

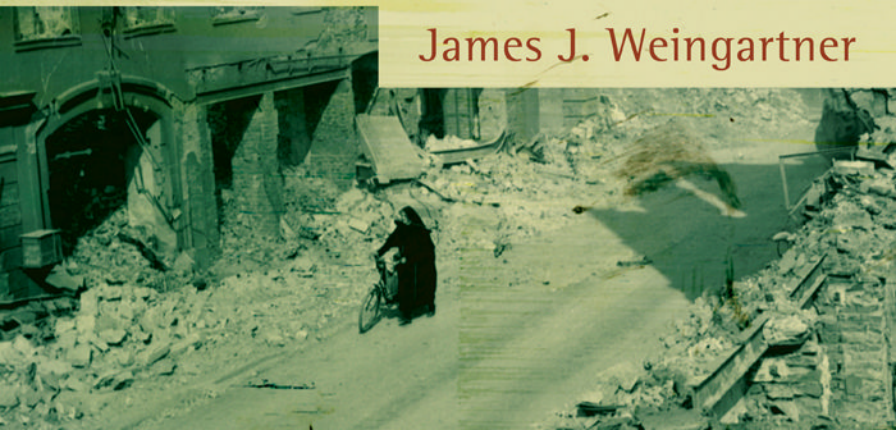


Americans, Germans, and War Crimes Justice

LAW, MEMORY, AND
"THE GOOD WAR"



James J. Weingartner



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Contents

Introduction	vii
1 War Crimes and the Law of War	1
2 Building a Case	29
3 A Town Brought to Trial	49
4 “Worms on the Ground”	71
5 Divided Counsel	85
6 Fed to the Lions	117
7 Germans as Victims	135
8 Posttrial Drama	163
9 Two Kinds of Justice?	183
10 Memory	193
11 August 4, 2003	203
Epilogue	211
Bibliography	217
Index	225

Introduction

In December 2009, an op-ed piece entitled “The Real Rules of War” appeared in the *Wall Street Journal*. It is a commentary on war crimes and the rules that seek to limit the savagery that is a common and perhaps inevitable part of armed conflict. Laws governing behavior in war are well and good, the author argues, but only so long as both sides respect them, a rare occurrence. And he suggests that the law of war is problematic in a more general sense. It applies the behavioral standards of civilian society to soldiers who are exposed to stresses that civilians who have never experienced combat can scarcely imagine. Although the author declares the rules of war to be “important,” his primary message seems to be that efforts to govern the behavior of soldiers in battle are often impractical.

The essay appears to have been inspired by recent American experiences in Iraq, including cases of allegedly illegal conduct by U.S. forces. Ahmed Hashim Abed was beaten by Navy SEALs who captured him, but, after all, he was the mastermind of the brutal murders of four civilian contractors in Fallujah. Although they violated the rules, do the Americans who beat him deserve to be punished? The three SEALs accused of the violations have since been acquitted by military courts. But most of the historical evidence that the author uses to flesh out his argument is drawn from the experience of World War II. U.S. troops murdered German soldiers who had surrendered during the Battle of the Bulge, the author concedes, but Germans had murdered American prisoners earlier in the battle. Surrendered SS men were massacred by American forces at the Dachau concentration camp, but “the obscene

horror of the Nazis" was in full evidence all around them.¹ Should soldiers abide by the international law of war when their adversaries do not? Unfortunately, American (and all other) soldiers in World War II did not always need the provocation of enemy atrocities to commit their own, a point that the author does not address.

The essay sparked spirited reaction from readers. Some of these were published in a column provocatively entitled "Do the Realities of War Turn Warriors into Criminals?"² The essay and the responses to it indicate that the depressing history of war crimes and their punishment in World War II remains relevant to the contemporary world, fraught as it is once again with armed conflict and controversy surrounding the bringing of suspected war criminals to justice. This book is offered as a contribution to a better understanding of that history, which may be more complex than the author of the essay realizes.

What follows is a story of crime and punishment. The perpetrators and victims are soldiers and civilians who were caught up in modern history's most devastating war. Literature on war crimes committed during World War II and the trials that some of them occasioned is plentiful, but this book is different. The Holocaust, that most horrendous of crimes associated with the Second World War II and the focus of most war-crimes literature, is mentioned only in passing and the "rape of Nanking" and the Katyn Forest massacre not at all. The atrocities that form the focus of this book each cost the lives of only a handful of victims, far fewer than the notorious Bataan "Death March" or the "Malmédy massacre." It is safe to say that they are unknown to the great majority of professional historians working in this period and to most if any of that vast throng of World War II enthusiasts. Yet, the legal and moral issues raised by these crimes and, in particular, by their judicial processing far transcend the very limited scope of the atrocities themselves.

This book is different in another way. Unlike almost all literature dealing with World War II war crimes, it concerns in part atrocities perpetrated by American soldiers. Those crimes and the way in which the U.S. Army regarded them will be compared with the character and legal treatment of *similar* crimes committed by Germans. "Similar" is a critical qualifier that must be emphasized. In no way should this book be interpreted to suggest even approximate moral equivalence between the wartime records of the United States and Nazi Germany. The Holocaust, German genocidal war against the Soviet Union, and murderously brutal German occupation policies that afflicted much

of Europe during the dark period between September 1939 and May 1945 have no counterparts in the conduct of U.S. forces during World War II.³

But all countries that participated in World War II committed war crimes, and to this generalization the United States is no exception. This may be difficult to reconcile with the mythologized and celebratory image of the U.S. war effort to which all Americans have been long exposed. Paul Fussell, once a young platoon leader with the U.S. 103rd Infantry Division in France who had experienced the “Real War,” has written that “For the past fifty years [he was writing in the late 1980s] the Allied war has been sanitized and romanticized almost beyond recognition by the sentimental, the loony patriotic, the ignorant, and the bloodthirsty.”⁴ But, in the immediate aftermath of the war, perhaps before memory had congealed into patriotic myth, it was possible to read in a mass-circulation middlebrow American magazine such as the *Atlantic Monthly* a bitter article written by Edgar L. Jones, an American ambulance driver and war correspondent. Jones mused:

What kind of a war do civilians suppose we fought, anyway? We shot prisoners in cold blood, wiped out hospitals, strafed lifeboats, killed or mistreated enemy civilians, finished off the enemy wounded, tossed the dying into a hole with the dead, and in the Pacific boiled the flesh off enemy skulls to make table ornaments for sweethearts or carved their bones into letter openers. . . . As victors we are privileged to try our defeated opponents for their crimes against humanity, but we should be realistic enough to appreciate that if we were on trial for breaking international law, we should be found guilty on a dozen counts.⁵

In fact, Americans *were* sometimes tried for war crimes. Some U.S. airmen, including eight captured members of the Doolittle raid of April 1942, were tried by the Japanese for alleged attacks on civilians in trials that, by Anglo-American standards, were travesties on justice, and some defendants were executed.⁶ But this book concerns trials of a different sort. As is generally known, the U.S. Army conducted hundreds of war-crimes trials of Germans, both military and civilian, between 1945 and 1947, involving more than 1,600 defendants. What is less widely known is that the Army also occasionally tried its own members for atrocities committed in the course of the war, and some of

these atrocities were similar in scope and character to crimes for which the Army tried and punished its enemies.

This book has as its primary focus two such war crimes and the trials that resulted from them. The defendants in one were German and in the other, American. Both were conducted by the U.S. Army in the months immediately following the end of the war in Europe, and one case would unexpectedly impinge upon the other. But did the Army approach the two cases in the same way? Was the evidence required to bring defendants to trial in the two cases of approximately equal weight? Were the two trials conducted according to similar procedural standards, and were verdicts and punishments based on equally rigorous standards of judgment? In other words, did the U.S. Army mete out equal justice in their trials of these men, American and German? These questions can be answered only by a careful examination of the two crimes and of the trials that resulted from them.

The answers to these questions have important implications that go beyond the assessment of two criminal cases. By means of war-crimes trials, the United States intended not only to punish Germans for their offenses, the worst of which beggared (and continue to beggar) the imagination, but also to educate the German people as to the criminal nature of the regime that most of them had supported or at least tolerated. It was also hoped that an example of fair trials conducted for the vanquished by the victors would help convince Germans of the virtues of a democratic society based on respect for law.⁷ But, if the victors were unwilling to apply the same standards of judgment for war crimes to themselves, the educational value of the trials would be seriously diminished. Sixty years later, the announced intention of the U.S. government to try accused terrorists before military commissions in the absence of some of the legal protections ensured to American citizens, including American soldiers tried by court-martial, has sparked vigorous debate.⁸ The appearance of hypocrisy and the application of a double standard in the matter of judging wartime atrocities were as potentially damaging to a nation's moral standing in 1946 as they are today.

A number of people made contributions to the completion of this book. Robin Smith, historian of the 486th Bombardment Group, provided valuable documents and photographs relevant to B-17 #909 and its crew and to the dedication of the memorial to them on Borkum. For his assistance and for his unfailing interest in this project, he has my gratitude. Linda J. Erickson of the U.S. Army Judiciary supplied vital

court-martial documents generated by the Voerde atrocities, and Carol Martin and Randy Sowell of the Harry S. Truman Library located correspondence related to the Schneeweiss case. Michelle Romero of the Snell Library at Northeastern University provided permission to use material from the papers of Edward F. Lyons Jr. To Jens Westemeier go my thanks for a stimulating exchange of views on the subject of war crimes and, in particular, for valuable insights on the contemporary German perspective on that subject. Riccardo Giannola provided me with his father's account of the massacre of Italian prisoners on Sicily, while Danny S. Parker shared with me important documentary material from his own research. I thank *The Atlantic Monthly* for permission to quote from Edgar L. Jones's "One War Is Enough." Quentin F. Ingerson kindly gave permission to use his photograph of the crew of B-17 #909, of which he had been a member. Praeger's Michael Millman proved a supportive editor and thanks are due to Apex for their perceptive copyediting.

Finally, I am deeply grateful to my wife, Jane Vahle Weingartner, for her invaluable assistance as literary critic, grammarian, and word processing expert and for her patience with a sometimes ill-tempered and preoccupied husband. Of course, any errors of fact or interpretation are solely my responsibility.

James J. Weingartner
Edwardsville, Illinois
April 21, 2010

NOTES

1. Warren Kozak, "The Real Rules of War," *The Wall Street Journal*, December 23, 2009.
2. "Do the Realities of War Turn Warriors into Criminals?," *ibid.*, January 5, 2010.
3. Racial hatreds and the dehumanization of the enemy evident in the attitudes and conduct of many Americans toward the Japanese do, however, bear some uncomfortable similarities to German perspectives and conduct regarding the peoples of the Soviet Union. The crucial difference, however, is that, unlike Germany, genocide never became U.S. policy. On this subject, see John Dower, *War without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1986); Omer Bartov, *The Eastern Front, 1941–45: German Troops and the Barbarization of Warfare* (New York: St. Martin's Press, 1985); James Weingartner, "War against Subhumans: Comparisons between the German War against the Soviet Union and the American War against Japan," *The Historian* 58 (Spring 1996): 557–73.

4. Paul Fussell, *Wartime: Understanding and Behavior in the Second World War* (New York: Oxford University Press, 1989), ix.

5. Edgar L. Jones, "One War Is Enough," *Atlantic Monthly*, February 1946, 49–50.

6. Craig Nelson, *The First Heroes: The Extraordinary Story of the Doolittle Raid—America's First World War II Victory* (New York: Penguin, 2003), 280–83; "Trial of General Tanaka Hisakasu and Five Others," *Law Reports of War Criminals, Selected and Prepared by the United Nations War Crimes Commission 6* (London: His Majesty's Stationery Office, 1948): 66–70.

7. Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany, 1946–1955* (Westport, CT: Greenwood Press, 1989), 2.

8. See, for example, Kevin J. Barry, "Military Commissions: Trying American Justice," *The Army Lawyer* (November 2003): 1–9; Colonel Frederic L. Borch III, "Why Military Commissions Are the Proper Forum and Why Terrorists Will Have 'Full and Fair' Trials," *ibid.* (November 2003): 10–16.

