to death on 28th December, 1945 by a Canadian court at Aurich, having been found guilty of committing war crimes, and this sentence was commuted to life imprisonment by the Confirming Authority. On 19th January, 1954 the Government of Canada, acting on the recommendation of the Mixed Consultative Board, reduced Meyer's sentence to 14 years.

Meyer has been released on expiry of his sentence, remission for good conduct and pre-trial custody having been taken into account…

G2. Confidential Minute Sheet, U.K. High Commissioner, 8 September 1954.[108]

I see that as I expected Kurt Meyer's release has been attended by a good deal of publicity, thanks to the fact that the date of his release was announced by the Canadians some time beforehand. As far as I can see this publicity has not been particularly objectionable, but there might have been unpleasant incidents, and our authorities at Werl must have been caused some embarrassment. As far as I know, it is not our practice to announce the release of war criminals beforehand but only after the event. Did the Canadians consult us in this case before they made their announcement or give us any warning of the publicity which was going to be given to the matter in Ottawa? If not, then I am rather inclined to make some reproachful noises to the Canadian Ambassador next time I see him.

Incidentally, I have not seen any references in the German papers about Kurt Meyer's health or any suggestions that owing to imprisonment he was on the point of death, which has been suggested on occasions in the past by his German doctors. On the contrary, one photograph I have seen of him makes him look remarkably well.

G3. Translation of an article published in the* Essener Tageblatt *on 8 September 1954.[109]

When ex-General Kurt Meyer yesterday stepped through the Werl Prison gate into freedom he was quietly greeted by his wife and ten war comrades. There were no Nazis to start demonstrations or to celebrate a [martyr], and there was not one bitter or accusing word spoken by Panzer-Meyer. Quietly, as they had come, the small [group] left the prison gate.

Yet the idea might have suggested itself to point out the sufferings of other German soldiers by drawing the attention of the public to the fate of the last commander of the Hitler-Youth-Division. In Werl, Landsberg and many other prisons in France hundreds of men are waiting for the victors to show insight.

He who committed a crime and soiled the German reputation should atone. Although the German people realizes the inner-political difficulties that prevent the Western Governments from doing finally away with the war criminals problem, it does expect that those Germans who have been punished for the wrong committed by others should now be released. Already in 1945, after Meyer had been sentenced to death, the Münster Prince of the Church, the Earl Clemens August Galen, wrote: "As representative of the Christian conception of law according to which everybody is responsible for his own deeds only... I request to remit the sentence imposed."[110]

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G4. ***Translation of an article published in the* Wilhelms Zeitung *on 8 September 1954.***[111]

"Panzer- Meyer" Released from Prison"

BRITISH ANNOUNCE OFFICIALLY: GOOD CONDUCT

Werl (dpa). Ex-SS-General and Commander of Division Hitler-Youth, 43-year-old Kurt Meyer, called "Panzer-Meyer," was yesterday released from British Prison Werl.

When leaving the Prison he was received by his wife and several members of his former military unit, and Meyer looked well, although it is known that during his period of detention he was frequently bed-ridden by reason of circulation trouble and heart complaint.

Meyer said that he was going to work with a Hagen Industrial Concern. He first proceeded to Clearing Camp Freidland in a car put at his disposal for a fortnight by a car factory. From Friedland he will proceed to a weekend house at Nieder-Krüchten near Müchen-Cladbach put at his disposal by some friends.

Considerable effort to effect Meyer's release had been made by a Canadian building contractor, aged 70, who had emigrated from Germany 41 years ago. "Uncle Fritz", as he is called by Meyer's family, employed Canadian lawyers and supported Meyer's family, consisting of 5 persons.

Concerning Meyer's release the Canadian Prosecutor in the Meyer-trial, Lt. Colonel Bruce Macdonald at Windsor (Ontario), declares: "Meyer's early release is justified only on the basis of international political expediency. As far as the law is concerned there was no reason to shorten Meyer's period of custody." Macdonald will publish a book on the "Kurt Meyer Trial" in October.

According to an official British communication Meyer's balance of sentence has been remitted on good conduct and upon deduction of his pre-trial custody from the period of his sentence. Together with Meyer ex-Sergeant with the Waffen-SS Edgar Klemmt(Hamburg) has been released; He had been in custody for 9 years.

G5. ***Translation of an article published in* Werler Anzeiger *on 8 September 1954.***[112]

Sentenced to Death- Why? "War Criminals" Don't Know

"PANZER-MEYER" AND EDGAR KLEMMT RELEASED FROM PRISON – REACTION ALSO IN NON-GERMAN PRESS.

Werl. "Why were you sentenced to death?" we asked ex-sergeant Edgar Klemmt, aged 59, after his release from Werl Prison yesterday morning on the platform of Soest Station. He could not answer this question- as he told us- since he had seen neither judgement nor reasons for the judgement. The conviction of Panzer General Retd. Kurt Meyer is a point just as problematic and controversial. He was convicted of war crimes allegedly committed in the Normandy and was also discharged from Werl "Allied Prison" yesterday morning.

A large number of the General's comrades had come to Werl to greet "Panzer-Meyer" and to congratulate him on his release and to clear the way into freedom for him. Already on Monday night Mrs. Meyer arrived at Werl and it was a moving scene when she celebrated the reunion with her husband in the Kurgarten-Restaurant. Owing to the good care of ex-comrades of the now 43-year-old ex-General, she lives at Müchen-Gladbach after it turned out that her stay at Helmstedt, which is very near to the Zonal frontier, was not so good. "Panzer-Meyer" himself will also proceed to Müchen-Gladbach after having gone through the necessary formalities at Friedland Camp.

THANKS TO PHILANTHROPIST

It is well known that Meyer's discharge is not least due to the efforts of the Canadian National Lichtenberg, who was also present at the Discharge Celebration in the Kurgarten-Restaurant. He was generally called "Uncle Fritz." He protested against any form of thanks expressed to him and said his best reward was to see this day. In addition to reporters

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from German newspapers and press agencies there were representatives also from American Papers and Television in the Werl Kurgarten-Restaurant, where ex- General Meyer stayed a short time following his release at about 0530 hrs, before he continued his travel to Friedland, by car. During a short celebration he was given numerous tokens of esteem. Frau Biele, the Werl German Red Cross Representative, was greeted especially heartily by the released man, and Frau Biele's daughter Brigitte presented a nice bunch of flowers. Frau Biele also expressed the thanks of the German Red Cross to the Canadian Philanthropist.

With his face bronzed by the sun General Retd. Meyer made a good impression, although the sufferings of his long period of detention left their marks on him and his relatives…

Still today, after the releases we have reported above, there are German men and women languishing at Werl and in other Prisons, hoping for a review of their sentences by a neutral court or for an amnesty on a generous basis. It is only when we are allowed to forget all these things that mutual efforts can be made to build a new Europe.

G6. Numbered Letter 882, C.S.A. Ritchie, Canadian Embassy, Bonn, to the Undersecretary of State for External Affairs, Ottawa, 10 September 1954.[113]

Ref: Review of Events in Germany for the Period September 4 to September 10

3. The release of "Panzer" Meyer took place at 5:15 a.m. on September 7. (The hour was chosen by the British to avoid demonstrations.) On the basis of a press report evidently issued by the Ottawa correspondent of Reuters News Agency on September 3, the weekend was given over to a good deal of telephone discussion with representatives of the press. His release at break of day and out of the back door appears to have prevented some of the publicity which had been planned for the event (an NBC television camera man, for example, arrived outside the prison at 6:30 a.m. only to discover to his annoyance that the bird had flown the coop (as it were)).

4. The *News Chronicle* and the *New York Herald Tribune* carried stories that Meyer was met at the gates by his wife and members of the German Red Cross and HIAG (the welfare organization of former SS men). According to these stories, he was presented with flowers and a huge cake inscribed in sugary words "Free at Last." The prison authorities claim these descriptions appear to bear little relationship to the truth. According to them, Meyer was not met by any reception committee, although they consider it likely that he met up with them in the town of Werl. The *News Chronicle* correspondent admitted to McQueen of the United Kingdom High Commission that his story might have been a little colored as he wrote it from Berlin!

5. In the evening, however, Meyer was accorded a hero's welcome upon his return to Niederkruechten in North-Rhine Westphalia where his wife and five children had been living. A torchlight parade was organized in his honour and a red convertible car was made available to him for 10 days by a Düsseldorf automobile firm. Also on hand was the 70-year old Canadian of German extraction from Moncton, New Brunswick, described in the press as "Uncle Fritz," who has helped support Meyer's family and financed various legal actions aimed at obtaining his freedom.

