



The Nuremberg Medical Trial 1946/47

Transcripts, Material of the Prosecution and Defense, Related Documents

On behalf of the
Stiftung für Sozialgeschichte des 20. Jahrhunderts
Edited by Klaus Dörner, Angelika Ebbinghaus and Karsten Linne
in cooperation with Karl Heinz Roth and Paul Weindling

Guide to the Microfiche-Edition

Compiled by Johannes Eltzschig and Michael Walter

With an Introduction to the Trial's History
by Angelika Ebbinghaus
and Short Biographies of the Participants

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Contents

Foreword	7
1. Introduction: Reflections on the Nuremberg Medical Trial <i>By Angelika Ebbinghaus</i>	
1.1 Initial Observations	11
1.2 The Indictment	14
1.3 The Road to the Nuremberg Medical Trial	17
1.4 The Trial Opens	23
1.5 The Taking of Evidence	29
1.6 Two Worlds	37
1.7 The Expert Witnesses	42
1.8 The Defense Strategies	47
1.9 The Judgment	53
1.10 The Sentences, and the Further Lives of the Defendants	60
1.11 Human Experimentation in Medical Practice and in the Nuremberg Medical Trial	64
2. Short Biographies of 545 Persons Involved in the Trial <i>By Angelika Ebbinghaus and Karl Heinz Roth</i>	67
3. Bibliographies	
3.1 Scholarly Publications of the Defendants, up to 1945	157
3.2 Selected Literature on the Nuremberg Medical Trial	167
4. Registers and Finding Aids to the Microfiche Edition <i>By Johannes Eltzschig and Michael Walter</i>	
4.1 Introduction and Instructions for Use	179
4.2 Table of Abbreviations	182
4.3 Finding Aids	184
4.3.1 Index to the Microfiche Edition	184
4.3.2 Index to the Transcripts	189
4.3.3 Lists of Witnesses	200
4.3.4 List of Prosecution Documents	203
4.3.5 Concordance of Exhibit Numbers vs. Document Numbers	226
4.3.6 Concordance of Prosecution Exhibits from before 1945 to the Records of the Bundesarchiv	228
4.3.7 List of Defense Documents	231
4.3.8 List of Provenances of the Material of the Trial	256
5. Documents and Material Pertaining to the Trial History, Background and Consequences of the Nuremberg Medical Trial <i>Compiled by Karl Heinz Roth in cooperation with Ulf Schmidt and Paul Weindling</i>	
5.1 Introduction	263
5.2 Index of the Documents of Part 8	264
6. Indexes <i>By Johannes Eltzschig and Michael Walter</i>	
6.1 Index of Persons	297
6.2 Subject Index	403
6.3 Index of Institutions	429
6.4 Index of Firms	484
6.5 Geographical Index	487
List of Donors	523
About the Authors	537

Foreword

After “Medicine without Humanity” – Alexander Mitscherlich’s and Fred Mielke’s report on the Nuremberg Medical Trials – and some other, few works on the National Socialist medical crimes, there have been decades of near total silence on the topics of the human experimentation, forced sterilizations, and “euthanasia” murders of that regime. This silence ended suddenly and surprisingly universally starting in 1980, when the younger generation of physicians, nurses, social workers and psychologists began nearly simultaneously – at first with resistance from above – to research and publish results on the histories of their own institutions and mental hospitals from 1933 to 1945. The continuing cooperation of these professional groups has taken on the character of a social movement as, from it, there have been numerous and far reaching effects extending in many directions, including: 1. The organization of a self-help group for victims of Nazi medical crimes – the “euthanasia” damaged or victims of forced sterilization. 2. Political campaigns achieving the (relative) recognition of medical experiment victims as among the persecuted and, thus, opening possibilities for compensation through federal channels. 3. The shameful silence in our relations with Poland, where the industrialization of murder using gas was first tried on mentally ill Polish people, has finally been broken. 4. Historical reflection has been expanded backwards, to 19th century thought on “final solutions” to social problems or “healing and annihilating” and revised to include the perspective of victims. Meanwhile, present and future considerations of today’s practical bioethical issues will be informed by a probing of the possible connections between these and the thoroughly codified medical ethics of the Nazi physicians. 5. Other responsible professional groups and institutions have been motivated to start the painful work of dealing with the Nazi medical crimes, from medical historical and scholarly historical perspectives, as well as from the varied angles of the different specialties – gynaecology, human genetics, pediatrics, or neurology, among others. 6. Concepts for de-institutionalizing the psychologically ill and mentally disabled, including their integration into aided living situations within society, will possibly receive renewed attention.

In light of these numerous activities, it had become increasingly troublesome, even scandalous, that nowhere could all of the documents of the Nuremberg Medical Trial be read or studied in one place, neither in German, nor in English. The need for a comprehensive edition, including background materials, became undeniable. Yet the proposal for a German edition drawn up by the 20th Century Social History Foundation ran to 440,00.00 DM – a sum considered reasonable by colleagues in the trade for so great an effort. Where was all of that money to come from? Of course, the physicians themselves seemed to be the most appropriate source – their growing consciousness of the problem would naturally make them see the publication as an important step in their own self-enlightenment. We first addressed the physicians’ own professional organizations. The German Physicians’ Chamber, though “willing in principle” rejected the proposal after all, because their by-laws forbade the

distribution of so high an amount of money. Thus, we chose the other, “grass roots” way, indeed, the way through which the entire issue of medicine during the Naziregime had begun to resurface originally, in 1980, among the colleagues at work in mental institutions and hospitals. Between 1994 and 1998, all physicians in Germany received personal letters requesting their participation in financing the project. The federal Physicians’ Chambers, in turn, motivated the state Physicians’ Chambers to help with logistics. The German Physician’s Page (*Deutsche Ärzteblatt*) reported regularly on the project, and the German Convention of Physicians, that is, the administrative governing body of physicians, in 1996, approved these reports and – considering the large amount of money that had been contributed – an expansion of the project to include an English edition.

And how much was this “large amount”? The individual physicians of Germany proved themselves to be conscientious – an inspirational experience – and 7,912 doctors contributed a total of 1,432,015.00 DM to the project. It is possible that the donation came easily for some, though for some, we know it was difficult. For among the mostly positive (very few negative) responses, were a few that read, “... Yesterday, for reasons of business, I had to discharge my second to last office helper ...” Though a considerable amount went for the printing and sending of these requests, even this had its social aspect: the contract was taken on by the Mirifico Self-Help firm in Westphalia, which was able thereby to finance numerous jobs for the psychologically ill. In all, the number of donations was so high that we decided to publish an English edition parallel to the German edition. It is not only because of the bilingual quality of the trial itself, but also because of the great interest expressed by foreign colleagues, that we are happy to be able to present an English edition, though it has indeed been the source of a great deal of additional work! And finally, we were able, as promised, to dedicate the remaining sum of 75,000.00DM to the surviving victims of NS medical crimes, through the agency of the Association of “Euthanasia” Damaged and Forcibly Sterilized, whose self-help groups in many cities could thereby be maintained, and new groups established in other cities.

Thus there are many reasons to be thankful. Primarily, we thank the individual physicians for their readiness to donate to this cause. These will be mentioned by name in an appendix, insofar as the names were readable and the parties concerned gave their consent. Our thankfulness also goes to the various physicians’ professional organizations, the delegates to the physicians’ parliament, editors of the German Physician’s Page (*Deutsche Ärzteblatt*), and both state and federal Physicians’ Chambers, as well as the many smaller specialty associations which contributed as groups. We thank the German Scientific Donation Association (*Stifterverband für die Deutsche Wissenschaft*) in Essen, most especially for their entirely disinterested administration of the funds and distribution of receipts.

At this point, we would also like to express our thanks to the various archives and libraries we consulted, whose workers gave us their time and help so generously. Without their

support, which often went far beyond the usual, the realization of this edition would not have been possible. We give particular thanks to Mr Gunter Friedrich of the State Archive in Nuremberg, and to Dr Helmut Rohlfing, director of the handwritten document department of the Lower Saxony State and University Library of Göttingen. Also, our thanks go to all of the directors, specialists, and the employees of the American Heritage Center at the University of Wyoming, at the archives of the Bleicher Publishing Company in Heidelberg, the Federal Physicians' Chamber Archives in Cologne, the Pasteur Institute Archives in Paris, the Royal College of Physicians Archives in Edinburgh, the archives of the Foundation for 20th Century Social History, and of the *Süddeutsche Zeitung* in Munich, the historical archives of the Max Planck Institute in Berlin, the Physicians' Association Library in Hamburg, as well as the Hamburg Eppendorf University Hospital Library, the Federal Archives in Berlin and Koblenz, the Federal Military Archive in Freiburg, the Secret State Archives of the Prussian Cultural Foundation in Berlin Dahlem, the Imperial War Museum in London, the Institute of Medical History of the University of Mainz, Munich, and Zurich, the Mugal Memorial Library in Boston, Mass., the National Archives in Washington D.C., the P. Hoven Archive in Freiburg, the Public Record Office in London, the Raphael Lemkin Institute at the University of Bremen, the State Archives in Hamburg, the State and University libraries in Berlin, Bremen, Göttingen, Hamburg, Hanover, and Munich, and the City and University Libraries in Frankfurt on Main, the University Archives in Bonn, Freiburg, Göttingen, Heidelberg, Berlin Humboldt University, Kiel, Munich, and Würzburg, as well as the Center for Research on anti-Semitism at the Technical University of Berlin. In addition, countless law offices, courts, and professional legal organizations have generously supported us in our search for biographical data on those who worked for the defense during the Medical Trial. For the readers of this list, our enumeration may seem tiresome, yet we fulfill here not only our obligations to thank those who have helped us so greatly and allowed us to reproduce documents given, we also relive the many vital conversations and letters which we had in our search for the optimally reproduceable documents, the clarification of some very delicate questions of detail in the background of the Trial, as well as the constant debates regarding the maintenance of high standards for the edition, with its many special problems.

To make matters yet more difficult, the Foundation for 20th Century Social History was compelled to move from Hamburg to Bremen during the final phase of the project. The problems that arose from this move would hardly have been manageable if it had not been for the directors and employees of the Institute from Medical Sociology at the University Clinic Hamburg-Eppendorf. Heidrun Kaupen-Haas and Alf Trojan recognized our critical position at the time and immediately gave us a much-needed hand. The projects of the Institute for Medical Sociology kindly moved over to make room for us, our team responsible for completing the register, so that they remained mostly spared of the confusion resulting from the move. Without this help, we would not have been able to meet our deadline.

This is not the place to report in great detail on the numerous highs and lows that beset the participants of this project throughout its development. Nonetheless, we allow ourselves a very fleeting excursion through the nearly five-year process. To begin with, though the material needs of the

project were well-provided, taking on Klaus Dörner's proposal was in fact a great risk on the part of the Foundation for 20th Century Social History. Yet we could always count on Klaus Dörner, the true mentor of this project. He was always there when we needed him, finding the broad-minded solution that allowed us to continue on our way. Arranging for the project's funding was in fact, mostly his doing. He, meanwhile, was supported by the board, which was responsible for publicizing the project's needs to the various physicians' professional organizations. For this support, we thank Gerhard Baader, Dirk Blasius, Thomas Gerst, Winfried Kahlke, Helmut Rohlfing, Ralf Seidel, Norbert Schmacke, Hans-Walter Schmuhl, Richard Toellner, Rolf Winau, and Michael Wunder.

The contents of the edition lay in the hands of the Foundation. Karsten Linne fulfilled his role arranging and editing the register section with great patience and circumspection. After the decision to do an English edition, Johannes Eltzhig and Michael Walter were brought onto the team. They accustomed themselves rapidly to their tasks, entering the fray in what was to be an exhausting struggle with the English documents connected with the trial. Cath Baker and Nancy Schrauf much later took on the task of finishing the register's translation and proofreading. Meanwhile, Angelika Ebbinghaus found herself in a very strenuous double role: that of project leader responsible for the entire concept and summary introduction, but also, increasingly, that of personnel administrator and advisor. Karl Heinz Roth stood by the project throughout every phase in the capacity of scholarly consultant, whereby, in fact, his support often went far beyond that of a mere advisor.

And throughout the process, the scholarly standards for the edition became higher and higher in the course of nearly four years. This occurred in a series of steps. The first of these was the recognition that a bilingual documentation of the trial was the only reasonable thing to do: the documents of the trial were bilingual in the first place, and meanwhile, the German and English versions of the protocols were not inconsiderably different from each other! This realization led us to feel that a scholarly and methodically correct consideration of the problems of these very special sources would necessarily have to be bilingual. Then a second hurdle, that of the concordance problem, arose before us. Mr Walter Naasner of the Federal Archives in Berlin convinced us that it would not be sufficient to assume the authenticity of the transcribed prosecution documents based on the copies of original documents stored at the National Archives in Washington D.C., rather, that the true original documents had to be traced down to the various archives in which they are now stored. Finally, after taking on this labor of Sisyphus, Karl Heinz Roth, in the face of a certain resistance from the project group, plead for the collection and inclusion in the source edition of such portions of files as would provide information on the background, previous history, and effects of the Medical Trial. Because this new idea would have been the final straw for the original personnel of the team, a new group was formed, consisting of Karl Heinz Roth, Paul Weindling of the Oxford Brookes University, and Ulf Schmidt from the Wellcome Unit for the History of Medicine at Oxford. At this point, we would like to give especially hearty thanks to our Oxford colleagues, Weindling and Schmidt. Without their commitment to the project, transcripts from observer/evaluator Leo Alexander's papers and much material on the background of the

Trial, scattered as it was all over France, England and the U.S., would not have made it into this edition. Unfortunately, the work group was not able to include the few Trial materials stored in the Moscow Archives, as these were only finally located long after the deadline had passed. We would also like to thank Mrs Gerlinde Grahn in Potsdam, Mrs Scherstjanoi of the exterior branch of the Berlin Social Historical Institute (*Institut für Zeitgeschichte*), and Mr Andrey Doronin, director of the Russian Social Historical Document Center, in Moscow, for their help.

In the nearly five years that we have been working on this edition, we have had the support of numerous others, beyond those already mentioned by name. Of course, for any errors that may have occurred in any of the editions, we take sole responsibility.

We thank the student assistants, Janna Ebbinghaus, Torsten Junge, Katja Kosubek, Julia Niekamp, and Frank Pieper, who all supported our effort with their commitment. In the final stages of the work, Stefan Heesch saw us through the reproduction of documents on the background and circum-

stances of the Trial and Gabi Schöning proofread the Introduction to the text – both of whom we also thank. We most especially thank Julia Hammerschmidt and Susann Lewerenz for their great help, which was far above and beyond the call of duty.

Finally, we would like to thank the employees of K.G. Saur Publishing, especially Mrs Romy Barthel and Mrs Barbara Fischer, but also Mr Klaus G. Saur himself. They have not only stood by us faithfully with competent advice and help, through every difficult phase of the work, but have also borne our repeated calls for extensions with patience and generosity. Only a publisher well accustomed to realizing weighty and ambitious projects would have been able to bring such flexibility and tolerance into our working relationship.

Klaus Dörner, Angelika Ebbinghaus, Karsten Linne and Karl Heinz Roth for the Foundation of Social History of the 20th Century.

Bremen and Hamburg, January 2000

1. Introduction: Reflections on the Nuremberg Medical Trial

By Angelika Ebbinghaus

1.1 Initial Observations

A bitterly cold wind was slicing through the ruins of Nuremberg as, on the 9th of December 1946, Telford Taylor began his opening speech for the Prosecution before the American Military Tribunal No. 1 which was to try twenty-three German medical scientists, physicians, and National Socialist functionaries. The atmosphere inside the court was no less bleak, and it remained so even when the first signs of spring began to appear among the ruins: "In the growing desert each suffering crumbles from the body of that which was once whole,"¹ as an observer wrote three months later, as he described his first encounter with the charges brought by the Prosecution at the outset of the trial – week for week, relentlessly.

Alexander Mitscherlich was that observer.² The Association of the West German Chambers of Physicians had sent the Heidelberg private docent to Nuremberg in the hope that he, as the head of a delegation commissioned to compile an official report, would avert or at least limit the damage to the reputation of German physicians as a professional group.³ But this hope was rudely dashed. Mitscherlich was overpowered by the charges read before him and the other observers. During the trial he published, together with Fred Mielke, the first annotated extracts from the documents brought by the Prosecution. Not only was that a clear violation of the agreement with the leading lights of the West German Medical Chambers, it also violated the principle that the arguments of the Defense should first be heard and judgment passed before publication.⁴

What lay behind this break with convention was not only the existential despair which had gripped them but also an analytical incisiveness as regards the prosecution documents which, in my opinion, remains unrivalled in Mitscherlich's later attempts to grapple with the Nuremberg Medical Trial. The grip of the winter outside the courtroom was nothing compared to the "icy coldness of the human relationships ... cosmic as a climate change. Shattering, as they also affect the physician," as he wrote in the introduction to his documentation. "Before these horrendous deeds came to determine daily routine and these monstrous thoughts came to be the lodestar of real life, this fatal idea must have been set in motion from many sources. The physician could however only become the concessive murderer and the public torturer in the conjunction of two developments: the concor-

dance of his aggressive search for truth and the ideology of the dictatorship ... Only the secret agreement of scientific and political practice can explain how in this trial it was inexorably the names of men in high office which were heard. These were men who perhaps had not committed any immediate crime but who had had an objective interest in all the deeds which made up the gruesome fate of the defenseless victims. A deep inhumanity had long been incipient. This is the alchemy of the present, the transformation of the subject into the object, the human into the thing on which the drive to destroy enjoys untrammelled freedom."⁵

No other of the subsequent proceedings of the Nuremberg Trial of the Major War Criminals, 12 in total, aroused from contemporary observers such despairing comments or such incisive reflections. What was dealt with here challenged the very ground rules of civilization in the violation of the doctor-patient relationship; these were crimes against humanity in a most fundamental sense. These crimes were embedded in complexes of interconnected conditions dealt with in the subsequent trials: with the wars of aggression of the National Socialist dictatorship, with its military massacres, with its looting, violent disposessions, mass expulsions, with forced labor and pillaging. But the medical crimes stand out among all these acts of barbarism.

They called into question the ground rules of human civilization, and it was the ensuing violation of ethical borders which at least partially set in motion the other genocidal actions of the "Third Reich." Yet how could such medical crimes ever be committed? To be able to grasp this, I want to reflect, as Mitscherlich did, on a range of factors which had varied effects depending on the situation in question. The physicians identified to a high degree with the NS-dictatorship, and there were several reasons for this.⁶ The "hygiene revolution" of medical thought had made them susceptible to the image of a socially sanitized utopia, while their own social standing and security had deteriorated markedly. Social-Darwinist philosophy had been familiar to physicians since the turn of the century and undoubtedly made the efficiency-oriented paradigm of healing and exterminating more acceptable.

The debates on the sterilization of particular groups and on "euthanasia," as the murder of "those unfit to live" was euphemistically called, had begun long before 1933. A further important factor was that the majority of physicians were anti-Semitic, and that was an attitude that even predated the World Wide Economic Crisis and the ensuing Depression, an attitude they had held prior to 1933. The bellicose and genocidal policies of the National Socialist regime on the one hand, and the attitudes of the physicians on the

¹ Alexander Mitscherlich and Fred Mielke, *Das Diktat der Menschenverachtung. Eine Dokumentation* (Heidelberg 1947), p. 11.

² For Mitscherlich's biography cf. the Concise Biographies which follow this section.

³ Cf. the correspondence on the appointment of this delegation in Section 8.2.2.1 of this Microfiche-Edition (Documents and Materials Pertaining to the Trial History, Background and Consequences of the Nuremberg Medical Trial, in the following = Related Documents).

⁴ Ibid., passim. On the reactions to the first of the total of three documentations of the trial produced by Mitscherlich and Mielke, cf. Related Documents, Section 8.3.2.1.

⁵ Ibid., p. 11f.

⁶ On the social position of physicians in the National Socialist state, cf. Michael Kater, *Doctors Under Hitler* (University Press of North Carolina, 1989). Angelika Ebbinghaus and Klaus Dörmer (eds.), *Ver-nichten und Heilen. Der Nürnberger Ärzteprozeß und seine Folgen* (Berlin, 2000). Cf. note 33 for more information about this volume.

other hand, are the two major factors which, at least in part, explain how the crimes dealt with in the Medical Trial could ever have been committed.

Whole ethnic and social groups were degraded to the status of things, to "sub-humans." And these had the "Pannwitzblick" of the physicians fixed on them as the fortunes of war began to turn.⁷ In the interest of continued victory it was expected that physicians deliver revolutionary new and immediately applicable knowledge with regard to the "human biomass." This led to the fatal congruence of mental, political and scientific aggression which turned on the excluded and the useless and transformed them into a scientifically-promising species of experimental animal.

The technocrats of the German Army, Air Force and Navy demanded that medical scientists and physicians produce rapid results to solve the increasing problems of disease control, aviation medicine, battlefield surgery and chemical warfare. Parallel to the "euthanasia" murders in the institutions and asylums, the medical experiments on concentration camp prisoners and those in institutions then began, experiments which paid no more regard to the health, sensitivity to pain, identity, will, or life of the subjects than if they had been rabbits, rats, monkeys or mice. In this degradation of the victims we see reflected the inhumane regression of the perpetrators in the service of an accelerated scientific progress. The medical scientists and physicians transferred their experiments into the archipelago of the concentration camp-terror and the genocide, because there their objects no longer had the individual human right to exist.

However justified the contemporary and later criticism on the conditions surrounding the genesis and the half-heartedness of the Nuremberg Medical Trial is, one thing remains clear: the uniqueness of these proceedings against the German medical scientists and physicians was conditioned by the uniqueness of the crimes against humanity which were dealt with there. This was also understood to be the case by all those who participated in the trial, particularly by the defendants and their defense counsel, who did not in any way challenge the facts, but merely tried to use the theorem of the "total state" and the "national community" to ennoble or to justify their actions by reference to the events of the war. Otherwise they tried to relativize and justify their deeds as, so to speak, merely the tip of the iceberg within a worldwide tendency towards the dehumanization of the medical sciences⁸.

Accordingly, the Nuremberg Medical Trial assumed the most prominent place in public awareness of the Nazi Capital Crimes Trials in the American and Allied Military Tribunals⁹ and led both the official and the unofficial observers of the trial to make, on some parts extensive, commentary which

gained considerable publicity. Mitscherlich and Mielke followed up their first documentation in 1949 with a final publication on "Science without Humanity", which provoked just as hefty a protest from the German medical scientific institutions and their representatives as had their first.¹⁰

One year later the French trial observer François Bayle published an exceptional and extensive study which consisted of documentation, character analysis of the defendants and reflections on the climax and the medical-ethical consequences of the trial.¹¹ These were complemented by the first works on specialized topics in the trial, such as a monograph by the German observer Alice Platen-Hallermund on the murders in the psychiatric institutions,¹² and ambivalently brilliant reflections such as Viktor von Weizsäcker's essay on illegitimate and legitimate forms of a physician's "extermination ordinance," whose message would only be critically examined decades later.¹³

Finally, within the framework of the "Trials of War Criminals," the official American trial documentation was also published.¹⁴ But that was only a publicity obligation within the framework of the documentation of the twelve American War Crimes Trials, which paid tribute to the demands of the Cold War: all the passages of the protocol which referred to the German biological warfare program and contained important information on aviation medicine experiments and their background were missing, since these research results had already been taken over within the framework of "Operation Paperclip".¹⁵ Thus the lessons of the Nuremberg Medical Trial faded into obscurity. If the files and documentation were used at all in the 1950s then it was to evaluate the medical-scientific knowledge contained therein and to use it for the military-medical complex.¹⁶ This remained the situation for almost a generation.

A critical interest in the trial files was reawakened in the course of the 1970s, as new research tendencies developed in medical history and science history. The documentation collections of "Case I" were only used as a historical source. The first individual studies then appeared, such as that by Michael Kater on the "Ahnenerbe" of the SS,¹⁷ which was

⁷ The term "Pannwitzblick" was adopted by Primo Levi, *Ist das ein Mensch?* (München/Wien, 1991), pp. 127f.: Dr. Pannwitz was a chemist in the I.G. Farben-Works Auschwitz, and Levi described his look: "Had I been able to finally explain the idiosyncrasy of that look that passes through the glass wall of an aquarium between the two living creatures on either side, who inhabit different elements, then I would have been able to explain the insanity of the Third Reich. ... The domineering intellect with those blue eyes and manicured hands said: 'This thing before me belongs to a species which it is, of course, necessary to exterminate. In this special case though it has to be determined whether there may be a use for it.'"

⁸ These defense strategies are presented in greater detail in: Related Documents 8.2.5.1 to 8.2.5.11.

⁹ On the reception of the Medical Trial in the German and International media cf. Related Documents, 8.2.9.

¹⁰ Alexander Mitscherlich and Fred Mielke, *Wissenschaft ohne Menschlichkeit. Medizinische und eugenische Irrwege unter Diktatur, Bürokratie und Krieg* (Heidelberg, 1949). In 1960 a paperback edition was published which made the documentation known beyond academic circles: Alexander Mitscherlich and Fred Mielke, *Medizin ohne Menschlichkeit. Dokumente des Nürnberger Ärzteprozesses* (Frankfurt-on-Main, 1960).

¹¹ François Bayle, *Croix gammée contre caducée. Les expériences humaines en Allemagne pendant la deuxième guerre mondiale* (Neustadt, Pfalz, 1950).

¹² Alice Platen-Hallermund, *Die Tötung Geisteskranker in Deutschland* (Frankfurt-on-Main, 1948).

¹³ Viktor von Weizsäcker, "Euthanasie" und Menschenversuche, *Psyche*, 1 (1947/48), pp. 68-102; on the controversy surrounding this essay in the 1980s cf. Jürgen Peter, *Der Nürnberger Ärzteprozeß im Spiegel seiner Aufarbeitung anhand der drei Dokumentensammlungen von Alexander Mitscherlich und Fred Mielke* (Münster/Hamburg, 1994), pp. 82ff.

¹⁴ Cf. *Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10*, Vol. I and II, Washington D.C. 1950.

¹⁵ Cf. Tom Bower, *The Paperclip Conspiracy. The Battle for the Spoils and Secrets of Nazi Germany* (London, 1987).

¹⁶ Cf. as an example the medical scientific evaluation of the Medical Trial files by New York Academy of Medicine, documented in extracts in: Related Documents, 8.3.6.

¹⁷ Michel Kater, *Das "Ahnenerbe" der SS 1935-1945. Ein Beitrag zur Kulturpolitik des Dritten Reiches* (Stuttgart, 1974).

strongly oriented to the history of institutions, or the publications on the post-war careers of prominent representatives of the psychiatric murder action, which were found scandalous.¹⁸

This state of affairs was surprisingly little affected by the health-political movement of the 1980s and its later influences on the bioethics debate. There remained a selective awareness of the Medical Trial, also in regard to the fundamental examination of the medical-ethical problems of the healing professions. Here, it is in particular the worthy publications of George J. Annas, Michael A. Grodin, Jay Katz and William E. Seidelman which should be mentioned. These have adopted a critical position, in contrast to the most recent tendencies towards a technocratic dehumanization of the biosciences.¹⁹ However they confine themselves to the principle of admissibility of human experimentation in the Medical Trial rendition of judgment, without dealing with the context of its genesis.

The international medical association IPPNW (International Physicians for Prevention of Nuclear War) remains trapped in this dilemma in its congress documentation published 50 years after the Nuremberg Medical Trial on "Medicine and Conscience".²⁰ The tendency thereby is to lose sight of the Medical Trial as a historic locus of inter-related empirical re-assessment and ethical self-reassurance, while the proponents of the bio-ethical anti-enlightenment have long since made the Nuremberg Code, removed from the context of its genesis, their own, declaring the parts unfavorable to their argumentation to be "outdated."²¹

The use of the trial materials by historians was also mostly determined by special interests and the particular group of documents found to be interesting, such as the studies on the SS- and aviation medical scientist Sigmund Rascher,²² on the malaria experiments in concentration camps²³ and on the victims of battlefield surgery experiments in the women's concentration camp Ravensbrück.²⁴ Ernst Klee, despite his excursions into the juridical clarification of the medical crimes, managed to completely ignore the Nuremberg Medical Trial.²⁵ There were, however, other approaches. Some authors tried, on the basis of the files of the Medical Trial, to gain an overview of the extent of invol-

untary human experimentation during the National Socialist period.²⁶

Such deficits gradually led to a growing demand for a repossession of the Nuremberg Medical Trial as the first and to date most significant point of reference for a political-juridical examination of the medical crimes against humanity of the German physicians. The prime concern was the question of the context of the Medical Trial. How could it come to pass that the Americans, in the same place and right on the heels of the International War Crimes Trial, opened the subsequent trials with a tribunal against the German medical scientists and physicians?²⁷ Why was the Prosecution so poorly prepared, and why did the Court have to improvise so often in the course of the trial?²⁸ What initiatives preceded the Americans' decision, and could there have been alternatives or complementary courses of action to purely judicial proceedings against the German physicians?²⁹ In a purely juridical examination should not the question of the historic, psychological, and scholarly theoretical conditions under which the medical crimes were committed have been placed secondary to a judicially incontrovertible establishment of individual guilt? And did not Allies' particular agenda of condemning German wartime crimes against foreign prisoners in the concentration camps put the medical crimes into rather too narrow a focus?³⁰

All these questions have been posed since the 1980s, but have by no means been fully answered yet.³¹ The research on the prehistory, background and effects of the Nuremberg Medical Trial is still in its infancy. We have therefore tried to the best of our ability to give this research new impetus through the inclusion of a special document section.³² I will, in my introduction, examine several problems in the prehistory of the trial and the later fate of the defendants. In addition, *Vernichten und Heilen*, a volume of collected studies on the context of the Medical Trial, resulting from a series of lectures which accompanied the research project

¹⁸ Cf. as an early example Friedrich Karl Kaul, *Ärzte in Auschwitz* (Berlin, 1968); by the same author, *Dr. Sawade macht Karriere. Der Fall des Euthanasie-Arztes Dr. Heyde* (Frankfurt-on-Main, 1971).

¹⁹ From the extensive publications of these authors, here the most important collection is mentioned: George J. Annas and Michael A. Grodin (eds.), *The Nazi Doctors and the Nuremberg Code. Human Rights in Human Experimentation* (New York/Oxford, 1992).

²⁰ Stephan Kolb et al. (eds.), *Medizin und Gewissen. 50 Jahre nach dem Nürnberger Ärzteprozess – Kongreßdokumentation* (Frankfurt-on-Main, 1998).

²¹ Cf., as an example, Erwin Deutsch, *Der Nürnberger Kodex. Das Strafverfahren gegen Mediziner, die zehn Prinzipien von Nürnberg und die bleibende Bedeutung des Nürnberger Kodex*, in: Ulrich Tröhler et al. (eds.), *Ethik und Medizin 1947–1997. Was leistet die Kodifizierung von Ethik?* (Göttingen, 1997), pp. 103–114.

²² Wolfgang Benz, Dr. med. Sigmund Rascher. Eine Karriere, *Dachauer Hefte*, 4 (1988), no. 4, pp. 190–214.

²³ Cf. above all Hana Vondra, *Malariaexperimente in Konzentrationslagern und Heilanstalten während der Zeit des Nationalsozialismus* (Diss. Med., Hanover, 1989).

²⁴ Claus Füllberg-Stolberg et al. (eds.), *Frauen in Konzentrationslagern: Bergen-Belsen, Ravensbrück* (Bremen, 1994).

²⁵ Ernst Klee, *Auschwitz, die NS-Medizin und ihre Opfer* (Frankfurt-on-Main, 1997).

²⁶ On this, as an example Gerhard Baader and Rolf Winau, *Ärzte und medizinische Verbrechen*, in: Fridolf Kudlien (ed.), *Ärzte im Nationalsozialismus* (Cologne, 1985), pp. 175–207; Gerhard Baader, *Medizinische Menschenversuche im Nationalsozialismus*, in: Hanfried Helmchen/ Rolf Winau (eds.), *Versuche mit Menschen in Medizin, Humanwissenschaft und Politik* (Berlin/New York, 1986), pp. 41–82; by the same authors, *Das Humanexperiment in den Konzentrationslagern*, in: Rainer Osnowski (ed.), *Menschenversuche – Wahnsinn und Wirklichkeit* (Cologne, 1988), pp. 48–69.

²⁷ Paul Weindling, *Ärzte als Richter: Internationale Reaktionen auf die Medizinverbrechen des Nationalsozialismus während des Nürnberger Ärzteprozesses in den Jahren 1946–1947*, in: Claudia Wiesemann and Andreas Frewer (eds.), *Medizin und Ethik im Zeichen von Auschwitz. 50 Jahre Nürnberger Ärzteprozess* (Erlangen/Jena, 1996), pp. 31–44.

²⁸ Christian Proß, *Nazi Physicians: Criminals, Charlatans, or Pioneers? The Commentaries of the Allied Experts at the Nuremberg Medical Trial*, in: Charles Roland et al. (eds.), *Medical Science without Compassion: Past & Present* (Hamburg, 1992).

²⁹ Cf. note 27.

³⁰ Michael H. Marrus, *The Nuremberg Doctors' Trial in Historical Context*, *Bulletin of the History of Medicine*, 73 (1999), pp. 106–123.

³¹ New results are to be expected from the following research: Paul Weindling, *Epidemics and Genocide in Eastern Europe 1890–1945* (Oxford University Press [in press]); Ulf Schmidt is planning a biography on the expert witness Leo Alexander and Karl Heinz Roth is planning a study on aviation medical research in the National Socialist period. I am planning a biography of the concentration camp physician Waldemar Hoven.

³² Namely in Part 8 of this Edition.

and edited by Klaus Dörner and myself, will be published by the Berlin Aufbau publishing house.³³

What, however, is the status of the Nuremberg Trial as a text, as a written record of documents, statements of witnesses, examinations and transcripts? This question has only been addressed rather lately by historical research. Several recent publications, however, show how fruitful such a view of the trial materials can prove. The brief overview articles of the literature³⁴ have now been followed by the first problem-oriented analyses. Jürgen Peter has approached the Medical Trial as reflected in his study and analysis on the basis of the three collections of documents from Alexander Mitscherlich and Fred Mielke.³⁵ Ulrich-Dieter Oppitz has now gone a step further, taking the transcript of the Medical Trial and examining the judgment and the files on the trial critically as regards the sources.³⁶ Thereby he has succeeded not only in clarifying important aspects of the context, but has also discovered an illuminating interconnection of the Medical Trial to the second American subsequent trial against Erhard Milch, the Secretary of State of the Reich Ministry of Aviation, a connection which substantially influenced the judges in the Medical Trial in their judgment against the accused aviation medical scientists.³⁷

In the following, I too will concentrate on perceiving and illuminating the Nuremberg Medical Trial as a text – apart from its prehistory and its consequences for the defendants and the bio-ethics debate. I have decided on this approach not least because it is the one most likely to render the voluminous trial materials most accessible to the reader. Thereby several levels are to be differentiated: first, that of language, namely the simultaneous bilinguality, which, in cases of doubt, makes it essential to look at both variants of the transcripts and to compare them;³⁸ second, the analysis according to the principles of American juridical speech acts in establishing the facts of the offense of a medical crime; and third, the connections manifest between those participating in the trial – counsel for the Prosecution, counsel for the Defense, defendants, expert witnesses and judges – within this dramatic field of tension. By adopting such a

multi-level approach, I hope to make the singular confrontation surrounding the verdict or the legitimization of the medical crimes more clearly perceptible. This way of viewing things, in contrast to the modes of perception applied to date, demands an inclusion of the defense strategies in the critical analysis. The concern here is not, by the way, to confirm the judgment or to subject it to belated criticism, however remarkable the sentences may seem to us in their relation to each other from the point of view of the current state of knowledge.³⁹ If we as historians may not exclude the Medical Trial as a trial, so we should also concentrate on the analysis of the substance of the charges, the medical crimes against humanity.