War Crimes and the Law of War

Borkum and Voerde are two towns in northwestern Germany. They are separated by little more than 100 miles as the crow flies but differ significantly. Since the 19th century, the island of Borkum, part of the North Sea Frisian archipelago, has been a popular (and, prior to World War II, notoriously anti-Semitic) vacation retreat, with the town of Borkum's economy centered on catering to a flourishing tourist trade. But Borkum in the early 20th century had a schizophrenic character. Sharing the island with hotels and shops serving vacationers and residents in the town on Borkum's southwestern corner were heavy coastal defense guns to the north, forming part of the defensive chain protecting Germany's North Sea coast. A German officer stationed there during World War I poetically called upon Borkum to "protect the ships that seek safe haven, defend the mainland with your strong arm."¹ By the start of World War II, Borkum's "strong arm" included the two 240 mm guns of Battery Oldenburg and the four 280mm weapons of Battery Coronel. Complementing Borkum's big-gun defenses against seaborne assault was an array of anti-aircraft batteries and air defense radar that offered protection against the newer threat from the air. Foreign forced laborers were put to work strengthening fortifications against an Allied attack that never came. Borkum was able to ride out the war in relative safety and never fully lost its prewar character as a seaside resort. At least two Allied aircraft crashed on Borkum in the course of the war, and stray bombs jettisoned by bombers in distress sometimes fell in the North Sea close by or even on the island itself, although little damage was done. The island was occupied by Canadian forces at the end of the war.²

Voerde, on the other hand, was a small town on the lower Rhine not far from the border with the Netherlands to the west and the heavily industrialized (and heavily bombed Ruhr Valley) to the east.³ The town was home to a 19th-century military installation, the Friedrichsfeld *Truppenübungsplatz* (troop training area), which had served as a prisoner-of-war camp during the Franco-Prussian War, and the Buschmannshof compound, a grim barracks-like structure that housed not soldiers but small children. Its tiny inmates—the oldest were no more than two years old—were the children of Eastern European women who were employed as slave laborers by the huge Krupp industrial complex in Essen, a short distance away. The Buschmannshof facility had been established in 1943, when Krupp's own hospital could no longer accommodate the growing numbers of children born to its female captive workers. The children were cared for by a staff of Russian women under German direction, but the quality of care given to them was minimal. Disease and malnutrition caused the death of close to 100 of these small prisoners, 48 of them in a diphtheria epidemic in the fall and winter of 1944, before a pitiful remnant was evacuated in the face of advancing Allied forces. How many, if any, survived is unknown.⁴

What brings Borkum and Voerde together in this book is the fact that both were the scenes of war crimes. As World War II atrocities go, they were small in terms of the number of victims each claimed—small even in comparison to the loss of life due to criminal negligence incurred at Buschmannshof. The crimes that will be addressed here, however, were not the products of negligence but were willful acts of murder. One was perpetrated by Germans and the other, by troops of the U.S. Army, and both would occasion postwar trials of the alleged perpetrators. In that context, the two crimes would converge in an unexpected but meaningful way.

By August 1944, the tide of war was running strongly in the Allies' favor. The Anglo-American forces that had landed in Normandy two months before were ashore to stay, and Patton's Third Army was fanning out into the interior of France. In the East, the Red Army had driven German forces from most Soviet territory and was threatening the border of East Prussia. In the south, Rome had fallen to Mark Clark's Fifth Army two days before the start of Operation Overlord, and, on August 4, British forces had entered Florence, 140 miles to the north. The threat of German U-boats had been mastered the year before, and, in the air, vast fleets of American and British bombers

operated against often little more than token opposition from German fighters. Missions over Germany were much safer than they had been a year earlier when, in twin attacks by the U.S. Eighth Air Force on August 17, 1943, on the ball-bearing works at Schweinfurt and the Messerschmitt factory at Regensburg, 60 heavy bombers had been shot down and more than twice that number damaged, many beyond repair. More than six hundred crewmen had been lost. But flak, occasional German fighters, and accidents ensured that operating a bomber on missions in German skies remained dangerous business until the end of the war.

The Eighth Air Force was to be up in strength on the morning of August 4, 1944. From their bases in East Anglia and the Midlands, more than 1,300 bombers were assigned to strike targets in northern Germany. One of these aircraft was B-17 #909 of the 486th Bombardment Group (Heavy), based at Sudbury. The crew was composed of recent arrivals in the European Theater of Operations, having joined the 486th late in July. Under the command of Second Lieutenant Harvey M. Walthall of Baltimore, they were hastily integrated into a group then making the transition from flying Consolidated B-24 "Liberators" to Boeing B-17 "Flying Fortresses," which, although built to an older design than the B-24, had a higher operational ceiling and were more stable bombing platforms. Walthall's crew had flown its first mission two days earlier. The fledgling #909 returned safely, but Walthall had shown himself to be a less than satisfactory formation flyer, having had difficulty holding position in his element and, in the process, frightening the crews of neighboring planes. The August 4 mission began inauspiciously; takeoff was delayed by fog, and assembly was complicated by a malfunctioning radio beacon. But, by a few minutes past 11 A.M., the bombers were crossing the English coastline at 13,000 feet and climbing on a northeasterly heading to their bombing altitude of 25,000 feet.

The 486th's primary target was the 5,000-ton-per-month capacity Ernst Schliemann oil refinery at Hamburg, an objective that was part of a campaign against the German oil industry then in the process of rapidly "demodernizing" the Nazi war effort to a premotorized state. Each B-17 carried a bomb load of 20 250-pound general-purpose bombs. These were light missiles, but effective against a refinery's fragile network of storage tanks, pipes, and retorts. The Schliemann refinery, however, would be spared #909's bombs. Shortly before 1 P.M., the 486th crossed the German coast north-northwest of Bremen, where

flak sent #949 spinning to earth. One parachute was observed. A few minutes later, as the formation was executing a turn east of Bremen, two planes collided, perhaps the result of a flak burst that propelled one into the other and/or pilot error. In any case, #145 fell out of control and disintegrated in midair. The other B-17 was Walthall's #909. In the terrifying moments following the collision, two crewmen, flight engineer Sergeant Kazmer Rachak and navigator Second Lieutenant Quentin Ingerson, took to their parachutes. The rest of the crew might have followed, had it not been for #909's initially uncontrolled dive that trapped them in their positions. But, fatefully, as events would prove, Walthall and his copilot, Second Lieutenant William Myers, succeeded in bringing #909 under control and swinging the damaged plane around in an attempt to nurse it home to England. There were no surviving witnesses to the effort, but Walthall undoubtedly would have ordered #909's bomb load jettisoned in order to lighten the aircraft as it struggled westward. It was not enough. By the time it had passed the German coastline, Walthall's bomber had lost too much altitude to permit it to cross the 250 miles of the North Sea to British soil. Beneath its wings lay the inviting beaches of Borkum. Walthall brought his plane in from the northeast and executed a wheels-up landing on tidal flats north of the town, known to locals as the *Muschelfeld*. It was a harrowing conclusion to a terrifying mission, for #909 had been fired upon by naval antiaircraft gunners on its approach, and some German witnesses claimed that fire had been returned by the B-17's defensive .50-caliber machine guns. Yet, #909 had suffered little additional damage, and the remaining seven crewmen surrendered peacefully and without further incident to German personnel who had been dispatched to the scene.⁵

The emergency landing of #909 on Borkum brought into collision not only aircraft and earth but also asymmetrical elements of the laws of war. To the degree that the vast and mutual dealing of death and destruction characterizing World War II was influenced by international law, it was affected primarily by conventions concluded in the periods immediately preceding and following World War I. One of these was Hague Convention IV of 1907, "Convention Respecting the Laws and Customs of War on Land," a slight revision of a similar treaty completed in 1899. In explaining the intentions of its signatories, its preamble notes that they had been "Animated by the desire to serve . . . the interests of humanity and the ever progressive needs of civilization" and "inspired by the desire to diminish the evils of war,

as far as military requirements permit [author's italics]." Nevertheless, the convention notes that "The right of belligerents to adopt means of injuring the enemy is not unlimited" (Article 22). The protections due prisoners of war are stated unambiguously: "They must be humanely treated," (Article 4) and "it is especially forbidden . . . to kill or wound an enemy who, after having laid down his arms, or having no longer means of defense, has surrendered at discretion" (Article 23). Article 25, however, contains an element that also seems unambiguous in regard to civilians and their property: "The attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended is prohibited," although the definition of "defended town" might be subject to a variety of interpretations. The inclusion of the phrase "by whatever means" was clearly intended to address the recently invented airplane, for it was the only change made to a similar article in the Hague Convention of 1899, four years before the Wright brothers' first heavier-than-air flight. Aerial warfare had been addressed at the 1899 conference, however, in the form of a five-year prohibition on the employment "of balloons or similar new machines for throwing projectiles or explosives," due to their indiscriminate nature. This, of course, had expired by 1907.⁶

But, if attack on an undefended town (however that might have been understood) was an illegal operation of land warfare, what was one to make of Hague Convention IX, "Bombardment by Naval Forces in Time of War," which was signed on the same day as "Hague IV"? An apparently similar prohibition of the bombardment of "undefended ports, towns, villages, dwellings, or buildings" was followed by a body of exceptions large enough to allow the passage of a battleship. A naval commander, according to Article 2, was free to destroy with his big guns "military works, military or naval establishments, depots of arms or war materiel, workshops or plants which could be utilized for the needs of the hostile fleet or army." Moreover, "He incurs no responsibility for any unavoidable damage which may be caused by a bombardment under such circumstances." And even undefended places devoid of military significance were open to bombardment if, "after a formal summons has been made to them, [local authorities] decline to comply with requisitions for provisions or supplies" (Article 3).⁷

In sharp contrast to existing primitive aircraft, warships, particularly battleships, were the most sophisticated and destructive weapons systems of the day. The revolutionary HMS *Dreadnought*, placed in service with the Royal Navy less than a year prior to the signing of

Hague IX, was capable of firing 10 850-pound projectiles per minute to a range of 12 miles. The greater effectiveness of naval gunfire and long experience with its employment against shore targets going back to the 16th century may account for the unwillingness of the conferees to impose significant restrictions upon its use. Comparatively primitive bombardment by heavier-than-air aircraft, on the other hand, would not be introduced to international conflict for another four years, when Italy employed a handful of planes against Turkish forces in Libya; these dropped their first bombs on enemy positions on November 1, 1911. The tiny missiles, weighing no more than five pounds, had little physical effect, but the first lines of a new and terrifying chapter in the history of warfare had been written. When aircraft were again used against their army in the Balkan War of the following year, the Turks threatened to execute any of the attacking airmen whom they might capture.⁸

World War I threw into high relief the destructive potential of aerial bombardment and saw the application to it, in practice, of the relatively permissive standards that already regulated naval bombardment. The shelling by German battle cruisers of British coastal towns in December 1914 resulted in substantial loss of civilian life and property and earned for the Germans condemnation as “baby killers” in the British press, although some of these towns were fortified and, therefore, seemingly legitimate targets under existing international law.⁹ In 1915, raids on British cities by Zeppelins were followed two years later by the operational advent of the Gotha, history’s first strategic bomber, capable of carrying a 660-pound bomb load at 80 miles per hour at altitudes up to 15,000 feet. An attack on London on June 13, 1917, by 14 Gothas resulted in the deaths of 160 people, about half of them women and children, when a bomb struck the Liverpool Street Station.¹⁰ Such raids were condemned in Allied propaganda as examples of a uniquely German barbarity, although the British carried out similar attacks of their own and their naval blockade of German ports resulted in the deaths by malnutrition of hundreds of thousands of civilians.¹¹ By the end of the war, the British had succeeded in dropping a 1,650-pound bomb (far larger in terms of explosive payload, if not gross weight, than the biggest naval projectiles of the time) from a bomber and were planning an aerial assault on Germany with hundreds of Handley Page V/1500 four-engine bombers capable of reaching Berlin from bases in England and able to carry maximum bomb loads of 7,500 pounds.¹² All of these acts exemplified an accelerating destructive dynamic in which the

economic base of modern industrialized war provided both the means and the justification for mass assaults on civilian populations.