G7. Translation of an article published in the Beobachter An Der Haar on 16 September 1954.[114]

Berner "Association" about Panzer-Meyer

Great homages were done to ex-SS-General Kurt Meyer, recently released from Werl, when he returned to his home community. If the opinion of the German public were to be accepted then all war criminals are either innocent or, even, defenders of humanity. A look into British records, however, reveals a different picture. They show that not all, but certainly most, of the convicted persons were unscrupulous executors of the Nazi principles: all is right that is useful to the people (or the regime). On the other hand there is the fate of thousands of late home comers from the Soviet Union, pushed from one authority to the other, trying in vain to find suitable work, and often enough herded in miserable hovels. The

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ex-SS-General found a weekend house waiting for him and a car put at his disposal by a motor-car factory. Arrangements had also been made for his immediate employment in an appropriate position.

G8. Secret, Memorandum from Under-Secretary of State for External Affairs to Secretary of State for External Affairs, 9 November 1954. 115

Mutual Aid: Training of German Aircrew in Canada

The entry of the German Federal Republic into NATO, once the relative North Atlantic Treaty and Brussels Treaty Protocols have been ratified, is almost certain to raise sooner or later the question of admitting German airmen to the NATO air training scheme in Canada…

2. As you will recall, this question was touched on briefly in Cabinet in the discussion on your submission prior to the recent Ministerial Meeting of the North Atlantic Council in Paris. At that time the view was expressed that it would be best, because of the state of opinion in Canada about Germany and because of the problems that would be created by an additional language group in the Training Programme, to discourage any proposal to train German aircrew in Canada as part of the Mutual Aid Programme "at this time." I understand that the Chairman, Chiefs of Staff, is also of a similar view. He has on several recent occasions expressed privately his fear that we might risk trouble and possible indignation in Canada if some German airman training here chanced to meet a relative of one of the Canadian prisoners shot by General Kurt Meyer in the last war.

3. The question of training German pilots in Canada was raised in a different context two years ago as the result of informal inquiries by the Chief of German Air Force Planning. At that time we concluded that no consideration should be given to training Germans in Canada unless and until a formal request was received through NATO-EDC channels. At the same time, however, General Foulkes expressed objections, on grounds of both practicability and desirability, to such a proposal no matter how the approach was made. Apart from the above, from the desirability aspect, it is considered there is a large morale factor. If German candidates were accepted at various training schools and colleges, there is always the probability that they might be under instruction with Canadian officers who have lost members of their immediate family during World Wars I and II, or have had other first-hand experiences with Nazi attitudes during World War II, which may have left them with strong prejudices. Although this factor is hard to assess, the recent strong feeling against mitigation of the sentence of Kurt Meyer must be taken as an indication that it is questionable whether the old enmities can be forgotten as quickly as present realistic interests would dictate. It would be most unfortunate if an incident did occur involving German and Canadian students which might prove politically embarrassing to Canada and tend to retard, rather than foster, the growth of mutual confidence necessary between these German forces and the other NATO countries."

4. Circumstances have changed since then, however, and I submit that we should now bear in mind in considering this problem that, once Germany is a full member of NATO, it will be extremely difficult to find any justification for treating her on any basis different from that on which we treat the other NATO countries…

G9. House of Commons Debates, 24 January 1955, 491, 493.

Reception to Meyer on release from prison

Mr. T.H. Goode (Burnaby-Richmond): Hon. members will recall that not too long ago we voted whether we should allow Kurt Meyer to return to Germany. I believe I was the only one on this [the government] side of the house who voted against his return at that time. I did it not for political advantage, not to create in the minds of the people of Canada the thought that here was a Liberal member who was against Germany, but I voted as I did because it was my opinion that concrete evidence was available that former senior nazi officials were coming to the forefront in German military matters.

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If you need further evidence of that fact, press reports of Meyer's reception and consequent generous treatment in his country are proof enough. Read the headlines of the European papers and prove for yourself that the staff of any new German army will be former associates, personal or military, of the nazi regime…

Had article 2 of NATO[116] been properly implemented we might have had [a free and democratic] Germany today. The people of that country would have had a chance to throw out nazism. The teachings of Hitler remain too deeply rooted for us to hope that this change could be brought about in such a short time. If there were evidence to show that nazism had gone, then there might be some justification for taking a calculated risk [and making Germany a great ally]. But instead of evidence that nazism is gone, what do we find? We find Kurt Meyer welcomed home. We find Adolf Galland, chief inspector of the Luftwaffe fighting command, returning to Germany from Argentina. We have Frau Schlitter making a statement in London showing the tragic reality that nazi thinking is not dead. Hitler's militarism can never be accepted in faith by the western world. That record can never be forgotten. That black page in the history of man is written.

G10. Letter, H.S. Meech, British Governor, Werl Prison to the Legal Branch, British Embassy, Bonn, 12 December 1955.[117]

For your information I have to report that, in conversation with Canadian Officers yesterday, I was informed that the ex War Criminal Kurt Meyer was recently entertained in the Officers' Mess of a Canadian Regiment stationed near Iserlohn.

If this information is correct it would appear to confirm the attitude of certain senior Canadian Officers who recently, and in the past, have expressed to me their appreciation of the merits of this ex German Officer who, according to the records held by this office, was sentenced to death by a Canadian Military Court in respect of a War Crime involving the killing of Canadian Prisoners of War.

At the same time I have been left in no doubt that, in the opinion of these Officers, Canadian Officers in the last war have been guilty of similar acts concerning German Prisoners of War.

G11. Confidential Telegram, Starnes, Canadian Embassy, Bonn, to External Affairs, Ottawa, 16 December 1955.[118]

Sub Kurt Meyer.

We think you should know in case the story receives publicity that we have learned Kurt Meyer has on occasion been received in one of the unit messes of the Canadian Brigade. Brigade Headquarters, who we understand are reporting more fully on this to the Department of National Defence, tell us that Meyer who is now a beer salesman in the Soest area, was recognized by a Canadian officer who invited Meyer into the mess for a drink. This courtesy has since been repeated and Meyer is supposed on one occasion to have given a talk to the unit's officers.

Brigade Headquarters tells us that strict orders have been issued that there should be no further contact with Meyer. We gather he continues to sell beer to the Brigade and Maple Leaf Services.

G12. House of Commons Debates, 19 July 1956, 6165-6.

Mr. Herridge: Mr. Chairman, a number of widows and mothers in Canada who have lost their loved ones in the armed services were extremely disturbed by a press dispatch of July 7 which was forwarded by Mr. Dave McIntosh, Canadian Press staff writer in Germany. I might say that several of these women have asked me to bring this matter to the attention of the house. The press dispatch read as follows:

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Kurt Meyer now Beer Salesman –

German SS Major General Kurt Meyer once sentenced to death for responsibility in the mass shooting of 18 Canadian prisoners of war, now sells beer to the Canadian army.

Army sources here disclose that Meyer, who spent 9? years in jail as a war criminal, is a beer salesman in the province of Westphalia in West Germany, where the 2nd Canadian Infantry Brigade is stationed.

As a salesman for a reputable brewery he often calls at brigade messes to make beer sales.

One army informant said Meyer is accorded the same privileges as any other beer salesman. However, he is not invited to join officers in a drink in the mess –

That is very thoughtful.

- and as a rule he talks only with the messing officer.

The army decided not to bar Meyer from the brigade area. As far as the Canadian army is concerned, the source said Meyer has served out his prescribed sentence as a war criminal, and is a German civilian who happens to sell beer…

I think anyone who doubts his responsibility has only to read the book "The Trial of Kurt Meyer" by Lieutenant Colonel B.J.S. Macdonald, O.B.E., Q.C., who was the official prosecutor of the war trials on behalf of the Canadian government.

We know this man has served his sentence, but that does not alter the situation and I think we have to consider the sensibilities and feelings of mothers and widows of Canadian veterans before we consider the sensibilities of a former war criminal. I bring this to the minister's attention because I have spoken to a number of people who are quite concerned about it and would ask him if he would issue instructions to the commander of our brigade in Germany to have some other beer salesman deal with the Canadian army rather than Kurt Meyer.

G13. Omar Anderson, "Kurt Meyer: Germany's New Beer Hall Hero,"* Weekend Magazine *(Ottawa Citizen) 7/5 (2 February 1957): 2-4, 18.