In the following I will not proceed chronologically, but will rather concentrate on the central problematics of the trial and the analysis of typical trial situations. At the focus of the Medical Trial stood the medical experiments on concentration camp inmates, who had neither given their consent to the experiments nor had been informed of the consequences for their health or lives. The circumstances of these experiments were extremely gruesome. In the trial the experimental situations were predominantly presented from two completely antithetical perspectives: from the perspective of the victim, and from that of the medical scientist. These two worlds, as I refer to them in my analysis, are without doubt the most important message of the transcripts of the Medical Trial if we understand it as a text. In contrast, the analysis of typical trial situations is intended to give an impression of how, in the field of tension between the judicial procedure and the confrontation on the facts of the case, the legitimacy or the illegitimacy of the mode of operation of the accused physicians and medical scientists was debated. Following a brief presentation of the professional career of the particular defendant under discussion, I will reconstruct the strategies of the Prosecution and the Defense on the basis of selected examples. In order to convey as broad an insight as possible into the trial proceedings, I have selected different experiments to reconstruct the taking of evidence than I did to analyze the defense strategy, and I have also examined the most important expert witnesses and their role in the trial. The presentation of the reasoning behind the opinion of the Court and the judgment is followed by a report on the further lives of the defendants. The Nuremberg Code, which undoubtedly represents the most important result of the Nuremberg Medical Trial and which still today plays a central role in the medical-ethical debate, will allow us to take a final look at the history of the effects of “Case I.”⁴⁰

1.2 The Indictment

American Military Tribunal No. 1 began its work on the 25th of October 1946. And on the same day Brigadier General Telford Taylor, the American Chief of Counsel for War

³³ Angelika Ebbinghaus and Klaus Dörner, *Vernichten und Heilen. Der Nürnberger Ärzteprozess und seine Folgen* (Berlin, 2000). The volume concentrates on: 1. The background to and historical context of the trial (Paul Weindling); 2. The social position of the physicians (Michael Kater); 3. Perspectives of history of mentalities (Alfons Labisch, Gerhard Baader and Rolf Winau); 4. Medicine and ethics (Klaus Dörner and Ralf Seidel); 5. Curricula Vitae: Victims and the Defendants (Loretta and Ulf Schmidt); 6. The murders of patients (Hans-Walter Schmuhl); 7. Human experimentation for war and medical advances? (Angelika Ebbinghaus, Karl Heinz Roth and Thomas Werther); 8. The reception of the Medical Trial in post-war Germany; 9. The Nuremberg Code and its effects to date (Jürgen Peter and Michael Wunder).

³⁴ Cf. for example Wolfgang U. Eckart, Fall I: Der Nürnberger Ärzteprozess, in: Gerd R. Ueberschär (ed.), *Der Nationalsozialismus vor Gericht. Die alliierten Prozesse gegen Kriegsverbrecher und Soldaten 1943–1952* (Frankfurt-on-Main, 1999), pp. 73–85.

³⁵ Jürgen Peter, *Der Nürnberger Ärzteprozess im Spiegel seiner Ausarbeitung* (note 13).

³⁶ Ulrich-Dieter Oppitz (ed.), *Medizinverbrechen vor Gericht. Das Urteil im Nürnberger Ärzteprozess gegen Karl Brandt und andere sowie aus dem Prozess gegen Generalfeldmarschall Milch*. (Erlangen/Jena, 1999). Cf. also cross-references to the second Nuremberg Follow-On Trial conducted against Erhard Milch (Case II), in: Related Documents, 8.2.6.

³⁷ Cf. Ulrich-Dieter Oppitz, *ibid.*, p. 99ff.

³⁸ On the significance of the rendition of the documents in two languages for a critical-academic evaluation of the Medical Trial cf. the Introduction to the indexes in this edition.

³⁹ For example the acquittal of the aviation physician Siegfried Ruff in comparison to the sentence of life imprisonment imposed upon Gerhard Rose.

⁴⁰ In the Introduction I have used the following abbreviations if I am quoting from the Microfiche Edition on the Medical Trial: 1. Part 1, Juridical Basis of the Trial = Juridical Basis; 2. Part 2, Transcripts = Transcripts; 3. Part 3, Material of the Prosecution = Prosecution; Part 4, Material of the Defense = Defense; 5. Part 8, Documents and Material Pertaining to the Trial History, Background and Consequences of the Nuremberg Medical Trial = Related Documents.

Crimes, submitted the indictment in the case of "the United States of America versus Karl Brandt et al." to the Secretary General of the American Military Tribunals. On the 5th of November 1946 the 23 accused,⁴¹ who were all already in custody in Nuremberg, received the indictment in German. Sixteen days later, on the 21st of November, American Military Tribunal No. 1 convened at 10 a.m. for ninety minutes. Following the roll call of the accused by name, Telford Taylor began to read the indictment.

It was sub-divided into four main charges. Under the first, the common design or conspiracy, the defendants were accused of "acting pursuant to a common design [they] unlawfully, willfully, and knowingly did conspire and agree together and with each other and with divers other persons, to commit war crimes and crimes against humanity, as defined in Control Council Law No. 10, Article II" during the period from September 1939 to April 1945.⁴² In contrast to this, the second and third charges, "war crimes" and "crimes against humanity," were concretely related to the crimes of which the 23 defendants were accused. They did not vary as regards the accusations, but were related to various groups of persons. While the charge of "war crimes" covered "civilians and members of the armed forces of nations then at war with the German Reich," the charge of "crimes against humanity" also included "German civilians and nationals of other countries." These two accusations were at the heart of the charges laid against the defendants. The defendants were accused of having been "principals in, accessories to, ordered, abetted, took [sic] a consenting part in and were connected with plans and enterprises involving medical experiments without the subjects consent" in medical experimentation during the war, experimentation which had been carried out without the consent of the experimental subjects. Thereby they stopped at nothing, not even "murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts."⁴³ The substance of the charges was, above all, the medical experiments which were carried out on concentration camp inmates with no regard for the consequences for their health or lives, but also covered crimes which formed a part of the National Socialist genocidal politics: the murder of mentally ill and disabled persons and the sterilization experiments on convicts. The fourth and last charge was that of membership in a criminal organization.⁴⁴ Ten defendants were accused of having been members of the SS.⁴⁵ Twenty of the defendants were physicians, many of them held high posts in the German Medical Corps, especially in those of the German Air Force and the Waffen SS, but also held offices in the civilian medical establishment. Two of them, the surgeon Paul Rostock and the specialist for tropi-

cal medicine Gerhard Rose, had international reputations and were well-respected scientists. Three of the accused were not physicians. Viktor Brack had been a subordinate of Philipp Bouhler in the Chancellery of the Führer (Office 2), Rudolf Brandt was the Personal Administrative Officer of the Reichsführer SS, and Rudolf Sievers had been head of the "SS Research and Instruction Society, *Das Ahnenerbe*" as the Reich Manager and of the Institute of Applied Military Scientific Research of the "*Ahnenerbe*."

Taylor briefly sketched the charges in the order in which they would be dealt with in the trial:

High altitude experiments: from circa March 1942 to August 1942 high altitude experiments were carried out on inmates in the Dachau Concentration Camp, because the German Air Force wanted information on the limits of human tolerance to and survival at extreme altitudes. Around 200 inmates were victims of these experiments, which were carried out in a low pressure chamber in which the atmospheric conditions to be found at high altitudes could be duplicated. These experiments were extremely painful for the inmates. Between 70 and 80 of them died as a direct result.⁴⁶

Freezing experiments: these were also carried out in Dachau – in the period from circa August 1942 to May 1943 – and in them around 300 inmates were abused in freezing experiments, because the German Air Force wanted to find out by which methods persons with serious hypothermia and frostbite could be most rapidly warmed. To this end inmates were forced to spend up to three hours in containers filled with iced water or to spend many hours outside, naked, in below freezing temperatures. More than 300 inmates were used for these extremely painful experiments, and 80 to 90 of them did not survive.⁴⁷

Malaria experiments: in the Dachau Concentration Camp between February 1942 and April 1945 malaria experiments were carried out on inmates. In order to find an immunization method for this disease and to improve its treatment, inmates were intentionally infected with malaria. When the test subjects became ill, the efficacy of various sera and medications were tested on them. Many inmates also died as a result of these experiments or their health was permanently impaired.⁴⁸

Lost (mustard) gas experiments: during the whole of the war inmates in the Sachsenhausen and Natzweiler concentration camps were victims of Lost experiments. Since the possibility of chemical warfare was not excluded, the German Medical Corps was searching for methods to treat the skin in Lost injuries. In order to find the most effective treatment in the case of such acid burns, liquid Lost gas was applied to the skins of concentration camp inmates and the affected skin then treated with various agents.⁴⁹ The experi-

⁴¹ The 23 defendants, listed in the order in which they were called before the Court: Karl Brandt, Siegfried Handloser, Paul Rostock, Oskar Schröder, Karl Genzken, Karl Gebhardt, Kurt Joachim Mrugowsky, Rudolf Brandt, Helmut Poppendick, Wolfram Sievers, Gerhard Rose, Siegfried Ruff, Viktor Brack, Hans Wolfgang Romberg, Hermann Becker-Freyseng, Georg August Weltz, Konrad Schäfer, Waldemar Hoven, Wilhelm Beiglböck, Adolf Pokorny, Herta Oberheuser and Fritz Fischer.

⁴² Transcripts, p. 5.

⁴³ Transcripts, p. 6.

⁴⁴ As was determined by Article II, Paragraph I (d) x of Control Council Law No. 10. On the juridical bases of the Medical Trial, see also Part I of this Edition: The Juridical Basis, in which all the juridical agreements are compiled.

⁴⁵ This related to: Karl Brandt, Genzken, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Brack, Hoven and Fischer.

⁴⁶ The following had to answer for the high altitude experiments: Karl Brandt, Handloser, Schröder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Ruff, Romberg, Becker-Freyseng and Weltz. In the course of the taking of evidence this count was dropped against Handloser and Poppendick.

⁴⁷ The following had to answer for the freezing experiments: Karl Brandt, Handloser, Schröder, Gebhardt, R. Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng and Weltz. Weltz was acquitted on this count.

⁴⁸ The following had to answer for the malaria experiments: Karl Brandt, Handloser, Rostock, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick and Sievers.

⁴⁹ Lost is a corrosive poison gas, known since the First World War as a chemical weapon under the name of Mustard Gas.

ments were extremely painful for the victims. Several inmates died as an immediate result of these experiments. Many received serious injuries and suffered long-term damage.⁵⁰

Sulfanilamide experiments: in the Ravensbrück Concentration Camp in the period from July 1942 to September 1943 wounds were intentionally inflicted on Polish female resistance fighters, the wounds were infected with bacteria and – in order to reflect actual conditions as realistically as possible – also infiltrated with sawdust and powdered glass. The wounds were then treated with sulfanilamides or with alternative agents, in order to test the at that time controversial sulfanilamide treatment in battlefield surgery. Several of the women died as an immediate result of these experiments, the survivors often suffered for life as a result of these gruesome experiments.⁵¹

Bone, muscle, and nerve regeneration and bone transplantation experiments: in the Ravensbrück Concentration Camp women were abused in experiments to study the regeneration of bone, muscle and nerve, and also on direct bone transplantation “on the living object.” The operations were accompanied by great pain for the victims and the women were often mutilated by them. The survivors suffered lifelong effects from these experiments. The human experiments, which were carried out between September 1942 and December 1943, were intended to help answer open and contentious questions in battlefield surgery.⁵²

Seawater experiments: the German Air Force and the German Navy were searching for ways in which to increase the survival chances of those adrift at or ditched in the sea. To this end, the seawater experiments were carried out. In these experiments carried out between July 1944 and September 1944, 40 inmates of Dachau received no nourishment but only chemically treated seawater. The goal of the experiments was to test various methods for making sea water potable. These experiments too were extremely painful and had far-reaching effects on the health of the inmates.⁵³

Epidemic jaundice experiments: inmates of the Sachsenhausen and Natzweiler concentration camps were, between circa June 1943 and January 1945, infected with epidemic jaundice, in order to be able to test various therapies. These experiments too had serious consequences for the victims, and many died. It was above all the German Medical Corps which was interested in the results, in order to be able better to control the infectious jaundice epidemic on the Front.⁵⁴

Sterilization experiments: since the Nazis, in the context of their genocidal policies, wished to render as many people as possible sterile in as short a time as possible and as simply as possible, from March 1941 to January 1945 various methods of sterilization were tested, above all in the Auschwitz

and Ravensbrück concentration camps. With X-rays and pharmaceuticals, but also operatively, thousands of people were rendered sterile.⁵⁵

Typhus experiments: in the Buchenwald and Natzweiler concentration camps, from December 1941 to February 1945, experiments were carried out on inmates to test the efficacy of vaccines for typhus, but also smallpox, typhoid, paratyphus A and B, cholera and diphtheria. Hundreds of inmates died as a result of these experiments. Healthy inmates were infected in great numbers in order to even be able to maintain the virus. The survival chances of these inmates were negligible, as is noted in the indictment.⁵⁶

Experiments with poison: in the period from December 1943 to October 1944 in the Buchenwald Concentration Camp, experiments were carried out to study the effects of toxic gases on living humans. For example, poison was mixed into the inmates’ food and the effects observed. If the inmates did not die as an immediate result, they were killed in order to be able to carry out an autopsy and to find out more about the effects of the poison. In a further series of experiments, poisoned projectiles were shot into inmates, who then died in agony.⁵⁷

Incendiary bomb experiments: in the Buchenwald Concentration Camp between November 1943 and January 1944, there were several series of experiments carried out on inmates in which burns were inflicted on them using phosphor which came from incendiary bombs. The efficacy of various preparations was then tested on the phosphorus burns. Since the beginning of the Allied air bombardment of German cities the optimal treatment of phosphorus burns had become an urgent problem, which is why the decision was made in this case also to experiment on inmates.⁵⁸

The skeleton collection: 112 Jewish inmates were selected from the Auschwitz extermination camp to complete the skeleton collection at the Reich University of Strasbourg. After these inmates had been anthropologically measured and photographed, they were killed and their skeletons preserved.⁵⁹

The murder of tubercular Poles: tens of thousands of supposedly tubercular Poles were murdered between May 1942 and January 1945, on the grounds that they might infect the Germans in Poland.⁶⁰

The “Euthanasia” Program: the victims of this state-organized program of murder, which began in September 1939 and lasted until April 1945, numbered hundreds of thousands.⁶¹ They were gassed with carbon monoxide or killed by lethal injection, because they were mentally ill, or mentally or physically disabled, or sometimes merely old and frail.⁶²

⁵⁰ The following had to answer for the Lost experiments: Karl Brandt, Handloser, Rostock, Gebhardt, Blome, Rudolf Brandt, Sievers.

⁵¹ For this the following had to answer: Karl Brandt, Handloser, Rostock, Schröder, Genzken, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, Becker-Freyseng, Oberheuser and Fischer. This count was dropped against Schröder, Blome and Becker-Freyseng during the taking of evidence.

⁵² For this the following had to answer: Karl Brandt, Handloser, Rostock, Gebhardt, Rudolf Brandt, Oberheuser and Fischer.

⁵³ The following were charged in connection with the seawater experiments: Karl Brandt, Handloser, Rostock, Schröder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Becker-Freyseng, Schäfer, Beiglböck.

⁵⁴ For this the following had to answer: Karl Brandt, Handloser, Rostock, Schröder, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose and Weltz. This count was dropped against Sievers, Rose and Becker-Freyseng.

⁵⁵ The following people had to answer on this count: Karl Brandt, Gebhardt, Rudolf Brandt, Mrugowsky, Poppendick, Brack, Pokorny, Oberheuser. This charge was dropped against Oberheuser.

⁵⁶ The following people had to answer on this count: Karl Brandt, Handloser, Rostock, Schröder, Genzken, Gebhardt, Blome, Rudolf Brandt, Mrugowsky, Poppendick, Sievers, Rose, Weltz, Hoven. This count was dropped against Poppendick.

⁵⁷ The following had to answer for the poison experiments: Genzken, Gebhardt, Mrugowsky, Poppendick. The count was dropped against Gebhardt.

⁵⁸ The following people had to answer on this count: Genzken, Gebhardt, Mrugowsky. This count was dropped against Genzken.

⁵⁹ Karl Brandt and Sievers had to answer on this count.

⁶⁰ The following people had to answer on this count: Karl Brandt and Blome, but the charge could not be proven.

⁶¹ Current research shows that a total of 200,000 were murdered.

⁶² Karl Brandt, Blome, Brack and Hoven were charged on this count.

Some of the alleged crimes were not listed in the charge sheet. They were introduced by the Prosecution in the course of the trial and supported by supplementary documentation. These crimes were the “Polygal” experiments,⁶³ experiments in the context of biological warfare, and the phlegmon and nutrition experiments on concentration camp inmates.

1.3 The Road to the Nuremberg Medical Trial

The demand that those responsible for inflicting so much pain and chaos on Europe should be called to account was not first voiced in 1945. The more the crimes committed by the Nazis since the start of the war became known, the more urgent became the calls for punishment of the perpetrators. As early as the invasion and occupation of Poland and Czechoslovakia it was demanded that the war crimes committed by the Germans should have consequences for the criminals. In January 1942 at a conference held in London, at which representatives of the newly occupied countries were present,⁶⁴ an initial program for the prosecution of war crimes was formulated. In this Declaration of St. James, it was laid down that one of the paramount objectives of the war was to punish those responsible for these crimes. In October of the same year, 17 nations founded the United Nations War Crimes Commission (UNWCC),⁶⁵ and in November 1943, Great Britain, the Soviet Union and the United States of America issued a joint “Declaration on German Atrocities in Occupied Europe,” which provided for the Prosecution of all those who had committed war crimes or crimes against humanity at the cessation of hostilities.⁶⁶ This declaration paved the way for the Nuremberg Trials.

The legal basis for the Medical Trial as well as for the other Allied military tribunals was the Control Council Law No. 10, passed by the Occupying Powers on the December 20, 1945 on the basis of the Moscow Declaration of 1943 and the London Agreement of August 8, 1945, which governed the prosecution of war crimes. Article II of the Control Council Law laid down that anyone be prosecuted who, “as perpetrator or accessory – be it only through agreement to the deed – had participated in a war crime or a crime against humanity or in the planning thereof or had belonged to an organization which had participated in or was in any way connected to such a crime.” That an individual had been acting in an official capacity did not absolve him or her of culpability any more than that he or she had acted on the basis of a civil service or military order.

However before such a trial can be held, it is a prerequisite that the crime be elucidated, the identity of the perpetrator established, the perpetrator perhaps sought, taken into custody and finally questioned. Witnesses must be named, found, and questioned. Evidence must be secured and examined. Only then can a decision be made as to whether the evidence is sufficient to support a prosecution. Robert Kempner put this most precisely: it is usually said that “Nurem-

berg Trials took place,” but the Nuremberg Trials had first to be called into being.⁶⁷

The Allied Powers already knew of many war crimes and crimes against humanity during the war. They knew of the murder of the mentally ill, the sick and the disabled, and of the Europe-wide organized murder of the Jews. As early as 1943 the British journal *The Lancet* reported on the human experimentation in the Buchenwald Concentration Camp.⁶⁸ Women from the Ravensbrück Concentration Camp who had been abused for the battlefield surgery experiments and were members of the Polish Resistance had succeeded in smuggling out information on these horrendous experiments.⁶⁹

In August 1944, the Americans and the British established a Court of Inquiry at their shared military headquarters (SHAEF).⁷⁰ The army commanders were ordered immediately to report any and all information on possible war crimes. In the initial phase, this was related solely to crimes committed against members of the Allied Forces. But in December 1944, this order was extended to include all war crimes irrespective of the nationality of the victim. Special War Crimes Investigating Teams were formed and were placed under the Judge Advocate’s Office of the armies. It was their task to seek out war crimes, to secure the evidence regardless of its kind, and to question witnesses. Above and beyond this they could order the arrest of war criminals and suspects.⁷¹

Unlike after the First World War, this time the Germans were to be made to pay in full for the consequences of the war they had unleashed and were to have to make sufficient material reparation. The Allies hoped for compensation for their own war costs if they could gather comprehensive information on the state of development of all areas of German industry and science. Interest was focussed above all on German military research. The Allies had prepared themselves well to be able to carry out a systematic evaluation of German scientific and technical know-how. They formed special investigating teams with experts who had at their disposal great technical and scientific expertise. These experts of the CIOS,⁷² to which both British and American scientists belonged, gathered information on all sectors of industry, on technological developments, especially military technology, but also in general on in the fields of medicine and the natural sciences. Their top priority was to investigate modern military technology and weapons development. This included the V2-rocket, shrouded in secrecy as it was, and aviation medicine, and chemical/biological weapons research. After the SHAEF were dissolved, the CIOS took over the tasks of the British BIOS,⁷³ and later the functions of the British-American CIOS were transferred to

⁶³ In these experiments, clotting agents were tested on inmates of the Dachau Concentration Camp.

⁶⁴ Belgium, Czechoslovakia, France, Greece, Holland, Yugoslavia, Luxemburg, Norway and Poland.

⁶⁵ USA, Great Britain, Australia, Belgium, Canada, China, France, Greece, Holland, India, Yugoslavia, Luxemburg, New Zealand, Norway, Poland, South Africa and Czechoslovakia.

⁶⁶ Telford Taylor, *Kriegsverbrechen und Völkerrecht. Die Nürnberger Prozesse* (Special Edition Zürich, 1951), p. 14.

⁶⁷ Robert M.W. Kempner, *Ankläger einer Epoche, Lebenserinnerungen* (Frankfurt-on-Main, 1986), p. 223.

⁶⁸ Quoted here after Paul Weindling, *Zum Hintergrund des Nürnberger Ärzteprozesses*, in: Dörner/Ebbinghaus, *Vernichten und Heilen* (note 33). Paul Weindling was the first to pose the question of the historical context of the Medical Trial (note 27). I am grateful to him for important impulses.

⁶⁹ Quoted here after Dunja Martin, “Versuchskaninchen” – Opfer medizinischer Experimente, in: Claus Lübbert-Stolberg, *Frauen in Konzentrationslagern* (note 24), p. 120.

⁷⁰ Supreme Headquarters Allied Expeditionary Forces.

⁷¹ Robert Sigel, *Im Interesse der Gerechtigkeit. Die Dachauer Kriegsverbrecherprozesse 1945–1948* (Frankfurt-on-Main 1992), p. 16ff.

⁷² Combined Intelligence Objectives Sub-Committee.

⁷³ British Intelligence Objectives Sub-Committee.

the FIAT.⁷⁴ The experts of these staffs interrogated numerous German scientists and technicians who had worked with the military, in scientific institutions, or in industry during the war.⁷⁵ In the course of these investigations they came across an oppressive state of affairs: they realized that many of the important results of German military research were based on human experimentation, on prisoners, who had not given their consent to those experiments.

Thus, very early in the process, a conflict of interest, arose which was very difficult to resolve. On the one hand, they wanted to acquire the German technical and scientific know-how. This, however, could only be achieved if the Allied teams cooperated with the German scientists and specialists in whatever way was necessary – even compromising with them. In the background was a simple consideration: if the German specialists fully revealed their knowledge and experience to the Allies, it would be possible to gain access to many scientific and technological fields which, in the final analysis, promised great capital. How, then, should the Germans be treated? Many of the Allied experts demanded they be treated as scientists and colleagues and not as Nazis.⁷⁶ Yet, in view of the inhumanity of the war, many felt and made an appeal for, a greater sense of duty to justice than to “national interests.”

Lieutenant Colonel Paul Tarr, Secret Service head of the American Section for Chemical Warfare, led a team of around 50 experts which investigated the German research and production facilities for chemical weapons and which was to seek out and interrogate the German scientists. Tarr’s team ventured so far into the front lines that headquarters of the 12th Army actually complained about them.⁷⁷ The team of specialists crossed the Rhine with the first Allied troops. Arriving in Leverkusen, Tarr and Edmund Tilley, an Air Force investigator who spoke fluent German, searched the ruined Leverkusen works of I.G. Farben. They also found the man who had developed the nerve gas Tabun: Gerhard Schrader. The latter immediately opened his safe to the investigators and “willingly revealed the secret formulae for Tabun and Sarin,” as Tarr reported. The Red Army had in February 1945 already taken the Tabun-facility in Dyhernfurth, which was in the vicinity of Breslau, and had found in a mine near Rudersdorf important laboratory notes and documents from the Tabun installation. In 1945, the British occupied Munsterlager where there was a further important research and test center for chemical weapons.

As a result of Schrader’s statement, Tarr rapidly discovered the most important data on the state of development of the German chemical weapons program. Since the Allies had not hitherto known that the Germans had already produced nerve gas, Tarr’s secret report caused great alarm in London and Washington. By the end of April 1945 several intelligence agencies were busily searching for the central figure behind the German development of chemical weapons, Otto Ambros, the former Director of I.G.-Farben, and for other top I.G.-Farben managers. The conflict of interest

mentioned above was also evident here: while Colonel Bernard Bernstein, a civil servant from the American Revenue Service was investigating the top managers of I.G.-Farben in order to bring them before the Court in Nuremberg to answer for war crimes and crimes against humanity and to smash the most powerful industrial concern in Germany, Tarr was principally interested in the scientific and technical knowledge of the I.G.-Farben manager Otto Ambros and not in his participation in war crimes. Ambros was found shortly after the German capitulation, in an I.G.-Farben chemical weapons installation in Bavaria. Tarr first heard of Ambros’ arrest two weeks later. In the meantime he had already questioned further poison gas experts and had learnt that experiments on humans had also been carried out in this field.

The uncertainty as to how to behave towards top German scientists became even more pronounced by the summer of 1945, because it was feared that the Soviets might succeed in acquiring the German experts by promising them favorable conditions. This was compounded by the fact that competition amongst the western Allies themselves over the “valuable war booty” was becoming hotter.

German aviation medicine was the best in the world towards the end of the Second World War, and the USA wanted to secure for itself this knowledge and technical know-how. The 46-year-old Colonel Harry Armstrong, physician with the US 8th Airforce and specialist in aviation medicine, was sent into the bombed-out ruins of Berlin in May 1945 to search for the head of German aviation medicine, Hubertus Strughold. Armstrong was well-informed on the development of German aviation medicine, and he was an admirer of the German aviation medicine specialists. Armstrong sought out in Berlin all the former – now more or less demolished – German centers for aviation medicine. After several days he found Ulrich Luft⁷⁸ in the ruins of the Institute for Aviation Medicine of the former Reich Ministry for Aviation. Armstrong was relieved to have finally found someone who “felt that I was not tracking down potential criminals; that I simply was a fellow research person who was interested in their wartime work.”⁷⁹ From Luft, Armstrong learned that Strughold was working in the British Zone, at the University of Göttingen. Arriving in Göttingen, Armstrong found Strughold almost immediately, and the two specialists in aviation medicine exchanged information on the rapid development of their field during the war years. With the development of jet propulsion, the pressurized cabin, the pressurized flying suit, and the modern oxygen mask, a revolution had taken place in aviation medicine, a revolution which had transformed flying into a highly developed science.⁸⁰ Armstrong was immediately seized by anxiety that Strughold and his colleagues might be lured away by one of the other Occupying Powers. His concern increased when a British investigative team, led by Sir Bryan Matthews, the Director of the Royal Air Force Institute of Aviation Medicine, also arrived in Göttingen with the objective of questioning Strughold.

In July 1945 Matthews traveled on to Schleswig-Holstein to question the Kiel physiologist and university professor Ernst Holzlöhner, Director of the Physiological Institute of

⁷⁴ Field Information Agencies [Technical].

⁷⁵ This initial interrogations are often particularly illuminating with regard to the question of who was charged and who was not. The interrogations have, on the whole, been preserved: National Archives Washington [hereafter, NA], M 1091, Records of the U.S.-Nuremberg War Crimes Trials, Interrogations 1946–1949; Staatsarchiv Nürnberg [hereafter StaN], Rep. 502 A, KV-Anklage, Interrogations.

⁷⁶ Quoted from Tom Bower, *Paperclip Conspiracy* (note 15), p. 87.

⁷⁷ *Ibid.*, p. 91.

⁷⁸ Luft, a former employee in the Institute for Aviation Medicine of the Reich Ministry for Aviation, was a witness in the Medical Trial.

⁷⁹ Quoted from Bower (note 15) p. 234.

⁸⁰ *Ibid.* 234 f.

the University of Kiel and former Captain with the Medical Experimental and Instruction Division of the German Air Force in Jüterbog. Holzlöhner had been in charge of the freezing experiments at the Dachau Concentration Camp and had reported on the experiments at the Conference "Medical Problems Arising from Distress at Sea and Winter Hardships," in October 1942, in Nuremberg. Shortly after being questioned, Holzlöhner committed suicide.

While the two investigators, Matthews and Armstrong, were questioning the specialist in aviation medicine, Strughold, Major Leo Alexander, a neurologist and psychiatrist, was questioning the physiologist Georg August Weltz. Alexander had been a member of the US Army Medical Corps since 1942 and from May to September 1945 was entrusted with the special task of investigating medical facilities in the American Zone for the Supreme Headquarters of the Allied Expeditionary Forces (SHAEF) as part of the 6th US Army Corps. In the Medical Trial, Alexander then appeared as an expert witness for the Prosecution.⁸¹ Alexander questioned Weltz, the former head of the Institute for Aviation Medicine at the University of Munich, about the freezing experiments. The latter readily reported on the work of his research group: The experiments had been carried out on animals, especially on pigs. Alexander wrote of this information in his CIOS report⁸² that he rather thought that experiments had also been carried out on humans. Weltz had denied this, at which he, Alexander, had not questioned him further and had so left Weltz secure in the belief that no such suspicion was harbored against him.

Thereafter Leo Alexander also proceeded to Göttingen, in order to interview Hubertus Strughold and Friedrich Hermann Rein, Director of the Physiological Institute of the University of Göttingen. On the way there, on June 15, 1945, he happened to meet a US Army Chaplain who told him of a radio report in which former inmates of the Dachau Concentration Camp had spoken publicly of freezing experiments conducted on inmates there. Alexander immediately realized that the nature of the experiments was similar to that of the experiments which Weltz had described to him. A day later he questioned Strughold, who confirmed that experiments had indeed been carried out on human subjects. At the conference on "Medical Problems Arising from Distress at Sea and Winter Hardships", which he had also attended, the freezing experiments had been mentioned. These experiments had been carried out by one "Doctor Rascher," and he, Strughold, had to add that he had not been comfortable with the thought of the experiments, even if they had been carried out on criminals. At his institute there had, as a matter of moral principle and a matter of medical ethics, been no experiments on humans unless these had given their express consent.⁸³

Rein made similar statements to those made by Strughold when he was interviewed. He confirmed the experiments on humans and also insisted that they had been carried out as the sole responsibility of Rascher. Moreover, he criticized the experiments carried out by Weltz and his team because they had, in his opinion, not resulted in any profound physiological insights. Alexander took with him from Göt-

tingen the important piece of information that Sigmund Rascher had been a former Captain in the Reserve of the German Air Force and Captain in the SS. Alexander followed this trail further, to Berlin, where in the Document Center of the 7th Army, he found what he had been searching for.⁸⁴ By that time, the Archive of the Personal Staff of Heinrich Himmler had been found in a disused salt mine near Hallein and had been brought back to Berlin. Alexander combed through the material with his team and they came across extensive documentation on the human experimentation in Dachau, and also on the high altitude experiments. The documents clearly proved that the Inspector of the Medical Service of the German Air Force, Erich Hippke, had approved the experiments. He had approved them under the condition that aeronautical medical specialist Weltz be in charge of the experiments and Siegfried Ruff, the head of the Institute for Aviation Medicine of the German Experimental Institute for Aviation, be a member of the team. These documents convinced Alexander that Friedrich Rein and Hubertus Strughold, who had named only Rascher as the responsible party, knew full well that Ernst Holzlöhner, Siegfried Ruff and Hans Wolfgang Romberg had also borne responsibility for them.

In July 1945 Alexander completed his report on "The Treatment of Shock from Prolonged Exposure to Cold, Especially in Water." His closing remark that the results of these experiments should be immediately made available to the American Air-Sea Rescue Services is interesting, since in the later debate on the medical and scientific value of the human experimentation which was carried out in the framework of the Medical Trial it was often maintained that the experiments were of no scientific value whatsoever. A further, although unfinished, debate centered on the question to what extent it was ethical to apply at all results which had been obtained under such inhumane conditions.⁸⁵

The American investigator Armstrong brought his investigations to a close, and the resume was: German Aviation Medicine had made impressive advances on its pre-war research, the scientific output of the last few years was notable, and most of the scientists were prepared to be interviewed by the US Air Force.⁸⁶ The Americans would thereby gain the accumulated scientific knowledge of five or six years work by several hundred scientists and at minimal cost. General Eisenhower gave Armstrong his approval to use the results of German aviation medicine for the benefit of the USA. To this end, the Aero Medical Center was opened in Heidelberg.⁸⁷ American and German aviation physicians worked together there from autumn 1945 to spring 1947. Under the leadership of the Nestor of German aviation medicine, Hubertus Strughold, the German aviation physicians committed the whole of their knowledge to paper in a two volume report on "German Aviation Medicine in World War II."⁸⁸

⁸⁴ Ibid., p. 54.

⁸⁵ On this debate cf. Friedrich Hansen, 40 Jahre Nürnberger Prozesse. Harte Forschungsdaten oder ärztliche Ethik? in: Rainer Osnowski, *Menschenversuche* (note 26), pp. 98-111; cf. on this topic also the debate in *The Lancet* from 14.12.1947, 4.1.1947, 11.1.1947, 18.1.1947 and 1.2.1947.

⁸⁶ Quoted from Bower, Paperclip conspiracy (note 15), pp. 232 ff.

⁸⁷ The Aero Medical Center had already been founded in October 1945 in Heidelberg.

⁸⁸ *German Aviation Medicine in World War II*. Prepared under the Auspices of the Surgeon General, U.S. Air Force, ed. Department of the Air Force, vol. I/II, Washington D.C. 1950.