Something more than 8.5 million men had died in combat during World War I, primarily the victims of the machine guns and artillery pieces produced in the industrial centers of Europe. Some theoreticians concluded that the airplane, whose enormous destructive potential was suggested by aircraft such as the V/1500, could provide the means of avoiding such battlefield carnage in future wars. Fleets of heavy bombers could strike devastating blows at enemy cities, crippling industrial infrastructures and demoralizing populations, bringing conflicts to quick and relatively inexpensive conclusions, victorious conclusions at least for those best prepared materially and psychologically to wage war in this manner. Yet, the fact that what came to be known euphemistically as "strategic bombing" inevitably involved the killing of civilians—perhaps in very large numbers—was troubling to many. Delegates to the Washington Conference on the Limitation of Armament, whose most notable achievement was the establishment of fixed ratios of strength among the world's leading naval powers, decided, in 1922, to establish a commission composed of representatives of Britain, France, Italy, Japan, and the United States to determine whether the existing rules were adequate in light of recent innovations in the waging of war, particularly in the air. The result was a 62-article document entitled "The Hague Rules of Air Warfare," which proposed to regulate the future employment of aircraft in international conflict. Most important was a series of provisions that sought to restrict the latitude of combatants to bomb population centers. Aerial bombardment was to be limited to military objectives, defined as "military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes." Attacks on population centers not in the immediate vicinity of the operation of ground forces were prohibited unless they contained military objectives so defined, but those objectives might be attacked only if the "indiscriminate bombardment of the civilian population" could be avoided. Population centers that *were* in the immediate vicinity of such forces might be bombed "provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population." Although the restrictive provisions, in practice, would have

been open to broad interpretation and would have allowed considerable freedom to the new breed of air warriors, the proposed rules nevertheless threatened to complicate and to some degree constrain the employment of a new technology of possibly war-winning potency, and this the major powers were unwilling to risk. The Hague Rules of Air Warfare remained a dead letter.¹³

International law regulating the treatment of prisoners of war was a different story. Hague IV of 1907 had stated simply that prisoners "must be humanely treated" and then specified in 16 articles the particulars of their required treatment. World War I had seen prisoners of war taken in unprecedented numbers and held, in some cases, for more than four years. Some had suffered terribly. The Convention of July 27, 1929, Relative to the Treatment of Prisoners of War of 1929 (the "Geneva Convention," in the discourse of World War II) was inspired, according to its preamble, by the recognition that, "in the extreme case of a war, it will be the duty of every Power to diminish, so far as possible the unavoidable rigors thereof and to mitigate the fate of prisoners of war." The 1929 convention spelled out in much greater detail than had Hague IV the conditions under which prisoners were to be held, down to a long list of the specific injuries and illnesses that were to qualify them for repatriation prior to the end of hostilities. But the fundamental requirement of the convention was that prisoners of war not be harmed. "They must at all times be humanely treated and protected, particularly against acts of violence, insults and public curiosity. Measures of reprisal against them are prohibited" (Article 2). And "Prisoners of War shall be evacuated within the shortest possible period after their capture, to spots located in a region far enough from a zone of combat for them to be out of danger" (Article 7). Unlike the proposed rules for aerial bombardment, with their numerous qualifiers in regard to the safety of civilians, the 1929 Geneva Convention was unambiguous. Moreover, unlike the abortive air rules, it was adhered to by most of the world's independent states. Of the major powers, only the Soviet Union and Japan (the latter signed but did not ratify) refused to become parties to it.¹⁴

On the eve of World War II, then, it seems appropriate to speak of a significant asymmetry in the laws of war. The protected status of prisoners under all circumstances was clear. Those countries that had not become parties to the Geneva Convention of 1929 might be written off as existing on the fringes of the "civilized" world. Civilians, on the other hand, had little, if any, formal legal protection against

aerial attack; pre-World War I treaty law and custom were in general agreement that injuring civilians was not a good thing but was acceptable if it could not be avoided in the pursuit of “legitimate” military objectives. And advocates for “strategic” bombing suggested that civilian casualties might actually serve humanity by bringing wars to quick conclusions, thus avoiding the prolonged mass slaughter that had characterized World War I. The will to impose meaningful limitations on a new technology whose potential had only begun to be explored was lacking. The killing of prisoners of war was not likely to produce victory, but airpower might!

Among the most enduring icons of the Second World War are scenes of vast urban devastation wrought by aerial bombardment. Never before or since have so many great places of human habitation and endeavor been subjected to destruction of similar magnitude. Approximately one million human beings, as a rough estimate, died as a consequence, many of them in overwhelmingly horrible ways. Germany initiated the air war on European cities, and its willingness to use urban bombing as a conscious instrument of terror is beyond serious dispute.¹⁵ What is also beyond dispute, however, is that British and American air forces inflicted vastly greater damage on German cities and their civilian populations than the Luftwaffe visited upon Germany’s enemies. More Germans died in two series of raids (those on Hamburg in July 1943 and Dresden in February 1945) than did British civilians in all German air attacks, including V-1 and V-2 missile bombardments, during the whole of World War II. Although German aircraft manufacturers produced prototypes of bombers capable of crossing the Atlantic, the cities of the United States emerged from the war unscathed by aerial assault.

If there was no clear prohibition of urban bombing in international law, were the Allies *morally* justified in demolishing German cities and killing hundreds of thousands of civilians in the process? Opinion is by no means unanimous on this contentious issue. Applying the standard of proportionality in the context of genocidal German policies that resulted in the murders of millions of human beings, policies most expeditiously terminated by the fastest possible termination of the criminal regime that gave rise to them, might suggest an unambiguous “yes.” Yet, it may be difficult to resist some degree of empathy with Hamburg policeman Otto Müller who, following the firestorm produced by the British attack of the night of July 27–28, 1943, encountered a young girl who had been wandering for days dragging the body of her

little brother. "I got so angry at this incident," he later recalled, "that I would have shot any enemy airman who had parachuted down. I also think that any English or American person would have felt the same way."¹⁶ At least one American agreed. U.S. Army Major Burton F. Ellis, an attorney sent to Germany after the war to assist in the trial of German war criminals, wrote to his wife in August 1945: "On Sunday I went through Darmstadt, a place about the size of Fresno. It was leveled. Block after block with nothing but burned out skeletons of apartment houses. If your family, your home, your possessions were buried there—what would your reaction be? These people that lived there beat some airmen to death. I can see why they did what they did. I would have done likewise."¹⁷

But it was not only bombing that assailed civilian populations. Less widely known and discussed than urban bombing is the fact that fighter pilots commonly attacked "targets of opportunity" as they flew over enemy territory. Such targets were sometimes human beings, and not always military personnel. This issue was frankly addressed in one of the documentary films produced by the U.S. War Department for showing to service and civilian audiences. Director William Wyler's *Thunderbolt* portrays the routine operations of a U.S. Army Air Forces fighter-bomber group flying the Republic P-47 "Thunderbolt" from bases on the island of Corsica against targets in German-held territory in Italy during the bloody Allied struggle to break through German defenses south of Rome in the first half of 1944. Viewers of the film are placed "in the head" of one pilot, whose voice is supplied by an actor as he flies to the day's target (a bridge), drops his bombs, and heads for home. On his way back to base, he sees a group of people on the ground, although he is unable to identify them. He muses in the clipped, unemotional tones affected by this film, "Somebody in that field. Don't know who they are. No friends of mine." With that, he opens fire with his plane's eight .50-caliber Browning machine guns, collectively spewing bullets a half-inch in diameter at the rate of one hundred per second. Continuing on, he sees rural Italian houses and comments on the supposed German practice of storing munitions in such structures. He proceeds to strafe them, initially without explosive effect, commenting, after each attack, "Nothing there" (except, perhaps, one is tempted to observe, an Italian family). Finally, one of the houses detonates, revealing the presence of enemy munitions and presumably justifying the attacks on the others.¹⁸

Wartime fighter pilot and famed postwar test pilot Chuck Yeager recalls orders received by his fighter group in the fall of 1944:

Our seventy-five Mustangs [P-51 fighter planes] were assigned an area fifty miles by fifty miles inside Germany and ordered to strafe anything that moved. The object was to demoralize the German population. Nobody asked our opinion about whether we were actually demoralizing the survivors or maybe enraging them to stage their own maximum effort. . . . We weren't asked how we felt zapping people. It was a miserable, dirty mission, but we all took off on time and did it. If it occurred to anyone to refuse to participate (nobody refused, as I recall), that person would have probably been court-martialed. . . . We were ordered to commit an atrocity, pure and simple.¹⁹

Such attacks, delivered at low altitude and against small groups and, in some cases, individuals, seemed more personal than bombs dropped from altitudes of four or five miles and were possibly more frightening and infuriating to the intended victims. Pastor Florenz Siekermann of Voerde declared, "One can only call it a crime against humanity that low-flying fighters [*Tiefflieger*] began more and more to fire on peaceful people in the streets and even in their fields." His judgment was probably influenced by an incident toward the end of 1944 in which a 10-year-old boy of the village was machine-gunned on his way home from school.²⁰

Some Germans were able to view the ruination being rained upon them as just retribution for the criminal actions of their own government and people. One remarked long after the fact, "I shouldn't really say this but I felt a wild joy during those heavy British raids. That was our punishment for our crimes against the Jews."²¹ Such reactions were almost certainly exceptional. It would be unrealistic to expect most German civilians who were on the receiving end of Allied bombs and bullets to regard them as their just desserts. On the contrary, it would be remarkable if occasional violence against downed Allied airmen had not occurred, as attacks on German airmen had sometimes taken place when they had fallen into the hands of the enemy.²² Desire for revenge and frustration over the inability of the Nazi regime to retaliate in kind grew as German cities were progressively reduced to rubble.²³ But, in the later stages of the war, the regime openly encouraged and sought to legitimize the ill treatment and murder of

captured Allied aircrew, which served as a means of releasing anger and deflecting it from the dictatorship that was unable to protect the German people from increasingly devastating attack from the air. It also had the effect of making ordinary Germans participants in Nazi criminality, thus giving them seemingly no alternative but to support the regime as it fought desperately to fend off defeat and Allied retribution. By the end of the war, perhaps 350 downed U.S. and British airmen had been murdered by German civilians, military personnel, or police and party officials.²⁴ Although the number killed represents only a small fraction of the total number of Allied airmen captured on German soil during that period and although some of the murders would probably have occurred in the absence of official encouragement, such encouragement was clearly provided. On August 10, 1943, SS commander and German police chief Heinrich Himmler ordered police officials not to intervene if civilians attacked captured Allied aircrew. On May 21, 1944, Hitler directed that downed Allied airmen be summarily executed if they had fired on German airmen parachuting from stricken aircraft or German aircrew who had crash-landed or if they had attacked trains or individual civilians.²⁵ And, in an editorial published in the Nazi Party newspaper *Völkischer Beobachter* during the following week, Propaganda Minister Josef Goebbels, in "a word on the enemy air terror," accused British and American airmen of the willful murder of German civilians. German morale was the primary objective of Allied bombing, he asserted, and 99 percent of the physical damage was to the civilian sector. The consequence of this "murder of women and children" was likely to be that the German people would be moved to take matters into their own hands and pay back in their own coin Allied flyers who had bailed out over German territory. But Goebbels reserved most of his venom for Allied flyers who strafed civilians with their machine guns and cannon, not wholly a figment of the propaganda minister's malignant imagination, as we have seen. "That has nothing more to do with war," he declared. "That is sheer murder." Goebbels went on to describe one incident "out of thousands" that had allegedly occurred the previous Sunday (thus, presumably, particularly dastardly) somewhere in Saxony in which groups of children were attacked, causing numerous casualties. If such criminals were to be shot down and captured, Goebbels continued, it would be inappropriate for German soldiers to protect them from civilians and their just desire for vengeance.²⁶ In fact, according to an order by Hitler (of which Goebbels may have been unaware),

troops who captured airmen guilty of such acts were to kill them. At the end of the month, Hitler's private secretary and Nazi Party chancellery chief Martin Bormann circulated a secret memo to party leaders down to the district level. Provocatively entitled "Re: Justice Exercised by the People against Anglo-American Murderers," it, too, referred to the strafing of civilians, including children, while the latter were engaged in innocent pursuits and directed that no prosecution or punishment of citizens who participated in the killing of such airmen was to take place. Local party bosses or *Ortsgruppenleiter* were to be notified orally of the contents of the memo. By early July 1944, the German high command had issued a top-secret order discouraging military personnel from intervening to protect captured Allied air crew from civilian attack and made specific reference to Goebbels's editorial.²⁷

Goebbels was guilty of hypocrisy of staggering proportions when he contrasted the "unlimited barbarity" of the Allied air campaign with the alleged German wish "that the war should be conducted in a chivalrous manner." The air war *was* barbarous. Genocide was far worse. And he was simply wrong when he claimed that "There is no rule of international law which the enemy can call on in this matter. The Anglo-American pilots place themselves through such a criminal code of warfare outside the pale of every internationally recognized rule of warfare."²⁸ Goebbels had conflated instances of fighter planes machine-gunning civilians with urban bombing, but the fact was that international law constraining aerial warfare was thin at best, while that regulating the treatment of prisoners of war and mandating their protection was well established. There was little in international law to counter the dominant Allied perspective that extreme and often indiscriminate force from the air was justified in defeating an enemy extreme in its evil.

By the summer of 1944, Germans had been subjected to years of increasingly devastating aerial assault. In spite of the ambiguities in Goebbels's editorial, they had every reason to believe that they were free to do with any of their tormentors who fell into their hands as they pleased. Yet, it would appear that relatively few Germans actually participated in or facilitated attacks on captured U.S. flyers. Given the provocation of Allied bombing and strafing and the encouragement of lawlessness from Nazi leaders, it is remarkable that so many captured American airmen (in excess of 32,000) survived the war.²⁹ But seven members of the crew of #909 would not be among them.

Since all seven crewmen aboard #909 when it crash-landed on Borkum on August 4, 1944, were murdered that day, the only witnesses to their murders and the events immediately preceding them were Germans or, in a few cases, non-Germans held as captive laborers. Dozens of residents of Borkum, members of the Wehrmacht stationed there and civilians, produced descriptions of what they claimed to have seen and done. These descriptions were recorded in the context of an investigation by the U.S. Army of the murders and the trials of those believed to have been perpetrators. Added, therefore, to the normal distortions to which human memory is subject was the powerful motivation of self-preservation.