A freed war criminal leads 500,000 veterans of Hitler's elite Waffen-SS in a demand for "honor"

Kurt Meyer, who is now 46, started working for the Nazis before Hitler came to power. A brilliant soldier, he became Germany's youngest general and commanded an armoured division which fought against the Second and Fourth Canadian Divisions in Normandy.

After the war, he was convicted of responsibility for the mass execution of 18 Canadian war prisoners by his men in 1944. He was condemned to death, but the sentence was first commuted to life imprisonment and then to 14 years – of which he eventually served nine.

He was brought to Canada in May, 1946, to serve his sentence in the penitentiary at Dorchester, N.B. But in 1951 he was returned to the war-crimes prison at Werl, in Germany. Three years later he was freed. He is now sales manager of a brewery in the area where Canadian troops are stationed.
Bonn, West Germany

THE SCENE was Minden, Lower Saxony, on a Sunday last August. Ten thousand German war veterans cheered and applauded the nattily-dressed trim figure on the speaker's stand decked with the Iron Cross.

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The 10,000 were a very special kind of German war veterans – the Waffen-SS, Hitler's fanatical shock troops. The speaker was an extraordinary man – Kurt Meyer, now 46, ex-war criminal held responsible for executing Canadian war prisoners.

Meyer had just exhorted his old comrades-in-arms:

> *"May it be the will of fate that the hour is near when the German people, instead of being ashamed of their dead soldiers, will clasp them in eternal gratitude."*

In 1954 Meyer had just finished a war-crimes stretch at Werl Prison, near Hanover. Today, Meyer is the leader of half a million Waffen-SS veterans, five times as many men as Chancellor Konrad Adenauer so far has been able to entice into the new German army.

Counting relatives, the families of the Waffen-SS war dead (400,000) and sympathizers attracted by Meyer's magnetic personality, this one-time war criminal commands in one form or another, allegiance from perhaps 3,000,000 of the 50,000,000 West Germans.

MEYER plainly has moved fast and far since the gates swung open for him at Werl on a September morning in 1954.

What is Meyer up to? On the surface this is no secret. Hitler's youngest general has brought to Germany from Canada his familiar war-criminal crusade.

Since 1950 the Western Allies, knuckling under the German pressure, have released 3,700 war criminals. But that is not good enough for Kurt Meyer. There are 123 Germans still imprisoned in various Western countries. Meyer vows to fight until all 123 are freed.

For Meyer has sunk a demagogue's teeth into the war-criminal issue. No shades of black or grey – only white. Every war criminal, in his book, is a grievously wronged man.

Since it is hard to keep a nation steamed up over 123 men, nearly all of whom soon will be free anyway, Meyer has been casting about for a more durable issue.

In the Waffen-SS he seems to have found it. Meyer's new crusade is to whitewash the Waffen-SS. He demands recognition for Hitler's elite troops as an "honorable" branch of the German armed forces in World War II.

Such a bold proposition sounds shocking, but he thinks he knows how to sell it. The Waffen-SS, his propaganda claims, had no connection with Himmler's political SS and nothing to do with Himmler's SS concentration camps.

The only thing the Waffen-SS was guilty of, according to Meyer, was fighting so well for its country that it lost 400,000 war dead.

He is pushing this propaganda through HIAG, the social-welfare organization for Waffen-SS veterans and their families, the group Meyer now heads.

The Waffen-SS issue, like the war-crimes controversy, is an inordinately complicated affair. Into the Waffen-SS, on Hitler's orders, were checker-boarded thousands of Himmler thugs along with tens of thousands of regular soldiers.

It is true that the Waffen-SS, at war's end, was almost a purely military organization. But it is also true that prior to the war's closing days Waffen-SS men were still doing odd chores for Himmler.

Most important, the Waffen-SS was the offspring – pure and simple – of Himmler's bloodstained political SS.

Meyer knows, of course, that he himself joined Himmler's political SS in 1934 and was a member of Hitler's own bodyguard.

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He also knows that Sepp Dietrich, a Waffen-SS colonel-general, commanded Hitler's bodyguard and was the Fuehrer's personal hatchet man. It was Dietrich who directed the execution of Ernst Roehm, the Nazi Storm Trooper chief, in the 1934 blood bath.

FINALLY, Meyer knows that Werner Naumann, deputy to the Nazi propaganda minister Joseph Goebbels, was shoved into Meyer's own 12th Panzer SS (Hitler Youth) Division as a battery commander in the war's last days. Naumann is the man the British arrested in 1953 for plotting to overthrow Adenauer.

Yet, knowing all this, Meyer nonetheless is demanding that Dietrich, Naumann et al be accorded the same military status as a professional soldier like Gen. Erich von Manstein.

"Honor," as Meyer is employing the word, is a loaded abstraction. Recognition of the Waffen-SS as a legitimate armed force would entitle all its members to the pensions and other benefits accorded the Wehrmacht, Hitler's regular army.

More important, "honor" is a back door through which Meyer, if successful, could sneak virtually the entire Waffen-SS roster into the new German army.

This, in fact, is Meyer's precise aim, and he does not attempt to mask it.

At present, the Bonn government will not take any Waffen-SS veteran into the Bundeswehr in a rank higher than lieutenant-colonel without special screening by a parliamentary committee.

Meyer demands that the Waffen-SS be blanketed into the new forces on the same basis as Wehrmacht veterans. This, inevitably, would give Meyer powerful influence, if not the top roost, in the new German armed forces.

Meyer, ironically, is an important figure on the German scene today because he was tried and convicted as a war criminal. Had he not been, Meyer today might be merely another faceless name among West Germany's 1,400 World War II generals.

Meyer's conviction (by a Canadian court) automatically elevated him into a snobbish new German military society – the war criminals' circle – and made him a living legend among the Germans.

When Meyer was returned from Canada in 1951 and imprisoned at Werl, he became giddy at reading the famous names on the adjoining cells – Kesselring… von Falkenhorst… von Mackensen… von Manstein…

"I breathed a sigh of relief at finding myself at last again among soldiers," Meyer recounts. Adenauer even visited Meyer at Werl. The Chancellor pumped Meyer's hand, told him he was a martyr and promised to work for his freedom.

Through Canadian-inspired publicity, all Germans are now familiar with the colorful Meyer story. They know, of course, that he became, at 33, amid the bitter Normandy fighting, Hitler's youngest general. They know he was one of the last war's most decorated German generals. They know that even the Canadian who prosecuted him, B.J.S. Macdonald, could hardly restrain his admiration for Meyer's military genius.

The Germans call the genius "Panzermeyer," running the two words together to signify that "panzer" (armor) and the man are one and the same thing. Familiarly, he is known as "Panzer."

In Russia Meyer's forte was daring forays far behind the Soviet lines, often 75 miles or more. In Normandy, Meyer's Hitler Youth Division, decimated to a battalion, held off the entire Canadian Second Division.

MANY stories of Meyer's personal heroism are circulating among the Germans today. The favorite is that from "Operation Totalize," the Canadian-British attack on the Falaise road.

Meyer went forward to the German 89th Division and was caught in a bombing attack. While he was on the road, groups of 89th Division troops, scattered by the bombing, swept down the road in panic.

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Calmly picking up a rifle, Meyer shouted to the fleeing troops, "Are you going to leave me alone here to meet the Allied attack?" The troops turned, took up defensive positions, and Meyer had saved the day.

Meyer has taken the position that his personal honor and reputation and that of the Waffen-SS are one and inseparable. By vindicating himself of the war-crimes charge, he expects to vindicate the Waffen-SS of being a gangster organization.

Meyer's tactic is to dismiss war crimes as "heat of battle" affairs – committed on both sides – and to play off the "front soldiers" against the chairborne brass and pettifogging politicians.

This he does to perfection in his autobiography, *Grenadiere*. Meyer provides a dramatic account, for example, of a clandestine party which Canadian Third Division officers threw for him on his 35th birthday, Dec. 23, 1945, a few days before his trial ended.

"I was mysteriously summoned from my cell at Aurich one night," Meyer relates, "and conducted with great secrecy to a darkened building. It was the Aurich officers' club, and inside I found a feast set in my honor."

"Later," as Meyer recalls, "we talked frankly about the war-criminal problem. The Canadian officers agreed: 'If you should be sentenced to death, and if this sentence should be permitted to stand, then the next day the Canadian army will cease to have generals. All the generals must go.'"

Canadian officers, Meyer continues, "contributed not an inconsiderable amount of money" for his legal battle in Canada.

Then Meyer turns to his foes. "The Canadian Legion loudmouths believed themselves to be the professional spokesmen for the front soldiers… The less people knew of the real situation, the louder they demanded my head."