⁸¹ See the section on the expert witnesses in this essay.

⁸² CIOS Target Number 24, Medical: The Treatment of Shock from Prolonged Exposure to Cold. Especially in Water, reported by Leo Alexander, in: Bundesarchiv Koblenz (hereafter, BAArchK), ZSg 154/ 74, printed in: Related Documents, No. 2, p. 35-108.

⁸³ Ibid., p. 50.

On the basis of the many CIOS, BIOS, and FIAT reports which were written in 1945 and 1946, it is possible to discern how the picture the Allies had of the medical crimes was built up layer by layer.⁸⁹ For instance there was a CIOS report on "Medical Targets in Strasbourg Area,"⁹⁰ and another on the "Institute for Typhus and Virus Research of the Supreme Command of the German Army at Roth, Bavaria."⁹¹ There were also further reports on individuals such as the surgeon Karl Gebhardt,⁹² the head of the Hygiene Institute of the Waffen SS Joachim Mrugowsky,⁹³ and the former Reich Commissioner for Health and Sanitation Karl Brandt.⁹⁴ Leo Alexander also wrote further CIOS reports on questions of aviation medicine, sterilization experiments, and on the murder of the mentally ill and the disabled.⁹⁵

This is the context in which the experts who were searching for evidence on the medico-scientific experiments had to work. The main problems confronting the investigating teams were, first, getting information about those responsible and, second, establishing whether there was sufficient evidence to support charges. The main advances in their investigations were the interrogation of Claus Schilling and the discovery of the documents of the Reich Research Council (Osenberg-Files). The interrogation of Wolfram Sievers, the former Manager of the SS Research and Instruction Society "*Ahnenerbe*" and head of the Institute for Applied Military Scientific Research of the "*Ahnenerbe*," also brought important information to light, as did the evaluation of the personal files of Himmler. On this basis the British FIAT group compiled a report in September 1945 on the SS Research and Instruction Society "*Ahnenerbe*" and the Institute for Applied Military Scientific Research of the "*Ahnenerbe*."

The introduction to this overview report on "SS Medical Research"⁹⁶ reiterated that the information on the medical experiments had been compiled, and this was followed by

information on the activities of the Institute for Applied Military Scientific Research of the "*Ahnenerbe*," on the case of "Prof. Karl Brandt," and on "Greiser's Cure for Tuberculosis" as well as on various sterilization experiments. Many of the documents mentioned there were later included in the Medical Trial, as for instance were the documents on the macabre skeleton collection of the Strasbourg anatomist August Hirt, or the Lost (mustard) gas and typhus experiments in the Natzweiler Concentration Camp. In the appendix to the report there is a nine page list of persons whom the Allied investigators at that point suspected of involvement in medical crimes.

At the beginning of 1946 the American psychologist Andrew Ivy compiled a further report on the medical crimes committed in Germany. Ivy was a well-known scientist working in the field of aviation medicine and he had advised the US Armed Forces during the Second World War. He distinguished between "experimental" and "non-experimental" crimes.⁹⁷ To the latter he counted amongst others the murder of the mentally ill and the disabled as well as the genocide committed against the Jews, Roma and Sinti, Poles, and Russians. The documents proved that the "Nazi (SS) doctors and scientists" had carried out experiments on humans without their consent and in violation of their human rights. The test persons had been subjected to unnecessary pain and suffering. In many cases the scientific procedure of the experiments was also open to criticism. The state of knowledge at that time was that around 70 physicians had participated in these experiments, Dr. Schilling being the most well-known of them.

Claus Schilling was a renowned tropical medicine specialist and malaria researcher.⁹⁸ In his report, Ivy examined a series of medical experiments which had been carried out on prisoners and which were already known of at that point: the typhus and tuberculosis experiments, the experiments on the treatment of gas burns, and the experiments in the area of reconstructive surgery, the freezing experiments, and the sterilization and abortion experiments. At this point and later, Ivy was of the opinion that the experiments carried out by the Nazi physicians were to be condemned in the strongest possible tone and to be clearly distinguished from medical experiments which were generally and legitimately carried out on humans.

A central role in the elucidation of the medical crimes was played by the British pathologist Arthur Keith Mant. He was a Major in the British Army of the Rhine and also a special investigator for medical war crimes. In 1945/46, in his function as the Investigating Officer of the British Army of the Rhine, he investigated above all the medical crimes which had been perpetrated on the Polish women inmates of the Ravensbrück Concentration Camp. With great precision, he described the various series of experiments and arrangements. He distinguished on grounds of the, at that time, state of the investigation between three kinds of crime: first, experiments which were related to the war – such as the

⁸⁹ See in this connection the extensive part of this Edition "Documents and Material Pertaining to the Trial History, Background and Consequences of the Medical Trial (=Related Documents)."

⁹⁰ CIOS-Report, Item 24, Medical: Medical Targets in Strasbourg Area, reported by Carl Henze/ William J. Crommartie, in: NA, RG 226 Oss, XL 7906, also printed in: Related Documents, No. 12, pp. 289-301.

⁹¹ CIOS-Report, Target No. 24/241: Institut für Fleckfieber- und Virusforschung des Oberkommandos des Heeres at Roth, Bavaria, reported by Joseph E. Smadel / Hans G. Schlumberger, in: BArchK, ZSg 154/64, also printed in: Related Documents, No. 13, pp. 302-321.

⁹² A. Martin/Carmen Mory, Report on Prof. Karl Gebhardt, in: Public Record Office (hereafter, PRO), WO 309/ 469, 55799, also printed in: Related Documents, No. 16, pp. 337-338.

⁹³ Notes of an unknown British investigator on evidence related to Joachim Mrugowsky in Reports of the ALSOS-Mission, May–August 1945, in: PRO, WO 309/ 469, 55799, also printed in: Related Documents, No. 17, pp. 339-343; Personalities Connected with Chemical Warfare, in: Related Documents, No. 18, pp. 344-357.

⁹⁴ BIOS Final Report No. 542, Item No. 8, April 1946 (Part II Professor Karl Brandt): Interrogations of Certain German Personalities Connected with Chemical Warfare, in: Related Documents, No. 18, pp. 344-357.

⁹⁵ Leo Alexander, Public Mental Health Practices in Germany – Sterilization and Execution of Patients suffering from Nervous or Mental Disease, CIOS Item 24, File No. VIII-50, s.l. (London) s.a. (1945); the same: Miscellaneous Aviation Medical Matters. Combined Intelligence Objectives Sub-Committee, Item No. 24, File No. VII-71, pp. 1-21, August 1945, in: Related Documents, No. 2-6, pp. 35-228.

⁹⁶ OMGUS, Office of the Director of Intelligence CINFO Report No. 5: SS Medical Research, 10.2.1946, in: NA, RG 338, Stock Area 290, Row 59, Compartment 17, Shelf 5: USAREUR/JAG War Crimes Records Regarding Medical Experiments, also printed in: Related Documents, No. 20, pp. 361-426.

⁹⁷ Cf. A.C. Ivy, Report on War Crimes of a Medical Nature Committed in Germany and Elsewhere on German Nationals and the Nationals of Occupied Countries by the Nazi Regime During World War II, in: Related Documents, No. 7, p. 230.

⁹⁸ Ivy spoke erroneously of Sigmund Schilling. Claus Schilling had carried out experiments on prisoners in the Dachau Concentration Camp to develop a vaccine for malaria and was thus condemned to death in the Dachau War Crimes Trial and was executed in 1946, in: Ibid., p. 232.

typhus experiments – and experiments in the context of armaments or battlefield surgery; second, crimes committed from a racist motive, such as the sterilization experiments; and finally all the crimes which should be counted among the “whims of Himmler,” such as the Strasbourg skeleton collection. It is to Mant’s credit that he interviewed several women who had survived the tortures of the experimentation. He gave the victims in the later Medical Trial a voice, and documented the experiments on humans from the point of view of the victims.⁹⁹

In January 1946 the head of the Scientific and Technical Department of the FIAT (British Element), Wing Commander John West Thompson, organized a conference on the problematics of the medical crimes, which was attended by legal and medical experts from Great Britain, France and the USA. Thompson tried to get the pathologist Sydney Smith, Professor of Forensic Medicine at the University of Edinburgh, as Chairman. The FIAT investigator hoped thereby to clear up several problems which he did not feel capable of solving alone.¹⁰⁰ At the end of March 1946 there was a sort of pre-conference,¹⁰¹ at which more or less the same topics were dealt with as were tackled by the main conference, which took place on May 15, 1946 at Höchst.¹⁰²

At both meetings it was stressed again and again that, in the search for technical and scientific information, the documents on human experimentation had been found almost by accident and that the problematics of the medical crimes did not actually form part of the purview of FIAT, but were rather the responsibility of the War Crimes Commissions. Although so much material had already been gathered on the medical experiments, there was still doubt as to whether the proof in respect of individual medical experimental groups would be sufficient to support a prosecution. The position was felt to be relatively satisfactory in the case of the Lost experiments, the freezing experiments, and the typhus experiments. However, it was felt to be advisable to pursue specific further inquiries. Above all, it seemed

important to find out more about Eugen Haagen,¹⁰³ the former director of the Hygiene Institute of the Reich University of Strasbourg, and about the Strasbourg anatomist August Hirt, who was obviously a key figure. Major Mant reported that there were survivors of the battlefield surgery experiments. These women were under the care of Swedish physicians. This offered the opportunity to name the victims as witnesses, which would not be possible in most of the other cases. There were also indications of human experimentation with the nerve gas Tabun, but the evidence was as yet insufficient. In order to advance the investigation of the medical experiments on humans as a whole, Mant recommended that the cooperation of the French, British and American teams be improved and that scientific experts be included.¹⁰⁴ In any case, the national War Crimes Agencies were called upon to apply themselves with greater intensity to the problematics of the experiments on humans.

Finally, two questions stood at the focus of the discussion: first, how was the scientific world to be informed of these extraordinary crimes, committed as they had been above all by physicians and scientists; and second, what form of trial would be the most appropriate. Should all the medical crimes be dealt with on the basis of the Four Power laws in a common trial? Or should the individual groups of experiments be dealt with in the various Occupation Zones – namely there, where the crimes had been committed? The majority of those present spoke against a common trial, and believed that the crimes should instead be dealt with in the Occupation Zones and investigation material and witnesses passed from one to the other as needed. The British had collected a great deal of material on the experiments in the Ravensbrück Concentration Camp, and the French were well-informed on the whole complex of the typhus experiments in the Buchenwald Concentration Camp because of information obtained from a former employee of the Pasteur Institute, Alfred Balachowsky, who as a camp inmate had been compelled to work on the typhus ward in Buchenwald. In addition, one American FIAT investigator referred to the Dachau trial which the Americans had already carried out. He mentioned that the Americans in total did not possess as many evidence documents as the British or French. There was unanimity that the conviction of the perpetrators should be the first priority before it would be possible to turn to a debate as to how these crimes could ever have been committed. There was no question that the moral and ethical discussion, in whatever form it might take, would be of extraordinary significance for the scientific world.

Unanimity was rapidly achieved on a further extremely important point: if the German experiments had led to new scientific or therapeutic results, these should of course be made available to the scientific world, since the exploitation of the scientific and technical know-how was the actual task of the FIAT. At the end of the meeting in Höchst it was agreed that an overview of the medical experiments on humans be compiled. Major Mant declared himself willing to do the necessary coordinating.¹⁰⁵

⁹⁹ Report by Major Arthur Mant on the Medical Services. Human Experimentation and Other Medical Atrocities Committed in the Ravensbrück Concentration Camp; by the same author., Experiments in Ravensbrück Concentration Camp Carried Out Under the Direction of Professor Karl Gebhardt, in: Related Documents, No. 9 and 10, pp. 253-286.

¹⁰⁰ Letter of John West Thompson to the Judge Advocate General Branch (War Crimes Section) of the British Army on the Rhine, regarding Medical War Crimes, 14.3.1946, in: PRO, FO 1031/ 74, 55799, also printed in: Related Documents, No. 29, pp. 464.

¹⁰¹ Minutes of a British meeting preparing the investigation of medical war crimes committed by German physicians and scientists (approx. end of March 1946), in: PRO, FO 1031/ 74, 55799, also printed in: Related Documents, No. 32, pp. 468-483.

¹⁰² From the USA, the following participated: Colonel C. E. Straight (Legal Branch, U.S. War Crimes); Colonel Bresee (Trial Branch, U.S. War Crimes); Mr. T.W. Schaeffer, (FIAT [US]) and Dr. M.W. Miller (FIAT [US]); from France the following participated: Prof. Lépine (Pasteur-Institut); Lieutenant Tchernia (Research Liaison Officer War Office, Paris), and from Great Britain the following participated: Brigadier R.J. Maunsell (FIAT [Br]); the Chairman Prof. Sydney Smith (University of Edinburgh); Lieutenant Colonel J.L. Blaisdell (FIAT [Br]); W/Cdr. J.W.R. Thompson (FIAT [Br]); Lieutenant Colonel M. Woodburn (British War Crimes, Liaison Dept. Wiesbaden); Major Mant (JAG Branch, HQ, BAOR); S/Ldr. B.E. Bishop (FIAT [Br]) and Major E. Tilley (FIAT [Br]). See Related Documents, 8.1.3., No. 34: Notes of a meeting held at Höchst on the 15th of May 1946 to consider evidence of war crimes committed by German scientists by means of inhuman experimentation on living human beings.

¹⁰³ Haagen began in May 1944 with experiments on inmates of the Natzweiler Concentration Camp for the development of a vaccine for typhus.

¹⁰⁴ Memorandum of Sydney Smith concerning the further investigation of experiments on human beings, 20.5.1946, in: Related Documents, No. 37, p. 501.

¹⁰⁵ Letter from John West Thompson, FIAT, to Professor Lépine, 17.5.1946, in: Related Documents, No. 35, p. 493.

It was in France that the greatest efforts were made to treat the particularly scientific character of the crimes thematically. As early as June 19, 1946, the French government issued an ordinance setting up an investigation committee on scientific war crimes.¹⁰⁶ And on the very same day a meeting took place at the Pasteur Institute in Paris to set up an international scientific commission to investigate criminal experimentation on humans. It was intended that this international commission increase the confidence of the public in relation to ethically acceptable medical experimentation and establish criteria as to what the preconditions for allowing experimentation on humans should be. And finally the commission should evaluate the results of the criminal experiments on humans. The Pasteur Institute offered to establish a central coordination office for all the documentation of the scientific commission and to organize regular meetings within its walls. The next meeting on July 31, 1946¹⁰⁷ was attended by Andrew Ivy,¹⁰⁸ who, in May, had been appointed by the American Medical Association as its expert representative for this field, and by a representative of the Office of US Chief of Counsel. In order that the scientific commission also have the necessary authority, the circle of official participants also had to be increased, since neither the USA nor Great Britain had at that time named official representatives for the Scientific Commission for the Investigation of War Crimes of Medical Nature. The American physiologist Ivy and the British Captain Somerhough were therefore given the task of approaching their respective governments in this regard, while the French for their part would try to get representatives of the USSR to attend the next meeting.

At this meeting Ivy remarked that were medical experiments to be dealt with, the possible negative health outcomes should be assessed. The end result should in no way be that public trust in experimental medicine and science as a whole be undermined. Therefore Ivy proposed that guidelines be formulated as to the conditions under which experiments on humans would be acceptable. The two most important preconditions were that such experiments be voluntary and with the full consent of the test subject to the test. Further, the test subject should be fully informed of the hazards and risks. Tests on humans should be preceded by tests on animals and the scientific result which might be expected from the test had to justify the test. The experiment should be carried out in such a way that all superfluous suffering be avoided. It should be, as a matter of principle, in the hands of trained scientific personnel. Under no circumstances should a test be carried out if there be any danger to the life of the test subject.¹⁰⁹

¹⁰⁶ The following were appointed to the Commission: the coroner Legroux from the Institute Pasteur; the physiologist Henri Simonnet; Pierre Lépine of the Pasteur Institute and the biologist Paul Tchernia.

¹⁰⁷ Those present were: Legroux, Lépine (both of the Pasteur Institute); Ivy (Special Consultant, Secretary of War); Major Duvall (U.S. Army War Crimes Group); James McHaney (Office of U.S. Chief of Counsel); Captain Somerhough; Major Mant; John Thompson and Sydney Smith. Cf. Minutes of a meeting in the Institute Pasteur Paris on medical crimes, 31.7.1946 and 1.8.1946, in: Related Documents, No. 40, p. 505.

¹⁰⁸ The American physiologist and physician Andrew Conway Ivy later became a medical expert witness for the Prosecution in the Medical Trial, see in this regard also the section on the expert witnesses in this contribution.

¹⁰⁹ Ibid.

These guidelines were taken up later by the Military Tribunal of the Medical Trial and in slightly altered form they entered the medical ethic debate as the Nuremberg Code. The Nuremberg Code is therefore not only a result of the proceedings in the Nuremberg Medical Trial, as it is usually presented as being today,¹¹⁰ but was also a pre-trial strategy formulated in order to avoid a total discrediting of clinical and experimental research in the face of the medical crimes committed on the concentration camp inmates.

The third meeting of the Scientific Commission took place on the 16th and 17th of October 1946 in the Pasteur Institute. This time Alexander Hardy, who was later to be one of the prosecutors in the Medical Trial, was also present and reported on who the Americans intended to bring charges against along with Karl Brandt in Nuremberg. When the International Scientific Commission met again in mid-January 1947,¹¹¹ the Nuremberg Medical Trial had been underway for over a month. At this point the British and American governments had still not appointed official representatives to the International Scientific Commission. The American Chief Prosecutor Telford Taylor and the medical expert witness for the Prosecution Leo Alexander had traveled from Nuremberg to attend. Both regretted being unable to take part in the meeting officially, since they had no mandate to do so from their government. Taylor, however, promised to support the work of the Commission to the best of his ability from Nuremberg. Alexander presented his thoughts on how these medical crimes could ever have been committed. There was a controversial discussion as to whether it would be better to write a paper for public consumption at that point or to wait until the Commission had completed its work. The majority deemed it better to wait, a view Alexander did not share.¹¹²

In summer 1946 the American prosecution team in Nuremberg were not yet absolutely certain which of the National Socialist physicians and medical scientists who were then in custody there should be brought before the Court. Thus, initially, they considered prosecuting Karl Brandt together with Oswald Pohl. It appears, however, that Major Stewart¹¹³ convinced Telford Taylor that it would be better to try Oswald Pohl together with the Division D of the SS Economic-Administrative Main Office, and to try Karl Brandt together with those who were being prosecuted for medical crimes, namely Wolfram Sievers, Joachim Mrugowsky, Eugen Haagen, Philipp Bouhler, Viktor Brack

¹¹⁰ Cf. George J. Annas and Michael Grodin, *Medizinische Ethik und Menschenrechte*, in: Kolb, *Medizin und Gewissen* (note 20), pp. 244-259; Jay Katz, *Menschenopfer und Menschenversuche. Nachdenken über Nürnberg*, in: Ibid., pp. 225-243; Erwin Deutsch, *Der Nürnberger Kodex. Das Strafverfahren gegen Mediziner, die zehn Prinzipien von Nürnberg und die bleibende Bedeutung des Nürnberger Kodex*, in: Tröhler, *Ethik und Medizin 1947-1990* (note 21), pp. 103-114. On the Nuremberg Code see also the last section of this contribution.

¹¹¹ Those present were: Prof. R. Legroux, Prof. P. Lépine, François Bayle, A. Touffait, Lieutenant P. Tchernia from France, Lord Moran, Prof. S. Smith, Prof. Barnard, Wing Commander J.W.R. Thompson and Major Mant from Great Britain, Brigadier General Telford Taylor and Leo Alexander as unofficial delegates of the War Crime Tribunal in Nuremberg, Henry S. Leger (USA) as well as an observer from the Paris liaison office with the U.S. Chief of Counsel.

¹¹² Leo Alexander had already written several essays on the Medical Crimes in the 40s. See in this connection the bibliography in this volume.

¹¹³ Of the Royal Aircraft Force, Legal Branch.

and the “Hohenlychen Group.” They also considered including Rudolf Brandt and Erhard Milch in this part of the trial.¹¹⁴ To all four of the Allied powers, Karl Brandt was a central figure – not only because of his leading position in the health and medical services but also because since 1944 he had had the post of special plenipotentiary for chemical warfare.¹¹⁵ Even if there are repeated hints in the sources which form the background to the Medical Trial that human experimentation had taken place in connection with the testing of the nerve gases Tabun and Sarin, there is no confirmation and this field was not dealt with in the Medical Trial, unlike the Lost (mustard) gas and the N-substance experiments. Since the nerve gas was of equal interest to all of the Occupying Powers, it is possible to say with reasonable certainty that all the evidence on human experimentation in connection with the testing of nerve gas was treated as top-secret and channeled by the respective intelligence services directly to the military departments responsible for chemical warfare.

On the 10th of September 1946 the American Prosecutor Hardy compiled a list of persons who were, in all probability, to be brought before the Court and charged with medical crimes.¹¹⁶ Since they had played important roles in the National Socialist health and medical services, Karl Brandt, Siegfried Handloser, Paul Rostock and Kurt Blome were to form the core of this list. This approach of calling to account the then elite of the health service was a leitmotif of the Prosecution. On Hardy’s list stood the names of Ralf Rosenthal and Percy Treite as possible co-accused, as well as the names of the former Hohenlychen Assistant Medical Director Karl Friedrich Brunner. In this list – three months before the start of the trial – the later co-accused Gerhard Rose, Viktor Brack, Georg Wetz, Konrad Schäfer, Waldemar Hoven, Wilhelm Beiglbock and Adolf Pokorny were not yet mentioned.

On September 16, 1946 an unit of the 303rd Department of the Counter Intelligence Corps (CIC) appeared at the Heidelberg Aero Medical Center, where many prominent German aviation physicians were working: General Telford Taylor had ordered the arrest of the aviation physicians Siegfried Ruff, Hermann Becker-Freyseng, Theodor Benzinger, Oskar Schröder and Konrad Schäfer. Benzinger suspected that his arrest was a result of intrigue on the part of Hubertus Strughold, who was trying to divert attention from his own involvement,¹¹⁷ and Benzinger was indeed subsequently released, the only one of the group to be so. All the other aviation physicians were taken to Nuremberg, arrested and charged in the Medical Trial. Strughold himself remained untouched. Was the evidence against him simply insufficient? Or had American interests in German aviation medi-

cine been placed above the prosecution of those responsible for war crimes?

The former Nuremberg Chief Prosecutor Telford Taylor reported at a conference in 1976 on the course of events – as he remembered them – leading up to the Medical Trial.¹¹⁸ The tribunal had not been prepared thoroughly enough and had been dependent upon many coincidental factors. It had been the first of several trials subsequent to the trial of the Major War Criminals. The mass of documents compiled was monumental, and it had not been possible even with Herculean efforts to work through them all in the time that had been available. Thus, coincidence often played a significant role. Taylor gave a typical example: in his interrogation, Herman Göring had named Erhard Milch as a witness for the high altitude experiments. When Milch himself was subsequently interrogated it transpired that he had himself been involved in these experiments on humans. In this way the first facts on these experiments slowly emerged. Parallel to this, a trial of the SS had been in preparation. In that connection, Wolfram Sievers, the former manager of the SS Research and Instruction Society “*Ahnenerbe*,” had been named as a witness. During his interrogation, the whole complex of SS applied military science was stumbled upon.¹¹⁹ Since the British and Americans had already collected material on medical crimes, the decision was made to pursue the course of a special trial in which the physicians as a professional group would be prosecuted.

1.4 The Trial Opens

On December 9, 1946, at 10 a.m., the Medical Trial was opened by the Marshal of the Court with the words: “Military Tribunal No. 1 is now in session. God save the United States of America and this honorable Tribunal,” a ritual which was to be repeated at the beginning of each day throughout the trial. The Presiding Judge Beals asked the 23 defendants once again how they wished to plead. To a man, they pleaded not guilty. Then Beals set the framework for the trial. One day had been foreseen for the reading of the charges, and this would be followed by the hearing of evidence for the Prosecution. As soon as the Prosecution had finished its evidence, which was to be completed on the 29th of January, 27 days into the trial, the Defense might begin its opening plea, for which two days had been foreseen. Beals made it clear that the Defense should present the heart of its argumentation, “the entire theory of their respective defenses.” The trial procedure was precisely determined. The Presiding Judge again instructed both parties that each document which was to be used in the trial – whether by the Defense or by the Prosecution – should be submitted promptly, so that it could be translated if necessary and

¹¹⁴ Letter of Brigadier General Telford Taylor to A.C.C. Sommerhaugh from Sept. 2, 1946, in: Related Documents, No. 54, p. 546f.

¹¹⁵ The American State Attorney Hardy concentrated on the investigation of Karl Brandt. See also: Memorandum of A.G. Hardy to Investigation Expert Wolfson, Re: Medical experimentation on human beings, 10.7.1946, in: Related Documents, No. 53, p. 545.

¹¹⁶ Karl Brandt, Siegfried Handloser, Paul Rostock, Rudolf Brandt, Joachim Mrugowsky, Helmut Poppendick, Wolfram Sievers, August Hirt, Karl Gebhardt, Fritz Fischer, Rudolf Rosenthal, Karl Friedrich Brunner, Percy Treite, Hingst, Herta Oberheuser, Siegfried Ruff, Hans Wolfgang Romberg, Viktor Brack, Kurt Blome, Oskar Schröder, Konrad Schäfer, Hermann Becker-Freyseng and Karl Genzken. See A.G. Hardy’s letter to all Research Analysts, 10.9.1946, in: Related Documents, No. 55, pp. 548-550.

¹¹⁷ Quoted from Tom Bower (note 15), p. 245 f.

¹¹⁸ *Biomedical Ethics and the Shadow of Nazism. A Conference on the Proper Use of the Nazi Analogy in Ethical Debate*, April 8, 1976, Hasting Center Report Special Supplement, August 1976, pp. 4-7.

¹¹⁹ Wolfram Sievers had already been examined on the SS complex in the Trial of the Major War Criminals. He was brought into the trial by the Defense. Alexander Hardy, who was already on Telford Taylor’s staff, handed over a “Sievers” file to the British Prosecutors which contained amongst other things documents on the acquisition of the skeleton collection of the Strasbourg anatomist Hirt. This complex was then dealt with in the Medical Trial. Cf. Telford Taylor, *Die Nürnberger Prozesse. Hintergründe, Analysen und Erkenntnisse aus heutiger Sicht* (München, 1992), pp. 595-597.

made available in sufficient quantities. This was essential, since the trial was to be carried out and documented in two languages: German and English. The witnesses too had to be announced 24 hours before they were to be heard, so that the other party could prepare itself to deal with the often complicated material. Beals, probably well aware of the resentment of an American Military Tribunal on the part of the defendants and a wide section of the general public, assured all present that the Court would strive to ensure a scrupulously fair trial. Both Prosecution and Defense were to be able to use all procedural possibilities to the full. Only after a precise hearing of evidence for the Prosecution would the Court come to a comprehensive and independent judgment. The trial itself was held in public. A limited number of admission permits were given. In the upper part of the courtroom, the Court sat, with the defendants and their attorneys sitting directly opposite. In the center of the judges' bench sat the Presiding Judge, Walter F. Beals. He had been a judge in the Washington State Supreme Court and could look back on a long and distinguished career. The experienced legal scholar was 70 when he was appointed to the American Military Tribunal in Nuremberg, and in the opinion of many, he exercised his new office with great dignity and objectivity.¹²⁰ To his right sat Harold L. Sebring,¹²¹ and to his left sat Johnson T. Crawford¹²² and the substitute judge Victor C. Swearingen.¹²³

At the head of the courtroom there was a booth for film and sound recording and immediately in front of that there were seats for the interpreters and for the Marshal. Level with the judges there was a bench for the witnesses. In front of the judges there were further seats reserved for the court reporters and for the court officials.

The counsel for the Prosecution, Telford Taylor's staff, sat in the middle of the courtroom, with a view of the Court and the defendants as well as of the defense counsel. The principal counsel for the Prosecution was, in this trial as in the other eleven subsequent trials, Telford Taylor. The concrete hearing of evidence for the Prosecution during the trial lay in the hands of the State Prosecutor James McHaney¹²⁴ and his assistant Alexander Hardy.¹²⁵

The 23 accused were represented by a total of 19 defense counsels, who had 10 assistants.¹²⁶ They were not assigned

counsel, but had been selected by the accused. Several of them, namely the attorneys Robert Servatius, Otto Nelte, Alfred Seidl, Fritz Sauter, Hanns Marx, Rudolf Merkel, Kurt Kauffmann, Horst Pelckmann and Herbert Kraus, had already appeared for the Defense in the Trial of the Major War Criminals or had assisted the Defense and were therefore conversant with the regulations governing a military tribunal.¹²⁷ The defense counsel sat in front of the accused, who were seated in two rows in the order in which their cases were to be considered. On the basis of the seating arrangements it was therefore possible to gain an impression of the position which the accused had occupied in the military hierarchy or civil health service hierarchy during the NS-period. In the presentation of the case by the Prosecution the former post occupied by the defendant was of prime importance. The Prosecution intended to go for the "big fish," for those who had held positions of responsibility in the NS-system. Viewed from the bench, the first row of defendants ran as follows, from left to right: Prof. Dr. med. Karl Brandt, former Reich Commissioner for Health and Sanitation; Prof. Dr. med. Siegfried Handloser, former Chief of the Medical Services of the German Armed Forces; Prof. Dr. med. Paul Rostock, former Chief of the Office for Medical Science and Research and Medical Superintendent of the Surgical Clinic Berlin; Dr. med. Oskar Schröder, former Chief of the Medical Service of the German Air Force; Dr. med. Karl Genzken, former Chief of the Medical Office of the Waffen SS; Prof. Dr. med. Karl Gebhardt, former Consulting Surgeon of the Waffen SS and Chief Clinician in the Staff of the Reich Physician SS and Police as well as Medical Superintendent of the Hohenlychen Hospitals; Prof. Dr. med. Kurt Blome, former Deputy of the Reich Health Leader; Prof. Dr. med. Joachim Mrugowsky, former Chief of the Hygiene Institute of the Waffen SS and Chief Hygienist of the Reich Physician SS and Police; Rudolf Brandt, former Personal Referent of Himmler in the Personal Staff of the Reichsführer SS; Dr. med. Helmut Poppendick, former Chief of the Personal Staff of the Reich Physician SS and Police; Wolfram Sievers, former Business Manager of the SS Research and Instruction Society "Ahnenerbe" and Director of the Institute for Applied Military Science of the "Ahnenerbe".

In the second row from left to right sat: Prof. Dr. med. Gerhard Rose, former Consulting Hygienist and Advisor for Tropical Medicine of the Chief of the Medical Service of the German Air Force; Dr. med. habil. Siegfried Ruff, former Director of the Institute for Aviation Medicine of the German Experimental Institute for Aviation; Viktor Brack, former Deputy Chief of Hitler's Chancellery; Dr. med. Hans Wolfgang Romberg, formerly physician at the Institute for Aviation Medicine of the German Experimental Institute for Aviation; Dr. med. Hermann Becker-Freyseng, former

¹²⁰ This was reported by observers at the trial, see Related Documents, 8.2.9.3.

¹²¹ Judge in the Supreme Court of Florida.

¹²² Judge in the District Court of Oklahoma.

¹²³ Until his appointment in Nuremberg he was assistant to the Chief State Attorney of the State of Michigan.

¹²⁴ James M. McHaney was a lawyer in Rock, Arkansas.

¹²⁵ Alexander G. Hardy was a lawyer from Boston, Massachusetts, who played a central role in preparing the Prosecution case.

¹²⁶ The defense counsel are listed in alphabetical order, together with the names of their clients: Erich Bergler (Assistant) represented Sievers; Georg Böhm represented Poppendick; Alfred Brenner (Assistant) represented Genzken; Walter Dehner (Assistant) represented Schröder and Becker-Freyseng; Helmut Dürr (Assistant) represented Poppendick; Fritz Flemming represented Mrugowsky; Hans Fritz represented Rose; Georg Fröschmann represented Viktor Brack; Hans Gawlik represented Waldemar Hoven; Georg Gierl (Assistant) represented Gebhardt, Oberheuser and Fischer; Karl Hoffmann represented Pokorny; Kurt Kauffmann represented Rudolf Brandt; Gerhard Klinnert represented Hoven; Herbert Kraus (Assistant) represented Rostock; Hanns Marx represented Schröder and Becker-Freyseng; Rudolf Merkel represented Genzken; Otto Nelte represented Handloser; Horst Pelckmann represented Schäfer; Hans Pribilla represented Rostock; Fritz Sauter represented Blome and Ruff; Rudolf Schmidt (Assistant) repre-

sented Karl Brandt; Alfred Seidl represented Gebhardt, Oberheuser and Fischer; Hans-Günther Seraphim (Assistant) represented Pokorny; Robert Servatius represented Karl Brandt; Gustav Steinbauer represented Beiglböck; Edmund Tipp (Servatius) represented Becker-Freyseng; Bernd Vorwerk represented Romberg; Josef Weisgerber represented Sievers and Siegfried Wille represented Weltz.

¹²⁷ Servatius defended Fritz Sauckel; Nelte (Wilhelm Keitel); Sauter (Walther Funk and Schirach); Seidl (Hans Frank); Marx (Julius Streicher); Merkel specialized in the count Membership of the Gestapo and Pelckmann on the count SS; Kauffmann defended Ernst Kaltenbrunner and Herbert Kraus assisted Dix in the defense of Hjalmar Schacht.

Spokesman for Aviation Medical Research of the Chief of the Medical Service of the German Air Force; Prof. Dr. med. habil. Georg August Weltz, former Chief of the Institute for Aviation Medicine of the University of Munich; Dr. med. Konrad Schäfer, formerly physician at the Institute for Aviation Medicine of the Reich Ministry for Aviation; Dr. med. Waldemar Hoven, former Medical Superintendent of the Concentration Camp Buchenwald; Prof. Dr. med. Wilhelm Beiglböck, formerly Captain (M.C.) in the German Air Force; Dr. med. Adolf Pokorny, dermatologist; Dr. med. Herta Oberheuser, former Camp Physician in the women's concentration camp of Ravensbrück; Dr. med. Fritz Fischer, assistant physician to Gebhardt.

Immediately behind the defendants there was a door to the cell tract. The seats for the public were divided: the back rows were reserved for German spectators, and in front of these seats there were seats reserved for foreign observers and for the press and prominent observers. In the front row were the court physician and the court orderly. After 139 days, the trial ended on August 19, 1947 with the judgment. A total of 32 witnesses for the Prosecution and 53 for the Defense, including the defendants themselves, had been examined. A total of 570 affidavits, reports and documents had been introduced as evidence by the Prosecution, and 901 had been introduced by the Defense. This made a grand total of over 1,474 items of evidence which had to be considered. On the 28th of January the Prosecution had closed the hearing of evidence for the Prosecution, and on the same day the Defense began their opening speeches. By the 3rd of July the Defense had presented all their objections and evidence in rebuttal. Following this, the Prosecution and the Defense each spent one week putting forth their pleas. This last phase of the trial ended on July 19, 1947 with the personal statements of the defendants. After the Court had been in session for 139 days, on August 20, 1947 at 10 a.m., the sentences were announced.