Sworn statements and trial testimony describe a wartime American-German encounter that began with deceptive calm but culminated in brutality, terror, and death. Early on the afternoon of August 4, 1944, pilot Second Lieutenant Harvey Walthall, his copilot, Second Lieutenant William J. Myers, bombardier Second Lieutenant Howard S. Graham, radioman Sergeant Kenneth Faber, ball turret gunner Sergeant James W. Danno, waist gunner Sergeant William F. Dold, and tail gunner Sergeant William W. Lambertus exited #909 where it had come to rest on the *Muschelfeld*. With the exception of one crewman who had apparently suffered a slight head wound, all had survived the crash landing uninjured. They were taken prisoner by personnel of the nearby Ostland antiaircraft battery, one of whom, a Corporal Roesing, bandaged the head of the injured American. The prisoners were then marched to the battery position about a kilometer away, where they were searched by the battery commander, Lieutenant Jakob Seiler. An English-speaking officer, Lieutenant Erich Wentzel, briefly interrogated them, after which they were marched under armed guard from the beach along a route that led through the town of Borkum. The captives were required to walk with raised hands, and, although the day was a hot one, they were forced to maintain a fast pace with the encouragement of shoves and blows from rifle butts. Encountering a detachment of the Nazi Labor Service (*Reichsarbeitsdienst* or "RAD"), the prisoners were beaten with spades, although not seriously injured, by its members. Then, incited by the mayor and local Nazi Party leader Jan Akkermann, a mob of townspeople kicked and beat them with fists and sticks. Throughout their ordeal, their guards offered them no protection. After a march of slightly more than three and one-half miles, the guards were equally passive when an off-duty German soldier approached the column near the town hall with drawn pistol and

shot Lieutenant Graham, who had tripped and fallen, in the head. The column moved on another mile and a half, pursued by the soldier, who methodically and fatally shot the remaining six prisoners near the town's *Sportsplatz* (athletic field). The seven murdered flyers were buried the following day.³⁰

The incident had clearly been encouraged by Nazi statements that had categorized downed Allied airmen as war criminals who, by their own actions, had removed themselves from the protected status of prisoners of war under international law. Prior to the fatal march, Goebbels's editorial of the previous spring, transformed in the minds of some Borkumers into a "decree," had been adopted as a guide for the treatment of the captives. And yet, the incident had not fully conformed to Goebbels's model. Walthall's B-17 had not been a strafing fighter plane. The naval personnel responsible for the prisoners had not provided them protection against civilian assault, but the actual murders had been committed by a member of the Wehrmacht, a scenario not addressed in the propaganda minister's editorial. This may account for the falsification of the incident contained in a report drafted immediately after the killings, according to which the guards had allegedly been overwhelmed by an enraged civilian mob, which had beaten the airmen to death. The fallacious report was signed by the guards and possibly transmitted to Gestapo agents on the mainland, although a report of the examining physician at the naval hospital on Borkum to which the bodies had been transported correctly noted the cause of death as gunshots to the head. Not surprisingly, however, German authorities made no effort to punish anyone for the murders, although an uneasy atmosphere descended on Borkum. Guards were ordered to neither speak nor write of the incident and to avoid entering the town. As the war neared its conclusion, fear of likely Allied retribution intensified uneasiness. Naval Captain Kurt Goebell, the senior officer on the island, claimed at his trial to have instituted a court-martial in March 1945 to try those responsible for the murders and to have taken up a collection for the maintenance of the graves of the U.S. flyers, probably a desperate effort to mitigate Allied punishment. No German trial had begun when Canadian forces occupied the island early in May 1945. The graves of the seven airmen neatly marked with white crosses bearing the name of each man and the date of burial, August 5, 1944, were found in Plot D of Borkum's Lutheran cemetery.³¹

As ghastly as the murder of seven American airmen in Borkum was, it is a minor entry in the vast catalog of German crimes committed

during World War II. The Holocaust that consumed much of Europe's Jewish population and genocidal German policies directed against the Slavic peoples of Europe, with their millions of victims, created a new paradigm of modern state-directed criminality approached only by the example of Stalin's Soviet Union. The magnitude of German crimes has rendered difficult the discussion of World War II war crimes as an international phenomenon. It constitutes a kind of historical black hole from which the attentions of historians cannot escape. Moreover, to mention the crimes of others in the same breath with those of Germany may appear to relativize and therefore diminish the gravity of Nazi offenses. Nazi genocide also distorts perspectives on German war crimes. Not all German criminality was motivated by a uniquely Nazi ideology of race, lawlessness, and the glorification of brutality. Some of it was the product of psychological forces generated by the stresses of war that affected all participants in approximately similar ways, no matter what their national or ideological affinities. Unfortunately, these distinctions tended to be obscured in the postwar U.S. program of wholesale war-crimes trials that tried many hundreds of Germans for offenses ranging from the leadership of *Einsatzgruppen*, the murder squads that ranged behind the German army in the Soviet Union, killing more than a million Jews, and the operation of concentration camps where vast numbers perished to the shooting of American POWs and the wearing by German soldiers of Allied uniforms while in combat. In the minds of many Americans, all tended to be indiscriminately subsumed in a uniquely horrific Nazi conspiracy of evil. But many war crimes committed by Germans were hardly unique to them. If nothing on the Allied side matched the Holocaust or the genocidal policies adopted toward Slavic peoples, all parties to World War II commonly murdered prisoners of war. But here, too, there are important distinctions to be made. Russians and Germans routinely shot each other's captured personnel, and vast numbers of Soviet POWs died in German captivity, while, in the Pacific, little mercy or respect for international law was shown by either side. On the more "civilized" battlefields of Western and Central Europe, on the other hand, where ethnically similar combatants found it easier to recognize in one another a common humanity, the murder of surrendered enemy soldiers was less frequent and on a much smaller scale, although not uncommon. The widely publicized Malmédy massacre of surrendered GIs by troops of the 1st SS Panzer Division in December 1944 during the Battle of the Bulge had a rough parallel in the lesser-known murders of

Axis POWs by members of the U.S. 45th Infantry Division on Sicily in July 1943. Both war crimes had been encouraged by inflammatory statements made by commanders prior to combat. In the case of the Malmédy incident, SS men had received pre-attack “pep talks” urging the creation of a “wave of fright and terror” and highly ambiguous directives not to “worry” about taking prisoners. The Germans were also encouraged to regard the offensive as an opportunity to wreak vengeance on Americans for the bombing raids that had taken the lives of many thousands of German women and children, although the killing of approximately 80 American prisoners was probably more an act of convenience on the part of mechanized troops on a very tight schedule than revenge. The U.S. 45th Infantry Division had been a part of the U.S. Seventh Army, commanded by Lieutenant General George Patton. Prior to the Anglo-American invasion of Sicily, Patton had openly discouraged the taking of prisoners under some circumstances. “Kill the bastard,” the division’s commander remembered Patton saying, when the enemy continued to resist within two hundred yards of an American advance, even if he subsequently offered to surrender.³²

There were survivors of both massacres. Their narratives reflect a common experience of helplessness and terror that transcends national divisions. Lieutenant Virgil P. Lary described having been taken prisoner along with other members of the 285th Artillery Observation Battalion’s Battery B on December 17, 1944. The lightly armed motorized American unit came under heavy fire from a powerful armored element of the 1st SS Panzer Division and quickly surrendered. All of the American POWs were assembled by their German captors in a field adjacent to a road intersection south of the Belgian town of Malmédy. Three vehicles parked on the road in front of the assembled prisoners. At the apparent signal of two pistol shots fired by one of the Germans, machine gun fire was opened on the captured GIs. Lary was slightly wounded and fell face down in mud, feigning death. He listened to the agonized screams of the wounded, while German soldiers moved among the recumbent forms, finishing off those who showed signs of life. After the Germans departed, Lary succeeded in slipping away and joining American forces in Malmédy.³³

When Anglo-American forces invaded Sicily on July 10, 1943, Italian airman Giuseppe Giannola was stationed at the air base of San Pietro di Caltagirone (known to the Allies as the Biscari airfield), a short distance inland from the Gulf of Gela, where troops of Patton’s Seventh Army had come ashore. On July 14, he and a number of other Italian

soldiers found themselves surrounded by U.S. forces and surrendered to them. They were strip searched, allowed to retain only their trousers, then marched to join another group of prisoners. The approximately 50 men were lined up, then mowed down by submachine gun fire delivered by a noncommissioned officer while 7 other GIs armed with rifles prevented their escape. Giannola was wounded in the right arm and lay motionless under corpses for about two hours, while the Americans lingered to deliver the coup de grace to the wounded and the dying. After the killers had left, he managed to crawl away but was shot in the neck by another GI. More merciful U.S. soldiers picked him up shortly thereafter and took him to a U.S. field hospital at Scoglitti.³⁴ Giannola had survived one of at least two mass murders of Axis POWs.

The Malmédy and Biscari atrocities are unusual in that detailed written records have survived, a result of the fact that both gave rise to formal trials of the alleged perpetrators. But most incidents involving the murders of prisoners of war did not become the subjects of methodical investigations and judicial proceedings. Individual prisoners or small groups of surrendered enemy soldiers were casually murdered in the rage and "heat" of combat, in revenge for fallen comrades, or as the consequence of the rational if also brutal calculation that the efficiency of the capturing force would be diminished by burdening itself with prisoners. Sometimes captured soldiers were murdered in reprisal for real or imagined enemy atrocities or because they were perceived as unnecessarily prolonging a ghastly war. For some combatants, the perverse joy young men may derive from killing an overpowered adversary was motivation enough, as might be the reluctance to grant a surrendered enemy the relative safety of captivity while their captors continued to be exposed to the hazards of combat. Men were killed, their bodies commingled with those of men fallen in battle, while the killers moved on. Since the perpetrators were rarely brought to trial, most accounts are anecdotal, preserved in the memories of participants and witnesses. Stephen G. Fritz describes an incident in which an American captain invited seven German soldiers to surrender, then methodically shot each of them in the head. Fritz adds that "the memoirs of most GIs reveal such episodes." Infantry platoon leader Paul Fussell recalls an event that occurred in his company in which 15 or 20 Germans trapped in a crater and attempting to surrender were killed. "Laughing and howling, hoo-ha-ing and good-old-boy yelling, our men exultantly shot into the crater until every single

man down there was dead." Ninety-ninth Infantry Division veteran Grady Arrington describes the murder of a German POW by a platoon commander "still hysterical with hate and fright" and his own participation in the killings of wounded German soldiers while filled with fury over the deaths of his buddies. In his *Citizen Soldiers*, the late Stephen Ambrose notes that he had interviewed more than a thousand U.S. combat veterans. Of these, one-third reported having witnessed German prisoners with their hands in the air being shot by American soldiers, although only one admitted his own participation.³⁵ German conduct in Western Europe was no better and in the East, where war merged with genocide, far worse.³⁶ In the Pacific, many GIs regarded the Japanese as little more than animals, due to widespread racism and the crimes committed by Japanese combatants. Japanese prisoners of war were few. This was due in part to expectations of the Japanese high command that Japanese soldiers fight to the death, rather than surrender and in part to overwhelming U.S. firepower. But, even when the opportunity to capture Japanese soldiers presented itself, it was frequently rejected. Charles Lindbergh, while serving as a technical adviser in the Pacific, was told by a U.S. Army officer on New Guinea in regard to the taking of Japanese prisoners, "Oh, we could take more if we wanted to, but our boys don't like to take prisoners." "It doesn't encourage the rest to surrender," Lindbergh continued, "when they hear of their buddies marched out on the flying field and machine guns turned loose on them." A Marine Corps veteran of the fighting on Okinawa remembers, "Nine Marines in ten would shoot them. If you saw a Jap trying to surrender, you'd let him have it fast." The importation of Japanese body parts as souvenirs—skulls, ears, noses, and the ever-popular gold teeth—became so common that it came to the attention of the U.S. Customs Service and was widely reported in the American press.³⁷