Meyer, as his career and his book show, is not only a military genius of sorts. He is also a genius at sounding his own trumpet. But formidable as his talents in these respects, many West Germans are suspicious over his rapid climb to civilian eminence.

They believe that Meyer is being pushed, and they think they know by whom. For one thing, there is the beer-hall talk. Every West German city has its out-of-the-way beer hall where Hitlerites meet to plot a Nazi revival. Some are boasting, "Panzer Meyer is with us."

West Germany's Social Democratic party, which Hitler suppressed and whose leaders he flung into concentration camps, has two Waffen-SS "experts" in Bonn who keep a close check on Meyer's activities. Said one of the experts:

"Meyer is backed by Ruhr money. He is a clever man who is scrupulously avoiding open Nazi activity, and he will never say the wrong thing. We think he is a dangerous man."

Of Meyer's Waffen-SS campaign this official said: "The Waffen-SS policed occupied territory, particularly in the East, in ruthless fashion. It was only when Hitler was losing the war that every Waffen-SS man was pushed into the front lines."

In an effort to get some specific replies to the anti-Meyer charges I had collected, I tackled Panzer himself. Meyer is sales manager for the Andreas Brewery in Hagen, a Ruhr industrial city of 200,000.

He lives in a fourth-floor walkup apartment on Hagen's Bahnhofstrasse. It is an ordinary neighborhood, and Meyer's flat was comfortably but plainly furnished. A Canadian helmet, the gift of a Canadian admirer, was the only martial decor in evidence.

The lean-muscled Meyer is a family man and proud of his pleasant blond wife, Kate, and their four daughters and one son.

Was he a Nazi or neo-Nazi? Meyer answered:

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"I was a Nazi, and there was much that I found good in National Socialism at the outset. Later I learned what was good and what was bad in Nazism. I am not a Nazi now and not a neo-Nazi."

"The wheel of history can't be turned back, and I reject a restoration of the Third Reich."

RUHR money? The Ruhr is thick with ex-Nazis in big positions, but Meyer denied being their man. He denied engaging in any political activity.

Meyer insisted that HIAG is strictly non-political. He showed me a stack of invitations to address political groups and his own replies of refusal.

Meyer denied that Waffen-SS veterans were eager to join the new army. It was, he insisted, solely a matter of "honor."

Would he himself join the new army? In an emergency, yes; otherwise, no. Not until the restrictions were lifted on Waffen-SS veterans.

Meyer said he would submit to civilian control over the military, but "soldiers must be judged by soldiers and not by politicians. A baker can't judge a tailor."

Meyer unveiled a threat to throw his Waffen-SS group into an open fight with the Adenauer government unless the Waffen-SS bars are lowered. He said:

"We will request that the conscription law be amended to exclude not only (Waffen-SS) generals and officers but also their sons."

This was a hint that Meyer's group is ready to make common cause with the anti-draft forces.

Meyer was evasive on questions directly linked to Hitlerism. Concentration camps? "I never saw a concentration camp," he said. Persecution of Jews? "I have only seen soldiers and not politicians." By that he meant he had lived exclusively among soldiers and had taken no interest in political affairs.

Hitler? Meyer evaded any direct stand or comment on the Fuehrer. His book is also noteworthy for the lack of any mention of Hitler, pro or con.

He admitted that Wilhelm Meinberg, ex-Nazi head of the Hermann Goering steel mills at Watenstedt-Salzgitter, had tried to interest him in Meinberg's neo-Nazi German Reich party. But Meyer said he didn't think the German Reich party had a future.

Meyer had this to say about the war-criminal issue:

"Don't you feel that it is better to bury the past and be friends? There has been enough talk about war criminals. My trial now belongs to the past. Canada knows my death sentence was not correct."

Meyer is incensed over political objections in Ottawa to his selling beer to Canadian troops. He maintains that his firm has the same right to the Canadian beer trade as any other German firm.

WHILE imprisoned in Canada, Meyer one day summoned a Canadian army officer attached to the staff of the Canadian Military Review. To this officer Meyer presented a remarkable document – a military study of the Caen-Falaise battles as Lt.-Gen. Guy Simonds fought them against Meyer, and as Soviet commanders would have fought them.

Meyer had compiled the study completely from memory and illustrated it with finely-detailed maps.

The officer had fought against Meyer in these battles, and he at once appreciated the brilliance of the analysis. His first impulse was to publish it.

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Since Meyer's critique was not very flattering to Simonds (then Chief of Staff), the officer yielded to discretion and passed it on to Simonds.

Simonds, as the officer now remembers the story, was fascinated and pored over Meyer's prison handiwork. (But the manuscript was not published.)

Today, Panzer Meyer is still immersed in military studies – not of past battles but the battles that may be ahead for the new German army.

When finally my two-hour conversation with Meyer shifted to the organization and equipment of the Bundeswehr, his eyes shot sparks. He declaimed with great force and eloquence on what kind of army it must be.

Again Panzer Meyer was in battle – this time nuclear fighting forces. For he demands that the new German army have the latest nuclear weapons.

The Bundeswehr, in addition, must be "completely armoured" – from quartermaster to signal vehicles, Meyer said. He envisions troops and their equipment being shuttled by air about the battlefield.

"If you build an army, it must be a battle-ready army," Meyer says. "Such an army costs money. In 12 months you can't train soldiers; it is simply a waste of tax money."

That ended my interview with Meyer. Throughout our talk he kept admonishing me, "Talk to the Canadian front soldiers. They will tell you the truth about me."

So after leaving Panzer I visited his next door neighbors, the Canadian Second Brigade. At Soest I located a senior officer who commanded a regiment against Meyer in Normandy.

This officer paid the customary tribute to Meyer's battlefield brilliance. Then he said:

"The man is a Nazi, and the Waffen-SS was a Nazi organization. I don't trust Meyer, and I don't want him around here."

The officer said Meyer's complaints about the beer trade were unjustified. "There is no discrimination. He is getting the same break the other dealers get. When Meyer knows he is not wanted here, why does he insist on hanging around?"

MEYER had told me that "soldiers should be judged by soldiers and not by politicians," and I mentioned this Panzer dictum to the Canadian soldier. He exploded:

"What kind of soldier is Meyer? Every soldier in a democracy knows he is not a free agent, but must take orders from the civilian authority. None of us relish it, but we all know it has to be."

On a first visit to Soest in 1954 I found the First Brigade (now in Canada) loaded with Panzer fans. He had been considered as a sort of resident military genius. Panzer used to lounge around the Soest mess, lecturing the Canadians on armored tactics.

Meyer has great appeal for the "front soldier." He passes himself off as not a politicians but "all soldier." This relieves the "front soldier" of any apprehensions he might have over Meyer's Nazi background. Since he knows Meyer to be an expert on the battlefield, his respect for Meyer's record further disarms him.

While advancing such outrageous propositions that all war criminals are innocent and the Waffen-SS was lily-white, Meyer sticks to gentle, moderate tones. He is always the eminently reasonable man. He never rants and raves. When he states that Canada wronged him, he does so in the more-in-sorrow-than-anger tones of an indulgent parent reproving an erring child. By this tactic, Meyer manages to generate a strong personal electric charge, a sort of magnetism.

It is only when you gaze into his cold, grey-blue eyes that you get a shock. They are the eyes of a fanatic.

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Hitler got Meyer young, and he owes all that he is to the Fuehrer. It is, perhaps, in Meyer's favor that he now refuses to condemn Hitler publicly as so many ex-Nazis do.

Meyer had a rough time of it before he joined Hitler's Storm Troopers in 1930 at the age of 20. His father, a factory worker, died of wounds he suffered in World War I.

Meyer went to elementary school and took some commercial training – that was all. He worked as a miner and in a sugar factory before becoming a policeman in 1929.

He worked at his paid police job and his unpaid Storm Troop post until 1934, when he went on the SS payroll. Thus Meyer joined up with Hitler well before the Fuehrer came to political power.

Why did Meyer fight so fanatically in Normandy? Because he thought Hitler could win? Not according to his autobiography.

In his book Meyer bitterly condemns the "gamblers at the card table" in Wehrmacht headquarters for the Normandy defeat, but he never mentions Hitler. This is contrary to the official Wehrmacht view, which holds Hitler alone accountable for the Reich's military disaster.

What is Meyer really after? Plainly, if he should get his hands on a nuclear-armed West German Bundeswehr, he would be set up to do business of some kind in a big way.

He is spokesmen for a powerful force of restive embittered men.