Taylor clearly conveyed a political message in his opening speech in this, the first of the 12 subsequent trials, "The defendants in this case are charged with murders, tortures, and other atrocities committed in the name of medical science. The victims of these crimes are numbered in the hundreds of thousands. ... For the most part they are nameless dead. To the murderers, these wretched people were not individuals at all. ... They were 200 Jews in good condition, 50 Gypsies, 500 tubercular Poles, or 1,000 Russians."¹²⁸ The Court bore a great responsibility, Taylor continued, a responsibility not only towards the victims and their families, since their suffering could not be truly compensated for, but a responsibility that "these incredible events be established by clear and public proof, so that no one can ever doubt that they were fact and not fable, and that this Court ... as the voice of humanity, stamp these acts, and the ideas which engendered them, as barbarous and criminal."¹²⁹ The Court had the duty to demonstrate to all the peoples of the Earth "why and how these things happened" and this was above all a duty towards the German people. In the interests of the future of the German people, it was essential that the true grounds for their present suffering, such as their ruined cities, be made clear to them. "I do not think the German people have as yet any conception of how deeply the criminal folly that was Nazism bit into every phase of German life, or of

how utterly ravaging the consequences were. It will be our task to make these things clear."¹³⁰

Taylor conceded that there had been a connection between the aviation medicine, the battlefield surgery, the biological/chemical warfare research and the contagious diseases research, but he was of the opinion that most of the experiments had had the aim of establishing not how life can be saved, but how it can be destroyed and annihilated. Even if the destructive character of the experiments was not so obvious as it was in the case of the sterilization and poison gas experiments, the evidence for the Prosecution would still show that the driving force in all the experiments had been that of destruction. Taylor therefore introduced the term "Thanatology," following the testimony of the expert witness for the Prosecution Leo Alexander.¹³¹ What he meant with this term was the knowledge of methods with which it was possible to kill human beings rapidly and in great numbers. This thanatological knowledge, which had been gathered partly through the experiments, had then been utilized as the technology underlying the genocidal policies of the "Third Reich."

In his opening speech, Taylor considered the problem of medical ethics, which he wished to do only briefly, since he did not regard it as being one of the essential issues of the trial. The difficult question of under what conditions a physician should consider experimentation on humans to be permissible did not therefore need to be discussed with all the pros and cons. The principle that participation in experimentation should be voluntary and with informed consent was no more a concern of the trial than the question whether it was permissible to carry out experiments on those sentenced to death, since none of the victims of these experiments around whom the trial revolved could be said to have voluntarily agreed to participate, irrespective of what these people might have said, acting under duress as they were in that situation. The victims were also not condemned criminals "unless it be a crime to be a Jew, or a Pole, or a Gypsy, or a Russian prisoner-of-war."¹³² Taylor put forward the conviction that the experiments were not only criminal, but also of no scientific utility. Since for physicians and scientists with the right connections it had been relatively simple to acquire as many human experimental subjects as they wished, many experiments were not planned and carried out with the necessary scientific precision and care. A particularly scandalous example of this was the seawater experiments.¹³³

However, the trial then took a different course in many respects than might have been thought from Taylor's estimation of the state of affairs. The main grounds for this were the argumentation of the accused and their defense counsel, which concentrated again and again on the question of the place of human experimentation in medicine, and under what conditions it was or was not permissible. It must also be said that Taylor's evaluation that the experiments were on the whole scientifically worthless must be treated with due caution.¹³⁴

Taylor viewed this trial as being particularly important because, although it was not the political, military and busi-

¹²⁸ Transcripts, p. 61.

¹²⁹ Ibid.

¹³⁰ Transcripts, p. 63.

¹³¹ For more extensive information see p. 44 of this Introduction.

¹³² Transcripts, p. 116.

¹³³ For more extensive information see p. 59 f. of this Introduction.

¹³⁴ This thesis is controversial, in this connection see Fritz Hansen, *40 Jahre* (note 85). The evaluation of the aviation medical experiments began before the trial was opened (cf. note 87).

ness elite of the Nazi regime who were in the dock, the trial illuminated the thinking of the Nazi era with particular clarity. And in this he was undoubtedly correct. Since allusions to and elements of medical thought played a central role in National Socialist ideology: the whole of National Socialist population policy rested on images which had been drawn from medicine. As the most important metaphor here, I wish only to mention the image of the *Gesundung des 'Volkskörpers'* (Healing of the "Body of the Folk"), which in its practical application led to the social exclusion or even the physical extermination of those who ostensibly posed a danger to the "*Volkskörper*," however this might have been defined. In many instances the attempt was made to remove the stigma of the crime of murder by using medical terms for it.¹³⁵

Since the functions and positions, with their hierarchies and interconnections, which the accused had held within the health medical services played a relatively large role in the trial, they will be briefly presented in the following. I also wish here to refer to the biographies of the accused, since they obviously often demonstrate similar factors: apart from the study of medicine, the most frequent shared factors are participation in the First World War, often Volunteer Corps membership, early membership in the NSDAP and a very strong career orientation. Karl Brandt, the number one in the Medical Trial, had studied medicine in the 20s and from 1929 had had a post as an assistant at the "Bergmannsheil" Hospital in Bochum. In 1935 he joined the Berlin Surgical University Clinic as intern. As early as 1932 he became a member of the NSDAP and was appointed Hitler's "escort physician," after having happened to give emergency treatment to Hitler's Adjutant Wilhelm Brückner and having made a favorable impression on Hitler.¹³⁶ After this initial piece of luck, he rapidly made a career for himself. In July 1934 he transferred from the SA to the SS as a Second Lieutenant and by November 9, 1937, after a series of rapid promotions, was an SS Major on the staff of the SS Main Office. After the invasion of Poland, as a Lieutenant Colonel he was transferred to the Body Guard Division Adolf Hitler, and from mid-May 1940 for the duration of the war he was part of Hitler's staff, after having shortly before been appointed Professor. From then on Brandt worked as a special plenipotentiary in the field of the health service. After the invasion of the Soviet Union, Hitler gave Karl Brandt the task of coordinating the military and civil health service and on July 28, 1942, at the cost of the Reich Health Leader Leonardo Conti, who had increasingly been overshadowed by Brandt, the latter was appointed Plenipotentiary for Health and Medical Services.

With this decree Karl Brandt was given the authority for "special tasks and negotiations to readjust the requirements for doctors, hospitals, medical supplies, etc. between the military and the civilian sectors of the Health and Medical Services." He was to be kept informed of all basic operations in the medical service of the Armed Forces and the civilian health service, and had the right to intervene as and where he deemed fit. In September 1943 his purview was again extended. As General Commissioner for Health and Sanita-

tion directly subordinate to Hitler, he assumed responsibility for overall coordination of medical care and was given special powers for the sector of medical research: "The plenipotentiary for the Medical and Health Services ... is charged with centrally coordinating and directing the problems and activities of the entire Medical and Health Services according to instructions. In this sense the order applies also to the field of Medical Science and Research, as well as to the organizational institutions ..."¹³⁷ On the 25th of August 1944 Karl Brandt was appointed Reich Commissioner for Health and Sanitation for the duration of hostilities. "In this capacity his office ranks as highest Reich authority."¹³⁸ He also became a member of the Reich Research Council and together with Paul Rostock directed all of the medical research in the concluding phase of the NS-dictatorship. In addition he was active, in the last year of the war, as Special Plenipotentiary for Chemical Warfare. In the planning and execution of the "euthanasia" campaign Karl Brandt had from the beginning occupied a prominent position. In 1939 Hitler had appointed him, together with Philipp Bouhler, as his "Euthanasia Commissioner." The second phase of the murders in the psychiatric institutions, which was intended above all to create a reserve of capacity in hospitals to accommodate those wounded in the war in the air, was called "Action Brandt," after Karl Brandt.¹³⁹ As General or Reich Commissioner for Health and Sanitation, Karl Brandt was answerable to no-one save Hitler and was therefore the highest instance within the health services. As a result of the posts he had held, he was the number one accused and was called to account and indeed sentenced on almost all the points on the charge sheet.

The three sections of the German Armed Forces, the Army, the Air Force and the Navy, each had its own medical service. The head of the medical service of the German Army was from January 1, 1941 to September 1, 1944 the accused Siegfried Handloser. In July 1942 he was named Chief of the Medical Services of the German Armed Forces on the basis of a Führer decree. Thereby he represented "the Wehrmacht before the civilian authorities in all common medical problems arising in the various branches of the Wehrmacht, the Waffen SS and organizations and units subordinate or attached to the Wehrmacht."¹⁴⁰ He was also the highest instance for all medical-scientific questions as well as for all measures "in the field of health guidance, research, and the combating of epidemics."¹⁴¹ In this function he had control of all scientific medical institutes. Handloser could look back on a long military career. After completing his school leaving examinations in 1904, he entered the Kaiser-Wilhelm Military Academy in Berlin, and in 1910 he completed his first state examination in medicine there. From the beginning of his studies to the end of the Second

¹³⁷ Transcripts, p. 11580.

¹³⁸ Transcripts, p. 11581.

¹³⁹ In the final weeks of the war Hitler called a tribunal against Karl Brandt, because his accompanying physician and Reich Commissioner had allegedly allowed his wife and his child to be "overtaken" by the American troops who were advancing on Thuringia. He was arrested for defeatism and cowardice and sentenced to death on the 17th of April 1945. Brandt was transferred several times in the following weeks and finally ended up in Flensburg, which he was released on the orders of Speer on the 3rd of May and was arrested by the English troops together with the Dönitz Government.

¹⁴⁰ Transcripts, p. 11575.

¹⁴¹ Transcripts, p. 154.

¹³⁵ On the thesis of the "medicinalization of killing" see Robert Jay Lifton, *Ärzte im Dritten Reich* (Stuttgart, 1988).

¹³⁶ Quoted here from an unpublished paper by Hans-Walter Schmuhl "Die Patientenmorde," which contains an extensive biographical sketch of Viktor Brack and Karl Brandt. In Ebbinghaus/Dörner, *Vernichten und Heilen* (note 33), pp. 295-328.

World War he was a member of the medical services of the German Armed Forces. During the First World War he worked as a military physician behind the front lines on the Western and on the Eastern front. In 1928 he was promoted to Major and joined the Medical Inspectorate of the Army in the Reich Ministry for the Armed Forces as a consultant. After the Second World War had begun he was first posted as a military physician to the 12th and 14th Armies. In November 1940 Handloser was posted to the medical services of the Army and on February 1, 1941 he was named as the successor to Anton Waldmann as the Medical Inspector of the Army. Shortly thereafter he was made Chief Medical Officer with the General Quartermaster of the Army Supreme Command. In June 1942 he was also given the post of Chief of the Medical Services of the German Armed Forces in the Supreme Command of the Armed Forces and then promoted to Lieutenant General in the Medical Corps. Handloser was the disciplinary and the medical head of the entire Medical Services of the Army and was responsible for education and training. As of June 1942 his authority was extended to all the branches of the armed forces and to the Waffen SS, as well as to all the medical services for prisoners of war of the Armed Forces. This meant that most of those accused of committing medical crimes were under his disciplinary and medical supervision. In autumn 1944 Handloser was replaced as Medical Inspector of the Army and as Chief Medical Officer, but remained Chief of the Medical Services of the Armed Forces and had the power, within his field of responsibility, to "give orders to" the whole of the Armed Forces and the Waffen SS. In Nuremberg, Handloser, whose defense was in the hands of Otto Nelte, was both accused of and convicted on most of the counts in the indictment.¹⁴²

Prof. Dr. med. Rostock was Chief of Surgery at the University of Berlin and had numerous academic posts. In September 1939, he was called up as a Consulting Physician and in 1942 took up his post as a Consulting Surgeon to the Army Medical Service with the post of a Brigadier General. In 1943 he was additionally appointed Chief of the Office for Medical Science and Research, a newly created department, which was attached to the General Commissioner for Health and Sanitation, the accused Karl Brandt.

Following his medical studies and a long period as an intern at the Jena Surgical University Clinic, Rostock became an Assistant Medical Director at the Bergmannsheil Hospital in Bochum. Karl Brandt was, at that time, also there as an intern. In 1933 Rostock took up a post as a Medical Superintendent in Berlin and in 1941 became Full Professor and Director of the "University Surgical Clinic in Ziegelstraße," at which Karl Brandt was by then a Assistant Medical Director. In 1942 Rostock became the Dean of the Medical Faculty of the University of Berlin. His career as a military physician began in 1939 when he became a Consulting Surgeon to the Army. In 1943 he was appointed by his former Assistant Medical Director Karl Brandt to be his deputy and Plenipotentiary for Medical Science and Research. On May 1, 1937 Rostock joined the NSDAP, and he too had to answer to most of the charges on the sheet, due to his position in the medical service of the German Army.¹⁴³

¹⁴² High altitude, freezing, Lost (mustard) gas, sulfanilamide, bone regeneration, transplantation, sea water, yellow fever and typhus experiments.

¹⁴³ He was charged in connection with the malaria, Lost, sulfanilamide, regeneration and transplantation, sea water, epidemic jaundice and typhus experiments.

The high altitude experiments, the freezing experiments, and the experiments on the potability of sea water were carried out on the initiative of the German Air Force. From the outbreak of war to January 1, 1944, Erich Hippke was the Chief of the Medical Service of the German Air Force,¹⁴⁴ and thereafter he was replaced by the accused Oskar Schröder. Schröder too had already been an officer in the medical corps in the First World War. In 1935 he became a Chief of Staff in the newly created Medical Department in the Reich Ministry for Aviation. Thereafter he was an Air Fleet Physician in the German Air Force, and finally returned to the Reich Ministry for Aviation as a Chief of Staff of the Inspector of the Medical Service of the Air Force. His appointment to Chief of the Medical Service of the German Air Force, through which he became immediate superior of all the medical officers in the German Air Force, took place in January 1944. He was head of the Medical Academy of the Air Force in Berlin. On account of his leading position, Schröder was held responsible for all the experiments which were carried out in connection with aviation. Schröder, as Chief of the Medical Service of the German Air Force, had been the direct superior of several of the defendants, as he was for the accused Gerhard Rose, Professor for Hygiene and Tropical Medicine, an internationally renowned scientist and head of the Department for Tropical Medicine at the esteemed Robert Koch Institute in Berlin. At the end of 1939 Rose joined the German Air Force with the rank of 1st Lieutenant (M.C.) and was soon promoted to Brigadier General (M.C.) of the Reserve. As of 1942 he was a Consulting Hygienist and tropical medicine specialist with the Chief of the Medical Service of the German Air Force. During the war Rose concentrated on malaria research and from 1941 to 1942 he tested new malaria medications for IG Farben Leverkusen in various mental institutions. He had his own institute within the Medical Academy of the German Air Force, the Institute for Fever Therapy in Pfafferoode. As of 1943 this Institute was situated in the Pfafferoode mental institution in Mühlhausen. Rose continued the malaria experiments, which had been started at the Robert Koch Institute, there. Rose was charged in connection with the typhus and malaria experiments in Nuremberg.

Prof. Dr. med. Georg August Weltz was a radiologist and in 1935 was appointed as Docent for Aviation Medicine at the University of Munich, where he established an experimental department at the Physiological Institute. This experimental department was taken over by the German Air Force in the summer of 1941 and renamed the "Institute for Aviation Medicine." Weltz continued to direct the Institute.

Dr. med. Hermann Becker-Freyseng was a Captain in the German Air Force and Head of the Department for Aviation Medicine at the Chief of the Air Force Medical Service. In 1944 he replaced Albert Anthony as the spokesman for Aviation Medical Research at the Chief of the Air Force Medical Service.

In 1934, Dr. med. Siegfried Ruff was appointed head of the newly founded Department for Aviation Medicine of the German Experimental Institute for Aviation, which he expanded into his own institute by 1942. Ruff was charged in connection with the high altitude experiments.

The accused Dr. Hans Wolfgang Romberg was Ruff's first intern and at the end of the war was head of department

¹⁴⁴ He was listed as missing.

at the latter's institute. He, too, was called to account for the high altitude experiments.

Dr. med. Konrad Schäfer was appointed in the Medical Experimental and Instruction Division Jüterbog in 1942 and in 1944 was promoted to intern and transferred to the Institute for Aviation Medicine of the Reich Ministry for Aviation. In 1944 he participated in the planning of experiments on making sea water potable.

Prof. Dr. med. Wilhelm Beiglböck was Austrian and was from May 1941 to the end of the war 1st Lieutenant in the medical service of the German Air Force. He too was charged in connection with the sea water experiments.

The SS had various levels. The most important was the Waffen SS, a military formation which accompanied the German Armed Forces at the Front. The medical services units of the Waffen SS which were sent to the Front were subordinate to the medical service of the Army and thereby were under the command of the accused Siegfried Handloser. The head of the medical service of the Waffen SS was the accused Karl Genzken, his immediate superior was Ernst Grawitz, Reich Physician SS and Police.

Six of those accused in the Medical Trial were from the medical service of the Waffen SS: In 1940 the defendant Karl Gebhardt became a Consulting Surgeon of the Waffen SS and in August 1944 obtained the newly created post of Medical Superintendent of the hospitals of the Reich Physician SS and Police. Prof. Dr. med. Karl Gebhardt was from 1933 the head of the Hohenlychen Hospitals and had numerous posts in the SS, such as Major General in the SS and Lieutenant General of the Waffen SS, Personal Physician of the Reichsführer SS Himmler, Chief Clinician in the Staff of the Reich Physician SS and Police, and was also the President of the German Red Cross. Gebhardt was called to account because of his leading position in the SS and for numerous experiments on humans. His research interests were in reconstructive surgery. In Nuremberg he was charged in particular in connection with the sulfanilamide experiments and the experiments on the regeneration of bone, muscle tissue and nerve fiber.

His defense counsel Dr. Alfred Seidl also defended Gebhardt's assistant Fritz Fischer and the only woman amongst the accused, Dr. med. Herta Oberheuser, a dermatologist. In January 1940 she had applied on the open job market for the post of a Camp Physician at the Ravensbrück Concentration Camp. She remained in this post until 1943. Subsequently she took a post as an intern at the hospital in Hohenlychen. She was charged with participating in the surgical experiments, as was Dr. med. Fischer. Fischer had been a member of the SS since 1934 and since 1939 had been a member of the Waffen SS. He was delegated to the Hohenlychen Hospitals as a physician and Second Lieutenant of the Waffen SS.

Joachim Mrugowsky, Waldemar Hoven, and Helmut Poppendick were also members of the medical service of the Waffen SS. Mrugowsky had already joined the NSDAP in 1930, and had been a member of the Waffen SS since 1931. Since 1938 he had been a member of the staff of the medical department of the SS special service troops. In 1941 he was appointed Chief of the Hygiene Institute of the Waffen SS. As a result of this post, he had to answer to most of the charges brought in Nuremberg.

Dr. med. Waldemar Hoven was assistant to the Camp Physician from 1939 to 1941 and then himself Camp Physician and from 1942 Medical Superintendent at Buchenwald

Concentration Camp. In 1943 he was arrested on the order of the SS and Police Court in Kassel, accused of the murder of a possible disaffected witness against the Camp Commandant Koch. At Nuremberg he was charged with participation in the vaccine experiments at Buchenwald under Dr. Ding, alias Ding-Schuler, but also of participation in the so-called Action 14f13.¹⁴⁵

Dr. med. Helmut Poppendick was an internist. As early as 1935 he had busied himself with the topic of "Racial Hygiene" at the Kaiser Wilhelm Institute for Anthropology, Human Genetics and Eugenics. As of 1937 he had been working at the SS Race and Settlement Main Office and was head of the Main Medical Department there. In 1941 he was transferred from the Medical Inspection of the Army to the Reich Physician SS and there became the head of the Scientific Service. In November 1941 he was transferred to the Waffen SS and in 1943 was appointed by Grawitz, Reich Physician SS and Police, to his personal staff.

The only accused to come from the civil health service was Kurt Blome. The former Reich Health Leader Dr. Leonardo Conti had, following his arrest, taken his own life in prison in Nuremberg in 1945. Blome had been Conti's deputy since 1939. He worked in the advanced medical training, in the German Red Cross, and as Manager of the Reich Physicians' Chamber, and in 1943 had been appointed Plenipotentiary for Cancer Research in the Reich Research Council. He was charged with participation in the malaria and the Lost (mustard) gas experiments, and also with participation in the murder of tubercular Poles and the physically ill.

Adolf Pokorny was a dermatologist. He had participated in the First World War and had been an early member of the German irredentists of Bohemia. Despite this, his application to join the NSDAP had been refused, since he was married to a physician who was stigmatized as a Jew, from whom he divorced in 1935. Until the beginning of the Second World War he worked in an independent practice for Skin and Sexually Transmitted Diseases, and later became a medical officer in the German Armed Forces. In contrast to the other accused, he did not hold a higher post in either the civil or the military medical service. He was accused of participation in the involuntary sterilization experiments.

Three of the accused were not physicians: Viktor Brack, Rudolf Brandt, and Wolfram Sievers. Viktor Brack had been a member of the NSDAP since 1920 and of the SA since 1933. Since 1932 he had worked full-time for the NSDAP on the staff of Bouhler, who was at that time the Chief Business Administrator of the Party in Munich. When Bouhler was appointed Chief of Hitler's Chancellery in 1934, he took Brack with him to Berlin. As of 1936 Brack was head of the Office 2 (state and party matters) of the Chancellery of the Führer, which dealt with complaints and letters from the German populace to Hitler. In this post he was responsible as of 1939, under the pseudonym of "Jennerwein," for the organization of the institutional murders in the framework of "Action T4," which was the first phase of these killings. He was also a proponent of the mass sterilization of the European Jews and the Slavic peoples in Eastern Europe. In Nuremberg he was charged in connec-

¹⁴⁵ Physicians working as T4-experts systematically combed the concentration camps, randomly selecting inmates who were then among other things murdered in the "killing centers" of Hartheim, Bernburg, and Sonnenstein.

tion with his part in the “Euthanasia Program” and the sterilization experiments.

Dr. jur. Rudolf Brandt had also had a successful career in the SS. In 1933 he was already working on the Staff of the Reichsführer SS for administrative tasks. Since 1938 he had had the post of a personal spokesman of the Reichsführer SS and thus had power and influence. In 1943 he was also appointed Ministerial Councilor and Head of the Ministerial Office in the Reich Ministry of the Interior. In this function he worked closely with the accused Karl Brandt. Rudolf Brandt had, as personal spokesman of Himmler, close connections with the Reich Business Manager of the SS Research and Instruction Society “Ahnenerbe” Wolfram Sievers and in this capacity participated in the coordination of most of the human experiments on concentration camp inmates which formed the substance of the Nuremberg Medical Trial. He had to answer to almost all the charges.

Wolfram Sievers had first completed an apprenticeship as a book seller and then worked as a businessman in publishing. In 1935 he joined the Personal Staff of the Reichsführer SS and became Business Manager of the SS Research and Instruction Society “Ahnenerbe.” In 1942 he took charge of the newly founded Institute for Applied Military Scientific Research which had been founded within the framework of the “Ahnenerbe.” In 1943 he became the assistant head of the Managing Advisory Board of the Reich Research Council. Sievers joined the NSDAP in 1929 and the SS in 1935. Sievers coordinated, together with Himmler’s personal spokesman, Rudolf Brandt, all the research activities of the “Ahnenerbe.” He was responsible for the SS participation in the involuntary human experiments on concentration camp inmates and was involved in most of the series of experiments which were dealt with during the Nuremberg Medical Trial.

1.5 The Taking of Evidence

The counsel for the Prosecution began to present the evidence on the 10th of December 1946. Before State Attorney James McHaney presented the evidence on the first “high altitude” experimental group, he first explained how the seized documents had been collected and catalogued and their authenticity confirmed.¹⁴⁶ Then he proceeded to explain to the Court the whole of the documents in the area of high altitude experiments, which had been compiled into a single volume of evidence.¹⁴⁷ In his presentation, McHaney related this evidence to each of the accused and backed up his evidence with statements of witnesses and sometimes new, additional pieces of evidence. Though this mode of presentation is in accord with American trial procedure, it was not always wholly familiar to the German lawyers. This led to repeated problems. Part of this procedure is the close scrutiny of the other side’s evidence and above all the cross examination of witnesses: first, the witness is examined by the party which has called him, he is then cross-examined by the other party. The first party may then re-examine the witness, but only in order to clarify points of substance which

have emerged in the cross-examination. For the examination and the cross-examination there are also different rules from those with which the German lawyers were familiar. For instance in the examination of a witness leading questions are not allowed, and the German lawyers often fell foul of this rule as they were accustomed to being able to put questions such as: Did you see that XY entered the shop and stole a watch? With this sort of questioning the answer is as it were put into the witness’s mouth. In our opinion it would be correct to ask: Where were you at what time? Who did you see there? Did XY do anything? If so, what? etc.¹⁴⁸

The defense counsel also had to accustom itself to the fact that the State Attorney’s Office did not have to present all the evidence known to them – both incriminating and exonerating.¹⁴⁹ “If the American prosecutor has 999 exonerating documents and only one incriminating one, then he only submits the latter and not a single one of the other 999. The German prosecutor, however, must acknowledge objectively and submit all the incriminating and exonerating material.”¹⁵⁰

I will illustrate the process of hearing evidence using the examples of the freezing experiments and the sulfanilamide experiments, and will thereby also present the main findings.

Freezing Experiments

State Attorney McHaney began to present the evidence documents on the charge of the freezing experiments on the 11th December 1946.¹⁵¹ Karl Brandt, Siegfried Handloser, Oskar Schröder, Karl Gebhardt, Rudolf Brandt, Joachim Mrugowsky, Helmut Poppendick, Wolfram Sievers, Hermann Becker-Freyseng and Georg August Weltz were charged on this count. The evidence was excellent. Most of the documents stemmed from correspondence of the Personal Staff of the Reichsführer SS and the SS Research and Instruction Society “Ahnenerbe.” However none of those who had directly participated in the freezing experiments were there to answer charges in Nuremberg. The Kiel physiologist Ernst Holzlöhner had, as mentioned above, taken his own life after being questioned by the British FIAT interrogator Matthews; the physician Erich Finke, also from Kiel, had been listed as missing since the end of the war, and Sigmund Rascher had been shot by the SS immediately before the end of the war at Dachau Concentration Camp.¹⁵² Those who had called the experiments into being and those who as a result of their positions had been responsible for them were thus charged. McHaney explained to the Court in meticulous detail the comprehensive affidavits of the accused Rudolf Brandt and Hermann Becker-Freyseng. Rudolf Brandt gave a detailed account of who had approved the

¹⁴⁶ Transcripts, p. 126ff.

¹⁴⁷ There is a total of 19 Prosecution Document Books (PDB) of various length, plus two volumes of addenda. The Prosecution always directed the taking of evidence on the various points of the indictment with presentation of and comment on the relevant group of documents.

¹⁴⁸ This was said by Brigadier General Ingles on the occasion of a meeting of the Presidents of the Chambers of Law in Bad Pyrmont (25.9.1946). He also reported there that the Military Tribunal, despite these problems, had expected greater support from German lawyers in: StAN, Rep. 502 A, KV-Verteidigung, Handakten, Hoffmann No. 25, also printed in: Related Documents, No. 115, p. 1003.

¹⁴⁹ This circumstance should be borne in mind above all by those who use the trial materials as a historical source and are not familiar with Anglo-saxon law.

¹⁵⁰ Letter from Paul Rostock to Hermann Rein, 9.7.47. In this letter Rostock critically examined the first trial documentation of Mitscherlich and Mielke, in: StAN, Rep. 502 A, KV-Verteidigung, Handakten, Rostock Nr. 8, printed in: Related Documents, No. 291, pp. 2588-2589.

¹⁵¹ They are compiled in Prosecution Document Book No. 3.

¹⁵² Cf. Michael Kater, *Das “Ahnenerbe” der SS* (note 17), p. 243.

experiments and who had carried them out, who had been informed of them, and what the interests of the German Air Force and the SS had been in the experiments. From the statement made by Becker-Freyseng on the October 24, 1946, it was unambiguously clear that all the leading aviation physicians had known of the human experimentation in the Dachau Concentration Camp. From a relatively large number of salvaged letters between Rascher and Himmler or his personal spokesman Rudolf Brandt, between Rascher and Wolfram Sievers, and between Field Marshal Milch, the Chief of the Medical Service of the Air Force Hippke and Himmler, McHaney was able to reconstruct with relative ease who had been responsible for these human experiments apart from those charged directly with them. In addition, the complete experimental reports on the freezing experiments had been found in Himmler's archives.

The problem of human hypothermia was not wholly new to aviation medicine, but in the winter of 1940/41 it had gained a pressing new dimension: in the air war against Britain, many pilots of the German Air Force had lost their lives after they had parachuted from their damaged aircraft into the cold waters of the English Channel. A considerable number of them had died as a result of hypothermia, and the medical service of the German Air Force wanted a rapid solution to this problem to reduce losses.

The accused Weltz had already begun to work with a research group at the Institute for Aviation Medicine in Munich on the causes of death by exposure and to examine how the body temperature of those suffering from hypothermia could best be raised. In these experiments animals, especially pigs, had been used. The research goal and the research procedure in the later human experiments in the Dachau Concentration Camp did not differ in principle from these animal experiments.

At Dachau Concentration Camp experiments were carried out on humans in order to achieve results as rapidly as possible and also to achieve results which would be immediately applicable in practice, since the scientists were well aware that the results achieved in animal experiments were not immediately applicable to human subjects.¹⁵³ Access to test subjects, namely concentration camp inmates, could only be given by the Reichsführer SS. Himmler himself had a marked interest in scientific and pseudo-scientific questions, and readily got involved in all sorts of research projects, so he of course wanted to play his part in tackling this particular problem and finding the solution which had been declared so crucial to the war-effort. Not only did he offer access to an unlimited number of test subjects – the concentration camp inmates – but was also prepared to take responsibility for these human experiments. This was because, according to Himmler, it was not to be excluded that officers in the Medical Corps might have reservations as regards human experimentation, whereas the SS did not have such scruples: "I regard those people as high and national traitors who, still today, reject the experiments on humans and would

instead let sturdy German soldiers die as a result of these hypothermia methods. I shall not hesitate to report these men to the Offices concerned."¹⁵⁴

In May 1942 the Inspector of the Medical Service of the German Air Force Hippke had informed the SS Lieutenant General Wolff that the high altitude experiments in Dachau had been brought to a close and that it did not seem advisable to continue them. "However the carrying out of experiments of some other kind, in regard to perils at high seas, would be important. These have been prepared in immediate agreement with the proper offices; Major (M.C.) Weltz will be charged with the execution and Capt. (M.C.) Rascher will be made available until further orders ..."¹⁵⁵ Subsequently, the Kiel physiologists Ernst Holzlöhner and Erich Finke and Dr. Rascher were appointed to carry out the freezing experiments. All three were Officers in the Reserve of the medical service of the German Air Force and the research application was approved by the spokesman for Aviation Medical Research to the Chief of the Medical Service of the Air Force.

On December 17, 1946 Walter Neff, as a witness for the Prosecution, reported on the freezing experiments in the Dachau Concentration Camp. Neff had been an inmate of the Dachau Concentration Camp from March 1938 and according to his testimony had been assigned to Rascher on the research ward on February 22, 1942. That was the day when the high altitude experiments began in the hypobaric chamber. Neff became Rascher's right hand man. Survivors of the Dachau Concentration Camp described him after the end of the war as having been Rascher's assistant. Neff was pardoned by Himmler in September 1942 as a direct result of his assisting with the high altitude experiments. Following his pardon, he continued to work at Rascher's side as a civilian employee in the "Ahnenerbe."¹⁵⁶ Although it should be borne in mind that Neff was involved in the crimes on trial, his knowledge made him an important witness for the Prosecution.

The experiments began on August 15, 1942 and took place over four months. Neff distinguished two phases:¹⁵⁷ in the first experimental phase Holzlöhner and Finke were involved as well as Rascher, while in the second phase the experiments were carried out by Rascher alone. The concrete circumstances of the experiments he described as follows: the experimental basin was made out of wood, two meters long by two meters wide and two meters deep.¹⁵⁸ The basin was filled with water and ice was added until a water temperature of three degrees centigrade was reached. The "test subject" was laid in the basin either clothed in a flying suit or naked. It took a considerable time until "refrigeration narcosis" set in. The temperature of the subject was measured rectally or by means of a stomach probe. The reduction of the subject's body temperature to 32 degrees centigrade was extremely painful, and only after that did the "test subject" lose consciousness. Despite loss of consciousness, the subject's body temperature was further reduced to 25 degrees

¹⁵³ Holzlöhner in his report "Prophylaxis and treatment of freezing in water" at the conference organized by the Inspector of the Medical Service of the German Air Force in October 1942 in Nuremberg on "Medical Problems Arising from Distress at Sea and Winter Hardships": "Thus the question of the critical temperature of the freezing water, below which people are endangered particularly rapidly, cannot be finally answered on the basis of experiments on animals", in: Prosecution, PDB 3, Exh.-No. 93, Doc.-No. NO-401, p. 328.

¹⁵⁴ Letter from Heinrich Himmler to Sigmund Rascher, 24.10.1942, in: Prosecution, PDB 3, Exh.-No. 92, Doc.-No. 1609-PS, p. 317.

¹⁵⁵ Letter from Erhard Milch to Karl Wolff, 20.5.1942, in: Prosecution, PDB 3, Exh.-No. 62, Doc.-No. 343-a-PS, p. 250.

¹⁵⁶ In this Introduction, it is not possible to address the topic of how, in concentration camps, inmates can rapidly become perpetrators.

¹⁵⁷ In this Introduction I examine neither the second phase of the experiments (re-warming of the hypothermic prisoners with naked women from the Ravensbrück Concentration Camp) nor the experiments with dry cold.

¹⁵⁸ Transcripts, pp. 683ff.

centigrade. The hypothermic subjects were then re-warmed by a range of methods – with massage, injections of heart stimulants, with electric arc lights, an electric heating bag or bath. In his testimony the witness Neff repeatedly referred to the differences between the two experimental phases: in the first phase the test subjects had often been anesthetized, but in the second phase no anesthetic was administered since Rascher rejected it on grounds of principle. Similarly, in the first phase no “test subject” died directly in the water, although some did die during the re-warming phase if their body temperature continued to sink despite re-warming, so that they died of heart failure. Their death was, according to Neff, not intentional. In contrast, in the experiments carried out by Rascher alone, the “test subjects” had sometimes been left in the water so long that several of them had died while still in the water. Neff then described an experiment in which two Russian officers had been immersed in iced water for several hours until their death: “It was the worst experiment ever carried out.” Neff reported that the two Russian prisoners of war had been forced to strip and lie naked in the water. While normally the refrigeration narcosis set in at the latest after 60 minutes, the two Russian officers had still been conscious and able to speak after two and a half hours.¹⁵⁹ In the trial Neff did not however show any pity for the two Russian officers, but rather for himself: “And how can one imagine that we inmates also had to be witnesses of such a death, and could do nothing against it, then you can really estimate how terrible it is to be condemned to work in such an experimental station.”¹⁶⁰

According to Neff, approximately 200 to 300 inmates had to take part in these experiments. The number of experiments was, however, markedly higher, approximately 360 to 400, since some inmates were used for several experiments. Around 80 to 90 people in total died in these experiments. In the first phase, from August 15, 1942 to October 1942, around 50 to 60 inmates were used for these experiments, of whom 15 to 18 died in them.