That Allied troops as well as their enemies had committed battlefield atrocities created crises of conscience in the minds of some commanders after the war, as their governments moved to the trial and punishment of Axis war criminals. Canadian general Chris Vokes, while considering a plea for clemency by Kurt Meyer, former commander of the 12th SS Panzer Division, who had been sentenced to death for the murder of Canadian POWs on the Normandy front, observed, "There isn't a general or colonel on the Allied side that I know of who hasn't said, 'Well, this time we don't want any prisoners.'" Following the conclusion of the Malmédy massacre trial, in which

all 73 German defendants were found guilty and 43 sentenced to death, the chief defense counsel wrote to his family that the president of the court, Brigadier General Josiah Dalbey, had told him that presiding over the trial was the most difficult thing he had ever done, because he knew that American soldiers had been guilty of similar crimes.³⁸ To its credit, the U.S. Army had brought to trial some of its own members who had violated the laws of war, but it treated them with comparative leniency. The Biscari massacre resulted in court-martial proceedings for two soldiers of the 45th Infantry Division in September and October 1943. The first of these had as its sole defendant Sergeant Horace T. West of Company A, 180th Infantry Regiment. West was charged under the 92nd Article of War with having “with malice aforethought, willfully, deliberately, feloniously, unlawfully and with premeditation” killed 37 prisoners of war with a Thompson submachine gun. West’s battalion commander testified that he had turned over to West more than 40 prisoners who had been flushed from a hillside cave near the Biscari airfield, which Giannola identified as the base near San Pietro di Caltagirone. Assembling a guard detail of nine men, West had marched the prisoners a short distance, then shot most of them with a submachine gun borrowed from one of the guards. None of the accompanying GIs had apparently attempted to restrain West. The sergeant offered a defense that combined his own fatigue and frayed nerves and Patton’s alleged “orders” with the claim that he had witnessed the murder of two captured GIs by the enemy, an experience that had filled him with uncontrollable rage. Nevertheless, he was found guilty of murder and was sentenced to life imprisonment. In fact, he remained incarcerated for little more than a year and was then returned to active duty.³⁹

The second trial for the Biscari murders had as its sole defendant Captain John C. Compton, commander of the 180th’s Company C. In an incident separate from that involving West, approximately 40 Italians had surrendered to men of Compton’s company. Compton ordered the prisoners shot, an order that was executed by a firing party of about two dozen men, some of whom had volunteered for the assignment. But the 45th Infantry Division’s inspector general recommended court-martial proceedings against Compton alone on the grounds that it was “certain” that the members of the firing squad had believed that they were following a lawful order. Compton was acquitted on essentially the same grounds. Patton had ordered the killing of enemy soldiers who continued to resist to within two hundred yards of an American

advance, even if they subsequently offered to surrender. Compton's closing statement made the point succinctly: "I ordered them shot because I thought it came directly under the General's instructions. Right or wrong a three star general's advice, who has had combat experience, is good enough for me and I took him at his word."⁴⁰

Respondeat superior or "let the master answer"—the principle that culpability for an illegal act rests with the commander who orders it—was a viable defense for an American soldier in 1943. Article 347 of the 1940 edition of the U.S. Army's *Basic Field Manual: Rules of Land Warfare*, in discussing the liability of soldiers for violations of the laws of war, states that "Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanctions of their governments or commanders." By the time the United States was ready to begin trying Axis war criminals, however, the standard had been significantly changed. As of November 1944, superior orders were no longer to be deemed a complete defense, although they might be considered in determining the degree of a defendant's culpability and in mitigation of punishment.⁴¹ This provision was incorporated in the Charter of the International Military Tribunal of August 1945 and was applied not only to defendants in the Nuremberg Trial of November 1945–October 1946 but in lesser war-crimes trials, as well. American soldiers accused of atrocities, however, were acquitted on the grounds of superior orders as late as July 1945 in a case involving the murders of German civilians committed several months earlier in Voerde.

There, troops of the U.S. 8th Armored Division randomly shot and killed at least six and probably eight persons, two of them women, who had been arbitrarily chosen for death. The murders were motivated by the desire of a junior officer, possibly encouraged by the intemperate or careless language of a superior, to "hunt Germans" or "shoot Krauts." As was true of the Biscari atrocities, the Voerde case required the U.S. Army to confront the fact that not all war crimes were committed by a uniquely brutal enemy. The murders in Voerde were as blatant a violation of international law as was the slaughter of the crew of Walthall's B-17 in Borkum. Article 46 of the 1907 Hague Convention (IV) requires an occupying army to respect the lives of persons in occupied territory. Article 19 of the U.S. Army's own *Rules of Land Warfare* of 1940 stated that "Inhabitants who refrain from acts of hostility . . . must not be injured in their lives or property."⁴² The Voerde atrocities and the courts-martial that they occasioned will be addressed in subsequent chapters.

By the time of the Voerde trials, U.S. prosecution of German war criminals had already begun. The U.S. program to try German war criminals was rooted in the “Moscow Declaration” of August 1943, in which Great Britain, the Soviet Union, and the United States declared their intention to apprehend and punish those responsible for Nazi atrocities. That resolve eventually involved the United States in a three-tiered system of war-crimes justice in Germany. The best-known component of this system—synonymous in the minds of many with the entire process of bringing Nazis to justice—was the International Military Tribunal that sat in Nuremberg for almost a year, from the fall of 1945 until the fall of 1946. There, a panel of American, British, French, and Soviet judges heard evidence against 22 German leaders and a number of organizations. Twelve defendants were sentenced to death by hanging. Seven received prison sentences ranging from 10 years to life. Three were acquitted. But the fewer than two dozen defendants tried by the IMT represented but a tiny fraction of the total number of accused German war criminals in whose trial the United States participated. A series of 12 subsequent trials conducted at Nuremberg before American judges passed judgment on 185 lesser German leaders between 1946 and 1949. By far the largest number of defendants, 1,672, were tried in 489 proceedings conducted from 1945 to 1948 before courts established and run by the U.S. Army for accused war criminals of lesser importance than those tried at Nuremberg.⁴³ In their totality, these trials were wide ranging and included defendants held responsible for the operations of the concentration camps at Buchenwald, Dachau, Flossenbürg, Mauthausen, Mühldorf, and Nordhausen and the Hadamar “euthanasia” facility; the Malmédy massacre case; the Skorzeny case, involving the use by Germans of American uniforms in combat; and more than two hundred “flyers cases,” in which Germans were tried for the abuse and murder of downed American airmen.⁴⁴

A very early trial conducted by the U.S. Army involved an incident similar to the Borkum atrocity. On August 24, 1944, 20 days after Walthall’s B-17 had come down on the *Muschelfeld*, an 8th Air Force B-24 commanded by Second Lieutenant Norman J. Rogers was shot down while taking part in an attack on Hannover. The nine-man crew took to their parachutes and were promptly captured. A seriously wounded member was given first aid by a German farm family, then hospitalized for further treatment, while the remaining eight men were placed on a train for transportation to a POW facility. They were forced to de-train at Rüsselsheim due to damage to the rail line and were marched

through part of the town, which had been heavily bombed by the RAF the previous night.⁴⁵ In spite of shouts from crew members that “We didn’t bomb Rüsselsheim” and “I am not Jewish,” they were brutally clubbed and beaten by enraged townspeople, while their guards gave them no protection. Four were shot by a local Nazi Party official. Two survived.⁴⁶

Eleven alleged perpetrators, including two women, were put on trial in July 1945 in Darmstadt, a town devastated by a British night attack the previous September that had killed 8,500 residents and left 70,000 homeless.⁴⁷ The defense argued that they had been incited to commit the crime by Goebbels’s propaganda and that he, not they, bore the preponderance of guilt. But the prosecution led by Lieutenant Colonel Leon Jaworski, who would achieve national fame three decades later as the special prosecutor in the Watergate case, insisted on the individual responsibility of the defendants for the murders, observing that “They were all grown men and women. If they are called on to commit murder and they do, they are just as responsible as any other murderers.” The officers hearing the case agreed. Ten of the defendants were found guilty, and seven, including the two women, were sentenced to death. One defendant was acquitted.⁴⁸

Like the Rüsselsheim case, the Borkum incident and trial involved important legal and moral issues growing out of atrocities spawned by an atmosphere of total war. Both tested the capacity of the U.S. Army to do justice to a defeated enemy that, in violation of international law, had murdered surrendered American soldiers. The Voerde case presented a no less significant challenge, probing the willingness of the U.S. Army to apply to its own soldiers the standards by which it was judging and punishing its enemies. Both of these cases must be carefully examined in order to draw valid comparative conclusions. In the immediate postwar years, the German people, whom the United States was intent upon “reeducating” in the ways of democracy, were watching and making comparisons of their own.

NOTES

1. Carl Lange, ed., *Kriegszeitung der Festung Borkum: Auswahl aus zwei Jahrgängen* (Berlin: R. v. Decker’s Verlag, 1917), vii.
2. J. E. Kaufmann and R. M. Jurga, *Fortress Europe: European Fortifications of World War II* (Conshohocken, PA: Combined Publishing, 1999), 77; Jacob Borut, “Antisemitism in Tourist Facilities in Weimar Germany,” *Shoah Resource Center*,

http://www.yadvashem.org/odot_pdf/microsoft%20word%20-%203123.pdf, 13; Holger Bloem and Wilke Specht, *Borkum: Nordseeinsel unter Weitem Himmel* (Norden: Verlag Soltau-Kurier-Norden, 2009), 7.

3. Voerde on the lower Rhine shared a name with a village to the south-east that, after the war, became a camp for Eastern European refugees, many of whom had been employed as slave laborers in German industry. On this Voerde, see Dieter Wiethege, *Und als der Krieg zur Ende Schien . . . Krieg, Überrollung und Ausländerlager in Voerde* (Meinerzhagen: Meinerzhagener Druck und Verlagshaus, 1985), 65–67, 81.

4. “Fahrtbericht 22.08.2009,” 1, <http://www.vdk.de/kv-am-niederrhein/mime/00057407D1252005573.pdf>; Ulrich Herbert, “Labor as Spoils of Conquest, 1933–1945,” in *Nazism and German Society, 1933–1945*, ed. David F. Crew (New York: Routledge, 1995), 250; Karl Göllmann, “Die Entstehung Friedrichsfelds,” <http://www.friedrichsfeld.net/Entstehung.pdf>.

5. “Report of Operations Office—Mission of 4 August 1944—Hamburg, Germany, Headquarters 486th Bombardment Group (H),” August 4, 1944, Entry 7, Mission Reports, Records of the U.S. Army Air Forces, RG 18 (National Archives, College Park, MD). I use this report courtesy of Robin Smith; “Report: Murder of Seven American Airmen on Borkum Island, 4 August 1944,” *United States of America v. Kurt Goebell et al.* (microfilm, frames 66–67, 240, Reel 1), Record Groups 338 and 153 (National Archives, Washington, DC); “Walthall’s Crew,” <http://www.486th.org/B5832/Walthall.htm>; Kazmer Rachak to Helmut Scheder, n.d. (in James J. Weingartner’s possession; courtesy of Robin Smith).

6. “Laws of War: Laws and Customs of War on Land (Hague IV),” October 18, 1907, *The Avalon Project at Yale Law School*, <http://www.yale.edu/law-web/avalon/lawofwar/hague04.htm>; Adam Roberts, “Land Warfare: From Hague to Nuremberg,” in *The Laws of War: Constraints on Warfare in the Western World*, ed. Michael Howard, George J. Andreopoulos, and Mark R. Shulman (New Haven, CT: Yale University Press, 1994), 119–23; Peter Karsten, *Law, Soldiers, and Combat* (Westport, CT: Greenwood Press, 1978), 23.

7. “Laws of War: Bombardment by Naval Forces in Time of War (Hague IX),” October 18, 1907, *The Avalon Project*, http://avalon.law.yale.edu/20th_century/hague09.asp; Tami Davis Biddle, “Air Power,” in *The Laws of War: Constraints on Warfare in the Western World*, ed. Michael Howard, George J. Andreopoulos, and Mark Shulman (New Haven, CT: Yale University Press), 143.

8. Lee Kennett, *The First Air War, 1914–1918* (New York: Free Press, 1991), 18–19.

9. Paul G. Halpern, *A Naval History of World War I* (London: Routledge, 1995), 40; Martin Gilbert, *The First World War: A Complete History* (New York: Holt, 1994), 110; “Scarborough Raid, 16 December 1914,” http://www.Historyofwar.org/articles/raid_scarborough1914.html.

10. Noble Frankland, “The Emergence of Air Power,” in *The Encyclopedia of Twentieth Century Warfare*, ed. Noble Frankland (New York: Orion Books, 1989), 194, 196; Kennett, *First Air War*, 57–62. The British regarded German Zeppelin crews as war criminals. See Karsten, *Law, Soldiers and Combat*, 23.