That Meyer is still a Nazi seems clear. The question, rather, is: active Nazi or neo-Nazi? Meyer denies that he is either. His assurances are unconvincing, but his accusers have been unable to get the goods on him.

In appraising Meyer and the undocumented charges against him, it is instructive to take a look at the post-war history of Nazism and neo-Nazism in Germany.

Briefly, as early as 1949 the Hitlerites began to emerge from their holes and to talk brashly about a Nazi restoration. Adenauer clapped the worst of the pack into jail and outlawed their party.

Adenauer told the Nazis, in effect: "Mutter in your beer if you like, but don't try any rough stuff."

Thus, at the moment, this situation prevails: if you start talking like a Nazi, and it looks as if you mean business, Adenauer's political police will lock you up – all in constitutional fashion. So today's neo-Nazis are careful not to talk in public like real Hitlerites. They are always "nationalists," "neutralists," or "Friends of Progress."

Meyer, if he really is an active Nazi, is merely finding discretion the better part of valor in not doing any tub-thumping. Moreover, by sticking resolutely to his "soldier only" line, he saves himself the embarrassment of having to answer critics who want Meyer's opinion on concentration camps and persecution of Jews.

That is one phase of the speculation about Meyer. Another lies in the Soviet Zone, where the Communists are operating a Nazi paradise. By getting a coat of red calcimine, the blackest Nazi stands to succeed in the Soviet zone. Nazis command the new East German army, Nazis sit in the rubber-stamp parliament, Nazis form a large percentage (up to 50 per cent) of the state bureaucracy.

One of the Soviet Zone's red calcimined Nazis has been ailing Field Marshal Friedrich Paulus, the Communist turncoat who surrendered Hitler's Sixth Army at Stalingrad. Paulus has had the job of trying to induce West Germany's old generals and high officers – Nazi and otherwise – to defect to East Germany. One of his targets has been Meyer.

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There is a third phase of the speculation, and this is provided by a remarkable German – as remarkable as Meyer – who lives in Darmstadt. Lutheran pastor Martin Niemoeller, the Kaiser's U-boat ace of World War I, is to some degree that war's military counterpart of Meyer.

NIEMOELLER turned to the ministry and after Hitler took power he became the Nazis' most outspoken critic. Hitler had Niemoeller put in a concentration camp.

Since World War II Niemoeller has shuttled between the Western and Communist worlds in quest of peace. Niemoeller opposes German rearmament and this is his explanation:

"There is the prospect that in a short time the 500,000-man Bundeswehr and the 250,000-man Soviet Zone army will represent the only factors of power in Central Europe.

"Then, only a new Fuehrer is needed to appeal to the German feeling of these soldiers, and we will have Germany re-unified under a military government.

"From there it is not far to a new nationalism or Nazism, because I do not believe that the West or East will intervene in this domestic German development."

In Hagen Meyer had assured me that the Waffen-SS was not interested in joining the Bundeswehr, but a check at the Defence Ministry showed Meyer to be poorly informed. The ministry got 1,310 Waffen-SS applications the first week after the bars were let down for ranks under colonel.

In his Waffen-SS campaign Meyer has fashioned a fatal booby trap. Under his "honor" formula, Hitler himself, were he alive today and had he the foresight to don a Waffen-SS uniform for a day, could be whitewashed.

Under this formula, Meyer even has the right to feel injured because he is not on the General Staff today in Ottawa. For Meyer has worn the Canadian uniform. With great relish he tells how his escort garbed him as a Canadian to sneak him out of Dorchester prison and back to Germany in 1951.

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Endnotes

1 LAC, RG 24, vol. 12839, File 67/Kurt Meyer Case/1.

2 DHH 159.95 (D1).

3 LAC, RG 24, vol. 12839, File 67/Kurt Meyer Case/1.

4 BNA, FO 1024/55.

5 LAC, RG 24, vol. 12839, File 67/Kurt Meyer Case/1. On this meeting, see also "Statement regarding meeting on 9 January 1946 with High Commissioner and others," DHH 159.95 (D1).

6 LAC, RG 24, vol. 12839, File 67/Kurt Meyer Case/1.

7 LAC, RG 2, reel T-2364.

8 LAC, RG 24, vol. 2053, file HQ 54-27-1-93.

9 LAC, RG 24, vol. 12839, file 67/Kurt Meyer Case/1.

10 LAC, RG 24, vol. 2053, file HQ 54-27-1-93.

11 LAC, RG 24, vol. 2053, file HQ 54-27-1-93.

12 DHH 159.95 (D1).

13 LAC, RG 25, vol. 5782, file 213(s)pt.1. Contains the text of Top Secret Message, CANCOF to CANMILITARY, 21 January 46, LAC, RG 24, fol. 12839, file 67/Kurt Meyer Case/1.

14 LAC, RG 25, vol. 5782, file 213(s) pt.1.

15 RG 24, vol. 2053, file HQ 54-27-1-93.

16 BNA, DO 35/2940

17 LAC, RG 25, vol. 5782, file 213(s) Pt.1.

18 LAC, RG 25, vol. 5782, file 213(s) Pt.1.

19 LAC, RG 25, vol. 5782, file 213(s) Pt.1.

20 LAC, RG 2, reel T-2364. This decision was passed along to the military in Under-Secretary of State for External Affairs to the Deputy Minister of National Defence (Army), Ottawa, February 22, 1946, LAC, RG 25, vol. 5782, file 213(s) Pt.1.

21 Note: Mr. King indicated that he would not, however, support the proposal which had been submitted by External Affairs in an attempt to provide a solution for the difficulties involved.

22 LAC, RG 25, vol. 5782, file 213(s) pt.1.

23 LAC, RG 24, vol. 2053,file HQ 54-27-1-93.

24 RG 24, vol. 12839, file HQ 67/Kurt Meyer Case/1.

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25 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

26 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

27 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

28 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265. Translated by Bureau for Translations, Foreign Languages Division.

29 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

30 LAC, RG73, acc. 1985/86-162, vol. 9, file 2265.

31 LAC, RG 25, vol. 3729, file 5908-C-40 pt.1. The Canadian Government replied that His Holiness could sponsor a petition for clemency (a reduction of sentence), but no reply was forthcoming.

32 LAC, RG 25, vol. 3729, file 5908-C-40 pt.1. The file includes copy of her letter dated 5 April 1948. Editors' note: P.C. 1373, 9 April 1946, prohibited the entry to or landing in Canada of enemy aliens.

33 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

34 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

35 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

36 Editors' Note: Meyer was not Canada's "only war criminal."

37 Windsor Municipal Archives, Windsor Public Library, MS 43 III – 3/9. The lawyer's name was MacKeen.

38 LAC, RG 73, acc. 1985/86-162, vol. 9, file 2265.

39 Windsor Municipal Archives, Windsor Public Library, MS 43 III – 3/9.

40 Editors' note: On his copy, Macdonald wrote "??" marks beside this paragraph and after the final sentence.

41 LAC, RG 2, reel T-2366.

42 DHH 159.95 (D1).

43 Editors' note: legal term meaning "of or from one side only."

44 LAC, RG 2, reel T-2366.

45 DHH 73/1302.

46 DHH 73/1302.

47 LAC, RG 25, vol. 3729, file 5908-C-40 pt.1.

48 LAC, RG 2, reel T-2367.

49 LAC, RG 2, Series 18, file C-10-9-M 1951.

50 LAC, RG 2, reel T-2367.

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51 RG 25, vol. 3729, file 5908-C-40 pt.1.

52 LAC, RG 25, vol. 3729, file 5908-D-40 pt.1.

53 LAC, RG 2, reel T-2367.

54 LAC, RG 2, reel T-2367.

55 DHH 159.95 (D1).

56 BNA, DO 35/2940.

57 Weekend Magazine vol. 9 no. 16 (1959), 32, 34-5.

58 Editors' note: Should be October 1951.

59 LAC, RG 2, reel T-2367.

60 LAC, RG 25, vol. 3729, file 5908-D-40 pt.1.

61 BNA, FO 1024/55.

62 BNA, FO 1024/55.

63 BNA, DO 35/2940.

64 BNA, FO 1060/514.

65 BNA, FO 1060/514.

66 BNA, FO 1060/514.

67 DHH 73/1302.

68 LAC, RG 25, vol. 3729, file 5908-D-40 pt.1.

69 BNA, FO 1060/514.

70 LAC, RG 25, vol. 3729, file 5908-D-40 pt.1.

71 LAC, RG 2, reel T-2367.

72 LAC, RG 2, vol. 241, file W-20-3-G.

73 LAC, RG 25, vol. 3729, file 5908-D-40 pt.1.

74 BNA, FO 1024/55.

75 LAC, RG 2, series 18, acc. 1983-84/213, file C-20-9(a)-M.

76 BNA, FO 1024/55. (i) Editors' note: some sentences of this translation have been reworded to make them more readable.

77 Documents on Canadian External Relations, vol. 19 (1953), doc. 957, file DEA/10935-B-40.

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78 LAC, Claxton Papers, MG 32 B 5, vol. 224, Memoir Notes – Misc. Subjects.