Rascher informed Himmler regularly on the experiments. He described the experimental procedure in detail in a letter as early as September 10, 1942.¹⁶¹ The “Vps” (Versuchspersonen = test subjects, A.E.) had to get into water at a temperature between 2.5 and 12 degrees centigrade clothed in a flying suit and flying helmet. In one series of experiments the “occiput and brain stem protruded above the water, while in another series of experiments occiput (brain stem) and back of the head were submerged in water.”¹⁶² Rascher described how the body temperature was measured and what conditions led to the death of the inmates: “Fatalities occurred only when the brain stem and the back of the head were also chilled.”¹⁶³ When the body temperature dropped to 28 degrees centigrade, the “Vps” died regardless of the re-warming measures taken. The dead inmates were then dissected in order to find out more about the causes of death

by exposure. According to Rascher the experiments had already at that point rendered important and practically applicable results, namely “a warming protective device for head and occiput when designing the planned protective clothing of the foam type” had an important protective function. The flying suits and helmets therefore had to be improved in order to improve the survival chances of pilots. The second result of the experiments was that a rapid warming of rescued pilots was definitely to be preferred to a slow warming. The Inspector of the Medical Service of the German Air Force planned a conference on Medical Problems Arising from Distress at Sea and Winter Hardships for October 1942, which all experts in the medical service of the Armed Forces were to take part. Rascher asked Himmler who was to report on the experiments to the scientific community at the conference. The Business Manager of the “Ahnenerbe,” the defendant Sievers, had questioned the intention of Holzlöhner to present the results there. Sievers was of the opinion that if anyone was to present the results, it should be Rascher himself.

This shows a conflict which can be traced through the rest of the correspondence, but which I wish to examine only cursorily here. Aviation medical research lay clearly in the hands of the German Air Force, specifically the Spokesman for Aviation Medical Research of the Chief of the German Air Force Medical Service.¹⁶⁴ On the other hand, Himmler alone could grant access to the test subjects, the concentration camp inmates. Alongside Himmler, other SS physicians, for example Gebhardt or Grawitz, had their own research interests. Rascher was also following his own agenda, namely his scientific career interests, but he understood how to further these within the context of the minefield of conflicts and intrigues and succeeded in doing so for a considerable period of time. He kept Himmler and his personal spokesman, the defendant Rudolf Brandt, and the Business Manager of the “Ahnenerbe,” the defendant Sievers, informed on all research progress and thus secured considerable protection for his interests in any situation which appeared threatening to him. Rascher wanted, with the help of Himmler and Sievers, to transfer from the German Air Force to the Waffen SS. Perhaps he hoped to assume sole responsibility for further experiments in the Waffen SS.¹⁶⁵ To what extent he viewed the research carried out by Weltz and others as being in competition with his own cannot be discussed here. In any case, Rascher wished to do a habilitation with these experiments, which despite his protectors in the highest ranks of the SS proved not to be so easy.¹⁶⁶ The Chief of the German Air Force Medical Service Hippke did not want to release him, he even offered to promote him for his services. The negotiations on Rascher’s transfer to the Waffen SS continued until at least May 1943. When the decision had been made, Hippke offered Rascher further participation in experiments in cooperation with the Air Force.¹⁶⁷ Even if this is not really the appropriate place to go into this web of

¹⁵⁹ In the trial this statement by Neff led to an argument with Beiglbock, who objected that this representation of the facts could not be accurate since no-one could survive so long in water at such a low temperature.

¹⁶⁰ Transcripts, p. 688.

¹⁶¹ Letter from Rascher to Heinrich Himmler, 10.9.1942, Prosecution, PDB 3, Exh.-No. 83, Doc.-No. NO-234, p. 252 with an interim report on the experiments, in: Prosecution, PDB 3, Exh.-No. 84, Doc.-No. 1618-PS, pp. 253-254.

¹⁶² Ibid., p. 253.

¹⁶³ Ibid.

¹⁶⁴ Until December 1943 this post was held by Prof. Dr. med. Albert J. Anthony, thereafter by the accused Becker-Freyseng

¹⁶⁵ After joining the SS Rascher had to coordinate his research with Grawitz and Gebhardt, which led to tensions.

¹⁶⁶ Letter from Wolfram Sievers to Rudolf Brandt, 21.3.1944, in: Prosecution, PDB 3, Exh.-No. 121, Doc.-No. NO-290, p. 396. The topic of his habilitation runs through a series of letters which are contained in Prosecution Document Book No. 3.

¹⁶⁷ Letter from Erich Hippke to Karl Wolff, 6.3.1943, in: Prosecution, PDB 3, Exh.-No. 108, Doc.-No. NO-262, pp. 370-371.

competing interests, in which pride and power played such a decisive role, I feel I should nevertheless mention that a certain demonizing of Rascher in the trial – and which was taken over by the research¹⁶⁸ – served a single purpose: getting the German Air Force and the Air Force officers off the hook. Since at the time of the trial all of those who had directly taken part in the experiments were dead and the person of Rascher, for the widest variety of reasons, offered a convenient opportunity to point the finger at him as the actual villain, to construct him as a sadist and a twisted personality, it was possible more easily to differentiate between the principally “good” German Air Force and the “evil” SS. This view of things, that in comparison to the despicable SS-man Rascher the Air Force officers were not to be condemned as strongly, was surely not only in the interests of the defendants but also of those who were interested in the results of the German aviation medicine.

Sulfanilamide Experiments

The situation in the trial when it came to the war surgery experiments in Ravensbrück Concentration Camp was totally different. Those immediately responsible and the surgeons were present in the courtroom: Professor Karl Gebhardt and his intern Fritz Fischer. The only woman in the trial also had to answer for the same crimes as had these two men: Herta Oberheuser. The dermatologist Herta Oberheuser was from 1940 to 1943 the camp physician in the Ravensbrück women’s concentration camp and had gone to Hohenlychen as Gebhardt’s surgical intern.¹⁶⁹

On the Eastern Front the situation had worsened considerably in the winter of 1941/42. There was a dearth of surgeons fit for the front line, and Allied leaflets dropped on the German lines telling of the use of the “miracle” medicines penicillin and sulfanilamides on Allied troops had demoralized their German counterparts. In May 1942 this problem was on the agenda at the Conference “East” of the Consulting Physicians,¹⁷⁰ but no real solution could be found. A compromise was reached whereby it was said to be “desirable” that further knowledge and experience be gathered in the areas of chemotherapy and sulfanilamides. The pharmaceutical industry had also started a program to secure the new market for sulfanilamides as soon as possible. The Reich Research Council financed the appropriate preparatory studies, and the Inspectorate of the German Army Medical Service signaled the desirability of large field studies. Since in view of the military situation the pressure to come up with results grew from week to week, the readiness also grew in all instances of war surgery to curtail complicated test phases, especially the difficult step from animal model to clinical testing on humans.

Together with the fact that since the failed Blitzkrieg on the Soviet Union hundreds of thousands of German soldiers had perished as a result of wound infections, there was also a concrete occasion for the sulfanilamide experiments: the

27th of May 1942 attempt on the life of Reinhard Heydrich, Chief of the Security Police and the Security Service and Deputy Reich Protector of Bohemia and Moravia in Prague. Grenade fragments, leather particles and parts of the horse-hair stuffing of the seatback of his automobile had penetrated his chest cavity. Together with these foreign bodies, gas-gangrene bacilli and other inflammatory infectious agents had entered his body. Surgical septicemia was unavoidable. As is well known, Heydrich did not survive the effects of the attempt on his life, even Karl Gebhardt, flown in from Prague, could no longer help him. Heydrich’s death from septicemia lent added urgency to the debate which had been raging among surgeons and particularly among war-surgeons on the efficacy of the new sulfanilamides. The assassination of Heydrich gave Gebhardt the occasion he needed to demonstrate the validity of what was then current practice in septic surgery in the dawning era of penicillin and sulfanilamides,¹⁷¹ since Gebhardt, like Sauerbruch, was as a result of his clinical experience not a proponent of the new chemotherapy. He believed that it led to a postponement of an immediate surgical treatment of wounds.

The sulfanilamide experiments began in July 1942 and lasted until August 1943. In the Ravensbrück Concentration Camp, Polish resistance fighters were deliberately wounded, and the wounds then intentionally infected with bacteria and foreign bodies. Then the wounds were treated with sulfanilamide preparations, in order to test the at that time controversial chemotherapy in military medicine. Of the 74 mostly young women, 13 died as an immediate result of the experiments, 6 victims were executed so that they could not bear witness to the crimes committed against them, and the survivors suffered lifelong physical and psychological effects from the experiments conducted on them.

The victims should not be forgotten, and I would like to “confront” Gebhardt’s presentation of the sulfanilamide experiments with the words of the women who were forced to take part in them. I will also here describe a situation during the trial in which Gebhardt was first examined by his own defense attorney and was then cross-examined by State Prosecutor McHaney.

Sofia Mączka was not herself a victim of the sulfanilamide experiments, but as a doctor to the concentration camp inmates she was in close contact with them and could observe the experiments with the eyes of a physician.¹⁷² Sofia Mączka was arrested on the April 19, 1941, having spent five months in protective custody in the police cells in Krakow. On the September 13, 1941 she was deported to the women’s concentration camp at Ravensbrück.

She made her first statement in April 1946, in Stockholm.¹⁷³ She had been born in 1905 in Krakow, had studied medicine, and had been a radiologist up until her arrest. She had been arrested because she was suspected of belonging to a Polish resistance group. She wore the red triangle of a political prisoner as an inmate of Ravensbrück. From July 1942 to July 1943, Sofia Mączka worked in the camp hospital, specifically in the X-ray department. She was then transferred to the bunker, under more stringent conditions

¹⁶⁸ Cf. for example Wolfgang Benz, *Dr. med. Sigmund Rascher* (note 22), p. 195f.; or: Gerhard Baader, *Das Humanexperiment in den Konzentrationslagern. Konzeption und Durchführung*, in: Helmchen, *Versuche mit Menschen* (note 26), p. 54.

¹⁶⁹ Cf. my earlier essay on Herta Oberheuser, in: Angelika Ebbinghaus (ed.), *Opfer und Täterinnen. Frauenbiographien des Nationalsozialismus* (Nördlingen, 1987), pp. 250-273 (Fischer-Taschenbuch 1996, pp. 313-343).

¹⁷⁰ In the sources they are also sometimes referred to as “consulting clinicians.”

¹⁷¹ Since these methods of treatment were indeed controversial in medicine at that time, I argue that it is inadequate to assume that Gebhardt had chosen these experiments only for political reasons or power.

¹⁷² Affidavit by Zofia Maczka, in: Prosecution, PDB 10, Exh.-No. 232, Doc.-No. NO-861, pp. 735-743.

¹⁷³ Ibid., p. 735.

of imprisonment, because she was suspected of having smuggled information out of the camp.

Due to her training as a physician, she was able to give a detailed report of the experiments: "The operations were carried out in the period between the summer of 1942 and the summer of 1943. ... Polish political protective prisoners from the transports from Warsaw and Lublin, numbering 74, were chosen as victims. All those who were chosen were young, healthy and well-built. Many were college or university students. The youngest was 16 years of age, the oldest 48 years of [sic] age. The operations were to be carried out for scientific purposes, but they had nothing to do with science. They were carried out under horrible conditions."¹⁷⁴ All the operations were carried out on the leg, and under anesthetic: "The operations were divided into 2 main groups:

1. Operations for infecting the patient;
2. Experimental aseptic operations.

As to 1: The soft part of the calf of the legs was opened and the open wounds were infected with bacteria which were introduced into the wounds. The following were used: staphylococcus aureus, oedema malignum (clostridium oedematis maligni), gas gangrene bacillus (gasbrandbazillus) (clostridium perfringens) and tetanus. Weronika Kraska was infected with tetanus. She died after a few days. Kasimiera Kurowska was infected with gas gangrene bacillus; she died after a few days. The following were infected with oedema malignum: Aniela Lefanowicz, Zofia Kiecol, Alfreda Prus and Maria Kuśmierczuk. The first three died after a few days; Maria Kuśmierczuk got over the infection. She was lying ill for more than a year and became a cripple, but she lives and is living evidence of the experiments. Mostly pygene stimulants were employed. The wounds were stitched after the infections and serious illness began. Many of the patients were ill for months and almost all of them became cripples. Why did Prof. Gebhardt, with his education, carry out these experiments? To test the new drugs of the German pharmaceutical industry. Mostly cibazol and albucid were used. Even tetanus was treated in that way.

The results of the treatment were not checked, or if they were, it was done in such an inadequate and superficial manner, that it was of no value."¹⁷⁵

In Sofia Mączka's affidavit, the latter part was devoted to the reconstructive surgery experiments, which were described in minute detail. The names of the Polish victims of these experiments were given, together with the nature of the experiments to which they had been subjected.

The counsel for the Prosecution introduced the affidavits of seven further Polish women concentration camp survivors as evidence in the trial, namely those of Jagwida Kaminska, Zofia Sokulska, Zofia Baj, Janina Iwanska, Helena Piasecka, Zdenka Nedvedova-Nejedla¹⁷⁶ and Gustawa Winkowska. All the women had been questioned by the British Major Arthur Keith Mant, in Brussels, Paris, Lund or Stockholm, on the experiments on humans in the women's concentration camp in Ravensbrück.

When at the end of December 1946 several of the women survivors of the Ravensbrück Concentration Camp gave evi-

dence in Nuremberg on the battlefield surgery experiments, it became clear what these experiments had meant for the victims: Maria Broel-Plater, a Polish micro-biologist, gave evidence on December 19, 1946 that as her legs were shaved by medical personnel, she feared that she was to be operated on. On November 23, 1942, she was given no food, and at midday she was given an injection. She then lost consciousness. When she regained consciousness, she saw that her left leg had not been operated on, but her right leg was totally numb. "I did not notice any wound or bandage, but a few centimeters beneath the knee I noticed a small hole, as if it was after a sting given by a pin or needle. Around this hole there was something like powder. I brushed off the powder, but I didn't see anything. At night I developed a very high temperature. I had this temperature for [two] days. My leg was very swollen from the toes up to the hip. In the neighborhood of the ankle my leg was quite dark and very swollen. ... I was then taken to the operating room a second time. ... When I woke up after the operation I was again in my bed. My leg was bandaged from the toe up to the knee. The bandage was triangular in shape. My leg pained me; I felt severe pain, and blood flowed from my leg. At night we were alone, without any care. I heard only the screaming of my fellow prisoners, and I heard also that they asked for water. There was nobody to give us any water or bed pans."¹⁷⁷ The following day she had been given a number of injections and had then suffered a further bout of fever. After several days, as the dressing on her leg was changed, pus flowed from the wound. "A few days later I was taken again to the dressing room. In the dressing room was Oberhauser [sic]. I heard her voice because the blanket was put over my eyes. I felt that somebody took off my bandage. I was told to lift my leg and keep it like that. Because I felt a severe pain, I removed the blanket from my head and the first thing I saw was my leg. The leg made a horrible impression on me. It was on the flesh."¹⁷⁸ On January 15, 1943 she had to leave the hospital tract and from the end of May 1943 was forced to resume work, despite the fact that her leg was still bleeding and that she found it extremely difficult to walk. At the end of June the wound on her leg was once more surgically opened. For a whole week, blood and pus flowed from the wound. "It was not only my case, but the legs of many comrades also bled [sic]. I saw, in the wounds of me [sic] fellow prisoners, pieces of wood, glass, and even thread with a broken needle."¹⁷⁹

The expert witness for the Prosecution, Leo Alexander, demonstrated to the Court the consequences of such experiments on three further witnesses: Władysława Karolewska, Jadwiga Dzido, and Maria Kuśmierczuk. Karolewska had, like all the other Polish women, been arrested and transported to Ravensbrück because she was suspected of being a member of a Polish resistance group. She described with great precision to the Court how the victims had been selected for the experimentation and how the first experiments had begun. On the 14th of August she, together with eight further Polish "girls" had been taken to the camp hospital. She thought that she was going to be executed, because shortly before that several inmates had been shot. In the camp hospital they were put to bed, and the rooms in which they were lying were locked. When they asked what was to

¹⁷⁴ Ibid.

¹⁷⁵ Ibid., pp. 736f.

¹⁷⁶ She was a physician tending some of the women upon whom had been operated.

¹⁷⁷ Transcripts, p. 848.

¹⁷⁸ Transcripts, p. 849.

¹⁷⁹ Transcripts, p. 851.

happen to them, their questions went unanswered. A German nurse gave Karolweska an injection in her leg. She felt sick, and was taken to the operating theater. When she awoke from the anesthetic, she was on a small ward, and had excruciating pain in her leg. She lost consciousness, and only re-awoke the following morning. Then she saw that her leg was swathed in plaster from the ankle to the knee. She experienced severe pain and had a high fever, and her leg was swollen. The following day, a fluid flowed from her leg. After three days, she was taken back to the operating theater. She did not know what happened to her there, but she had the feeling that something had been excised from her leg. It was a few days later that she had the first opportunity to actually look at her leg: "The incision went so deep that I could see the bone. ... On the eighth of September I was went [sic] back to the block. I could not walk. The puss was rainin [sic] from my leg; the leg was swollen up and I could not walk."¹⁸⁰ On September 16, 1942 she was operated on a second time. For weeks she was in pain, her leg was suppurating, and she was unable to walk.

In February 1943 Władysława Karolewska was to be operated on again, together with other Polish women. The Polish women did not want to submit to this without resistance, and resolved to protest in writing to the Camp Commandant. They went, some of them on crutches, to the Camp Commandant and submitted the following letter of complaint: "We, the undersigned, Polish political prisoners, ask Herr Commander whether he knew that since the year 1942 in the camp hospital experimental operations have taken place under the name of guinea-pig ..., as explaining the meaning of those experiments. We ask whether we were operated on as a result of sentences passed on us because, as far as we know, the international law forbids the performance of operations even on political prisoners."¹⁸¹ As punishment for their resistance, they were sent to the bunker. As her cell in the bunker was opened, she believed that she had been brought there to be interrogated and beaten, said Władysława Karolewska, but there was a bed and bedclothes in the cell. The SS-physician Dr. Trommel [i.e. Dr. Richard Trommer] came and asked her if she would consent to a "little operation". "I told him that I did not agree to it because I had undergone already two operations."¹⁸² As she realized that she was to be operated on in the bunker, "I decided to defend myself to the last moment. In a moment Trommel came back with two SS men. One of these SS men told me to enter the cell. I refused to do it, so he forced me into the cell and threw me on the bed. Dr. Trommel took me by the left wrist and pulled my arm back. With his other hand he tried to gag me, putting a piece of rag into my mouth, because I shouted. The second SS man took my right hand and stretched it. Two other SS men held me by my feet. Immobilized I felt that somebody was giving me an injection. I defended myself for a long time, but then I grew weaker."¹⁸³ Władysława Karolewska was again operated upon.

The Polish women repeatedly reported to the Court how they had tried to defend themselves. With remarkable courage these young women of the Polish resistance fought their persecutors, even physically, as long as they could, even though they had no chance against the SS-personnel.

On the March 4, Karl Gebhardt sat, slumped, on the bench reserved for the defendants and listened to the words of his defense counsel, Seidl. Seidl opened his client's case by reading a large number of affidavits. The affidavits had been written by Gebhardt's medical colleagues and evaluated Gebhardt's professional work – as a physician and as a scientist – positively. Obviously the counsel for the Defense's primary concern in the face of the accusations against his client which presented him as devoid of all medical morality was to present a picture of Gebhardt that was rather more flattering: the picture of a dedicated and good physician, who not only cared for the well-being of his patients but also kept an eye on the everyday running of a clinic and the workload of his personnel. Other affidavits were intended to convey to the Court the picture of a well-respected scientist.

With a slight Bavarian accent, Gebhardt described his career: he had been a pupil of Sauerbruch, and "without any political connections" he became a "doctor who concerned himself with the social questions of a general nature."¹⁸⁴ Gebhardt presented himself as a physician who looked beyond the immediate treatment of his patients to the restoration to health of the person as a whole. His attitude to his profession he described thus: "... You can sell luxury items for high prices, because people can do without them. You can make an actress pay dearly for her luxury cosmetic operation, because she doesn't matter. However, a specialist such as I was, cannot attach economic terms to the kinds of operations upon which the poor depend."¹⁸⁵ And this was not only his attitude, but that of a large circle of the younger German physicians. Thus he had established Hohenlychen, where he had made new methods for the after treatment of accident and sports injuries available to the working young. He believed that he could honestly say of himself that he had been a friend and a physician to the poor, and he added in a bitter tone that at that time many of "our officials" had distanced themselves from him, as they were to later from the "SS-leper." He objected to the picture of him presented by the Prosecution, who had portrayed him as stupid, uneducated, and fundamentally irresponsible, since he had enjoyed a thorough training as a specialist and was convinced that his name could not forever be ignored in the annals of German surgical physiotherapy.

As he proceeded to draw a verbal picture of his former friend Heinrich Himmler, the tension in the Court became palpable. He described Himmler as neither a great man, nor a pathological one, but rather as an extremely hard-working man. He had first met Himmler when they were both young, as Gebhardt's father had been the Himmler's family doctor. It was only in 1933 that he – Gebhardt – had joined the NSDAP and had then in 1939 become Himmler's personal physician.

On the next day of the proceedings, the 5th of March 1947, the sulfanilamide experiments were dealt with, and as the defense counsel initially remarked on this charge, neither Gebhardt nor Seidl's other two clients Fischer and Oberheuser denied having carried out these experiments. To be clarified was then, in Seidl's view, whether these experiments had been necessary and the treatment with sulfanila-

¹⁸⁰ Transcripts, p. 880.

¹⁸¹ Transcripts, pp. 882f.

¹⁸² Transcripts, p. 885.

¹⁸³ Transcripts p. 886.

¹⁸⁴ Transcripts, p. 4030.

¹⁸⁵ Because the original English translation did not accurately reflect Gebhardt's linguistic or educational level, the passage has been newly translated based upon the German protocol (Compare page 3969 of the German protocols of the trial. (English Transcripts, pp. 4030f.)

mides accepted or controversial in German military medicine, and how these experiments had been reported and received at the “Conferences ‘East’ of the Consulting Physicians.” Following an extensive exposition of the conference report¹⁸⁶ the counsel for the Defense addressed the core of the State Prosecutor’s case, namely the testimony of the Polish women who had survived these experiments. The concrete presentation, however, he left to his client.

Gebhardt, taking over from his counsel, said that he intended to show how he had come to a totally different view of the events from that presented by the Prosecution. Gebhardt seems to have been particularly cut by the accusation that he had acted “with gross negligence and unscientifically” and that the experiments were devoid of any scientific value. Patently outraged, red-faced, Gebhardt accused the State Prosecution of coming to an incompetent lay evaluation of medical matters: “I should like also to ask the Tribunal to give me a chance of dealing with this all-important part of the work of German and foreign scientists in detail. The final exploitation of our work could be facilitated in as far as the haze of semi-medical ideas and wrongly applied medical expressions as well as evidence showing facts in distorted fashion can be rectified by me as an expert, so that any one reading the record years after our death would be in a position to judge the particular experiment in question, something which up to now is impossible, and I would like to suggest that it may or may not be by design that a haze is being created here, or whether it is merely because of the inefficiency of the laymen that it has happened. At any rate on this point I’m back in the same situation, something which I would like to underline, and where I found myself before, namely someone is attacking me, a layman who is saying he can pass judgment, who has no idea of the progress of an infectious disease, or what death and dying of thousands means; that I should answer the layman, not on my behalf, but on behalf of the public, and put him in his place. In other [sic] words, the fact implicates me legally, and I am well represented by myself since I am assuming responsibility for that. The incredible impression which we have received has been achieved by a minor optical trick. Without knowledge of the contents and procedure four women deeply mourned by me were brought for demonstration to this Tribunal, and of course that caused the pity of every decent spectator ...”¹⁸⁷

The four women had, as mentioned above, been introduced by the medical expert witness for the Prosecution, Leo Alexander. Gebhardt accused the expert witness of being “filled with a hate against each and every German,” to the point of “collapse.” The four Polish women, he continued, had him, Gebhardt, to thank that they could appear in Nuremberg to testify against him, because it was he who had secured permission for “60 experimental persons” to leave Ravensbrück for Sweden.

This distortion of reality is typical for the accused as a whole. It is based essentially on a mechanism for perception which views the environment, totally disregarding other people and views, and structures it exclusively from the perspective of the self. This limitation to perception must inevitably lead to distortion. It has as its prerequisite, however, a dearth of empathy with other people. This psychic

paralysis is a precondition for being able to carry out such experiments. If the pain and the suffering of the other is not even perceived, the view is focussed and restricted to the prime interest, in this case the medical experiment and its results. Other aspects of reality, that there is a person suffering, are no longer registered.

Gebhardt then in great detail described the collapse of “our front in the winter of 1941 to 1942.” It was the enormous losses on the Eastern Front – including those of the SS-elite units – which had moved the political and military leadership to take measures to combat the masses of deaths in the field hospitals with all measures necessary. The decision was unanimous – there had to be an end to the endless testing of various methods of treatment. However, it was not the case that animal experimentation had then simply been omitted, rather it had been perceived that with these infectious diseases animal experimentation was “a mistake and leads to false conclusions,” which not many knew.¹⁸⁸ Indignantly Gebhardt rejected the question as to why the sulfanilamide experiments had not been conducted in his own clinic or in field hospitals. Such a question could only be posed by lay persons, since the situation in a clinic could not be compared at all with that at the Front, and at the Front, as an American military physician was bound to know, it was impossible to create anything approaching experimental conditions.

After Gebhardt had described the final impetus for the experiments, namely the attempt on Heydrich’s life, he turned to speak of the experiments themselves. He accepted full “scientific and human” responsibility for them. However, he wished to make clear that he had not followed the dictate of the Reich Physician SS and Police, Grawitz, that the experiments be carried out under conditions such as those at the Front. The argumentation is familiar. Just as with the aviation medicine experiments it had been the dead Rascher who was held responsible for the lethal intensification, so with the war-surgery experiments it was to be Grawitz, at that point already dead, who was to have insisted on the steady worsening of the experimental conditions. To his counsel’s question as to what safety measures had been adopted to avoid fatalities, Gebhardt answered “I think that the main security measures were that after all one of the best surgeons of the Waffen SS, coming from the old school, who had only dealt with other special fields [the German text here reads: “who had only concerned himself with suppuration in addition to his own specialist interests”], was personally carrying out the clinical side of these experiments.”¹⁸⁹

To absolve his co-defendants Fischer and Oberheuser, Gebhardt said that his assistant Fischer had only acted on his instructions and that Herta Oberheuser had played an “insignificant role, hardly worth mentioning” [incorrectly rendered in the English translation as “played a noble part”]. He had chosen his best man from Hohenlychen in the interests of the test subjects, although it was for him then later particularly bitter to see the consequences this decision had had for Fischer.

Asked about the concrete conditions in the camp hospital of the Ravensbrück Concentration Camp, Gebhardt answered that they had been at least as good as those in a field hospital for German troops. The preliminary experiments had been carried out on male concentration camp inmates from

¹⁸⁶ See Defense, Gebhardt, Document Book No. 1, Doc Nos. 1-3, pp. 2859-2891.

¹⁸⁷ Transcripts, pp. 4097ff.

¹⁸⁸ Transcripts, p. 4112.

¹⁸⁹ Transcripts, pp. 4124f.

July 12 to 14, 1942, on five persons in each instance: "These instructions were quite simple. We had a clear cut order. Certain preparations, the value of which was for the work at the front, were to be checked quite from the beginning."¹⁹⁰ These preparations were called Cibazol, Eleutron and Katoxin. "And on the other hand there was a fight for wounds of a nature similar to war wounds or for infections which gave a picture similar to war wounds but which were created in quite a different manner ..."¹⁹¹ The Prosecution had accused him of inflicting additional wounds and having been so rough "as to have opened a small piece of tissue by means of a knife. ... To a surgeon there is nothing more harmless and clearer and obvious than the plainly visible wound conditions of a straight cut which will heal up afterwards given the necessary assistance."¹⁹² We see here again the distortion of reality which I mentioned earlier: the surgeon sees only the small section of the open leg on which he is to operate. The rest of the leg is shrouded, the face of the patient usually not to be seen. To see the patient or the test subject as a person, the surgeon surely has to speak to him before and after the operation.

Gebhardt then lectured the Court on medical issues in wound care as if he were in a lecture theater in a medical school and not before a court of law. Then he turned to a concrete discussion of the series of tests for which the Polish women from the resistance had been used. The experimental procedure had been essentially the same as that in the preliminary experiments,¹⁹³ although the experimental conditions had been made more "authentic." Gebhardt described this "greater authenticity," which had had serious consequences for the women, with twisted words: "So it wasn't that we inserted dirt, glass or sand cruelly, and soil particularly, which, after all, is the representative in the wound, was replaced by sterile glass, silicate – chemically speaking, soil and textiles which entered the wound were replaced by us through sterile cellulose – finely ground. You all know that if you cut yourself with a non-sterile piece of glass, inserting it into the wound, and if you do not move the spot, then that glass will heal inside without any special symptoms. The only purpose it has is to act as a catalyst for the germs and to produce obstacles for clear and easy blood penetration ..."¹⁹⁴

Gebhardt then drew the Court's attention to the allegedly good aftercare, which was the reason why only "circumscribed local abscesses" had formed. On the whole, the results of the experiments remained unsatisfying, because it had with this test procedure not been possible to obtain any decisive results on the validity of the sulfanilamide therapy. "I was attempting this below the line of abscess to not endanger any lives."¹⁹⁵ The Reich Physician SS, Grawitz, demanded a further aggravation of the experimental conditions when he came to view the experiments on September 3, 1942. Gebhardt maintained that he wanted to keep the experiments in his own hands in order to, so to speak, prevent anything worse happening. In the next series of experiments – they began in September 1942 in two groups each of 12 test subjects – the intention was to create severe local infec-

tions in wounds similar to war wounds. The techniques did not differ from those employed in the previous experiments. An incision was made on the outer side of the calf. "We injected [i.e. infected, the German text refers to "infections"] in a place where the bleeding had been reduced."¹⁹⁶ Gebhardt described to the Court how expertly the ligation to reduce the blood flow had been carried out – a routine procedure for any surgeon. According to Gebhardt no test subject had been endangered because the physicians had been fully conversant with wound infection. Unfortunately fate had burdened him with three fatalities.¹⁹⁷ No German soldier and no private patient in Hohenlychen with gaseous gangrene had been treated differently or any better. Gebhardt closed his six-hour exposition on the sulfanilamide experiments with the request that he be allowed to convince the Court of the safety of these experiments by carrying one out on himself, which the Court rejected.

On March 7, 1946, State Prosecutor McHaney began his cross-examination with the observation: "Herr Professor, you have testified very clearly and emphatically as to the efficient and careful way in which the sulfanilamide experiments were executed under your supervision. You have stated that you made a substantial contribution to scientific knowledge concerning the use of sulfanilamides through these experiments. You insisted on publicizing your experiments for what they were. ... All of this, plus your high official rank in the SS, and your knowledge of Himmler and military medical service in Germany, leads me to believe that you can, if you are willing, tell us a great deal about the experiments which are subject of this trial and perhaps other experiments on human beings. Will you do that?"¹⁹⁸ To which Gebhardt retorted: "I was perfectly aware of the dangers of my testimony and the attack which you would so clearly aim at attributing to me all the knowledge of every one of these matters."¹⁹⁹ Despite this, he wished to answer and asked the Court to believe him when he said that he did not know, that was the truth. Initially McHaney tried to find out from Gebhardt how, for example, the Air Force physicians or Gebhardt himself had happened upon concentration camp inmates as test subjects. He asked whether it had been known in military physicians' circles that Hitler and Himmler had allowed medical experiments to be carried out in the concentration camps.

Gebhardt, who tended to be long-winded and rather pedantic, offered the following explanation: "Do you think that history will ever ascertain how cautiously and how generally Hitler's wishes and instructions were expressed? On the other hand and, mind you, this is all assumption on my part – it was necessary for him only to say to Himmler 'Good Heavens, you have a wonderful way there. Why shouldn't they experience the same fate as people on the front?' That it was enough for Himmler to take up the matter." [cf. the German text: "I believe that some day history will establish how carefully and generally Hitler's wishes and orders were expressed. On the other hand, it would have sufficed, this is just a construction on my part, if he (Himmler, A.E.) had merely said to Hitler 'That's extraordinary; why shouldn't they experience the same fate as people on the front?' 'That just goes to show who has the initiative.' That would have

¹⁹⁰ Transcripts, pp. 4139f.

¹⁹¹ Transcripts, p. 4140.

¹⁹² Ibid.

¹⁹³ The preliminary experiments were carried out on male prisoners who had been brought to Ravensbrück from the Sachsenhausen Concentration Camp.

¹⁹⁴ Transcripts, p. 4150.

¹⁹⁵ Transcripts, p. 4153.

¹⁹⁶ Transcripts, p. 4155.

¹⁹⁷ Transcripts, p. 4157.

¹⁹⁸ Transcripts, p. 4283.

¹⁹⁹ Ibid.

been enough for Himmler to take up the matter.”²⁰⁰ The route to the concentration camp ran exclusively through Himmler. In concrete terms, there had been various routes: for the German Air Force there was a connection via the upper echelons, but also one through “the double figure of Rascher between Luftwaffe and SS.” In all the medical experiments on epidemic diseases the connection had been between Conti and Grawitz. The assumption presented in the trial that all connections had been organized hierarchically in relation to Karl Brandt and Siegfried Handloser was thus incorrect.