11. Holger H. Herwig, *Hammer or Anvil? Modern Germany 1648–Present* (Lexington, MA: Heath, 1994), 204.

12. "Handley Page V/1500," in *Encyclopedia of Twentieth Century Warfare*, ed. Noble Frankland (New York: Orion Books, 1989), 185; "The War in the Air—Bombers Britain," http://www.firstworldwar.com/airwar/bombers_britain.htm.
13. "The Hague Rules of Air Warfare," http://wwi.lib.byu.edu/index.php/The_Hague_Rules_of_Air_Warfare; W. Hays Parks, "Air War and the Laws of War," in *The Conduct of the Air War in the Second World War: An International Comparison*, ed. Horst Boog (New York: Berg, 1992), 337–39; Biddle, "Air Power," 148.
14. "Convention between the United States of America and Other Powers, Relating to Prisoners of War; July 27, 1929," http://avalon.law.yale.edu/20th_century/geneva02.asp; Adam Roberts, "Land Warfare," in *The Laws of War: Constraints on Warfare in the Western World*, ed. Michael Howard, George J. Andreopoulos, and Mark Shulman (New Haven, CT: Yale University Press), 127–28.
15. Olaf Groehler, "Strategic Air War's Impact on German Civilians," in *The Conduct of the Air War in the Second World War: An International Comparison*, ed. Horst Boog (New York: Berg, 1992), 281–83; Olaf Groehler, *Bombenkrieg gegen Deutschland* (Berlin: Akademie Verlag, 1990), 8–14; cf. Horst Boog, "The Luftwaffe and Indiscriminate Bombing to 1942," *The Conduct of the Air War in the Second World War: An International Comparison*, ed. Horst Boog (New York: Berg, 1992), 373–96.
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17. Burton F. Ellis to Dee Ellis, August 29, 1945, Burton F. Ellis Papers, Manuscript Group 409 (University of Idaho Library, Moscow). I use this letter courtesy of Danny S. Parker.
18. *Thunderbolt*, dir. William Wyler (War Department, 1944), DVD, Galam Americas, 2001.
19. Chuck Yeager and Leo Janos, *Yeager: An Autobiography* (New York: Bantam, 1985), 62–63.
20. Wiethage, *Und als der Krieg zu Ende Schien . . .*, 38.
21. Middlebrook, *The Battle of Hamburg*, 303.
22. Alfred de Zayas, *Die Wehrmacht-Untersuchungsstelle: Deutsche Ermittlungen über alliierte Völkerrechtsverletzungen im Zweiten Weltkrieg* (München: Universitas/Langen Müller, 1979), 256–58.
23. David Welch, *The Third Reich: Politics and Propaganda* (New York: Routledge, 1993), 115–18.
24. Barbara Grimm, "Lynchmorde an alliierten Fliegern im Zweiten Weltkrieg," in *Deutschland im Luftkrieg: Geschichte und Erinnerung*, ed. Dietmar Süß (Oldenbourg: Institut für Zeitgeschichte, 2007), 75. Bryan T. van Sweringen, who arranged the Borkum trial records for microfilming while employed by the U.S. National Archives, has written that the U.S. Army tried

"about 600 persons, mostly German civilians, . . . for the killing of some 1200 U.S. nationals, mostly airmen." "Introduction," 4, *U.S. v. Goebell* (microfilm, frame 4, reel 1).

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26. "Document No. 1676-PS," in *Trial of the Major War Criminals before the International Military Tribunal*, 42 vols. (Nuremberg: International Military Tribunal, 1948), 27: 436–39.

27. "Rundschreiben 125/44g, May 30, 1944, *ibid.*, XXV, 112–13; Szymon Datner, *Crimes against POWs: Responsibility of the Wehrmacht* (Warsaw: Western Press Agency, 1964), 198.

28. "Document No. 1676-PS," 438–39.

29. David A. Foy, *For You the War Is Over: American Prisoners of War in Nazi Germany* (New York: Stein and Day, 1984), 12. Some downed airmen were shown great kindness. See, for example, the experience of Matthew Radnosky in Lewis H. Carlson, *We Were Each Other's Prisoners: An Oral History of World War II. American and German Prisoners of War* (New York: Basic Books, 1997), 51–52.

30. See James J. Weingartner, "Americans, Germans, and War Crimes: Converging Narratives from the 'Good War,'" *Journal of American History* 94 (March 2008): 1167.

31. "Report: Murder of Seven American Airmen on Borkum Island, 4 August 1944," June 27, 1945; "Short Statement of Facts," January 24, 1946, *U.S. v. Goebell* (microfilm, frames 66–67, 240, 540, reel 1); Rachak to Scheder, n.d.; Maximilian Koessler, "Borkum Island Tragedy and Trial," *Journal of Criminal Law, Criminology, and Political Science* 47 (July–August 1956): 184–89.

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33. *U.S. v. Valentin Bersin, et al.* (microfilm, frames 419–36, reel 1), Records of the United States Army Commands, 1942–, RG 338 (National Archives, Washington, DC).

34. Statement of Giuseppe Giannola, March 4, 1947 (in author's possession). I use this document courtesy of Riccardo Giannola.

35. Stephen G. Fritz, *Endkampf: Soldiers, Civilians, and the Death of the Third Reich* (Lexington: University of Kentucky Press, 2004), 73–74; Paul Fussell,

Doing Battle: The Making of a Skeptic (Boston: Little, Brown, 1996), 124; Grady P. Arrington, *Infantryman at the Front* (New York: Vantage Press, 1959), 165–66, 226–27; Stephen E. Ambrose, *Citizen Soldiers: The U.S. Army from the Normandy Beaches to the Bulge to the Surrender of Germany, June 7, 1944–May 7, 1945* (New York: Simon and Schuster, 1997), 352–53; Justin Michael Harris, “American Soldiers and POW Killing in the European Theater of World War II,” M.A. thesis, Texas State University, 2009, 13–22.

36. See, for example: Omer Bartov, *The Eastern Front, 1941–1945: German Troops and the Barbarization of Warfare* (New York: St. Martin’s Press, 1985); Christian Streit, *Keine Kameraden: Die Wehrmacht und die sowetischen Kriegsgefangenen 1941–1945* (Stuttgart: Deutsche Verlags-Anstalt, 1978); Richard J. Evans, *The Third Reich at War* (New York: Penguin Press, 2009), 182.

37. John Dower, *War without Mercy: Race and Power in the Pacific War* (New York: Pantheon, 1986), 52–73; Charles A. Lindbergh, *The Wartime Journals of Charles A. Lindbergh* (New York: Harcourt Brace Jovanovich, 1970), 856; George Feifer, *Tennozan: The Battle of Okinawa and the Atomic Bomb* (New York: Ticknor and Fields, 1992), 485; James J. Weingartner, “Trophies of War: U.S. Troops and the Mutilation of Japanese War Dead, 1941–1945,” *Pacific Historical Review* 61 (February 1992): 53–67. For an effort to apply game theory to the issue of surrender and capture, see Niall Ferguson, “Prisoner Taking and Prisoner Killing in the Age of Total War: Towards a Political Economy of Military Defeat,” *War in History* 11 (2004), 148–92.

38. Brode, *Casual Slaughters and Accidental Judgment*, 105; Willis M. Everett to family, n.d., Papers of Willis M. Everett Jr. (in James J. Weingartner’s possession).

39. “Record of Trial of West, Horace T., Sergeant,” September 2, 1943, 4, 9, 11, 25, 35–38, 40–43, 84–100, 112–13; *United States v. West, Sgt. Horace T.* (Clerk of Court, U.S. Army Judiciary, Arlington, VA).

40. “Report of Investigation of Shooting of Prisoners of War under Direction of Captain John T. Compton, 0-406922, Co. A, 180th Inf. On July 14, 1943 in the Vicinity of the Biscari Airport, Sicily,” August 5, 1943, 1–2; “Record of Trial of Compton, John T., Captain, Infantry,” October 23, 1943, 63, *United States v. Compton, Capt. John T.* (Clerk of Court, U.S. Army Judiciary, Arlington, VA).

41. U.S. War Department, *Basic Field Manual: Rules of Land Warfare* (Washington, DC: U.S. Government Printing Office, 1940), 86–87; James B. Insko, “Defense of Superior Orders before Military Commissions,” *Duke Journal of Comparative and International Law* 13 (Spring 2003): 404, <http://www.law.duke.edu/journals/cite.php?13+Duke+J.+Comp.+&+Int'l+L.+389>.

42. “Laws of War: Laws and Customs of War on Land (Hague IV),” Article 46; *Basic Field Manual: Rules of Land Warfare*, 6.

43. Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany* (Westport, CT: Greenwood Press, 1989), 9, 21, 31.

44. Ute Stiepani, “Die Dachauer Prozesse und ihre Bedeutung im Rahmen der alliierten Strafverfolgung von NS-Verbrechen,” in *Der Nationalsozialismus vor Gericht: Die alliierte Prozesse gegen Kriegsverbrecher und Soldaten 1943–1952*, ed. Gerd R. Ueberschär (Frankfurt am Main: Fischer Taschenbuch Verlag, 1999), 229.

45. August Nigro, *Wolfsangel: A German City on Trial* (Washington, DC: Brassey's, 2001), 17–24; Winston G. Ramsey, "The Rüsselsheim Death March," *After the Battle* 57 (1987): 1–4.
46. Nigro, *Wolfsangel*, 24–25, 46–51; Gladwin Hill, "11 Germans Tried for Killing Fliers," *New York Times*, July 26, 1945.
47. Groehler, *Bombenkrieg gegen Deutschland*, 374, 410.
48. "7 Germans Doomed for Killing Fliers," *New York Times*, August 1, 1945.

Building a Case

Borkum was in the British zone of occupation and came under the control of Canadian forces in the waning days of the war. The Canadians were given a handwritten statement by Dirk Johan Hendrik Dreux, a Dutch prisoner who had been held on the island by the Germans for labor on the fortifications. On "August 3, 1944," Dreux had watched Walthall's B-17, which he described as already visibly damaged, make a crash landing after having been "shot down" by Borkum's antiaircraft guns. He and several other Dutch prisoners then watched as "three" crewmen exited the plane and were marched off in the direction of the town by German soldiers. Dreux learned later that day from another Dutchman, named Lubbers, that the American prisoners had been paraded around the town with hands behind their heads while townspeople, including some members of the Hitler Youth, yelled and spat at them. In front of the railway station, a spectator had kicked one of the prisoners who had retaliated by punching his assailant in the face. The prisoners had then been attacked by a mob that struck them with "shovels, stones and other things." Lubbers claimed to have heard pistol shots, but he could not see who had fired them. In any event, all of the Americans had been killed. Subsequently, Dreux had heard people talk nervously about the murders, and one had pointed out to him a "butcher" and local Nazi leader who had allegedly played a leading role in fomenting the incident, clearly the mayor and local party boss, Jan Akkermann.¹

Dreux's statement was based partly on hearsay and was wrong on the date of the incident, the number of victims, and some of the particulars, but it was soon supplemented by a CIC (U.S. Counter Intelligence Corps) report containing testimony by Thomas J. Lyons, a

recently liberated U.S. prisoner of war. Lyons was a slightly built 22-year-old native of Buffalo who had served as the dorsal turret gunner of an Eighth Air Force B-17 shot down by flak, on November 6, 1944, while on a raid against Hamburg. He had parachuted from his stricken aircraft, coming to Earth about nine miles from Emden, breaking his left leg and cracking seven ribs in the process. His treatment had differed radically from that accorded #909's crew on nearby Borkum. His German captors took him to the Marine Hospital at Emden, where he remained until liberated by Canadian troops the following spring. While recuperating, he was told a story by a number of other POWs, including a Serb who claimed to be an eyewitness, about seven American airmen who had made an emergency landing on Borkum. According to Lyons's informants, they had been paraded around the island under the direction of the mayor, abused, and finally shot without justification and buried in a mass grave.²

Additional information was provided in a report by Lieutenant (jg) J. W. Gould of the U.S. Navy that was based on statements made to him by several Germans. These noted the names of German naval personnel who had allegedly been present at the killings and specified a Lieutenant Weber as the officer allegedly responsible for ordering the American airmen shot.³ But by far the most complete description of the atrocity to date was supplied on May 22 by Roger Guillon, a French prisoner who had been employed on Borkum at the time of the incident. It is not clear how many of the events of August 4 Guillon had actually witnessed and to what degree his statement was based on what he had heard from others, but Guillon had been held on the island for two years, spoke fluent German, and had established associations—perhaps even friendships—with some residents. Not only were major components of the incident described with considerable precision, but key names were provided, as well. Naval Captain Kurt Goebell, the top-ranking officer on Borkum, had arrived at the crash site and had ordered the prisoners marched to an air base on the other side of the island approximately seven miles away, ostensibly for evacuation to POW facilities on the mainland. Guillon observed that the prisoners might have been transported by means of a narrow-gauge railroad that passed close to the crash site, a point that would later prove an important component in the prosecution case. As the column of seven Americans and their dozen guards approached the town, officers of the Labor Service seized spades from their men and attacked the prisoners. Abuse continued at the hands of townspeople, who beat

and stoned the prisoners, egged on by Mayor Jan Akkermann with shouts of "Kill them, kill them like dogs!" Guillon, whose testimony clearly indicated that he had been an observer of this part of the march, claimed to have then been threatened by a "Corporal Langer," one of the Germans who guarded the foreign laborers on the island, who had ordered him at pistolpoint to stand aside. Guillon testified that he had subsequently heard from multiple witnesses that Langer shortly thereafter had shot and killed one of the prisoners. Accompanied by their guards, who provided no protection against continuing assaults, the prisoners stumbled on, collapsing one by one, then were "finished off" with further pistol shots. The bodies were allowed to remain where they had fallen until evening, when they were transported by wagon to nearby sand dunes and stripped of their clothing. They were then taken to the town cemetery and buried in a common grave.⁴