79 BNA, FO 1060/515 and FO 1024/55.

80 BNA, FO 371/104149

81 BNA, FO 1060/516.

82 BNA, FO 1060/516.

83 RG 2, 16, vol. 18, Cabinet Conclusions 1953.

84 BNA FO 371/104149.

85 BNA, FO 1024/55.

86 BNA FO 371/104149.

87 DHH 159.95 (D1).

88 DHH 159.95 (D1).

89 BNA, FO 1060/515.

90 DHH 159.95 (D1).

91 BNA, FO 371/1104156.

92 DHH 159.95 (D1).

93 DHH 159.95 (D1).

94 BNA, FO 1060/515.

95 DHH 159.95 (D1).

96 LAC, RG 2, Cabinet Conclusions 1954.

97 LAC, RG 2, Cabinet Conclusions 1954.

98 BNA, FO 1024/56.

99 BNA, FO 1024/55.

100 BNA, FO 1060/516.

101 BNA, FO 371/109724.

102 BNA, FO 1060/516.

103 BNA, FO 1060/516.

104 BNA, FO 1060/516.

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105 BNA, FO 1060/516.

106 BNA, FO 1024/56.

107 BNA, FO 1060/516.

108 BNA, FO 1060/516.

109 Enclosed in Letter from H.S. Meech, British Governor, Werl Prison to Legal Adviser, U.K. High Commission, 10 September, 1954, on BNA, FO 1060/516.

110 The translated text of Clemens August, Graf Galen, to the Bishop of Munster, 11 January 1946, reads: I was informed that Kurt Meyer has been sentenced to death because men subordinated to him have committed crimes which were not instigated or approved by him. Pleading for the Christian comprehension of law, according to which every men is responsible and can be punished, if the case may be only for his own deeds, I therefore sponsor the petition for mercy for General Meyer and ask for a release of sentence." DHH 581.009 (D67).

111 BNA, FO 1060/516.

112 BNA, FO 1060/516.

113 LAC, RG 25, vol. 4293, file 10934-F-40 pt.1.

114 Enclosed in Letter from H.S. Meech, British Governor, Werl Prison to Legal Adviser, U.K. High Commission, 17 September, 1954, on BNA, FO 1060/516.

115 *Documents on Canadian External Relations* vol. 20 (1954), Doc. 261, file DEA/50030-U-40.

116 Editors' note: During the deliberations that led to the signing of the NATO agreement, Canada successfully negotiated for an explicit commitment to non-military cooperation. Article 2 of the Washington Treaty (popularly referred to as the "Canadian Article") reads: "The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them."

117 NA, FO 1024/56.

118 DHH 159.95 (D1).

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Waffen-SS Ranks and their U.S. and British/Canadian Equivalents

Waffen-SS	*U.S.A*	*British*
SS Oberst-Gruppenführer und Generaloberst der Waffen-SS	General of Army Five Stars	Field Marshal
SS Obergruppenführer und General der Waffen-SS	General Four Stars	General
SS Gruppenführer und Generalleutnant der Waffen-SS	Lieutenant-General Three Stars	Lieutenant-General
SS Brigadeführer und Generalmajor der Waffen-SS	Major-General Two Stars	Major General
	Brigadier-General One Star	Brigadier-General
SS Oberführer *SS Standartenführer*	Colonel	Colonel
SS Obersturmbannführer	Lieutenant-Colonel	Lieutenant-Colonel
SS Strumbannführer	Major	Major
SS Hauptsturmführer	Captain	Captain
SS Obersturmführer	First Lieutenant	Lieutenant
SS Untersturmführer	Second Lieutenant	Second Lieutenant
SS Sturmscharführer	Warrant Officer First Class	Regimental Sergeant-Major
SS Stabsscharführer	First Sergeant	Senior Sergeant
SS Hauptscharführer	Warrant Officer Second Class	Company Sergeant-Major
SS Oberscharführer	Master Sergeant	Quartermaster Sergeant
SS Scharführer	Staff Sergeant	Staff Sergeant
SS Unterscharführer	Sergeant	Sergeant
SS Rottenführer	Corporal	Corporal
SS Sturmmann	Private First Class	Lance-Corporal
SS Oberschütze	–	–
SS Mann/Schütze/Grenadier/Panzerschü etc.	GI	Private, Rifleman, Tanker, Gunner, etc.

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Glossary

1 Canadian War Crimes Investigation Unit: A unit established by the Canadian Government in June 1945 to investigate possible war crimes against Canadian nationals and members of the Canadian Armed Forces, and to prepare any resultant cases for prosecution at trial

Abteilung: German term meaning 'department' or 'body'

Ack-Ack: Allied term for Anti-Aircraft guns and their fire

British Army of the Rhine: British occupying force in Germany established in 1945; formerly the 21st Army Group

Baendel: Band worn on the left forearm by German soldiers displaying their division's insignia

Belgian White Brigade: Belgium's national resistance movement, which collected intelligence on Nazi forces' strength and movements; the 'white' referred to the white butcher coats operatives wore on missions performed above ground (also referred to in Meyer's trial as the 'White Army')

Brigadeführer: *See rank chart*

British Zone of Occupation: Germany was divided into four occupation zones in 1945. The British administered one of the four sections of post-war Germany with a military government apparatus; the other three areas were controlled by the United States, France and the Soviet Union. The British occupation zone was located in North-West Germany.

Cabinet: Members of Parliament and Senators selected by the Prime Minister and assigned a Ministry with a policy field (i.e. Finance) to act as the Prime Minister's advisor as part of the political executive

Canada House: Location of the Canadian High Commission in United Kingdom since 1923, in London's Trafalgar Square

Canadian Military Headquarters: Central Command for the Canadian Forces in Europe

Canadian War Crimes Regulations: Regulations drawn up with the assistance of LCol Macdonald in Summer 1945 to facilitate Canadian prosecution of alleged war criminals such as Kurt Meyer. These regulations included changes to the treatment of evidence before a military court and a new legal definition of command responsibility. The regulations were promulgated by order-in-council in August 1945

Chancellor: German the head of government, separate from the President, its head of state

Commonwealth Relations Office (British): Government department established in 1947 from the Secretary of State for Dominion Affairs to promote British relations with the other Commonwealth nations

Draufgänger: German term meaning 'go-getter' or 'risk-taker'

European Defence Community: 1952 plan for a European military, including a remilitarized Germany, against the Soviet Bloc; the French National Assembly rejected the EDC in 1954 and instead Germany was incorporated into NATO (North Atlantic Treaty Organization)

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Federal Republic of Germany: Official name of the state created from the British, French and American Zones of Occupation of Germany in 1949; popularly referred to as West Germany

Feldgendarmerie: German military police attached to Waffen S.S. and Wehrmacht units to maintain order in the lines and in occupied territories

Foreign Office (British): Diplomatic department designed to promote and protect Britain's overseas interests

French Forces of the Interior (FFI): Armed French resistance movement organized beginning in Spring 1944; other such resistance groups included the Free French and the Armée d'Afrique

Geneva Conventions: A series of international agreements beginning in 1864 pertaining to the treatment of wounded soldiers and prisoners of war

The Hague Conventions: International agreements codifying the conduct of warring nations, including the rights of neutral nations, the prohibition of certain weapons, and the protection of prisoners of war

Haupsturmführer: *See rank chart*

Hauptman: *See rank chart*

Hauptscharführer: *See rank chart*

High Commissioner: Diplomatic representatives between Commonwealth countries; Vincent Massey was the Canadian High Commissioner to the United Kingdom from 1935-1946

Hitler-Jugend (Hitler Youth): Nazi organization for young men aged 14 to 18 that stressed Nazi ideology, athletics, and military training, including the use of rifles and machine guns; the organization was closely linked to the S.S. and many Hitler-Jugend members joined the S.S. or the Waffen S.S.