When asked whether he had, in the discussion of July 1942, demanded particular test subjects for the sulfanilamide experiments,²⁰¹ Gebhardt answered that the experiments were to have been carried out on men, on German criminals who had been condemned to death. For the State Prosecutor, the question of the status of the test subjects was central. Gebhardt, like the other accused in this trial, persistently gave the standard answer that the test subjects had been convicted criminals who had been condemned to death. Usually this was accompanied by the remark, intended as self-vindication, that the “criminals” had been able to obtain better conditions of imprisonment or a commutation of their sentences by participating in the experiments. Despite intensive questioning by McHaney, Gebhardt gave only evasive answers on this point. Question: “Well, I’m just asking you to give us a little more information about what type of criminals Nebe had under him.”²⁰² The word ‘criminal’ is someth[ing] which has to be defined a little bit. For example, we know that Jews were condemned to death as criminals for having committed sexual intercourse with an Aryan. Now, do you know whether Nebe had any of these criminals under his jurisdiction?” Answer: “In the first place I am not convinced that your statement is true – that a person was condemned to death for Rassenschande [miscegenation]. ... Personally, we never knew who and what the individual was.”²⁰³

And it should be added that Gebhardt, like the other accused, had never asked. They could have asked the concentration camp inmates, but that would have meant the establishment of a connection to the test victims, and although this would not have rendered it impossible to carry out the experiments, it would at least have made it more difficult for the people carrying them out. To the question why the experiments had not been carried out on troops, Gebhardt answered that it would have been impossible to have obtained rapid and reliable results under the conditions which obtained at the front. To the State Prosecutor’s concrete question: “You yourself were convinced that sulfanilamides were not effective in treating deep-seated wound infections. Is that right?”²⁰⁴ Gebhardt answered evasively. He had managed without sulfanilamides in Hohenlychen, even if competent authorities had found sulfanilamides indispensable. There then followed an extensive cross-examination on the experiments on the Polish women in the Ravensbrück Concentration Camp.²⁰⁵ Again and again the State Prosecutor

wanted to know from Gebhardt what the actual results of the sulfanilamide experiments had been and if they had been applied in practice. Gebhardt, who despite the new chemotherapies still accorded preference to surgical wound management, answered evasively, weighing his words carefully. He obviously wished to avoid the impression that he had carried out experiments which he actually believed to be superfluous. After a cross-examination of almost four hours, McHaney returned to the status of the inmates: “If the experiments which are the subject of the indictment here, were carried out on persons who did not volunteer, is it your opinion that the person who was responsible for the selection of the inmates committed a crime?”

A[nswer:] If it was the State, and if there was an order from the State, therefore, if it was legalized, then, no I don’t think so.”²⁰⁶

After this answer, State Prosecutor McHaney had no further questions.

1.6 Two Worlds

If one reads the scientific reports and the statements of the survivors on one and the same experimental situation, it is truly difficult to understand that the two have an identical starting point. The victims of the experiments often did not know why they were being subjected to these procedures. Neither had they been asked for their consent, nor had they been informed. Nor did they have any chance whatsoever to end the experiment if they were in pain. They were treated as nothing more than laboratory rats. It is grimly appropriate that the Polish women prisoners from the Ravensbrück concentration camp who were victims of the war surgery experiments described themselves in just such terms.

The Polish Priest Leo Michałowski was the sole survivor of the freezing experiments to testify in Nuremberg on the 21st of December 1946. He reported his recollections of the experimental situation to the Court as follows:²⁰⁷ After several days – it was October 7, 1942 – a camp inmate came to me and said that I was to report immediately to the camp hospital. I said to myself that it was bound to be an examination again, or something of that kind. I was led through the malaria ward in Block 5 of Dachau. That was where the so-called pilots experimental ward was situated, which was surrounded by a fence of wooden boards so that none could see what was behind it. I was taken in there, where there was a basin full of water and blocks of ice.

There were two tables, one or two tables, on which stood two pieces of apparatus. Alongside them was a pile of clothing. It was uniforms. In the room there were Herr Dr. Brachtel,²⁰⁸ and two officers in Air Force uniforms, but I don’t know their names. Then I was told to undress. I undressed and I was examined. The doctor said, everything was ok. After that wires were clipped to my back and a wire was fed into my anus, after they had stripped off my vest and my underpants. After that I had to put on one of the uni-

²⁰⁰ Transcripts, p. 4288.

²⁰¹ Those present at this meeting were Ernst Grawitz, Arthur Nebe, Richard Glücks and Heinrich Himmler.

²⁰² Arthur Nebe, Reich Chief of Office V (Criminal Police) of the Reich Main Security Office, SS Major General and Major General of the Police.

²⁰³ Transcripts, p. 4308.

²⁰⁴ Transcripts, p. 4309.

²⁰⁵ Transcripts, pp. 43144ff.

²⁰⁶ Transcripts, p. 4347.

²⁰⁷ The following statement is to be found in: Transcripts, pp. 938–942. Since I have not quoted word-for-word, I have not used quotation marks. However, I have only changed grammatical structure as necessary and have otherwise followed the quotation closely. I decided to do this because the Polish witness spoke good but not perfect German and I did not wish to devalue his testimony.

²⁰⁸ Rudolf Brachtel. Erroneously written as Prachtel.

forms that were lying there. Then I had to put on a pair of those long shoes lined with cat skin, a flying suit. Then a tube was placed around my neck and pumped up with air. After the wires had been pulled out and connected to the pieces of apparatus, I was thrown into the water. I suddenly felt extremely cold and began to shiver. I immediately asked the three men to pull me out because I couldn't stand it in the water any longer. But they just smiled and said it was going to take a little while longer. I sat in that water for around eight and a half hours, fully conscious. I can only estimate the length of time, because I didn't have a watch. The temperature sank slowly at the beginning of that period, but later it sank a little more rapidly. When I had been thrown into the water, my body temperature had been 37.6. I still registered it as the temperature sank first to 33 and then to 30 degrees. But I don't know if I registered everything. Every 15 or 20 minutes a little blood was taken from my ear. I was absolutely frozen in that water, my feet were as stiff as a block, my hands too, and I was panting for breath. I began to shiver uncontrollably again, and a cold sweat ran from my head. I felt as though I was dying. I asked them again to take me out of the water, because I couldn't stand it in there any longer. Then Dr. Brachtel came with a little bottle and gave me a couple of drops of liquid, that I didn't recognize from it. It tasted sort of sweet. Then I lost consciousness. How long I was lying in that water I can't say, because I was unconscious. As I regained consciousness, it was around eight or eight thirty in the evening. I was lying on a stretcher, covered by a blanket, and over me there was a stand with two lamps attached to it that were warming me. I can remember having been given something to eat, and a prisoner who took me back to the Krankenrevier and who was also Polish, and a doctor, warned me urgently that I should tell absolutely none of what had happened to me.²⁰⁹

To the State Prosecutor's question as to how long he had suffered from the consequences of this experiment, Michałowski answered that he still suffered from headaches, stabbing pains in his heart, and leg cramps. He also now had a weak heart and could no longer walk quickly for more than short distances, and sweated rather a lot. To the question whether he knew how many inmates had been subjected to experiments similar to the one he had been subjected to and how many of them had died, he could give no answer. Since the experiments had been, on grounds of secrecy, fully cut off from the rest of the camp hospital, Michałowski could only report rumors which had circulated in the camp.

After Michałowski had ended his testimony, the State Prosecutor asked if the Defense had any questions. None of the defense counsel had any questions to the witness. It is noticeable that in this examination as with the other examinations of survivors, the defense counsel almost never asked a question.

Writing this introduction, I found I had the following problem: Should I place the testimony of the victims at the center of my presentation of the Medical Trial? There were many arguments in favor of doing so. But the result would have been a fragmentary picture of what was at that time reality. If I were to use the testimony of the survivors just like any other source, evaluating it and writing about it, I would adopt a scientific perspective that would at least tend to make the surviving victims into objects once more. I therefore

decided to try to sensitize my readership to this problem of the two worlds, as I would like to call it.²¹⁰ The witnesses for the Prosecution – even if they are few – I report without comment in order to make it possible to adopt their point of view, at least partially. I now wish to compare examples from the points of view of the victims to examples of a scientific report on an experiment. In this report there is not one iota of pity. Every possible trace memory of the pain and humiliation which the physicians and scientists inflicted on their involuntary test subjects is erased in the language. The language of the experimental reports is aseptic and scientifically distanced, as if it had to help maintain the distancing which had been a prerequisite for carrying out the experiment.

The Inspector of the German Air Force Medical Service hosted a conference from October 26 to 27, 1942 in the Hotel "Deutscher Hof" in Nuremberg on "Medical Problems Arising from Distress at Sea and Winter Hardships." The conference was headed by the Captain Albert J. Anthony, spokesman for Aviation Medical Research with the Chief of the Medical Service of the Air Force. All the important aviation physicians, and also the most important physiologists such as Professor Friedrich Hermann Rein from Göttingen and Franz Büchner from Freiburg²¹¹ were there at the conference to give papers. The later accused Georg August Weltz gave a paper on "re-warming after life-endangering freezing," and Captain Ernst Holzlöhner reported on the results of the experiments carried out with Captain Erich Finke and Captain Sigmund Rascher on the concentration camp inmates at Dachau. "Prophylaxis and Treatment of Freezing in Water" was the scientifically-distanced title of his paper.²¹²

Lay persons may have no concept of what the consequences of the experiments Holzlöhner reported on had had for the test subjects, but in Nuremberg he was speaking to other experts. Holzlöhner reported to his colleagues that it had been possible to "conduct a series of investigations on human beings who were rescued after having been in cold water for a long time."²¹³ In the experiments, the rapidity with which rigor had set in had been remarkable. "It was determined that already 5 to 10 minutes after falling in, an advancing rigor of the skeletal muscles sets in, which renders the movement of the arms especially increasingly difficult. This affects respiration also: inspiration is deepened and expiration is delayed. Besides this heavy mucus secretions occur. ... The rigor is a conditional reflex and not, as many persons apparently think, a contraction of the corresponding muscles due to cold. It ceases spontaneously [sic] at death. From this it follows that persons seemingly dead who still evince a definite rigor offer hope for revival."²¹⁴ The ex-

²¹⁰ Franz Kafka's story "Ein Bericht für eine Akademie", in: Franz Kafka, *Erzählungen* (Frankfurt-on-Main, 1983), pp. 139ff., helped me to adopt varying perspectives.

²¹¹ (Friedrich) Hermann Rein and Franz Büchner argued in the Göttinger Universitätszeitung (1947, No. 14, 17/18; see also the supplement and the following correspondence from 2.11.1947, 15.11.1947, 21.11.1947 and 29.11.1947) with Alexander Mitscherlich on how far they on the grounds of their presence at the conference had known of the human experimentation and should have protested against it. Cf. Related Documents, 8.3.2., Doc. Nos. 296 and 297, pp. 2603-2620.

²¹² Report 7/43 on a scientific conference on 26th and 27th of October 1942 in Nuremberg on Medical Problems Arising from Distress at Sea and Winter Hardships, sponsored by the Inspector of the Medical Service of the Air Force, in: Prosecution, PDB 3, Exh.-No. 93, Doc.-No. NO-401, pp. 319-341.

²¹³ *Ibid.*, p. 329.

²¹⁴ *Ibid.*

²⁰⁹ The testimony of the witness Michałowski ends here, Transcripts, p. 942.

perimental procedure was presented solely from the perspective of the researcher, and the impression might be gained that it was that of a perfectly ordinary experiment in a perfectly normal research institute.²¹⁵ Nothing was really kept quiet, but things were just put in such a way that a non-expert could not have perceived by what agonies the experiments had been accompanied for their victims. Those present at the conference were, however, not lay persons but experts, and to them it was clear what particular measurement data must have meant for the “test subjects.” This form of presentation undoubtedly fulfilled the function of absolving the scientists themselves and of eradicating every recollection of the concrete experiment and any qualms of conscience they might have suffered.

The aim of the experiments – as it was laid down in a detailed, secret experimental report – consisted in clarifying the “treatment of shipwrecked persons who have been exposed for long periods of time to low water temperatures.”²¹⁶ This was related to the pharmacological as well as to the physical treatment. Since the causes of death by exposure were not known, it was not known whether persons saved from the sea should be re-warmed rapidly or slowly. Animal experimentation had not provided satisfactory answers to this question, since the results were not transferable to humans. “In the warm-blooded, one finds a varied degree of development in the heat regulating mechanism. Besides this, the processes in the skin of the pelted animals cannot be carried over to man.”²¹⁷

Holzlohner, Finke and Rascher wrote of the experiments carried out on inmates in the Dachau concentration camp: “The experimental subjects were generally dressed in equipment such as the flyer wears, consisting of underclothing, uniform, a one piece summer or winter protective suit, helmet and aviators fur-lined boots. In addition they wore a life-preserver of rubber or kapok. The effect of additional protective clothing against water-cold was tested in a special series of experiments, and in another series the cooling of the unclothed person was studied.”²¹⁸ In the appropriate scientific register, the measurements which were carried out were described. It appears as if the report writer was not wholly immune to the reality of the experiment: “In severe cooling, checking of the pulse is difficult. The pulse becomes weaker, the musculature become stiff, and shivering sets in. Auscultation during the experiment by means of a tube stethoscope fastened over the tip of the heart proved effective. The tubes were led out of the uniform and made possible the continuous listening to the heart during the stay in the water. Electrocardiographic controls were not possible in the water. After removal from the water they were possible only in those cases in which a too severe muscle shivering did not disturb the electrocardiographic records.”²¹⁹

Although Holzlohner and his colleagues gained their

data through experiments on humans, humans who suffered great pain and who begged him and his colleagues to take them out of the water, this dimension of reality was excluded in the clinical picture of the cooling in the experiments, as if this dimension had not existed. The experiments can, of course, be described without referring to the suffering of the test victims, and this restricted way of describing reality can of course be justified. The clinical picture of the cooling was dependent on the general condition of the “experimental subject,” on the position in the water – especially on whether the back of the head was immersed in or above the surface – and on the form of clothing, as Holzlohner and his colleagues wrote. Despite the medical terminology and an on the whole distanced use of language, the tortures of the experimental procedure for the victims are still sometimes discernible: “If the experimental subject were placed in the water under narcosis, one observed a certain arousing effect. The subject began to groan and made some defensive movements. In a few cases a state of excitation developed. ... There followed a progressive rigor, which developed especially strongly in the arm musculature; the arms were strongly flexed and pressed to the body. The rigor increased with the continuation of the cooling, now and then interrupted by tonic-clonic twitchings. With still more marked sinking of the body temperature it suddenly ceased. These cases ended fatally, without any successful results from resuscitation efforts.”²²⁰

In the context of the experimental report quoted, it is written that there was an acute danger of death if the body temperature fell below 30 degrees centigrade. The cause of death was, finally, heart failure. For that reason it was recommended that a person saved from the sea should be warmed as rapidly and intensively as possible. A hot bath had proved particularly effective. The foam suits which were then in development would increase the chances of survival and life jackets should be improved so that the back of the head was kept out of the water as much as possible.

The aviation physicians Holzlohner, Finke and Rascher described the reactions of the victims of their experiments as if they had been describing the reactions of insects. There are surely many reasons why they were able to switch off any trace of empathy and sympathy. Some of those reasons I would like to discuss in the following: the prisoners were to these scientists not humans whose status was equal to their own. The image of Polish, Russian, or Jewish “sub-humans,” of inferior “anti-socials” or “criminals” gave them a sort of permission to do things which their medical morality and ethics would otherwise have prevented them from doing. They viewed the “test subjects” solely with the “Pannwitzblick” of the scientist, and so were able to avoid the establishment of any kind of connection with the actual person in front of them.²²¹ Some of the accused scientists focussed exclusively on the results of the experiments, because they hoped for professional and scientific advancement through them. How they arrived at the results was immaterial to them. Others were of the opinion that in times of war such experiments were permissible, because in such an exceptional situation in which the lives of thousands of soldiers were concerned, there was no time to look for a slow solution.

The indictment covered, apart from experiments with poisons and poisoned projectiles, also the Lost (mustard)

²¹⁵ Even though I am of the opinion that the language of science at least carries with it the danger of a strategic exclusion of the experimental subject, I do not in principle wish to engage in polemic. The duty to precisely document the conditions under which the experimental results are obtained in each and every instance of human experimentation would counteract this danger.

²¹⁶ Secret report on the Experiments on Cooling on Human Beings, by Captain Prof. Dr. E. Holzlohner, Captain Dr. S. Rascher and Captain Dr. E. Finke, in: Prosecution, PDB 3, Exh.-No. 91, Doc.-No. NO-428, pp. 266-315.

²¹⁷ Ibid.

²¹⁸ Ibid., p. 269.

²¹⁹ Ibid., pp. 269f.

²²⁰ Ibid., p. 274.

²²¹ On the metaphor “Pannwitzblick” see note 7 of this contribution.

gas experiments on concentration camp inmates.²²² The accused Karl Brandt, Siegfried Handloser, Paul Rostock, Karl Gebhardt, Kurt Blome, Rudolf Brandt and Wolfram Sievers were called to account for the Lost gas experiments, and the accused Karl Genzken, Kurt Blome, Joachim Mrugowsky²²³ and Helmut Poppendick had to answer for the poison gas experiments. None of the defendants had taken part in the scientific planning of the experiments or carried them out themselves. They were the administrators in the background, who had tortured and maimed at arm's length. The accused Rudolf Brandt and Wolfram Sievers had, due to their administrative office – Brandt as the personal spokesman of Himmler and Sievers as the Business Manager of the “*Ahnenerbe*,” played a central role in the planning of the experiments.

As early as September 1939 the efficacy of a salve for Lost gas burns had been tested on inmates of the Sachsenhausen Concentration Camp.²²⁴ In order to be able to treat them with the salve, the skin areas which were to be treated first had to be cauterized with the mustard gas. The camp physician Walter Sonntag did not write in his final report of the skin being damaged prior to the application of the salve but rather referred to “areas of vaccination.”²²⁵ He accordingly referred to the inmates as “subjects vaccinated”, so that here a twisted picture of the reality of the experiments was created: most people connect the concept of “vaccination” with health protection. Instead of calling the intentional cauterization with chemical warfare agents by its name, it was instead suggested that a normal and meaningful medical activity had been carried out. This reinterpretation of reality may have helped the perpetrators to repress the fact that they had inflicted physical damage on the camp inmates. And those who made use of the results of the experiments may have found this terminology made it easier for them simply not to even pose the question of how the experimental results had been obtained.

In a report which was sent to the Reichsführer SS on the January 5, 1940, it was written that in the experiments “both arms are cauterized in order to have a relatively wide chance of coming to a conclusion, while considering comparatively [sic] few cases.”²²⁶ The Lost gas was dripped onto the skin and then allowed to dry for 30 minutes. According to a specific treatment protocol an additional infection was inflicted on various inmates, on various days. This was followed by treatment with moist dressings and two different salves. After seven to eight hours red areas of skin became visible – as they were euphemistically referred to “areas of vaccination.” After 24 hours blisters formed. The fluid in the blisters was “of a jelly-like, mucilaginous substance. As a rule the arms will be extremely swollen and the pain is extreme.”²²⁷ This is one of the very few experimental reports by scientists in which the pain which was connected with

the experiments is mentioned. The Holzmann Lost Remedy, which was tested in the Sachsenhausen Concentration Camp, was not particularly efficacious, as was laconically concluded at the end of the series of experiments.

Immediately after the occupation of Strasbourg in 1940, the Reich University of Strasbourg was opened. Research essential to the war effort was carried out in several institutes at this university. Eugen Haagen, the Director of the Institute of Hygiene, and Otto Bickenbach, Head of the Medical Polyclinic, were financially supported by the Reich Research Council for their research from 1942 to 1944.²²⁸ Both were university professors and officers of the German Air Force. The hygienist Haagen worked on the development of an new typhus vaccine, and Bickenbach continued his research on a possible protective agent against the chemical weapon phosgene. Both scientists tested their remedies on the inmates of the Natzweiler Concentration Camp.²²⁹ Bickenbach had discovered that tetramine-hexamethyl, known under the name of Urotropine, was an effective protective agent against suffocation attacks caused by phosgene. The exact mechanism of action Urotropine was studied using concentration camp inmates, on people – as Bickenbach said when he was interrogated in Strasbourg on the 3rd of May 1947 – who were “to be used as guinea pigs” and who, as he had been assured, had been “sentenced to death by virtue of regular decision of a court.”²³⁰ In his examination Bickenbach tried to exonerate himself with the usual justification that the prisoners had been condemned to die and at the same time defined their status as non-persons. They did not have the status of people, to him they were “guinea pigs.”²³¹ This withdrawal of human status seems to be an almost constant prerequisite for the way that the experimenter did not need to establish a human bond between himself and the experimental subject and could thus carry out the experiment. A further example of the way the scientific presentation of the experimental situation excluded essential aspects of the reality of the experiment and of how the scientific register served the ends of reproducing this reduction of the reality of the experiment is provided by a report on the phosgene experiments which was top secret and of which there were only two copies was sent to the Führer's General Commissioner for the Health and Sanitation, Karl Brandt.²³² In this report “Investigations on the decrease in concentration of phosgene in the chamber used and its hydrolysis under the influence of atmospheric moisture” the experimental results were presented in three graphs. Not one single word was wasted on the way that the experimental results had been obtained. In a further report Bicken-

²²² The topic of neurological chemical warfare hardly surfaced in the Medical Trial, although the accused Karl Brandt had been Special Plenipotentiary for Chemical Warfare since 1944.

²²³ In the case of Mrugowsky this charge was dropped during the course of the trial.

²²⁴ F 1001 or Holzmann's Lost Remedy.

²²⁵ Letter from Ernst Grawitz to the Personal Staff of the Reichsführer SS, in: Prosecution, PDB 13, Exh.-No. 253, Doc.-No. NO-199, p. 1041.

²²⁶ Preliminary report enclosed with a letter from Reich Physician Ernst Grawitz to the Personal Staff of the Reichsführer SS, 5.1.1940, in: Prosecution, PDB 13, Exh.-No. 254, Doc.-No. NO-198, p. 1043.

²²⁷ Ibid, p. 1045.

²²⁸ The most important post-war trial on human experimentation with chemical warfare agents took place in France. In March 1952 a French Military Tribunal in Metz tried August Hirt, Otto Bong, Eugen Haagen, Helmut Graefe, Otto Bickenbach, Helmut Rühl. This trial was politically controversial in France. There were demonstrations and protests, so that two years later an appeal was allowed, which took place in Lyon from 11–14 May, 1954.

²²⁹ BArchK, B 126/61082, 2nd Part: Military Tribunal Lyon against Haagen and Bickenbach, Indictment Metz, 1952, pp. 4f.

²³⁰ Warrant for the arrest of Otto Bickenbach, Strasbourg on May 3, 1947, here quoted according to Prosecution, PDB 18, Exh.-No. 529, Doc.-No. NO-3848, p. 1834.

²³¹ Bickenbach did not, as is usual in German, speak of “experimental rabbits,” but actually used the term “guinea pigs.”

²³² Several reports on phosgene and related experiments, addressed to Karl Brandt, General Commissioner for Health and Sanitation, 1944, in: Prosecution, PDB 19, Addendum, Exh.-No. 456, Doc.-No. NO-1852, pp. 2110-2131.

bach's assistant, Helmut Rühl, described the gas chamber in such a way that the reality of the experiment may at least be surmised: "Our test chamber has a capacity of 25 cbm. Walls, floor and ceiling are painted with an acid-proof lacquer. 2 large plate-glass windows permit observation of the test from outside. With an electric drop hammer the phials filled with liquid phosgene are smashed. A large ventilator causes a quick and equal distribution of the gas. A strong exhaust ensures a quick purification of the room."²³³

An initial series of experiments were carried out in December 1943 on around 20 prisoners, who received Urotropine either intravenously or perorally.²³⁴ Eleven experiments with various doses of phosgene gas were carried out. The victims of the experiments had to break the gas ampules themselves and had to walk up and down in the gas chamber, where they were exposed to the gas for a period of approximately 20 minutes. In this series of experiments there were no fatalities, but several inmates were left with quite serious or serious lung oedemas. The psychic trauma which was most probably inflicted on the camp inmates with these gas experiments was never taken into account at all.

Bickenbach argued that at the turn of the year in 1943/44 a gas war had been viewed as being increasingly possible, which was why Himmler, through Hirt, had approached him and had demanded renewed human experimentation. The second series of experiments in June 1944 was even more severe for the victims than the first had been.²³⁵ A group of camp inmates were given Urotropine, while a second group were exposed to the gas without having been given any protective agent. In addition, Bickenbach had increased the dosage of phosgene. Three inmates died immediately during the experiments. In the last series of experiments, which took place in August 1944, the phosgene dose was again increased.

August Hirt, Head of the Anatomical Institute of the University of Strasbourg and a member of the "*Ahnenerbe*" team, had already carried out Lost gas experiments for the German Armed Forces in 1942.²³⁶ He had developed a special kind of mustard gas treatment with Trypaflavine²³⁷ in combination with doses of vitamins. In June 1942 Wolfram Sievers had informed the personal spokesman of Himmler, Rudolf Brandt, of Hirt's Lost gas experiments.²³⁸ Hirt had informed them that he, regrettably, only had results from animal experimentation at that point. "I was not in a position to conduct the corresponding experiments on human beings, because I was forced by the beginning of the Offensive against France to return to my unit, from where I did

not return until March 1941."²³⁹ The head of the "*Ahnenerbe*" immediately responded that Himmler had shown great interest in the Lost gas experiments." We are sure to be in a position to put at your disposal for the furtherance of these experiments unique facilities in connection with special secret experiments which we are at present conducting at Dachau."²⁴⁰

In November 1942 August Hirt and his assistant Karl Wimmer began the first series of Lost gas experiments. The aim of these human experiments was to establish in how far a particular vitamin salve was effective in the healing of cauterization of the skin by Lost gas. They compiled their results into a treatment protocol for Lost gas injuries. In this "proposed treatment of poisoning caused by Lost,"²⁴¹ Hirt and Wimmer described in detail at what intervals moist dressings should be changed, when and which vitamins should be given, and what complications should be expected, such as circulatory problems or the danger of thrombosis. No aspect of this report betrayed its origins. "The effect of Lost as a poison gas is immediate and, by causing other pathological reactions within the cells and organs, it damages the entire efficiency of the individual cell as well as that of organs. The organism stands the best chance of absorbing the damage caused by Lost, if there is a large vitamin reserve in the body. In administering the vitamin treatment after Lost damage has been inflicted, care must be taken that the medications are not administered indiscriminately. The vitamin combinations (A, B complex, C) taken orally or vitamin B₁ administered intravenously in glucose suspension have proved most effective."²⁴²

Ferdinand Holl was a trusty in the Natzweiler Concentration Camp and had written an overview report on the various tests with chemical warfare agents for the Prosecution.²⁴³ For the complex of the human experimentation with chemical warfare agents he was the most important prosecution witness. Ferdinand Holl testified in Nuremberg on January 3, 1947. He had been arrested as anti-Nazi in Bordeaux on October 11, 1940 by the Gestapo and had been sent to Buchenwald Concentration Camp in mid-December 1940. Holl was a political prisoner. In October 1942 he was transported to the Natzweiler Concentration Camp, where he was forced to help build the camp. After 14 days in the stone quarry, he was given the job of a medical orderly in the camp hospital. The "*Ahnenerbe*" ward had been under his charge since then. He was the hospital trusty of this department and was present at many human experiments. Holl described the experiments to the Court in Nuremberg.²⁴⁴ Professor Hirt had selected the inmates himself. They were taken into two rooms, about 15 people per room. For approximately 14 days they received the same food as the guards. Then the experiments began. In the pathology department the first experiments were carried out in October/November 1942 with liquid gas. Around 30 inmates were

²³³ Ibid, p. 2114: "Our test chamber has a capacity of 25 cbm. Walls, floor and ceiling are painted with an acid-proof lacquer. 2 large plate-glass windows permit observation of the test from outside. With an electric drop hammer the phials filled with liquid phosgene are smashed. A large ventilator causes a quick and equal distribution of the gas. A strong exhaust ensures a quick purification of the room."

²³⁴ Cf. BArchK, B 126/61082, 2nd Part: Prozeß Militärgericht Lyon (note 229), pp. 11f.

²³⁵ Ibid.

²³⁶ In the 7th Experimental Report it says that the experiments were carried out on "40 prisoners," predominantly middle-aged people in poor physical health. Following a thorough description of the experiments, there is a table from which it is possible to derive who died as an immediate result of the experiments, in: Report from Otto Bickenbach to Karl Brandt, September 1944, in: Prosecution, PDB 19, Addendum, Exh.-No. 456, Doc.-No. NO-1852, pp. 2125ff.

²³⁷ A dye used to dye cells.

²³⁸ BArchK, B 126/61082, 2. Teil: Prozeß Militärgericht Lyon (note 229), p. 4f.

²³⁹ Letter from Wolfram Sievers to Rudolf Brandt dated 2.6.1942, enclosing a report by August Hirt, in: Prosecution, PDB 13, Exh.-No. 260, Doc.-No. NO-97, p. 1059.

²⁴⁰ Letter from Wolfram Sievers to August Hirt on the Lost experiments dated 2.4.1942, in: Prosecution, PDB 13, Exh.-No. 258, Doc.-No. NO-793, p. 1052.

²⁴¹ Report by August Hirt on Lost experiments, 1944, in: Prosecution, PDB 13, Exh.-No. 268, Doc.-No. NO-99, pp. 1074-1078.

²⁴² Ibid, p. 1074

²⁴³ Affidavit of Ferdinand Holl, 3.11.1946, in: Prosecution, PDB 13, Doc.-No. NO-590, pp. 1094-1097.

²⁴⁴ Transcripts, p. 1113.

affected by these experiments. To the question whether the inmates had taken part in the experiments voluntarily, Holl responded: "Professor Hirt before selecting these people gave them a lecture and told them that if some of them would volunteer he would speak with Himmler and see that these people would be released."²⁴⁵ Since no one volunteered, the persons to take part in the experiment were selected. In the first experiments, Professor Hirt and the German Air Force Officer "who was carrying out these experiments had the prisoners completely undressed and they came into the laboratory one after the other and then I h[ad] to hold their arms and they received ten centimeters above the lower arm and there was a drop of the fluid put upon that part of the arm. Then the people who had been treated in such a way had to go into an adjoining room. They had to stand there for one hour with their arms sprayed. After approximately ten hours ... burns began to appear and from then on they were spread over the whole body. Wherever a drop of this gas touched the body there would be burns. Even some people became partially blind. They suffered terrible pains so that they were hardly able to bear them. It was almost impossible to stay in the vicinity of these people."²⁴⁶

1.7 The Expert Witnesses

The three medical expert witnesses for the Prosecution in the Medical Trial, Consultants to the Secretary of War and the Chief of Counsel for War Crimes, were Leo Alexander, Werner Leibbrand and Andrew Conway Ivy.²⁴⁷ I intend to consider them in greater detail here not only because their various positions were very interesting but also because they had a decisive influence on the course of the trial.

Leo Alexander – who was 41 at the time of the trial – was a neurologist and psychiatrist. He had grown up in Vienna, studied there and began his time as an intern there. As of 1929 he worked as a physician, at first as a voluntary intern and from 1931 as an intern in the City and University Clinic for the Mentally and Emotionally Disturbed in Frankfurt-on-Main. In February 1933 he was granted leave of absence and, on a Rockefeller grant, took up a post as a lecturer in psychiatry and neurology at the Peiping College in Beijing, China. After the Nazis seized power, Alexander lost his post in Frankfurt-on-Main and emigrated to the USA at the end of 1933. He worked there as a resident in the Worcester State Hospital in Massachusetts, before lecturing from 1934 to 1941 in neurology at Harvard Medical School and at the same time working as a neuropathologist at the Boston City Hospital in Boston, Massachusetts. In 1941 he was appointed Associate Professor of neuropsychiatry at Duke University Medical School in Durham, North Carolina.

In 1938 Leo Alexander became an American citizen. From July 1942 to January 1946 he was a member of the US Army Medical Corps as a major, and later as a Lieutenant

Colonel of the Reserve. He worked until the end of the war as a section head for Neuropsychiatry in the 65th General Hospital, which was stationed in England as part of the 8th Air Fleet of the US Air Force. From May to September 1945 Alexander worked as a special representative of the Headquarters of the Allied Expeditionary Forces in a G-2 Post (intelligence) of the 6th Army Corps, and investigated medical research establishments on behalf of the CIOS in the Allied Zones. In summer 1945 he wrote a total of seven CIOS reports, in which he scientifically evaluated these institutions and their leading lights and in which he described their participation in the medical crimes.²⁴⁸ On the basis of Alexander's investigative work, essential facts on the murder of the mentally ill and the mentally disabled, the freezing experiments and the high altitude experiments were discovered and the interconnections elucidated. At the beginning of November 1946 the Pentagon gave him the task of working for the Prosecution in Nuremberg. In addition to advising the Prosecution on medical and ethical questions, he was also to assume the task of questioning and recording the accused for the "Interrogation Unit" – all the accused in the Medical Trial were questioned by representatives of the US State Attorney's Office after they had been arrested in Nuremberg.²⁴⁹ At the end of November 1946, a short time after his arrival in Nuremberg, Alexander interviewed all the accused for the first time. A major goal of his interrogation of them was to find out why the accused had committed the crimes of which they had been accused. He elicited biographical data, in particular on the professional socialization of the accused and their political connections. At the center of his interrogation stood, of course, the involvement of the accused in the crimes.

Since this interrogation furnished important background material for the Court and the State Attorney, I wish to present an example of one of the interrogations carried out by Alexander, that of the accused Karl Genzken.²⁵⁰ Karl Genzken, born in 1885, studied medicine in Marburg, achieved his doctorate in medicine in 1912, and before the First World War had already joined the Naval Medical Service, of which he remained a member for the duration of hostilities. From 1919 to 1934 he practiced in Preetz, Holstein. In 1934 Genzken returned to active service as a Reserve Officer of the Naval Medical Service. Thereafter he switched to the post of a Colonel in the SS-Operational Main Office and was promoted to the post of physician in chief of the SS-Hospital in Berlin, and in 1942 to the post of Chief of the Medical Office of the Waffen SS. Genzken had joined the NSDAP as early as 1926 and in 1933 joined the SS. He rose to the rank of Major General in both the SS and the Waffen SS. Due to his leading position as a physician Genzken was involved in a whole series of the medical experiments carried out on humans without their consent. In Nuremberg he had to answer to charges in connection with the sulfanilamide, the typhus, the poison and incendiary bomb experiments and was found guilty on the first two charges brought against him.

Alexander first interrogated Genzken on November 30, 1946 in the presence of the latter's legal counsel.²⁵¹ After he

²⁴⁵ Transcripts, p. 1114.

²⁴⁶ Transcripts, pp. 1114f.

²⁴⁷ On the reports and publications by Leo Alexander, Andrew C. Ivy and Werner Leibbrand see the bibliography in this volume. See also: Related Documents: Notes and reports by von Leo Alexander 8.1.1.1 and 8.2.1.1; by Andrew C. Ivy 8.1.1.2 and 8.2.1.2; by Werner Leibbrand 8.2.1.3. Ulf Schmidt is planning a biography of Leo Alexander (note 31). Ralf Seidel is planning an essay on Werner Leibbrand for Ebbinghaus/Dörner, *Vernichten und Heilen* (note 33). I am grateful to these two authors for important references.

²⁴⁸ See Related Documents, 8.1.1.1 as well as references to publications on Alexander in this volume.

²⁴⁹ Cf. note 75.