Guillon's statement would be proved wrong on some details, but it was compelling testimony. He was able, moreover, to provide the names of several Germans whom he characterized as "anti-Nazi" who might provide additional information. Motivated by substantial evidence that a war crime had occurred on Borkum, an investigation was begun by naval Lieutenant Guin Fisher, a legal officer attached to the U.S. Navy Flag Officer for Western Germany stationed at Buxtehuda, a short distance southwest of Hamburg. Assisted by Sub-Lieutenant D. McDonald of the Royal Navy as interpreter, Fisher interviewed more than 40 Germans, both military and civilian, from June 11 to June 18.⁵

If any doubts lingered that a war crime had been committed on Borkum the previous August, they were erased by Fisher's interrogations, on the basis of which a coherent narrative emerged that broadly corroborated Guillon's recollections. A "Short Summary of the Facts" based on those interrogations noted that:

On 4 August 1944, about 1300 hours, an American flying fortress was hit by flak and was forced to land on Borkum island. The crew consisted of three Second Lieutenants and four Sergeants, all of whom were immediately taken prisoners [*sic*]; six of the men were uninjured and the seventh suffered only a minor forehead injury. Upon his arrival at the scene of the landing shortly thereafter, the Military Commander of the Island ordered that the prisoners be marched through the town of Borkum to the airfield situated on the other side of the island about seven miles distant, although it would have been easy for rail transportation to have

been provided. Seven German soldiers were ordered to march with the prisoners and guard them. At the entrance to the town, the Americans were forced to march with their hands over their heads and to pass between members of the German Labor Corps, who beat them with spades at the order of their Commanding Officer. Many civilians of the town also beat the men with sticks and fists and threw stones at them. The Burgomaster of Borkum incited the mob to fever pitch, shouting "Kill them, kill them like dogs." At the center of the town, after the prisoners had been badly beaten, a German soldier ran up and shot one of them in the back of the head. The remaining six prisoners were forced to continue their march and to receive additional beatings from both the civilians and their guards. Finally, these men collapsed on the street and were also killed where they lay by shots through the head.

Contained in the report was a list of 29 Germans suspected of participating in the atrocity. U.S. Navy Reserve Lieutenant Morton E. Rome, who authored the report, declared the existing evidence probably sufficient to support convictions for murder of 14 of these and verdicts of mistreatment of the prisoners for the remainder. Nine of the suspects were already in custody.⁶

Further investigation of the Borkum case now became the responsibility of the U.S. Army, which, under Joint Chiefs of Staff Directive 1023/10 of July 8, 1945, was authorized to establish courts in the U.S. occupation zone to try Germans suspected of having committed war crimes.⁷ These tended to be lesser offenders than those who would be tried at Nuremberg and included Germans accused of crimes committed against U.S. combatants. Both the U.S. Third and Seventh Armies were to conduct trials, the former primarily at the former Nazi concentration camp at Dachau outside Munich and the latter at Ludwigsburg, near Stuttgart, although, in October 1946, the process would be centralized and all subsequent trials held at Dachau. U.S. Army Air Forces Major Abraham Levine, investigator-examiner for War Crimes Investigation Team #6837, arrived on Borkum on October 5. Although he claimed to have "found the people as a whole very uncooperative," by October 22, with the assistance of German-born interpreter Private Rudolph Kaufman, he had nevertheless assembled 47 sworn statements that presented, he believed, "a clear picture of what happened on the 4th day of August, 1944."⁸ In the ensuing weeks, Levine would secure dozens more.

Many of the interrogations occurred at the British 102 Civil Internment Camp at the site of the German Navy's former POW enclosure at Westertimke or 103 Civil Internment Camp at Esterwegen, previously a Nazi concentration camp. These were of persons already strongly suspected of participation in the atrocity. Other interrogations were conducted in the town of Borkum itself. Ex-mayor Jan Akkermann, one of those in custody, was vague on many details of the events of August 4 but admitted having yelled, as the prisoners were led past him and a crowd of civilians, "Murderers, murderers, murderers, beat them on their necks." He also had observed Raender Haksema and Joseph Hanken each strike at least one of the Americans.⁹ Haksema testified in excellent English that he had heard Akkermann shout "hit them, hit them" but denied having struck a prisoner or having seen anyone else do so.¹⁰ Hanken, however, admitted that he had been in a state of high agitation over the fact that he had lost his home, possessions, and job in an air raid on Hamburg and, consequently, had been moved to hit one of the flyers. He also claimed that Akkermann had informed him that the American bomber had fired on Nazi Labor Service men as it descended, killing one and wounding another.¹¹ Fifty-one year-old air-raid policeman Gustav Mammenga also admitted to having struck the smallest of the prisoners, who struggled throughout the march to keep an oversize pair of pants from falling to his ankles, but only "two or three times" with his open hand.¹²

On August 4, 1944, 34-year-old Heinz Witzke had been an enlisted man serving searchlight # 3 of Battery 7, Antiaircraft Battalion 216. He was ordered to serve as one of the guards as the POWs were marched through Borkum. Lieutenant Jakob Seiler, commander of the battalion's Ostland Battery, near which the B-17 had come down, directed the guards to withhold protection from the prisoners should they come under civilian attack and to beat them if they lowered their hands, although Witzke denied having personally struck anyone. Following the murders of the seven Americans, Witzke testified, all of the guards were required to sign a statement to the effect that the prisoners had been beaten to death by enraged civilians and were ordered neither to speak nor to write of the incident.¹³ In his own sworn statement, Seiler admitted only to having ordered the guards not to "shoot" civilians if they should attack the prisoners, but he denied having required the beating of prisoners who lowered their hands during the march.¹⁴ Former lieutenant Karl Weber witnessed the march through the town, Akkermann's efforts to incite the crowd, and attacks by "four or five"

citizens on the prisoners. Although Major Levine confronted him with testimony alleging that he had been seen riding a bicycle at the head of the column of prisoners while yelling, "Beat them to death, beat them to death," Weber denied all wrongdoing and claimed, in fact, to have helped a fallen prisoner to his feet.¹⁵

Frigate Captain Walter Krolikovski had commanded the 216th Naval Antiaircraft Battalion on Borkum when Lieutenant Harvey Walthall had put #909 down on the *Muschelfeld*. Although the second-highest ranking officer on Borkum, when questioned by Levine in Esterwegen on October 29 he claimed to have played only a tangential role in the events of August 4, 1944, largely limited to having been informed by others of assaults on the prisoners, ordering subordinates to investigate, and notifying his superior, Captain Kurt Goebell, that trouble was afoot. That the prisoners had been shot to death he had not discovered until later, having been told initially by the guards that they had been fatally beaten by civilians. But Levine confronted Krolikovski with Johann Schmitz, the senior noncommissioned officer among the guards, who stated that he had informed Krolikovski almost immediately that the Americans had been shot by an unnamed soldier and Petty Officer Jakob Wittmaack, a member of the guard detail.¹⁶ Krolikovski's assertion of ignorance in regard to the fate of the prisoners was implicitly called further into question by the sworn statement of the former deputy commander of the battalion, ex-lieutenant Emil Sobiech. Sobiech had been at battalion headquarters in the Dorf Hotel after the prisoners had passed and had learned almost immediately of the shooting of the first American at the town hall. He had witnessed Krolikovski's "very excited" reaction after having spoken to civilians returning from the scene of the subsequent murders. Sobiech testified that Krolikovski had then dispatched him to investigate but had declared that he already "knew all about it" when Sobiech attempted to report the deaths of the remaining Americans. He also identified Goebell as the source of the orders to march the prisoners on the seven-mile route to and through the town.¹⁷

Forty-four-year-old former Lieutenant Erich Wentzel, adjutant and personnel officer of the 216th Naval Antiaircraft Battalion, was one of those already under detention at Esterwegen. At the time of #909's emergency landing on Borkum, he had been in his office in the Dorf Hotel but had hurried on his own volition to the crash site, he testified, meeting Captain Goebell and several other officers on the way. Wentzel spoke English and was ordered by Goebell to briefly question the

prisoners at the Ostland Battery, to which they had been brought. Goebell was primarily interested in learning who had been responsible for shooting down #909. In fact, probably no one had been, the primary damage to #909 having been caused by its collision with another B-17, although that information apparently was not elicited from the prisoners. Following the interrogation that Wentzel recalled as having lasted about 15 minutes, the prisoners were assembled for the march to the airfield. Lieutenant Seiler, the battery commander, ordered the guards to see to it that the prisoners kept their hands raised and refrained from talking to one another, but Wentzel denied having heard him direct that the Americans were not to be protected if attacked by civilians. Petty Officer Johann Schmitz, who was appointed leader of the guard detail, doubted his ability to find the prescribed route through the town, and Wentzel volunteered to accompany the procession as guide. As the prisoners and their guards marched from the Ostland Battery around the *Muschelfeld* and on to the Promenade that ran along the beach, all was peaceful. Then, Schmitz made a wrong turn onto Victoria Strasse, whereupon Wentzel ordered him to turn the column back along the Promenade toward Strand Strasse. That maneuver brought the prisoners and their guards into contact with a company of the Nazi Labor Service equipped with spades then engaged in exercises. Someone—Wentzel professed not to know who—ordered the Labor Service men to form two lines on either side of the street. As the column of prisoners marched between them Wentzel, pedaling ahead on his bicycle, heard shouts but claimed not to have seen any acts of violence. He paused briefly while the column passed him, did not see any evidence of injury to the Americans, then followed in the company of Lieutenant Weber down Strand Strasse, turning right on Bahnhof Strasse. At the corner of Bahnhof Strasse and Franz Habich Strasse stood a mob of civilians, shouting, Wentzel recalled, “Knock them down, kill them dead, they killed our sisters, brothers, and children.” He observed prisoners being struck by civilians and claimed to have attempted to protect the Americans by riding his bicycle between them and the mob. Once again at the head of the column, Wentzel heard a shot in the vicinity of the town hall. Turning back to investigate, he found a prostrate prisoner and several men preparing to carry him inside the office of the air-raid police. Wentzel proceeded to the Dorf Hotel, where he reported to Captain Krolikovski what he had seen, then continued along the route of march to Reede Strasse, where he observed the bodies of the remaining prisoners and spoke to Schmitz,

who explained that they had been beaten to death by the mob. But Wentzel's effort to portray himself as the innocent observer of criminal acts that he had been helpless to prevent was undermined by his reluctant admission in the face of sarcastic questioning by Levine that he had composed a report on the incident incorporating the tale of beatings by civilians as the sole cause of the prisoners' deaths in the knowledge that at least one of the prisoners had been shot and had read the report aloud to the guards prior to their having been required by Krolikovski to sign it.¹⁸

Forty-nine-year-old Kurt Goebell was Borkum's senior military officer on August 4, 1944. He had watched #909 descending and being fired upon by the batteries under his command. He went to the crash site, then proceeded to the Ostland Battery, where the American prisoners had been assembled. Goebell was evasive in his responses to Levine's questions. He claimed not to remember whether or not he had ordered Wentzel to interrogate the prisoners or if he had posed any questions himself, nor could he remember ordering Seiler to direct the guards not to intervene if the Americans were attacked by civilians, although he admitted that he had been aware of Propaganda Minister Goebbels's "decree" on the subject. He did concede, however, that he had relieved one of the guards for his failure to be "strict" enough with his prisoner and, more critically, that he had ordered Seiler to march the prisoners through the town. In response to Levine's question as to why he had ordered the prisoners marched to the airfield rather than transported by the island's narrow-gauge railroad, he replied that the train was being used by foreign workers and civilians and that he did not want the Americans to come in contact with them. When asked why a separate car could not have been used for the prisoners, Goebell could only manage, "I did not think about it." After the column had marched off, Goebell went to his office and phoned Borkum's police chief, Heinrich Rommel, to notify him of the imminent arrival in the town of the American prisoners. Rommel testified that Goebell had said, "Unfortunately, I have taken seven prisoners," which, when queried by Levine, he denied, but he admitted the possibility of having said to Rommel, "I point out to you the decree of Dr. Goebbels." Goebell attempted to defend himself against the sinister interpretation that Levine assigned to the statement by claiming the sole motivation of wanting to alert the man responsible for the maintenance of law and order in the town, to which his interrogator responded with heavy sarcasm, "You were responsible for the care and safety of these prisoners

of war who had surrendered according to the Geneva Convention." Goebell conceded that, "in the final analysis," that was true and assured Levine that, if he had had reason to anticipate trouble, he would have avoided marching the prisoners through the town in daylight.¹⁹