Kommandantur: German term meaning headquarters

Leibstandarte (Adolf Hitler): Adolf Hitler's Bodyguard Regiment, formed from the original Party Headquarters Guards in 1933; the Leibstandarte became the 1st S.S. Division which fought in Poland, Greece, Russia and the Western Front. The 12th SS Panzer Division had a strong connection to the Leibstandarte (Adolf Hitler), from which officers and non commissioned officers were drawn.

Manual of Military Law: An official publication issued by the War Office setting out the content and interpretation of British military law for the guidance of officers and other ranks in the field. A chapter dealt with the laws and customs of land warfare and the 1929 Geneva Convention was reproduced in an appendix.

Military Medal: British imperial medal awarded to warrant officers, non commissioned officers and other ranks for individual or group acts of bravery, based on a recommendation of a Commander-in-Chief in the field

Minister of National Defence: A position in the Canadian Cabinet responsible for the Canadian military

Oberleutnant: *See rank chart*

Obersturmbannführer: *See rank chart*

Obersturmführer: *See rank chart*

Order-in-Council: Legislative decisions passed by the Cabinet without reference to the House of Commons; the power to pass an order-in-council on a policy area is given to the Cabinet by statute or by royal prerogative

Ordonnanz Offizier: German military term for orderly officer

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Panzer Gruppe West: Armoured (Tank) Battle Group on the Western Front. The 12th S.S. Panzer Division was placed under this formation for training purposes and tactically subordinate in later operations during the Normandy campaign.

Prisoner of war: Soldier, airman, or sailor captured by or surrendered to enemy forces; The Hague and Geneva Conventions outlined legal status at the time of capture and provisions for the treatment of prisoners of war during captivity.

Regierungspräsident: German term meaning the president of government

Res gestae: Latin for 'things done,' refers to a rule of evidence where words or phrases related to an event can be considered as part of that event and therefore not hearsay

Rottenführer: *See rank chart*

Schmeisser: German military submachine gun, also referred to as the Maschinenpistole 40 (MP40)

Schutzstaffeln (S.S.): The term, which originally referred to elite guards of the Nazi party, was eventually used to denote the organizational structure encompassing interior forces, the police apparatus, and fighting units under Heinrich Himmler. SS combat units were commonly referred to as the Waffen SS and were distinguished from the Death's Head concentration camp guards belonging to the same organizational structure.

Schwimmwagen: Volkswagen amphibious car used by Waffen S.S. and the Wehrmacht

Secretary of State for Dominion Affairs (British): British Cabinet Minister in charge of relations between the United Kingdom and the Dominions (Canada, Australia, New Zealand and South Africa)

Secretary of State for External Affairs (Canadian): Member of the Canadian Cabinet responsible for overseeing the federal government's international relations and the Department of External Affairs. From 1912-1946, the prime minister held this position.

StabScharführer: *See rank chart*

Standartenführer: *See rank chart*

Sturmmann: *See rank chart*

Supreme Headquarters Allied Expeditionary Force (SHAEF): An inter-Allied military organization and headquarters formed for the planning and conduct of operations in North-West Europe between 1943 and 1945. General Dwight D. Eisenhower served as Supreme Allied Commander in this theatre of operations. A standing court of inquiry was established under SHAEF auspices to collect information and gather evidence about suspected atrocities and war crimes against Allied personnel within this geographical area. SHAEF ceased to exist in July 1945.

Unteroffizier: German term meaning Non-Commissioned Officer (NCO)

Unterscharführer: *See rank chart*

Untersturmführer: *See rank chart*

Vernichtung: 'V' in V1 and V2 rockets, during Meyer's trial the interpreters disagreed over the direct translation of the term, either 'annihilation' or 'destructive attack'

War Crime: Violation of the existing laws and customs of war by an individual or individuals, civilian or military, which usually fell under international agreements such as the Hague and Geneva Conventions. The Meyer case involved a traditional violation of the laws and customs of war by military forces whereas the International Military Tribunal at Nurem-

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berg broadened out the term war crime to include crimes against humanity and acts of aggression in planning for war by political and military leaders. The term war crime is still used in both senses today.

Wehrmacht: The German armed forces, comprised of the Luftwaffe, Heer, and Kriegsmarine.

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Selected Bibliography

Bantekas, Ilias. "The Contemporary Law of Superior Responsibility." *Journal of American International Law* 93 (1999). 573-595.

Barris, Ted. *Juno: Canadians at D-Day, June 6, 1944*. Toronto: Allen, 2004.

Bartov, Omer. *Hitler's Army: Soldiers, Nazis, and War in the Third Reich*. New York: Oxford University Press, 1991.

--. "The Conduct of War: Soldiers and Barbarization of Warfare." *Journal of Modern History* 64 (1992). S32-S45.

Bercuson, David J. *Maple Leaf Against the Axis: Canada's Second World War*. Toronto: Stoddart, 1995.

Bercuson, David J. and S.F. Wise, eds. *The Valour and the Horror Revisited*. Montreal & Kingston: McGill-Queen's University Press, 1994.

Best, Geoffrey. *Humanity in Warfare*. London: Methuen, 1983.

Bloxham, Donald. "British War Crimes Trial Policy in Germany, 1945-1957: Implementation and Collapse.' *Journal of British Studies* 42 (2003). 91-118.

Brode, Patrick. *Casual Slaughters and Accidental Judgments: Canadian War Crimes Prosecutions, 1944-1948*. Toronto: Osgoode Society for Canadian Legal History, 1997.

--. "Bruce Macdonald and the Drafting of Canada's War Crimes Regulations, 1945," *Gazette of the Law Society of Upper Canada* 29 (1995). 274-82.

Buscher, Frank M. "The U.S. High Commission and German Nationalism, 1949-1952," *Central European History* 23 (1990). 57-75.

---. *The U.S. War Crimes Trial Program in Germany, 1946-1955*. New York and Westport, CT: Praeger, 1989.

Campbell, Ian J. *Murder at the Abbaye: The Story of Twenty Canadian Soldiers Murdered at the Abbaye d'Ardenne*. Ottawa: Golden Dog, 1996.

Canada. *The Valour and the Horror*. Report of the Standing Senate Committee on Social Affairs, Science and Technology. January 1993.

Case No. 22, "The Abbaye Ardenne Case," *Law Reports of War Criminals* 1 (1945). 97-112.

Copp, Terry. *Fields of Fire: The Canadians in Normandy*. Toronto: University of Toronto Press, 2003.

---. *No Price Too High: Canadians and the Second World War*. Toronto: McGraw-Hill Ryerson, 1995.

Copp, Terry and Mike Bechthold, "The Bridgehead Battles 7 June – 12 June." *Canadian Military History* 13 (2004). 39-39.

Copp, Terry and Robert Vogel. *Maple Leaf Route: Caen*. Alma, ON: Maple Leaf Route, 1983.

D'Este, Carlo. *Decision in Normandy: The Unwritten Story of Montgomery and the Allied Campaign*, fiftieth anniversary edition. New York: HarperCollins, 1994.

58053_test.qxp:NEW 8/8/07 2:47 PM Page 670

De Zayas, Alfred M. *The Wehrmacht War Crimes Bureau, 1939-1945*. Lincoln: University of Nebraska Press, 1989.

Diehl, James M. *The Thanks of the Fatherland: German Veterans after the Second World War*. Chapel Hill: University of North Carolina Press, 1993.

English, John A. *The Canadian Army and the Normandy Campaign: A Study of Failure in the High Command*. New York and London: Praeger, 1991.

Fenrick, Bill. "The Prosecution of War Criminals in Canada," *Dalhousie Law Journal* 12 (1989). 256-97.

Foster, Tony. *Meeting of Generals*. Toronto: Methuen, 1986.

Friedman, Leon, ed. *The Law of War: A Documentary History*. New York: 1972.

Gilbert. *Bloody Buron! Canada's D-Day + 1*. Surrey, UK: Gargunnock, 2004.

Goodyear, Lisa L. "In the Name of Justice or Finding a Place: Canadian War Crimes Prosecutions at the end of the Second World War." M.A. thesis. Kingston: Royal Military College of Canada, 2002.

Green, L.C. *The Contemporary Law of Armed Conflict*. New York: St. Martin's Press, 1993.

Haller, Oliver. "The Defeat of the 12th SS: 7-10 June 1944." *Canadian Military History* 3 (1994). 8-25.

Hart, Russell. *Clash of Arms: How the Allies Won in Normandy*. Boulder, CO: L. Rienner, 2001.

Hastings, Max. *Overlord: D-Day and the Battle for Normandy*. New York: Simon and Schuster, 1984.

Hilton, Wesley Vincent. "The Blackest Canvas: U.S. Army Courts and the Trials of War Criminals in Post-World War II Europe." Ph.D dissertation. Lubbock: Texas Tech University, 2003.