²⁵⁰ StaN, Rep. 502 A, KV-Anklage, Interrogations, G 28 (Genzken).

²⁵¹ Ibid., Examination of Dr. Karl Genzken by Dr. Alexander (in the presence of counsel for the Defense Dr. Merkel) on 30th November 1946. All following quotations *ibid.*

had asked him about the various positions he had held, Alexander asked what Genzken's role had been in organizing the human experimentation. Genzken replied that he had not played any particular role, since after an argument with SS-Lieutenant General Hans Jüttner in 1941 it had been determined that all scientific research and planning for the medical service as a whole should be concentrated in the hands of the Reich Physician SS.²⁵² He personally had only been responsible for the care of the troops. To the question of to what extent knowledge gained from the human experimentation had been applied to the care of the troops, he had no answer. He had, of course, known that in Buchenwald there was an institute for research on and the production of typhus-serum, and that experiments had been carried out on inmates there, said Genzken, but he had never personally been there. He had found out from a hygienist that following the experiments, 40,000 doses of typhus vaccine had been available monthly and that the vaccine developed by the SS had been particularly effective. He had only read of the freezing experiments in the newspaper, when he was already in custody in Neuengamme. He had also never seen an instruction sheet on the treatment of soldiers suffering from freezing. When asked if he had further knowledge of other experiments, Genzken answered that he had been informed of the sulfanilamide experiments. Up to the outbreak of war he had been in charge of medical matters in the concentration camps. Then this responsibility had been transferred to Enno Lolling. He considered it normal that experiments had been carried out in the concentration camps, since in any medical institution research and experimentation were undertaken. The English had also undertaken experiments in Neuengamme. Genzken was in charge of the physicians of the Waffen SS if they were stationed at the Front, in active units, or in field hospitals.

On the 7th of December Alexander continued his interrogation.²⁵³ The proceedings in the Medical Trial had already been opened. In this interrogation, the focus was on Genzken's professional career and the question why he had joined the Waffen SS. In November 1919 he had been demobilized from the Navy and had had to find a new career, Genzken explained. He had set up a practice near Kiel as a physician and had become well-established, but he had suffered from intestinal growths and had suffered first from constant colic and subsequently from chronic gallbladder problems. This had moved him to give up his practice in 1934 and to return to active service in the Naval Medical Service. As he wished to return to his former post as a military physician, but there was no post available in the Navy, he had joined the Waffen SS in 1936. Genzken informed Alexander that he had sustained injuries to the head on three separate occasions, none in battle, and that he suffered from neurological blackouts as a result.

On January 23, 1947 the third interrogation followed.²⁵⁴ Alexander questioned Genzken on his family, his childhood and his schooldays. Genzken had grown up in a middle-class family, his father, a pastor, had demanded respect but had not resorted to physical punishment. As a child he had

kept animals, which he had cared for. He had attended a humanistic gymnasium and had gone on to study at university, which had been a matter of course for he and his family. Money had never played a role for him, since there had always been enough money in his family. He had played several sports, and had also played the violin and cello. He had not had any serious illnesses, and even after 1945 he had not been treated unfairly but had rather "regarded it all as a tragedy" that he had been deprived of his freedom for the past two years.

Asked his view on the Medical Trial as a whole, he responded that "I could not comprehend the main charge of conspiracy, since it did not accord with the facts. Apart from that, I am surprised by the sheer weight of the prosecution case, since I have not known any of it."²⁵⁵ Alexander then turned to the topic of the human experimentation. According to Genzken, he had already addressed this problem in his preliminary interrogation and had explained that "if the use of human subjects should be deemed scientifically necessary according to the usual medical principles, this use of human subjects must be justified by the goals and results of such a scientific experiment, and that the assessment of whether such an experiment is indeed necessary should not be left up to lay persons but should be undertaken by a panel of experts."²⁵⁶ In response to a further question from Alexander, Genzken confirmed that he regarded it as justifiable that a small number of people die to save a larger number. This principle had however obviously been violated in view of the high number of victims during the NS period. To what extent the experiments on humans had been justified in individual cases, Genzken said he could not judge and that that should be left to the experts. However, often, according to Genzken, it was not the experts who had made this decision, but Hitler and Himmler. This had led to a dilatory approach. In conclusion, Alexander asked Genzken what he thought of Jews, Poles, and Roma. This question was intended to discover if and if so what racist prejudices Genzken might harbor. Although Genzken did his best not to show any immediately recognizable racist stereotyping in his answers, his prejudices nevertheless shimmer through in many of his answers.²⁵⁷

What was the quintessence of this interrogation, which above all had tried to get to the bottom of why Genzken had done what he had? Genzken's biography was that of a normal German man of the middle-class in the first half of the twentieth century. He had had a sheltered upbringing and as a young adult had been able to choose from a range of activities. The decisive point had come for him, as for so many of his class and generation, with the First World War. Genzken was a loyal and devoted officer in the Naval Medical Service. His subsequent profession as a practicing physician was an emergency solution, as he had to build a new career for himself following the defeat in the First World War. As early as 1926 he had joined the NSDAP and in 1933 he joined the SS, which was an indication of his political convictions. Like many of others who followed a similar path, he was nationalist, anti-Semitic and right-wing. He joined the Waffen SS in the hope that this would

²⁵² Ernst Grawitz, Reich Physician SS and Police, committed suicide on 24th April 1945.

²⁵³ Examination of Dr. Karl Genzken by Dr. Alexander on 7th December 1946, in: *StAN*, Rep. 502 A, KV-Anklage, Interrogations, G 28 (Genzken).

²⁵⁴ Examination of Dr. Karl Genzken by Dr. Alexander on 23rd January 1947, in: *Ibid*.

²⁵⁵ *Ibid.*, p. 14.

²⁵⁶ *Ibid.*, p. 15.

²⁵⁷ An example: "Question: What do you think of Poles and gypsies? Answer: I only know them from seeing them on the road, and as a child one was always warned not to have anything to do with them because of their thieving; ... not Poles," in: *Ibid.*, p. 21.

enable him to continue the career in the Medical Services which he had begun in the Navy. The above outline of Genzken's interrogation and the details that emerged on his life, career and convictions illustrate the psychiatrist and expert witness Alexander's approach to his task.

Alexander made his first appearance before the Court as an expert medical witness for the Prosecution on December 20, 1946. After he had explained in detail his personal and professional background, he demonstrated to the Court the effects of the sulfanilamide and reconstructive surgery experiments on the Polish women victims, effects from which they were still suffering. Three Polish women who had survived the experiments appeared in person as witnesses before the Court: Maria Broel-Plater, Władysława Karolewska and Jagwida Dzido. The witnesses testified on their origins, their imprisonment in Poland, their transport to the Ravensbrück Concentration Camp, and the medical experiments which had been carried out on them against their will. With the aid of X-rays Alexander, who had carried out an extensive medical examination of the witnesses beforehand, explained the damage to their health and the disabilities resulting from these experiments to the Court. He asked Maria Broel-Plater to remove her shoes and stockings and demonstrated to the Court the scars on her lower shin and the total lack of sensation in the whole leg. The disfigured legs of the Polish women were an impressive testimony to what they had suffered.

Alexander dealt with the knowledge he had gained from his investigations and from his questioning of the defendants, as well as from his participation in the trial as an expert witness, in several essays.²⁵⁸ At the center of his considerations was the problem of the war crimes and the question how they ever could have been perpetrated. In this context, Alexander developed his theory of thanatology. The medical services under the NS regime were characterized by a rapid loss of ethical values. The first qualitative caesura in this process was the murder of the chronically ill. The exclusion from society of socially, racially, or ideologically undesirable persons followed, the final consequence of which could be their physical annihilation. The casual exploitation of "human material for experimentation" in the concentration camps did not take place in Alexander's opinion to elucidate valid medical questions. The research carried out by the NS physicians had, rather, in most instances had as its goal the destruction of life. Alexander thus termed this science of killing "thanatology." To this he reckoned all the methods of mass extermination and the sterilization experiments. All of the poison experiments, which had had as their aim to discover how it was possible to kill people, were also a part of thanatology for Alexander. He described the fact that Jewish concentration camp inmates had been killed solely to enable Hirt to establish a collection of skeletons in these same terms. Alexander also counted the seawater experiments and the sulfanilamide experiments to thanatology. Since in his view Gebhardt had only carried on the sulfanilamide experiments to clear himself of the suspicion that he had treated Heydrich wrongly. He himself had never believed in the superiority of the sulfanilamide treatment.

Alexander made the following entry in his diary on December 3, 1946, immediately prior to the opening of the Medical Trial. "Many of these so-called experiments are frankly and openly devoted to the methods of destroying, or

preventing life, namely to 'euthanasia' and extermination methods, and to methods of sterilization. But this preoccupation with methods of producing death runs also through many of the other investigations as a red thread, irrespective of the ostensible other purposes of the experiments. The frightful body of new methods of killing – the new lethal injections, the new gases, the poison bullets constitute a formidable body of new and dangerous knowledge, useful to criminals everywhere, and to a criminal state if another one is permitted to establish itself again."²⁵⁹ In Alexander's view, National Socialism had constituted a new branch of science, a true perversion of medicine, which warranted a new name: because this thanatological science set up the means by which genocide could be carried out, and the politics of annihilation espoused by the "Third Reich" would not have been possible without the active support of the medical scientists.²⁶⁰ In his Opening Statement, Telford Taylor largely adopted Alexander's view.

Werner Leibbrand was, like Alexander, a neurologist and a psychiatrist, although nine years his senior. He had completed a humanistic education at a gymnasium in Berlin and then began his medical studies, which he finished in 1919 in Berlin with the State Medical Examination. In 1920 he did his doctorate at the Institute for Cancer Research there, and in 1921 he gained his Medical License. During the following years he worked in several Berlin psychiatric hospitals as an intern or an assistant medical director. In 1927 Leibbrand opened a neurological practice in Berlin-Charlottenburg, and at the same time he took over as the head of Social Psychiatric Welfare Office in the Berlin Health Department of the Tiergarten district, and was active in the Association for Medical Psychology and Psychotherapy and in the Association of Socialist Physicians as well as in the German Section of the League for Human Rights.

In 1933 the socialist Leibbrand, who since 1932 had been married to a partner who had been stigmatized by the National Socialists as a Jew, lost his status as a panel doctor and also lost his post in the public health authorities. He could then only practice medicine privately and applied himself increasingly to the history of medicine. In the summer of 1943, within the framework of "Action Conti", he was conscripted to serve as an intern in the Psychiatric Clinic of the Nuremberg Hospitals, and thus forced to leave Berlin, together with his wife. He spent the last months of the war living illegally in Franconia with his wife, on the run from the Gestapo.

After the Liberation, Leibbrand became the Director of the Mental Institution in Erlangen. In his unpublished autobiography, he described how he came to be appointed as a medical expert in the Medical Trial.²⁶¹ One day an American investigating officer turned up and asked him if he could be of assistance in compiling material on the accused and on the NS-health system. He agreed to do so and applied himself to the task of sifting through the numerous journals and Nazi-literature on the subject.

On January 21, 1947 Leibbrand appeared before the Court as a medical expert for the Prosecution. Like all witnesses, he was first examined as to his person and profes-

²⁵⁸ See the bibliography on Alexander in this volume.

²⁵⁹ Related Documents, No. 61, p. 566. See Ulf Schmidt, *Lebensläufe. Biographien und Motive der Angeklagten aus der Perspektive des medizinischen Sachverständigen*, Dr. Leo Alexander, in Ebbinghaus/Dörner, *Vernichten und Heilen* (note 33), pp.374-404.

²⁶⁰ *Ibid.*

²⁶¹ Ralf Seidel told me about this, for which I thank him.

sional curriculum vitae. Public Prosecutor Hardy asked him to tell the Court about "the German Medical Organization prior to 1933 relative to the German Medical Association, the Hartmann Bund, professional ethics and malpractice procedure, certification and licensing [sic] of physicians, medical education and then the effect of the Nazi government on the Medical Association prior to 1933."²⁶² This Leibbrand did, in great detail, interrupted intermittently by further questions and requests to make a particular point more concrete. In his autobiography he described the situation thus "on the 21st of January I began my historic presentation in foro. ... I was not allowed to use any notes and had several hours at my disposal in which to present my case uninterrupted. ... In the second half of the afternoon the mob of the counsel for the Prosecution was let loose on me. That was known as cross-examination."²⁶³

The counsel did in fact press Leibbrand and he was not always able to answer their questions or to equal their rhetorical skills. Just how uncomfortable he must have felt is evident in his brief description of the Medical Trial. That may also be the reason why there are no written comments on the Medical Trial from Leibbrand, although he otherwise published a lot.

Leibbrand saw a qualitative break in the health service, since after 1933 a doctor was no longer obliged to care for the health of the individual, but became a "biologicistic civil servant" who was to put the putative welfare of the "nation community" [Volksgemeinschaft] above that of the individual. Robert Servatius, defense counsel for Karl Brandt, asked him what he understood to be biologicistic thinking, and Leibbrand responded "under biological thinking, I understand the attitude of a physician who does not take the subject into consideration at all, but for whom the patient has become a mere object so that the human relation no longer exists if a man becomes a mere object like a mail package."²⁶⁴ Leibbrand characterized the NS-State as being "demonically obsessed with order," in which all actions by physicians were subordinated to the maxim of the preservation of the purity of the bloodline of the race, whose consequence was that everything which lay outside this fiction had to be "(done) away with." And this was the trigger for what then happened, namely, exclusion to the point of physical annihilation.

Leibbrand adopted the most clear and restrictive position of all the medical experts with regard to the issue of human experimentation. He referred thereby to the Berlin psychiatrist Albert Moll who, in his 1902 book on medical ethics, had insistently warned against experiments on humans without the express consent of the subjects, and had urged medical scientists before embarking on such experiments to first consider that "every person confronted with such a theoretical possibility should consider whether he would subject his own relatives and members of his family in such a manner."²⁶⁵ Cross-examined by Servatius, Leibbrand took the position that there could be no freely given consent in the case of those who were in a position such that they could not exercise free choice – for example in the case of those in custody. Even when Servatius cited the example so often

adduced in the Medical Trial, that of the 800 inmates of an Atlanta prison who had voluntarily agreed to allow themselves to be infected with malaria, Leibbrand repeated his view and emphasized that a malaria infection, with which he as a psychiatrist was well familiar, was a very serious illness with a high risk to health. The defense counsel for Kurt Blome, Fritz Sauter, tried to shake Leibbrand's stand by demonstrating that he had made several errors in his presentation of the structure and development of the NS-health service.²⁶⁶

Leibbrand clearly rejected "euthanasia" as being a "meta-physical lowering of standards"²⁶⁷ if life itself is to be seen as the point of living. It was a bad joke that one of the defendants, namely Mrugowsky, had even written a book on medical ethics and had referred to Christian Wilhelm Hufeland, the authority on questions of medical ethics in the nineteenth century, in justification of his own position.²⁶⁸ Mrugowsky's counsel, Fritz Flemming also tried to put pressure on Leibbrand. He suggested that as Leibbrand himself was not a scientist working empirically, he was not actually in a position to assess some of the experiments. There were in fact, suggested Flemming, medical experiments which could not be carried out on animals, for example those with scarlet fever vaccines and with malaria prophylaxis. Malaria experiments could also not be carried out on animals, since the illness did not transmit to the animal and the pathogen could not be cultured in the test tube. Therefore in all developed countries experiments within the framework of therapeutic malaria infection were carried out on humans, predominantly on the mentally ill, but also on prison inmates. In the fight against sexually transmitted diseases, human experimentation was also at the fore. Flemming, obviously well-briefed by his client, presented further examples of experiments which were only possible on humans. Again Leibbrand's argumentation followed Moll as he asserted that the physician should act according to the basic principles of morality and should curb his drive to research at all costs, adhering to the basis of the physician's code of behavior as expressed in the Hippocratic Oath.

The third medical expert witness Andrew Conway Ivy, appeared relatively late in the proceedings, namely on June 12, 1947, which was met by considerable resistance on the part of the defense counsel. Ivy was, in contrast to the two other expert witnesses, a physician trained in the natural sciences and applying this knowledge in his medical work, and he was also a well-known and well-respected scientist in the USA. He had taught physiology for several years at the University of Chicago and was then a physician at Northwestern University. During the Second World War, Ivy was a consultant to the General Quarter Master of the US Armed Forces, and the US Navy, and to the Surgeon General of the US Army. In addition, in the post of Director he developed the Naval Medical Research Institute in 1942 and 1943. He personally carried out research on rendering seawater potable and on the physiological problems which could arise in high altitude flight, and was also substantially involved in the introduction of pressurized oxygen masks for US pilots. At the time he was working as a medical expert on the Medical Trials, Ivy was Professor of Medicine and Physiology at and also the Vice President of the Uni-

²⁶² Transcripts, p. 2036.

²⁶³ Quoted from the unpublished biography (note 261), which we were, however, only able to use in the form of short passages relating to the Medical Trial.

²⁶⁴ Transcripts, p. 2066.

²⁶⁵ Transcripts, p. 2060.

²⁶⁶ Transcripts, pp. 2071ff.

²⁶⁷ Transcripts, p. 2084.

²⁶⁸ Transcripts, p. 2063.

versity of Illinois. He was nevertheless still occupied with the problems of physiological and clinical diagnostics as well as with submarine and aviation medicine. In Ivy, the Prosecution had an expert witness who was the equal of the defendants in knowledge and expertise in the field of aviation medicine. The complicated medical matters at issue in the trial frequently posed difficulties for all those participating in the trial, with the exception of the scientists in the dock. For the Court and for the Prosecution but also for the Defense, it was not always easy to come to grips with this frequently very complicated material.

Ivy's examination also began with questions on his personal and professional biography. Following this he was questioned by Prosecutor Hardy on his knowledge in the field of aviation medicine, which he answered with reference to his extensive research and his numerous publications. He had investigated the effects of high altitude on humans, in particular the occurrence of difficulties in breathing and pain in the joints, explained Ivy. These experiments had been carried out with the aim of better being able to rescue pilots at high altitudes. It had been investigated how long humans were able to think and write at high altitude without the administration of oxygen, and how long it took to lose consciousness in those conditions.²⁶⁹ The two difficult factors for pilots in jumping from aircraft at great heights resulted from the outside temperature, the cold, and the danger of losing consciousness. Through the detailed questioning of Ivy, it became clear to all those in the Court that they had a leading authority in US American aviation medicine before them.

Before Ivy turned to a concrete consideration of the charge against the defendants in connection with the high altitude experiments, counsel for the Defense Alfred Seidl objected, as Ivy had only been named as an expert on the seawater experiments but his examination was now to be extended to the high altitude experiments. This was compounded by Ivy's late appearance in the proceedings as a whole. The Prosecution had already introduced its expert witness, namely Professor Leibbrand, and was now introducing a further expert witness, after the Defense had already presented all its arguments and evidence. The Prosecution was thereby, in a way, rolling the whole trial out again from the beginning. Public Prosecutor Hardy then asked the Court to inform the Defense about the possibilities of presenting evidence in rebuttal, since Ivy had been introduced out of the foreseen order as a rebuttal witness.²⁷⁰ Here as in other situations that arose in the course of the trial, it became clear that because the lawyers were not fully conversant with all aspects of the American legal process, repeated misunderstandings occurred.

Following Seidl, the lawyer Fritz Sauter, who was acting for the two defendants Ruff and Romberg,²⁷¹ stressed that the Defense had very early demanded that in view of the

very difficult content to be dealt with in the trial, they be allowed to call upon independent expert witnesses, which the Court had, however, refused. And now, almost at the end of the trial, the Prosecution had called the expert witness Ivy to the stand. In addition, there was also no time available for the Defense to now prepare, so he was duly making the application that Ivy not be heard in the matter of Ruff and Romberg. The application was rejected by the Court.²⁷² Sauter did not feel himself to be in a position to cross-examine Ivy due to the complexity of the material and the lack of time to prepare, and he therefore applied to the Court for Ruff and Romberg to be allowed to do this on their own behalf. The Prosecution objected, but the court consented on the grounds of the special situation. First, Ivy was examined in exhaustive detail on the high altitude experiments by Public Prosecutor Hardy. Ivy, who had a precise knowledge of the documents brought in evidence,²⁷³ answered the question as to whether the high altitude experiments carried out in Dachau had been necessary from a scientific point of view:²⁷⁴ not really, since it was known at what altitudes the air still contained sufficient oxygen to provide the blood with the necessary oxygen. "With that knowledge one can determine the amount of oxygen in the air that has to be put in a bail-out bottle in order to preserve consciousness from one high altitude to a lower safe altitude."²⁷⁵

Counsel for the Defense Fritz Sauter, obviously well-briefed by his client Ruff, tried to shake Ivy's credibility as a witness. With his questions he wished to make it clear to the Court that in the USA the same experiments had been carried out as in Germany. Thus he wished to know from Ivy if he had, in his aviation medicine experiments used conscientious objectors as subjects and if it was not in fact normal practice to use prison inmates in medical experiments in the USA. Ivy answered both questions in the affirmative. In this cross-examination it emerged that Ivy had had the chair of a committee in Illinois that had had to set the guidelines under which prison inmates could take part in medical experiments. The concrete occasion for this had been the planning of malaria experiments on prisoners and the question of how much the prisoners' sentences should be reduced if they participated "voluntarily" in the experiments. The reduction of the sentence could not in Ivy's view be too great or it would no longer be possible to speak of a voluntary decision to participate on the part of the prisoners.²⁷⁶

Following Sauter, Ruff took over the cross-examination of Ivy. Ruff, as a result of his work in the Heidelberg Aero Medical Center, was well-informed about aviation medical research and practice in the USA, and he asked Ivy how many and what sort of fatalities he knew of in American aviation medicine in the 1940s.²⁷⁷ Ruff pointed out to Ivy that he himself knew of at least six fatalities in the context of high altitude experiments. The goal of this line of questioning was to demonstrate to the Court the parallels between German and US American aviation medical research. In so doing he wished to call into question Ivy's statement that the high altitude experiments carried out in Dachau had been scientifically completely superfluous, which he suc-

²⁶⁹ Transcripts, pp. 9199ff.

²⁷⁰ The Presiding Judge, Sebring, explained court procedure to the defense counsel. The Prosecution and the Defense submit their evidence, and the Prosecution can then call a witness to explain everything which has been presented up to that point. However no new evidence is admissible. The witness is called out of order, but he is a witness for the Prosecution and is not usually called upon before the case of the defendant has been concluded. The accused is not in any way disadvantaged by this, since the witnesses may be cross-examined.

²⁷¹ Romberg's defense counsel was, in fact, Bernd Vorwerk. But since he could not be present, Fritz Sauter took temporary charge of Romberg's defense.

²⁷² Transcripts, p. 9620.

²⁷³ On the Prosecution's evidence on the charge of the high altitude experiments, see: 3.1.2., PDB 2, pp. 122-231.

²⁷⁴ Transcripts, p. 9247.

²⁷⁵ Transcripts, pp. 9248f.

²⁷⁶ Transcripts, p. 9377.

²⁷⁷ Transcripts, pp. 9347ff.

ceeded in doing. Ruff appeared to be so certain in his argumentation that he went onto the offensive and defended the scientific value of the high altitude experiments carried out in Dachau: "I don't know whether you know that in 1945 and 1946, together with my co-defendant Becker-Freyseng, I worked for one year on this decompression sickness."²⁷⁸ ... Now, professor, we have examined these reports of Rascher carefully, not only for this trial but also we worked on them for on the scientific point of view ... and it seemed to us that in this experiment ... Rascher perhaps made a discovery, the significance of which he did not realize, but it seems to me to be quite important and now we have a request of you: When you go back to the United States, test this thing again in an animal experiment and see to it that the superstition of breathing pure oxygen is removed if Rascher's findings are justified. In the German Luftwaffe, by a fortunate coincidence, from the beginning of our investigations on decompression sickness for fighter planes, from the time when those mobile low pressure chambers were put into use in 1941 we set the time for the stay at 12 kilometers at 10 minutes. If you in the United States make the time 10 to 20 minutes, I believe you will not have any more deaths which, as you said yesterday and the day before, you considered a matter of Fate."²⁷⁹ This statement by Ruff demonstrates clearly that the high altitude experiments carried out in Dachau had been followed closely by the Heidelberg Aero Medical Center, while the War Crimes Commissions were at the same time investigating these experiments.²⁸⁰ The problematic question of to what extent the results of the high altitude experiments carried out in Dachau were later taken over and used by US American aviation and space medicine cannot be dealt with in the framework of this introduction.²⁸¹

Ivy was also examined as an expert witness on the seawater experiments,²⁸² since he was a noted expert in this field. The desalination method which had been developed in the USA was, reported Ivy, technically comparable to that of the defendant Konrad Schäfer. He, Ivy, had even carried out an experiment on himself. The principal problem consisted in the kidney only being able to concentrate chlorides or salt up to 1.8 or 2.0 percent, whereas seawater contained up to 3.5 percent of chlorides, so that the consumption of even only a small quantity of seawater led to abnormal elimination of body water. That was the why people in distress at sea who drank seawater were more likely to die than those who did not take any liquid at all. Here Ivy contradicted the expert witness for the Defense, Professor Franz Volhard, that in distress at sea it was better to drink half a liter of seawater and thereby to raise the level of salt in the blood so that one would not dehydrate so quickly than to thirst completely and thereby to rob the body of its reserves of salt. Similarly Ivy rejected as erroneous Volhard's statement that the drinking of seawater treated with Berkatite

only had serious health consequences for humans after six days, since Berkatite was nothing other than seawater without the taste. "Were Herr Beiglböck's experiments necessary or superfluous?" asked the Public Prosecutor. They were superfluous, answered Ivy, since the research carried out on the method for the illuviation of seawater developed by Konrad Schäfer has already known. Public Prosecutor Hardy: "Was it necessary to test the Berkatite-method on humans?" Ivy: "It was unnecessary unless one desires to determine survival time of human beings on 500 cc or 1,000 cc of Berka water or seawater."²⁸³

1.8 The Defense Strategies

I wish here to examine the strategies utilized by the Defense, on the basis of three examples which are typical for the Medical Trial as a whole.²⁸⁴ I have chosen the charge of "euthanasia" because the Defense used all the historically usual arguments which have so far been used by its proponents. They wished thereby to convince the Court that the count did not in fact deal with a crime. Using the example of the battlefield surgery and the epidemic medical research I wish to demonstrate how the Defense cited the war situation as a decisive precipitating and as a mitigating factor. I will finally turn to an examination of how in this case an individual defendant, in this case Paul Rostock, took over his own defense and how he structured it. The examples I have chosen demonstrate a range of defense strategies and mitigating arguments. This is why I wish to examine at least one further typical line of argumentation used by the defendants. The Prosecution frequently argued with the positions and functions which the defendants had held in the NS Medical Services and Health System. The defendants for their part tried to reduce their culpability for the crimes they were accused of by presenting their functions and positions in a different light from that thrown on them by the Prosecution.²⁸⁵ A fundamental pattern followed by the Defense was as follows: the defendants in higher positions maintained that they had not known of the actions of those who were subordinate to them, while those directly involved in the crimes justified their actions by claiming that they had only followed orders from above.

Murder of Patients from Mental Institutions

From 1939 to 1945 an estimated 200,000 mentally ill and mentally disabled people from the mental institutions of the

²⁷⁸ Ruff worked in the Aero Medical Center in Heidelberg right up to the beginning of the Medical Trial.

²⁷⁹ Transcripts, p. 9375f.

²⁸⁰ Ruff was acquitted in the Medical Trial.

²⁸¹ See Karl Heinz Roth, *Tödliche Höhen: Die Unterdruckkammer – Experimente im Konzentrationslager Dachau und ihre Bedeutung für die luftfahrtmedizinische Forschung des "Dritten Reiches,"* in: Ebbinghaus/Dörner, *Vernichten und Heilen* (note 33) and Karl Heinz Roth, *Strukturen, Paradigmen, und Mentalitäten in der luftfahrtmedizinischen Forschung des "Dritten Reiches" 1933 bis 1941: Der Weg ins Konzentrationslager Dachau,* in 1999, *Zeitschrift der Sozialgeschichte* des 20. und 21. Jahrhunderts, 15 (2000), 2, p.49-78.

²⁸² Transcripts, pp. 9146ff.

²⁸³ Transcripts, p. 9213.

²⁸⁴ On the question of which lawyer defended which of the accused, see note 126.

²⁸⁵ Genzken denied the responsibility of the Medical Office of the Waffen SS for Ding-Schulers experimental station; Karl Brandt tried to play down his position among other things in relation to Conti; Handloser maintained that the post of the Chief of the Medical Services of the Armed Forces was without influence; Poppendick thought that he had been charged unjustly as Grawitz's deputy and played down his function in Grawitz's Personal Staff; Rudolf Brandt described his position as Himmler's personal spokesman and Ministerial Councilor in the Ministry of the Interior as being that of a shorthand typist; Sievers represented his function in the "Ahnenerbe" as purely administrative and without any executive authority; Blome, as Conti's deputy, had supposedly been at odds with the latter and had thus been systematically excluded from access to all information; Brack and Karl Brandt denied having had an influential position the "euthanasia" program.

Third Reich, but also in the occupied zones of Poland and the Soviet Union were killed. This first large, organized murder campaign of the Nazi period was the final step in a historical process which had its roots in the eugenic thinking of the turn of the century and which culminated in the National Socialist Eugenics Policy. It was prefigured by the policy of “decontrolling the annihilation of those unworthy of life”, which had been practiced since the early 1920s, but its immediate causes also lay in the everyday problems with which psychiatry was confronted with at that time – the effects of the Depression on the weakest in society – and in the overworked nursing and care staff. As the murder of patients is one of the chapters of National Socialist history which has been most widely dealt with since the 1980s,²⁸⁶ I wish here only to mention that in the Medical Trial it was above all the first phase of this murder campaign which was dealt with, in which from January 1940 to 1941 70,273 people were killed with carbon monoxide in the gas chambers. On the August 21, 1941 Hitler had given the defendant Karl Brandt the verbal command to halt “Action T4.” Nevertheless, the killing went on. In the phase thereafter, thousands of patients in ordinary homes were killed by lethal injection or by withholding nourishment. The headquarters of the campaign to murder patients was in Tiergartenstraße 4, in Berlin, and remained there after August 1941 and was also responsible for the murders thereafter. In addition, it made its personnel and its technology available for the development of the extermination camps. As the war in the air intensified and with it the bombing of Germany, and as the mental institutions were to be used increasingly as supplementary hospitals, a new phase of the murder of the patients in the mental institutions began. The patients were, as in the first phase, transferred to special institutions for their annihilation and were killed.²⁸⁷ This transfer of patients was named “Action Brandt,” after the defendant Karl Brandt, who was at that time the General Commissioner for Health and Sanitation.

On the charge of “euthanasia,” the defendants Viktor Brack and Karl Brandt, and also Kurt Blome and Waldemar Hoven, were accused at Nuremberg. Philipp Bouhler did not appear before the Court.²⁸⁸ He had taken his own life before the proceedings were opened. Viktor Brack and Karl Brandt were defended by Georg Fröschmann and Robert Servatius respectively.²⁸⁹ If one examines the defense strategy for this charge, two general lines may be discerned: Firstly “euthanasia” was not a crime. The “release of the chronically ill, the frail or the disabled” – I am consciously

using their terminology here, which is intended to evoke a particular evaluation and point of view – was carried out on ethical grounds and out of pity. Secondly the “euthanasia” program had a legal basis, namely the authorization given by Hitler on September 1, 1939.

Brack’s defense counsel had made an intensive study of the literature on euthanasia and soon was seen as an expert on this subject.²⁹⁰ Telford Taylor, Fröschmann explained, had in his opening statement accused the physicians among the medical scientists of having approved of atrocities committed under the pretext of medical science. Brack was not a physician. He had only been brought into the dock because his superior Philipp Bouhler was no longer alive. Brack had been an administrator in the Chancellery of the Führer and had not there had anything to do with any kind of medical matters. The Prosecution did not accuse him of participating in medical experiments. “However, Brack is accused of participation in the genocide policy of the Third Reich, in so far as he participated in the euthanasia program and the sterilization experiments and was conscious of their destructive purposes.”²⁹¹ In the judgment of the International Military Tribunal, the expressions “euthanasia” or “euthanasia program” had not even been mentioned; only measures “that were taken for the purpose of killing all the old, mentally ill, and those who had incurable diseases, in special institutions, which included German nationals and foreign workers who were unable to work” had been mentioned. Any connections between these measures and those of the persecution of Jews, which had been dealt with in a separate chapter, in particular with the plans drawn up in the summer of 1941 for a ‘final solution’ of the Jewish question in Europe was never established by the IMT nor even hinted at.”²⁹²

The term “euthanasia” had been unknown to Brack up until the autumn of 1939. Only those who knew Greek would understand the term as the “art of dying.” In the past century, euthanasia had meant that the physician had ameliorated the end of life for dying patients by giving them medication to ease the pain, as an act of pity. In the 19th century a development of the meaning from a shortening of life to active help in dying was observable. Euthanasia had existed in almost every age and in almost every place on the face of the Earth. “The assertion of the Prosecution that euthanasia was the product of National Socialism and its racial theories can be indisputably refuted throughout history.”²⁹³ Fröschmann presented the arguments known from the literature with which “euthanasia” is justified. The term “euthanasia” has always been associated with the cruel lot of the mentally ill, their dark and tragic suffering. It was only since the concept had been accepted that the insane should be treated as sick and since institutional care had arisen in the 18th century that, alongside a large number of “curative cases” with a limited stay in the institutions, “hundreds of thousands of spiritually dead persons” with a stay of at least a few years or even as permanent patients had had to be kept in such institutions. Such patients had no contact to their surroundings, they had no sense of morals, they were as regards their intellectual level, equal to animals,

²⁸⁶ There is a good overview of the state of the research in the bibliography published by Christoph Beck, *Sozialdarwinismus – Rassenhygiene – Zwangssterilisation und Vernichtung lebensunwerten Lebens. Bibliographie zum Umgang mit behinderten Menschen im Dritten Reich – und heute* (Bonn, 1992).

²⁸⁷ The most important destinations were at that time, alongside the provincial psychiatric hospital of Meseritz-Obrawalde in Pommern, Tiegenhof, Warta, Bernburg, Bavarian psychiatric hospitals and among others, the Ricklinger psychiatric hospitals in Schleswig-Holstein.

²⁸⁸ Bouhler was head of the Chancellery of the Führer and together with Karl Brandt had been appointed a “euthanasia” Commissioner. Together with Brandt he had determined the appraisal criteria for “Action T4” and had initiated the killing procedure in camouflaged gas chambers.

²⁸⁹ Fröschmann also worked as a defense counsel in further subsequent trials, namely in Cases IV (Mummertthey) and XI (Berger). Servatius assumed the function of a sort of speaker among the defense counsel..

²⁹⁰ From his notes on the Medical Trial it can be seen that he was asked for advice by the lawyers who had taken on the briefs in the, at that time in its initial stages, Euthanasia Trial. Cf. StAN, Rep. 502 A, KV-Verteidigung, Handakten Fröschmann.

²⁹¹ Transcripts, p. 11412.

²⁹² Transcripts, p. 11413.

²⁹³ For all further quotations in this paragraph: Ibid.

they could not exist without the help of others and had no prospect of recovery. "The concept of redeeming these empty human shells from their misery" had not first arisen in our age. Philosophers, legal scholars, physicians and theologians had repeatedly tried to come to grips with the question of the "destroying so-called life unworthy of being lived," and not only in Germany, but in many countries all over the world. The lawyer thus pointed out an absolutely valid state of affairs.

Fröschmann continued that Brack had not denied his participation in the "euthanasia," and he therefore considered a more precise examination at the level of concrete allegations superfluous. Yet what had moved Brack to his deeds? His motive was the "deepest pity for those most wretched human creatures, whose delivery from suffering is a desirable thing from a humane point of view, as the witness Leibbrand could not deny."²⁹⁴ Brack had not participated in "Action T4" lightly, but only after a thorough study of the literature on the subject. His thinking was not guided by considerations of expediency, as might seem from the fabrication "useless eaters" which he was alleged to have used. He had been guided solely by ethical considerations. With this argumentation the lawyer wished to convince the court that his client had not had any motive such as those by which a murder usually qualifies as a murder. Secondly, Fröschmann tried to show that Brack had acted in accordance with the law: "However many as the grounds may be *de lege ferenda* for the justification of euthanasia for the incurably insane," as Fröschmann continued, "reference to such grounds would still, for lack of legal basis, be of no importance *de lege lata*. The premeditated and deliberate killing of a human being remains murder even if it is done for ethical reasons."²⁹⁵ As a justification for his actions Brack had adduced Hitler's decree of September 1, 1939, which Bouhler had informed him of verbally.²⁹⁶ Brack had not understood this declaration of Hitler's as a command from the Führer that he had a duty to execute. But he did claim in his own defense that "that he like [his] associate and all other persons involved, regarded Hitler's assignment as a completely valid legal basis for carrying out euthanasia, and also considered Hitler justified in issuing such a decree with force of law."²⁹⁷ That led to the basic question as to "whether Hitler's declaration of intentions of September 1, 1939 can be considered such a legally objectionable state act which eliminated the injustice of killing a human being inherent *de lege lata* in euthanasia of the insane."²⁹⁸ Fröschmann argued that with the Act of Enablement of the March 24, 1943, the plebiscite of August 19, 1934, and the Head of State Act of August 1, 1939, Hitler had been given "authority as head of the state and chief of the government". He had thereby also become the supreme legislator of the Reich. On this basis the declarations of Hitler's will which were ini-

tially designated "decrees," but later as "decrees of the Führer" assumed a central position. In them, the common distinction between the legislative and the executive, which had still been present in the Weimar Constitution, had been superseded, as Hitler had declared in his speech before the Reichstag on January 30, 1937: "There is only one legislative power and one executive." Brack had been convinced of the legal validity of this decree. Should the decree be deemed invalid, then Brack had erred as to the state of the law, and he could not therefore be deemed to have acted intentionally. Of course, the authority of the Führer was also limited by law where actions no longer accorded with concepts of humanity. In the case of "euthanasia" however, as had been shown by this trial, these limits could not be clearly defined. Hitler's authorization thus represented a "legitimizing law," "an alteration of the generally valid prohibition on killing with respect to particular cases of the incurably insane," and secondly was an "administrative order including the definition by name of the men who were to be responsible for carrying it out and giving firmly outlined commands for the conditions of the execution of the order according to the objective and personal side."²⁹⁹ This decree did not represent any basic regulation of this centuries-old problem, but only created a basis on which personal guilt was excluded. It also did not exceed the boundaries drawn by general laws of morality on the power to define the law. Brack was convinced that his actions had been in accord with humanitarian principles.

Fröschmann dealt fully with the reservation that a secret decree could not be viewed as valid law. One could not view the secrecy as an indication of illegality, since it was perfectly usual at that time to proceed in such a manner. Brack had always pleaded with Bouhler for an end to the secrecy surrounding the "euthanasia action," since it was pointless and had only led to complications. It was impossible to conceal the "euthanasia action" from the public, and that was why Brack had in 1940 pressed for the decree to be transformed into a formally correct Reich Law, "on the grounds that euthanasia for the incurably insane [sic] was, in its effects and extent, a matter concerning the nation and the public." Brack's defense counsel concluded his argumentation by again stressing that his client had not done as he had from any base motive: "Decisive for him was: the thought, *vorn* [sic] out of compassion, to release the poor creatures from their suffering painlessly and unnoticed by themselves, provided medical experts had made sure that he was incurable and therefore, though he lived, he not only lacked every sense of life, but had lost every will to live because his mind and soul were buried. To Brack it seemed to run counter [to] the dignity of man to live a life unworthy to live only for the sake of the will to exist."³⁰⁰

Hitler's decree of September 1, 1939 was considered by Karl Brandt as it was by all other state bodies as a legally binding statute, in spite of the secrecy. The content of the law however referred only to "German citizens," argued Brandt's defense counsel Servatius, "whose life after a critical examination of the state of health from the medical and the human point of view, was judged to be nothing but pain."³⁰¹ The war disabled and those who had occupational diseases

²⁹⁴ Transcripts, p. 11427.

²⁹⁵ Transcripts, p. 11428 [*de lege* = according to law, *de lege lata* = according to valid law].

²⁹⁶ The Decree had the following wording: "Reich Leader Bouhler and Dr. Brandt are charged with the responsibility of enlarging the authority of certain physicians to be designated by name in such a manner that persons who, according to humane judgment, are incurable, can, upon a most careful diagnosis of their condition, be accorded a mercy death. (Signed) Adolf Hitler." Quoted here according to Exh.-No. 330, Doc.-No. 630-PS, in: Prosecution, PDB 14-I, p. 1112.

²⁹⁷ Transcripts, p. 11429.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Transcripts, p. 11436.

³⁰¹ Introductory statement for Prof. Dr. med. Karl Brandt before the Military Tribunal No. I, Nuernberg, presented by Robert Servatius, Attorney-at-Law, in: Defense, Karl Brandt, p. 1785.

were exempted. By referring to those “German citizens” Servatius attempted to question the jurisdiction of the Court concerning this charge. His client could only be called to account for, as Servatius expressed it, “medical euthanasia,” as it could be proven that he had had nothing to do with the phases following this and had had no knowledge of them either. Servatius classified the patient murders up to the so-called “euthanasia”-stop in August 1941 as “medical euthanasia.” Brandt had participated neither in the organizational realization of the “euthanasia” program nor in the appraisal of the patients.

The defendant Karl Brandt himself showed neither understanding nor remorse. He defended the human experimentation just as he defended the “euthanasia”: “Both afflicted me, to obey and to give orders and both are responsibility. I am a doctor and before my conscience there is this responsibility as the responsibility towards men and towards life.”³⁰² Against this stands the charge. It speaks of “murder” and “crime” and raises the question of his guilt. “For my sake I shall not evade these charges.” He had never viewed the human experimentation as a matter of course, even where it was harmless. “But I affirm it for the sake of reason that it is a necessity.” For the individual person the experiment makes no sense. The sense was however deeper. “Can I, as an individual, remove myself from [sic] the community? Can I be outside and without it? ... The sense is the motive, devoted to the community. If for their sake I am guilty, then for their sake I will justify myself. There was war. ... Sacrifices of war affect us all and I stand by them. But are these sacrifices my crime? ... Yes, they will point at me and cry ‘Euthanasia’ – and wrongly: unless [sic], incapable, without value.” Even Pastor Bodelschwingh said that he was an idealist and not a criminal, and yet there he stood charged with a fearful crime. He too was a man with a heart and conscience. “Would you believe that it was a pleasure to me when I received the order to start Euthanasia?” He had stood at patients’ bedsides for 15 years and had treated every sick child like his own brother.

He wished to defend himself against the accusation of inhumanity and low motives. He had accepted “euthanasia,” which was as old as humanity itself. “I realize the problem is as old as man, but it is not a crime against men nor against humanity.” He was a doctor and thus saw the laws of nature as the laws of reason.

Human experimentation in the context of war surgery and epidemic medicine

The counsel for the Defense Alfred Seidl attempted to arouse the understanding of the Court for the actions of his client Fritz Fischer, in the hope of thus showing mitigation: Fischer had at first had reservations about participating in the experiments but he had disregarded them on two grounds: first on the ground of his own experiences as a medical officer at the Front, and secondly for him it was simply inconceivable to refuse to carry out a command in times of war. Fischer had been stationed from the very first day of the campaign against the Soviet Union with the 1st SS-Armored Division as a medical officer.³⁰³ This Division had been one of the elite of the German Armed Forces, to those units that had fought with bravery, fortitude and with unrelenting will, and

hence had suffered enormous losses. There Fischer had learned what difficulties a medical officer had to overcome. Faced with the high losses the medical officers and main field hospitals were no longer able “to master, even to some extent, the terrible effects of the weapons used and the ghastly wounds. The bacterial infection of wounds, and among these especially gas gangrene, made the casualty lists longer and longer, and made every medical officer wish to be able to make up for the shortage of surgeons by means of suitable chemo-therapeutical treatment. It became evident that the few surgeons at the front were simply not able to give sufficient surgical attention to all the wounded, and that the fatal results of the infections would continue to increase, unless the bacterial infection could be checked effectively by use of suitable and simple means.” Faced with this predicament there was simply no time to clarify by clinical observation and bioassay the open research questions. “This research would have required further work lasting years, during which time perhaps hundreds of thousands of wounded would have received delayed and insufficient aid.” Gebhardt and Fischer had therefore begun the sulfanilamide experiments in the expectation, “that at least some of the sulfanilamide preparations used would show results to an extent which would justify the introduction of those preparations on the front and, if necessary, equipping every soldier with sulfanilamide.” Both defendants, according to Seidl, wanted nothing other than “to put a quick-acting and safe therapeutic preparation for preventing bacterial wound infection at the disposal of the wounded soldier who fought a battle of life and death and who saw the very existence of his fatherland threatened. The Defendant Fritz Fischer, in doing so, did not just follow any scientific aim in the strict meaning of the word, but was carried by the desire to help many hundreds of thousands of wounded.” However one may wish to judge the experiments, Fischer had not been led by any criminal intentions, but had acted from motives which must be seen as binding for any physician and researcher.

On the other hand Seidl argued for his client Gebhardt with the strategic goal of the war and not with the well-being of the individual soldier: “Of all medical experiments forming the subject of the indictment, the experiments for testing sulfonamides were undoubtedly the most directly connected with the war. The problem of wound infection in every war and especially in modern warfare, is one with which every nation must concern itself.”³⁰⁴ It did not only have great significance for every single wounded soldier, but also for the strategic situation and for the prosecution of the war. It had been evident in the First World War that most soldiers did not fall immediately on the battlefield and that death was in most cases not an immediate result of the injuries they had suffered, but rather that the “heavy losses” were a result of wound infections. The Second World War confirmed this experience fully. The problematic nature of the treatment of the injured had, however, become an even more pressing problem due to the climatic conditions on the Eastern Front, and wound infections had become a “medical and tactical problem of the highest importance.” A further complicating factor was that the care of the troops of the army and the Waffen SS by medical officers and surgically trained military medical officers had become increasingly

³⁰² Final statement of the defendant Karl Brandt, in: Defense, Karl Brandt, pp. 2577ff., all further quotations from this essay, *ibid*.

³⁰³ Plea on behalf of Dr. Fritz Fischer, in: Defense, Fischer, p. 2749, further quotations from this essay, *ibid.*, pp. 2750f.

³⁰⁴ Final plea for the defendant Dr. Karl Gebhardt, in: Defense, Gebhardt, p. 3091, all further quotations from this essay, *ibid*.

more difficult, and an effective chemotherapeutic agent would have therefore been of great assistance.

Apart from the war-surgery experiments, it was also the epidemic-medical experiments which were most closely connected to the war. As an example, only the typhus experiments will be mentioned here. In the medical service of the German Armed Forces it was only too well known – not least from the experiences in the First World War – that typhus could prove more dangerous for their own troops than the military enemy.³⁰⁵ In the First World War they had attempted to prevent the spread of the dreaded typhus through the abatement of the plague of lice. In the mid-30s there was one single effective vaccine, developed by the Lemberg biologist Rudolf Weigl. However, it was so complicated to produce that it was not suitable for production in larger amounts. For the medical service of the German Armed Forces the urgent question was posed, whether it would be possible to find a new vaccine against typhus and/or to improve the means of production of the so far only efficient typhus vaccine. Still before outbreak of war a true boom in typhus research took place. With the beginning of the war the pressure continually increased to find a rapid solution, in particular after the first typhus cases had occurred.

In the Buchenwald and Natzweiler Concentration Camps the effectiveness of typhus vaccines was tested on prisoners. Hundreds of them died during these experiments. The head of the Department for Typhus and Virus Research of the Hygiene Institute of the Waffen SS which had been established in Buchenwald Concentration Camp was Dr. Erwin Ding-Schuler. He had committed suicide before the trial began. Waldemar Hoven was in the dock, since as of October, 1939, he had been the site physician of the Buchenwald Concentration Camp.³⁰⁶ He was accused of having deputized for Ding-Schuler in his absence and of having selected the prisoners for the typhus experiments. The defendants Gerhard Rose, Karl Genzken and Joachim Mrugowsky also had to answer for these experiments. Mrugowsky's lawyer, Fritz Flemming, maintained that the typhus research was not a crime, but "a research work which had to be carried out unless further hundreds and thousands of men, whose lives could be saved only with the help of these experiments, were to die of spotted typhus [sic]."³⁰⁷ Rose's defense counsel, Hans Fritz, also attempted to win over the Court with a similar argumentation for the view that the circumstances of war prevailing at the time of the actions should not be neglected in a consideration of the defendant's culpability. In 1942, it was the middle of the war, but "the war continued and it exacted every day and on all fronts, from friends and foe as well as at home, many thousands of human lives, many of them as victims of a typhus epidemic the existence of which was admitted by the Prosecution."³⁰⁸ In this way the defense counsel attempted to con-

ceal the connections above all in Eastern Europe between the typhus epidemics the typhus experiments and the genocide.³⁰⁹

Paul Rostock's Defense

How active a role several of the defendants played in their own defense may be elucidated using the example of Paul Rostock. This was to some extent conditioned by the matter dealt with, which frequently presupposed specialist medical knowledge. It was, however, also the strategy of the Defense and defendants to ameliorate the accusations in the charges brought against them by pointing out comparable medical experiments in other countries and/or constructing a comparability. Rostock himself is also interesting, because he observed the entire trial proceedings exactly, analyzed, and documented them.

On March 18, 1947 the counsel for the Defense Hans Pribilla wrote to his client Paul Rostock that he was thinking a great deal about "his Rostock case," which was indeed at the center of his considerations. On the whole he was quite confident, and the previous cases confirmed him in that. He himself was convinced of the Court at the end "passing a sensible and correct judgment," because the emphasis of the American action was on the hearing of evidence and "this has gone excellently for us according to sober and human judgment. ... I would not really like to address the jury like the others and say: There is nothing in the evidence and my client should be found not guilty. If that is said here in chorus for the individual 'figures,' then we relinquish something in that we are congregating so."³¹⁰ Pribilla wrote to his client that he would be pleased to deliver an address to the jury that would still be remembered in 20 years hence. Therefore he would like to obtain Rostock's assistance "for this part of our fight." He considered himself fortunate "to defend such an outstanding scientist and you have really now – perhaps for the first time in your life – a great deal of time at your disposal." It did not matter that he was not a lawyer, it was rather a matter of healthy common sense, psychological sensitivity and good argumentation. "As a man of your importance you are undoubtedly in a position to deal with such a task."³¹¹ Rostock answered on the same day: "I imagine that one counts soberly what the Defense has accused one of and then the facts are picked out of the enormous cake in the hearing of evidence to prove that it is not in fact so, mentioning a horrendous number of exhibit numbers and references to the transcripts. Because in the final analysis the judges somehow have to make a list of the incriminating and the exonerating evidence which the Prosecution and the Defense have laid out before them, and then have to place it upon the famous scales which Blind Justice holds in her hand to then examine this instrument through her blindfold, which at least in this case must be of cellophane. But the blindfold has to be transparent before that, of course, so that the Judges can get the incriminating and the exonerating evidence on the right side of the scales and will not get them confused."³¹²

³⁰⁵ Cf. Angelika Ebbinghaus, *Der Prozeß gegen Tesch & Stabenow. Von der Schädlingsbekämpfung zum Holocaust, 1999, Zeitschrift für Sozialgeschichte des 20. und 21. Jahrhunderts*, 13 (1998), 2, pp. 16-71; on the typhus experiments cf. Thomas Werther, *Menschenversuche in der Fleckfieberforschung*, in: Ebbinghaus/Dörner, *Vernichten und Heilen* (note 33), pp. 152-173.

³⁰⁶ Initially as an intern and from July 1942 to September 1943 as a senior physician.

³⁰⁷ Opening plea on behalf of Professor Dr. Joachim Mrugowsky, in: Defense, Mrugowsky, p. 4572.

³⁰⁸ Closing brief for Professor Gerhard Rose, in: Defense, Rose, p. 6756. Rose denied all responsibility for the typhus experiments.

³⁰⁹ Paul Weindling, *Epidemics and Genocide in Eastern Europe* (note 31).

³¹⁰ Letter from Pribilla to Rostock dated 18.3.47, in: Related Documents, No. 171, p. 1271.

³¹¹ *Ibid.*, p. 1272.

³¹² Letter from Rostock, 18.3.1947, in: Related Documents, No. 171, pp. 1274f.

Rostock got on the job immediately. He had already documented the entire trial process and compiled it clearly, "which one could understand as a burden for me, and which one may regard as exonerating."³¹³ Pribilla should please assign his preparatory work to the legal aspects of the trial, he wrote. He could imagine that one could compile the "positive factual material" together, but everything else was a matter for the lawyer. Rostock wanted his activities to be understood as unskilled labor.

In a "blue book" about 200 pages thick Rostock examined all the questions, evidence documents and testimonies of the trial, of course in as far as they affected him, but not only. Rostock had to answer to the charges of the malaria-, Lost-, sulfanilamide, reconstructive surgery and the typhus and epidemic jaundice experiments in front of Court. Meticulously he discussed the course of the trial. He produced tables to show when which particular experiments had been begun and when they had been brought to an end, or which of the defendants had to answer to which particular charges. Rostock distinguished precisely in his records what degree of complicity was laid at the door of a defendant concerning the different experiments, whether it was a question of being a planner, a consultant or an executive, whether he or she was reproached with a general or a special responsibility for a specific experiment. His recordings are especially interesting with regard to what he predicted the results of the trial might be. And indeed he made predictions for every defendant according to the stages of the trial, after his or her examination, after the address to the jury of the defense counsel and after that of the Prosecution counsel. He subdivided his predictions into four categories: capital punishment, long terms of imprisonment, imprisonment and acquittal.³¹⁴

Pribilla's aim was in the personal examination of his client to convince the Court of just how busy this man had been. He wanted to show in detail what Rostock had done professionally and when and with whom he had worked, in order to allow his client against this panorama of his life to present the charges against him as not very convincing. This questioning was well prepared. First he questioned Rostock on the course of his personal and professional life.³¹⁵ Pribilla then asked him about his activities during the war, "in order to make it clear to the Court that you were from the first to the last day fully occupied with your clinic, the Zentralblatt, the deanship, and the position as a Consulting Surgeon and that all these activities had nothing to do with the accusations leveled against you here. I will sharply distinguish in this case between your activities before September 1943 and your later activities."³¹⁶ Rostock had drawn a graph on which he showed clearly the extent of his different activities during the years from 1939 to 1945.³¹⁷ At the beginning of the war he had been called up and until the end of 1940 em-

ployed as Consulting Surgeon of an Army at the Front. At the beginning of 1941 he had returned to his clinic in Berlin. That year he also worked at the Front for several months however as a Consulting Surgeon. In the years following, up to 1945, he stated that his main occupation had been as head of the University Surgical Clinic in Berlin. In the trial itself it was above all the posts which he had held during the last three years of the war which played a role. In August 1942 he had taken on a post as Consulting Surgeon of the Army Medical Inspector, among whose tasks were counted the evaluation of "all surgical field reports from the Front and at Home" and to draw up monthly reports as well as guidelines on this basis and to advise the Medical Inspector of the Army in all important questions of the war surgery.³¹⁸ In October 1943 Rostock had also taken over the newly created "Office for Medical Science and Research" with the General Commissioner for Health and Sanitation, the defendant and former assistant medical director of Rostock, Karl Brandt. He claimed that he had pressed for the preservation of basic research in this function in spite of the difficult war situation.

With which arguments did Rostock attempt to invalidate the accusations of the Prosecution that he bore responsibility for the sulfanilamide experiments? In his function as Consulting Surgeon he had presided over the Third Conference "East" of the Consulting Physicians,³¹⁹ at which Karl Gebhardt and Fritz Fischer reported on their sulfanilamide experiments on Polish women prisoners in the Ravensbrück Concentration Camp. In the sense of the charge he was therefore an accessory and had not suppressed these experiments. His argument in his defense was that he had had no reason to doubt Gebhardt's report. According to the latter's information the experiments had been carried out on condemned prisoners. The prisoners had been offered a pardon in return for their participation. This was the usual argument used to justify the medical experiments on concentration camp inmates. "In the establishment of the guidelines from the 1943 sulfanilamide lectures it was not a matter of re-examining the documents on which those who presented papers had based their results. Such a procedure was not usual at German congresses. And those in the know as to the state of affairs and the persons would not be able to suppress a smile if they pictured to themselves what presumably would have happened if for example I had requested Mr. Sauerbruch to give me the documents to examine on which he had based what he presented."³²⁰

That is why it did not even cross Rostock's mind to ask Gebhardt and Fischer about case histories or other notes. His main concern had, after all, been to compile the most important results of all the presentations into a page of printed guidelines for the medics and physicians at the Front. Finally the argument was also adduced that one must remember that there was a war going on. Rostock himself had also had research done at his clinic on the efficacy of sulfanilamides, however, without success. At all German clinics for accident cases an inquiry on the efficacy of sulfanilamides had been carried out. These, however, had not produced any essential results. Chemotherapy of wound in-

³¹³ Ibid., p. 1275.

³¹⁴ Related Documents, No. 125, pp. 1029f. Rostock planned to publish a documentation on the Nuremberg Medical Trial following his acquittal, not least because he wished to set a counter-point to the documentation of Mitscherlich and Mielke. He had already developed a concept for this book and after his release from custody he tried to compile the trial materials which he still lacked. In addition, he committed himself wholeheartedly to the petitions for mercy of his former co-defendants.

³¹⁵ On Rostock's life see the Concise Biographies in this volume.

³¹⁶ Letter from Pribilla dated 18. 1.47 to Rostock, in: Related Documents, No. 171, p. 1269f.

³¹⁷ Defense, Rostock, Document Book 1, Exh-No. 1, pp. 8685f., for this see draft versions in Related Documents, pp. 1262ff.

³¹⁸ Rostock's notes dated 20.11.46, in: Related Documents, No. 166, p. 1258.

³¹⁹ 24-26 May, 1943.

³²⁰ Evaluation of the sulfanilamide lectures, in: StaN, Rep. 502 A, KV-Verteidigung, Handakten, Rostock No. 2.

fections was not only a topic of basic research but had also been an essential problem during the war, as it related to surgery on the front and tactical sanitation. He himself had initiated the formation of "investigation groups" whose task it was to treat fresh wounds at the Front and simultaneously test the efficacy of sulfanilamides. In spite of that, no clarification in the sulfanilamide question had been possible.³²¹ Rostock denied responsibility for the malaria experiments and adduced as proof that his name had not been mentioned once in the context of the malaria experiments. Furthermore the hearing of evidence had shown that Himmler had entrusted Claus Schilling in Dachau with that responsibility in February 1942. The same was also true on the charge of complicity in the Lost experiments. They were begun in the Natzweiler Concentration Camp in September 1939, and at that time he was Consulting Surgeon of the Army, and there had not then been either the Office of the General Commissioner for Health and Sanitation or the Office for Medical Science and Research. Rudolf Brandt, who had accused him of involvement in the preliminary examinations had retracted these charges later. August Hirt, who had carried out the Lost experiments, was entrusted with those investigative tasks by the Reich Research Council. These were given before October 1943, therefore at a time in which Rostock had not yet been deputy of the member of the presidium Karl Brandt in the Reich Research Council. Furthermore the defendant Rudolf Brandt had retracted his contention that Karl Brandt on the order of Hitler forced investigations in the field of chemical warfare agents in 1944.³²² Ding-Schuler's lecture at the Third Conference "East" of the Consulting Physicians he had not heard, because he had not participated at this meeting.³²³ Rostock's and Pribilla's strategy, to verify point by point either that Rostock had not been present at specific events or had not taken over certain functions at all at specific dates yet or, if a denial was not possible, as in the case of the lectures on the experiments in the Ravensbrück women's concentration camp, that no reason for the doubt and queries had existed, was to prove successful.

After intense preparations and consultation with his client Pribilla presented Rostock with the draft of his address to the jury on June 6, 1947 and wrote to him that he hoped it would "find approval in your eyes."³²⁴ He would be sad if too much were altered, since there would then be a danger that the broad sweep of the address to the jury would be destroyed. Rostock might also like to consider that the address to the jury displayed the opinion of the lawyer about the case, not that of the defendant. "I played to win. If Rostock is innocent then that is the only possible attitude. Finally I did not commit any such crimes myself and so I want to prepare myself for the mentality of the judges and to speak a language that all decent people in the world will understand." Differences arose in the last phase of the trial between lawyer and client because of formulations in the address to the jury, but Rostock conceded to Pribilla ultimately. After his address to the jury, which brought Rostock an acquittal on the count, he thanked his counsel: "First of all, I give

you my most heartfelt thanks for your defense. I am fully aware that it is to a large extent to your credit that this judgment has been given in this way."³²⁵

1.9 The Judgment

"The evidence in the case of the United States of America versus Karl Brandt, and other defendants having been closed, counsel for the Prosecution and the defendants having filed their briefs and submitted them to the Tribunal, the Tribunal after consideration of the evidence and the briefs filed, is now ready to pronounce the judgment ..."³²⁶ With these words the Presiding Judge on the 19th August 1947 – after 142 days in session – began to give the opinion of the Court. Beals once again considered the jurisdiction of the American Military Tribunal,³²⁷ listed how many items of evidence had been entered in the trial and how many witnesses had been heard in total, and stressed that in the interest of the defendants in almost all cases the objections of the Defense had been sustained.

The first charge "The Common Design or Conspiracy" had been a bone of contention between the Defense and the Prosecution throughout the trial.³²⁸ Therefore the Presiding Judge dealt with the basic legal objections of the defense counsel which they had brought forward again and again that according to the Control Council Law No. 10 crime of conspiracy did not exist as a "separate substantive crime."³²⁹ The Court followed the argument of the Defense at least partially in this point, but had not totally dismissed the first count.³³⁰ After that Beals once again considered the significance of the second and third counts, "War Crimes" and "Crimes against Humanity," and finally went on to speak of the individual crimes. He fully discussed the problematic nature of the human experimentation in his opinion. Following that, he presented how the Court had evaluated the evidence in the case of each individual defendant, whereby the nature and manner of his consideration of each was repeated in structure.

Beals reported first the opinion of the Court on Karl Brandt. He summarized once again the course of his life and his prominent functions in the health service. After that he dealt with the medical experiments. Karl Brandt was accused before the Court that he, although he had been informed of the freezing, sulfanilamide, malaria, bone-, muscle- and nerve regeneration, and bone transplantation experiments, the seawater, sterilization and typhus experiments, he had not suppressed these criminal experiments, as he had been obliged to do by his position, and he would have been capable of doing. In addition the Court accused him of being legally responsible for the experiments designed to discover an ef-

³²¹ Cf. questions to Rostock, *ibid.*

³²² *StaN*, Rep. 502 A, KV-Verteidigung, Handakten, Rostock No. 3, Sheet 212.

³²³ Cf. Paul Rostock, Conference of the consulting physicians with a lecture on typhus by Ding, 20.12.1946, in: *Related Documents*, No. 172, p. 1294.

³²⁴ Letter from Pribilla to Rostock, 6.6.1947, in: *Related Documents*, No. 171, p. 1288.

³²⁵ Letter from Rostock to Pribilla, August 1947, *ibid.*, p. 1293.

³²⁶ *Transcripts*, p. 11553.

³²⁷ They were based on Control Council Law No. 10. For the Medical Trial, the provisions of Article II, defining the facts that represented a suspected crime, were particularly decisive. See Part I, Juridical Basis of the Trial, Control Council Law No. 10, pp. 140-146.

³²⁸ The defendants were accused that they "unlawfully, acting pursuant to a common design, willfully and knowingly did conspire and agree together to commit war crimes and crimes against humanity".

³²⁹ *Transcripts*, p. 11557.

³³⁰ Only in this respect was the charge "charges the commission of the alleged crime of conspiracy as a separate substantive offense, distinct from any war crime or crimes against humanity, the Tribunal will disregard that charge". In: *Transcripts*, p. 11559.

fective vaccine against epidemic jaundice³³¹ since he had incited Ernst Grawitz to these investigations. The main charge against Karl Brandt referred to his role as “a euthanasia commissioner.” The Court came to following conclusion: “Shortly after the commencement of operations for the disposal of ‘incurables,’ the program was extended to Jews, and then to concentration camp inmates. In this letter [sic] phase of the program, prisoners deemed by the examining doctors to be unfit or useless for labor were ruthlessly weeded out and sent to the extermination stations in great numbers. Karl Brandt maintains that he is not implicated in the extermination of Jews or of concentration camp inmates; that his official responsibility for euthanasia ceased at the close of the summer of 1941, at which time euthanasia procedures against ‘incurables’ were terminated by order of Hitler. It is difficult to believe this assertion. ... The evidence is conclusive that almost at the outset of the program non-German nationals were selected for euthanasia and exterminated.”³³² The defendant Brandt was found guilty on all four counts.

Judge Sebring continued with the case of Handloser.³³³ As Chief of the German Armed Forces Medical Services, he had had authority over all scientific medical institutes of the Armed Forces as well as over the medical service of the Air Force, Army, Navy, and SS. He had played a major part in the preparation of the conference of the Consulting Physicians and was thus well informed on more or less all of the human experimentation carried out in the concentration camps. Along with responsibility for the freezing and sulfanilamide experiments he bore special responsibility for, and had participated in, typhus experiments conducted in the Buchenwald and Natzweiler Concentration Camps.³³⁴ For the Court it was beyond question that typhus had posed a genuine danger to the German Armed Forces and that the creation of a satisfactory typhus vaccine was an urgent task. The distribution of the vaccine to the German Armed Forces had been under Handloser’s purview, and that was why he had been interested in the production of typhus vaccine. The typhus and virus institutes of the Supreme Command of the German Army in Krakow and Lemberg had produced a vaccine,³³⁵ which was very effective, but was very complicated and expensive to produce. A further vaccine³³⁶ could be rapidly produced but there was no general agreement as to its efficacy. In December 1941 there had therefore been a meeting of representatives of various institutions at which one of Handloser’s people had been present and which had also been attended by three representatives of the Behring-Works. It had been decided that the efficacy of the vaccine from the Behring-Works should be tested.³³⁷ For this purpose an experimental station had been set up in the Buchenwald Concentration Camp under Erwin Ding-Schuler and his deputy Waldemar Hoven. Ding-Schuler had kept a daily protocol of the typhus station, which had formed part of the evidence in the Medical Trial, and a controversial one.³³⁸ The official protocol had, as the Court saw it, been kept by Eugen

Kogon,³³⁹ a functional prisoner in Buchenwald and an assistant of Ding-Schuler. Kogon was the central witness for the Prosecution in the complex of the typhus experiments. In the trial the authenticity of the daily protocol was contested, and this is why the Court addressed this issue in the opinion: “It is manifest that the entries in the diary were often not made on the day they bear date; but this does not mean that it has no probative value.”³⁴⁰ The entries were backed up by a multitude of other testimonies. From the very first entries it was possible to see the particular responsibility of Handloser for the experiments.³⁴¹ Judge Sebring introduced a further series of items of proof of how deeply Handloser had been involved in the typhus experiments, in which hundreds of prisoners had died. The Court also accused Handloser of not having done anything to find out what was happening to the victims of the experiments to exercise due control over those who were carrying out the experiments, despite his position of responsibility. Handloser was found guilty by the Court on the second and third counts.

The well-known surgeon Paul Rostock, Judge Crawford continued, as the head of the Office for Medical Science and Research, was informed of all the important research and had also distributed the investigation tasks according to importance. The Prosecutor’s Office did not maintain “that Rostock personally participated in criminal experiments. It vigorously argues, however, that – with full knowledge that concentration camp inmates were being experimented upon – he continued to function upon research assignments concerning scientific investigations, the result of which would probably [be] further experiments upon human beings.”³⁴² The Prosecution had relied in its argumentation to a large extent on a compilation of 650 research mandates, in which the research carried out by Eugen Haagen and August Hirt in the Natzweiler Concentration Camp were also mentioned. The Court’s evaluation did not accord with that of the Prosecution. Rostock had indeed known that experiments were carried out on prisoners. “However, it does not appear that either Rostock or any subordinate of his directed the work done on any assignment concerning criminal experiments.”³⁴³ The Court therefore acquitted Rostock and released him from custody.

In the case of Oskar Schröder, the former Chief of the German Air Force Medical Service, the aviation-medical experiments were at the heart of the opinion.³⁴⁴ He was held responsible for them on the grounds of his position. The Military Tribunal came to this decision because Schröder “took a consenting part in medical experiments performed on non-German nationals against their consent.”³⁴⁵ The Court declared Oskar Schröder guilty on the second and third counts.

On the afternoon of August 19, 1947 Presiding Judge Beals continued in his opinion with the case of Karl Genzken. The Prosecution considered it as being proved that the former Chief of the Waffen SS Medical Office bore, on the basis of his “command position,” a special share of the

³³¹ Transcripts, p. 11584.

³³² Transcripts, p. 11588.

³³³ The Court rejected the charge that Handloser had been responsible for the high altitude experiments.

³³⁴ Transcripts, p. 11596.

³³⁵ According to Weigl, from mouse intestines.

³³⁶ It was extracted from egg-yolk cultures.

³³⁷ This was extracted from scalded hens’ eggs.

³³⁸ According to the judge, Ding-Schuler had kept a private diary, which had, however, disappeared.

³³⁹ Transcripts, p. 11598. After the liberation of the camp this diary remained in the possession of Eugen Kogon, who delivered it to the Prosecutor’s Office in Nuremberg.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Transcripts, p. 11603.

³⁴³ Transcripts, pp. 11603f.

³⁴⁴ The Court dismissed the charge on the sulfanilamide experiments.

³⁴⁵ Transcripts, p. 11614.