Höhne, Heinz. *The Order of the Death's Head: The Story of Hitler's SS*. London: Secker and Warburg, 1969.

Hood, Andrew John. "The Doctrine of Command Responsibility and the International Criminal Court: Development, Regression, or Compromise?" L.L.M. thesis. Montreal: McGill University, 2001.

Huffman, Christopher William. "The Waffen-SS Soldier in World War II: Fanaticism, Everyday Life and the New Military History." Ph.D. dissertation. Atlanta: Georgia State University, 2005.

Kater, Michael H. *Hitler Youth*. Cambridge: Harvard University Press, 2004.

Koch, H.W. *The Hitler Youth: Origins and Development, 1922-1945*. London: Macdonald and Jane's, 1975.

Kochavi, Arieh J. *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment*. Chapel Hill: The University of North Carolina Press, 1998.

Lackenbauer, P.W. "Kurt Meyer, the 12th SS Panzer Division, and the Murder of Canadian Prisoners of War in Normandy: An Historical and Historiographical Appraisal." *Gateway* 3 *(March 2001)*. Available online. 26 pp.

--- and Chris Madsen. "Justifying Atrocity: Lieutenant-Colonel Maurice Andrew and the Defence of Brigadeführer Kurt Meyer." *Canadian Military History Since the 17th Century ed. Yves Tremblay*. Ottawa: National Defence, 2001. 553-64.

Large, David Clay. "Reckoning without the Past: The HIAG of the Waffen SS and Politics of Rehabilitation in the Bonn Republic, 1950-1961." *Journal of Modern History* 59 (March 1987). 79-113.

Lehmann, Wady. "Recollections Concerning War Crimes Investigations and Prosecutions," *Canadian Military Histor*y 11/4 (2002). 70-80.

58053_test.qxp:NEW 8/8/07 2:47 PM Page 671

Levi, Howard, ed. *Documents on Prisoners of War*. Newport, RI: Naval War College Press, 1979.

--. *Prisoners of War in International Armed Conflict*. Newport, RI: Naval War College Press, 1978.

Lockenour, Jay. *Soldiers as Citizens: Former Wehrmacht Officers in the Federal Republic of Germany, 1945-1955*. Lincoln: University of Nebraska Press, 2001.

Luther, Craig W.H. *Blood and Honor: The History of the 12th SS Panzer Division 'Hitler Youth,' 1943-1945*. San Jose, CA: R. J. Bender, 1987. See also "The Twelfth SS Panzer Division 'Hitler Youth': Its Origins, Training and Destruction, 1943-1944 (France; Germany)." Ph.D dissertation. Santa Barbara: University of California, 1987.

Macdonald, B.J.S. *The Trial of Kurt Meyer*. Toronto: Clarke, Irwin & Co., 1954.

Madsen, Chris. *Another Kind of Justice: Canadian Military Law from Confederation to Somalia*. Vancouver: UBC Press, 1999.

Margolian, Howard. *Conduct Unbecoming: The Story of the Murder of Canadian Prisoners of War in Normandy*. Toronto: University of Toronto Press, 1998.

Meyer, Hubert. *Kriegsgeschichte der 12.SS-Panzerdivision 'Hitlerjugend'*. Osnabrück: 1982. Translated as *The History of the 12th SS-Panzerdivision Hitlerjugend*. Trans. H. Harri Henschler. Winnipeg: J.J. Fedorowicz Publishing, 1994.

Meyer, Kurt. *Grenadiere*. Munich: 1957. Translated as *Grenadiers*. Trans. Michael Mendé. Winnipeg: J.J. Fedorowicz, 1994.

Meyer, Kurt Jr. *Geweint wird, wenn der Kopf ab ist. Annäherungen an meinen Vater – "Panzermeyer," Generalmajor der Waffen-SS*. Freiburg: Herder, 1998.

Neitzel, Sönke. "Des Forschens noch Wert? Anmerkungen zur Operationsgeschichte der Waffen-SS." *Militärgeschichtliche Zeitschrift* 61 (2002). 403-429.

Parks, William H. "Command Responsibility for War Crimes." *Military Law Review* 62 (1973). 1-104.

Pollard, Gregory Charles. *Missing: The Story of Lance Corporal George G. Pollard Murdered at the Hands of German Soldiers Under the Command of Major-General Kurt Meyer of the 25th Panzer Grenadier Regiment*. Cornwall: Astro Printing, 2003.

Reitlinger, Gerald. *The SS: Alibi of a Nation, 1922-1945*. New York: Arms and Armor Press, 1981.

Rempel, Gerhard. *Hitler's Children: The Hitler Youth and the SS*. Chapel Hill: University of North Carolina Press, 1989.

Reynolds, Mark. "Cold War Clemency: The Kurt Meyer Conundrum." *The Beaver* 83 (2003). 12-15, 17-19.

Rogers, A.P.V. "War Crimes Trials under the Royal Warrant: British Practice 1945-1949." *International and Comparative Law Quarterly* 39 (1990). 780-800.

Roy, Reginald H. *1944: The Canadians in Normandy.* Toronto: Macmillan, 1984.

Sauer, Robert John. "Germany's I SS Panzer Corps: Defensive Armored Operations in France, June-September 1944." Ph.D. dissertation. Boston: Boston College, 1992.

Sayer, Ian and Douglas Botting. *Hitler's Last General: The Case Against Wilhelm Mohnke*. London and New York: Bantam, 1989.

Smidt, Michael. "Yamashita, Medina, and Beyond: Command Responsibility in Contemporary Military Operations." *Military Law Review* 164 (2000). 155-234.

Stacey, C.P. *The Victory Campaign: The Operations in North-West Europe, 1944-1945*. Ottawa: Queen's Printer, 1966.

Stein, George H. *The Waffen SS: Hitler's Elite Guard at War, 1939-1945*. Ithaca and London: Cornell University Press, 1966.

58053_test.qxp:NEW 8/8/07 2:47 PM Page 672

Sullivan, Michael E. "Combat Motivation and the Roots of Fanaticism: The 12th SS Panzer Division *Hitlerjugend* in Normandy," *Canadian Military History* 10/3 (2001). 42-56.

Syndor, Charles. *Soldiers of Destruction*. Princeton, NJ: Princeton University Press, 197.

Vokes, Chris and John P. Maclean. *Vokes: My Story*. Ottawa: Gallery Books, 1985.

Wegner, Bernd. *Hitlers Politische Soldaten: Die Waffen-SS 1939-1945: Studien zu Leitbild, Struktur und Funktion einer Nationalsozialistischen Elite*. Paderborn: Ferdinand Schöningh, 1982. Translated as *Waffen-SS*. Trans. Ronald Webster. Cambridge, MA: Basil Blackwell, 1982.

--. "Die Garde des 'Führers' und die 'Feurwehr' der Ostfront: Zur neuren Literatur über die Waffen-SS.' *Militärgeschichtliche Mitteilungen* 1 (1978). 210-236.

Weingartner, James J. *Hitler's Guard: The Story of the Leibstandarte SS Adolf Hitler, 1933-1945*. Carbondale and Edwardsville, IL: 1974.

---. "Unconventional Allies: Colonel Willis Everett and SS-Obersturmbannfuehrer Joachim Peiper." *Historian* 62 (1999). 79-98.

Weisbord, Merrily and Merilyn Simonds Mohr. *The Valour and the Horror: The Untold Story of Canadians in the Second World War*. Toronto: HarperCollins, 1991.

Whalen, James M. "The Face of the Enemy: Kurt Meyer: Normandy to Dorchester," *The Beaver* 74 (April/May 1994). 20-3.

Wiley, William Harry. "'Onward to new deeds:' The German Field Army and War Crimes during the Second World War." Ph.D dissertation. Toronto: York University, 1996.

Williamson, Gordon. *Waffen-SS Handbook, 1933-1945*. Stroud, Gloucestershire: Sutton Publishing, 2003.

Wilke, Karsten. "Organisierte Veteranen der Waffen-SS zwischen Systemopposition und Integration: Die 'Hilfsgemeinschaft auf Gegenseitigkeit der Angehörigen der Ehmaligen Waffen-SS' (HIAG) in der frühen Bundesrepublik." *Zeitschrift für Geschichtswissenschaft* 53 (2005). 149-166.

Zuehlke, Mark. *Holding Juno: Canada's Heroic Defence of the D-Day Beaches, June 7-12, 1944*. Vancouver: Douglas & McIntyre, 2005.

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