Hermann Wulff was a 41-year-old plumber who had been employed by Borkum's gas works at the time of #909's emergency landing. He had been returning from a job to the gas works at about 4:30 P.M. and nearing the town hall when he had encountered a crowd of about 20 civilians and soldiers. Alighting from his bicycle, he asked two of the soldiers what was going on and was told that captured airmen were about to be led through the town and that they were to be beaten. Wulff rode down Seldte Strasse to the drug store at its intersection with Neue Strasse, where he stopped to observe the approaching column of prisoners. They were clearly exhausted, he recalled, staggering from side to side as they "jogged" down the street, with hostile civilians both beside and in front of them. One prisoner, the tallest, had a bloody face. Although Wulff did not see civilians attack the prisoners, he did observe that one prisoner who had fallen was struck with the rifle butt of a guard, whom Wulff professed himself unable to identify. The smallest prisoner, the last in line, struggled to keep a pair of oversized trousers around his waist. Lowering his hands to reposition them, he was struck and knocked to the ground by his guard, also unknown to Wulff, who jerked him to his feet and shoved him forward with a shout of "Go on, gangster, criminal!" As the column moved down Seldte Strasse, the witness heard a shot and, as the crowd dispersed, saw a prisoner lying on the pavement in front of the air-raid police office. This would later be identified as #909's bombardier, Lieutenant Howard Graham, the "little flyer" with the falling pants and the first victim of the Borkum atrocity. Wulff claimed to have repulsed one guard's invitation to participate in beating the prisoners and to have finally witnessed the murder of the remaining Americans by a pistol-wielding soldier who, with a "wild look in his eye" and yelling "I can't go on anymore," shot each in the back of the head, the last as he attempted to flee the carnage.²⁰

Karl Fick was a 45-year-old policeman who had lived on Borkum island since 1939. Under questioning by Levine, he provided a succinct account of what he had witnessed on the afternoon of August 4, 1944. Between 3 and 4 P.M., he had been on the Promenade investigating an incident unrelated to the captured airmen. He encountered an air-raid policeman, Klaas Wegmann, who informed him that the

American prisoners were to be led through the town on their way to the airfield and that he had been directed by Mayor Akkermann to alert Fick about the prisoners' approach. Fick also observed a large group of young Labor Service men, perhaps as many as 100, exercising with their spades on the promenade between Victoria and Strand Strassen. As he was conversing with Wegmann, the prisoners and their guards hove into view—hands raised, walking fast but obviously exhausted—led by an officer mounted on a bicycle. The Labor Service contingent assembled on either side of the promenade, although Fick could not hear an order for them to do so. The prisoners were made to march between the ranks of spade-wielding men, although the witness remembered seeing only one American—the last or next to last—actually struck. Fick then proceeded to the police station, where, about 15 minutes later, a phone call from his wife informed him of the shooting of six of the prisoners near the athletic field (Graham, of course, had been mortally wounded earlier on the march). Fick bicycled to the scene along with Heinrich Rommel, the police chief, blocked off the street, and watched as an ambulance removed the bodies.²¹

Rommel was 54 years old and had been a resident of Borkum for 22 years. When #909 landed on the *Muschelfeld*, he had been at home. He had not seen the plane descend, but he had heard the air-raid siren and proceeded to his office. At about 3 P.M., he informed Levine, he had received a phone call from Captain Goebell. Goebell's message, as Rommel recalled it, was to be central to the case that U.S. Army prosecutors were to formulate: "An airplane has come down and unfortunately I took seven prisoners. They will be taken to the airport and I draw your attention to the decree of Dr. Goebbels." Being unfamiliar with the "decree," Rommel was made uneasy by Goebell's statement, and he phoned the Gestapo office in Emden for instructions. Commissioner Struwe asked whether the prisoners had been taken by the police or the military and, when told the latter, instructed Rommel to remain uninvolved. Although allegedly ignorant of the nature of the Goebbels "decree," he oddly neglected to query Mayor Akkermann when the latter phoned to essentially repeat the message given to Rommel earlier by the island's commandant. It was a passive police chief who briefly observed the marching prisoners, claimed to have witnessed no abuse of them as they passed the police station, but was shortly thereafter notified by Fick of the prisoners' murder, whereupon he proceeded to the scene and observed the removal of the bodies.

Rommel's testimony included an insight into the tensions among Borkumers created by the murders and their fear of American retribution. Following war's end, Captain Goebell, obviously apprehensive, had questioned Rommel on the tenor of opinion among Borkumers on the murders of the American flyers the previous summer. Rommel replied that the people were "worried and sorrowful" and believed that Goebell could have prevented them. "Me?" Rommel remembered Goebell responding. "I had nothing to do with it." In what was clearly an increasingly heated exchange, Rommel replied that if Goebell was not responsible, he couldn't imagine who might be. Goebell could; he blamed Rommel for not having protected the prisoners from attack and categorically denied having brought the "decree" of Dr. Goebbels to the police chief's attention.²²

On the afternoon of August 4, 1944, 29-year-old Heinrich Heinemann was making sausages in his father's butcher shop on the corner of Neue and Franz Habich Strassen. He had served in the German Navy but had been released due to his father's having been awarded a contract to supply meat products to the military. Learning from passers-by that prisoners were to be led through the town, he and six foreign prisoner-workers employed in the shop went outside to watch. Heinemann remembered that the Americans seemed weary, that a tall prisoner had a bandage over his eye, and that the smallest flyer, the last in the column, had trouble keeping his pants in place. Although he estimated that about 20 civilians "were running all around," he saw none of them strike the prisoners but stated that some of the guards repeatedly hit the prisoners with their rifle butts. Heinemann returned to work. After about 15 minutes, a woman entered the shop with the news that one of the prisoners had been shot near the city hall. He took to his bicycle to investigate but found no one there. Pedaling on to the old lighthouse just beyond the Dorf Hotel, he observed the six surviving prisoners, their guards, and a crowd of civilians. Also present were Lieutenants Wentzel and Weber and Captain Krolikovski, who looked on as guards continued to force the exhausted prisoners on with blows from their rifle butts. Heinemann continued to follow the procession to the fence along the sports field when he heard shots. An infantryman whom Heinemann described as tall with a thin face and "a brutal look in his eyes" and armed with a pistol was running up the line of prisoners shooting each man in the back of the head. His final victim, the prisoner at the head of the line, attempted to flee but was pursued by his assailant and shot from a distance "of about two or

three meters." Heinemann then observed one of the noncommissioned officers among the guard detail, described as a short, older man with a thick moustache, shoot two of the fallen Americans a second time with his 9mm *Pistole 08*. In distress and agitation, Heinemann testified, he immediately rode home. But Heinemann might have been less the innocent observer than his testimony implied. Another witness interrogated by Levine claimed to have seen Heinemann—easily identified by his white butcher's apron—rush into the crowd as the prisoners passed. Questioned a second time, Heinemann told an unconvincing story of having "stumbled" and put his hand on the shoulder of one of the Americans, pushing him "twice so I would not fall."²³

Klaas Meyer-Gerhards was a 50-year-old merchant and a lifelong resident of Borkum who, on August 4, 1944, was leader of the island's air-raid police. He had seen the approach of #909 and proceeded with seven subordinates to the landing site, where they blocked off an area of about 150 meters from the aircraft to secure it from curious residents. Finding no more to do, Meyer-Gerhards accompanied his men back to town and went home for lunch and a nap. His slumber was interrupted by a phone call from one of his men. He was informed that Mayor Akkermann was attempting to reach him and that he needed to come to his office in the Central Hotel, across the street from the city hall. His arrival coincided with that of the American prisoners and their escort, along with a crowd of onlookers whose number he estimated at "about a hundred or more and a lot of children, too." As Meyer-Gerhards was about to enter his office, he saw a soldier whom the witness identified as Langer run toward an American who had fallen and shoot him in the back of the head. Meyer-Gerhards had the victim, clearly Lieutenant Graham, carried into his office, followed by a wild-eyed Langer, who asked to be allowed "to finish him off." Meyer-Gerhards claimed to have responded, "Are you crazy? He isn't an animal! Get out of my office!" Detaining Langer, however, does not seem to have occurred to the witness, and Langer was free to pursue the remaining prisoners. Meyer-Gerhards called for an ambulance, which transported the still breathing but unconscious Graham to the naval hospital on the island, and summoned yet another ambulance when informed that the remaining prisoners had also been shot. Before leaving his office, at around 6 P.M., Meyer-Gerhards testified, he phoned the hospital and learned that Graham was, at that point, still alive.²⁴

That an atmosphere of tension and fear had developed among Borkumers concerning the possible consequences of the murders of the

American flyers was hardly surprising. Many of the sworn statements gathered by Levine were obvious efforts to portray the deponents' conduct on August 4, 1944, in the best possible light, and some of them certainly contained serious distortions, if not outright falsifications. That some witnesses, motivated by conscience, personal animosity, or a desire to conceal their own guilt or that of family members, were willing to make (or, possibly, invent) damaging revelations about their neighbors was evident. Erna Garrels testified that her husband, Gerhard, already arrested for participating in the beating of the prisoners, had in fact been in Emden on August 4, 1944, but that she had seen Klaas Wegman, a neighbor, kick one of the Americans. In a second statement, she revealed a series of mutual recriminations that had been stimulated by earlier American investigations of the murders. Shortly after Lieutenant Guin Fisher's preliminary inquiry, in June 1945, Frau Garrels had learned of a heated exchange between Klaas Meyer-Gerhards and Heinrich Heinemann, whose father had been imprisoned on suspicion of having assaulted the Americans. In the course of the confrontation, the younger Heinemann apparently imputed guilt to Meyer-Gerhards, to which the latter allegedly replied: "You keep still! If I open my mouth, you will be in it, too. You were one of the first at City Hall who did the beating." After Levine's arrival on Borkum, Frau Garrels had threatened Meyer-Gerhards with disclosure to the Americans of what she had heard about the latter's actions on August 4, 1944. According to Garrels, Meyer-Gerhards had replied: "I'll deny everything. Your husband wouldn't want that if he was [*sic*] here. I'd sooner go to jail for five years before I would report somebody," to which Frau Garrels had responded tartly, "So far neighborly love doesn't go, that you would go to prison for a guilty one." Frau Garrels's husband, Gerhard, interned at Westertimke, although identified by Agnes Fischer as having beaten Lieutenant Graham and by Hendireka Gemsa as having been present on Borkum rather than in Emden, claimed that the witnesses had confused him with Gustav Mammenga, whom he closely resembled.²⁵

Other residents supplied Levine with additional detail regarding the attacks on the American prisoners. On August 4, 1944, Rudolf Erdwiens, a 16-year-old carpenter, had been working when Borkum's air-raid sirens sent him to a shelter. He heard the firing of the island's antiaircraft batteries and, shortly thereafter, the sounding of the all-clear, after which he returned to work. Knocking off at around 5 P.M., he gathered up some wood from the shop for his personal use

and began to walk to his home, at 54 Deich Strasse. Reaching Reede Strasse, he saw the American prisoners with their guards. As the column drew opposite him, a tall male civilian dressed in white shirt and gray trousers whom he did not know grabbed a piece of wood about two feet long and two inches square from Erdwiens and used it to beat one of the prisoners on his shoulders and back.²⁶ Johann Grupengiesser, a 48-year-old machinist who had witnessed the attack described by Erdwiens, identified the assailant as a certain "Rimbach." He also claimed to have witnessed *two* of the guards who were armed with pistols shooting two of the prisoners a second time after they had been felled by Langer. These men he was able to describe but not identify. Grupengiesser also observed two officers on bicycles, one of whom he identified as Lieutenant Weber (the other was certainly Wentzel), who rode up to the scene, made a cursory inspection, then rode away.²⁷

Johanna Wybrands, age 51, told a dramatic story that, if true, indicated that, on August 4, 1944, not all Borkumers had approved of the assaults on the American prisoners and that at least one of the prisoners had attempted a measure of self-defense. Looking out the kitchen window in the building at 26 Reede Strasse shared by the grocery store she operated with her husband, Frau Wybrands saw "a crowd of people" and went outside to investigate. She witnessed an onlooker (presumably the Rimbach identified by Grupengiesser) seize a stick from a youngster (who must have been Erdwiens) and strike a prisoner on the head with it. Another prisoner, she testified, grabbed the stick, at which point someone from the crowd yelled, "Now shoot him!" She then claimed to have seen a private shoot "the flyer" (which one is unclear) in the back of the head. At this point, Frau Wybrands fled back into her store, although she re-emerged some time later to see "four" more dead Americans. As an interesting coda to her sworn statement, Frau Wybrands added that, at the time of the assault on the prisoner with the stick taken from Erdwiens, she had attempted to pull the assailant away from his victim, for which she was reviled by several bystanders with the accusation that she was "not fit to be a German woman," a now useful distinction also claimed by another female witness critical of the beatings, Elizabeth Biermann. Wybrands had been confronted by Langer, who, she asserted, had appeared at her door as she was about to enter the store and put his hand menacingly on his pistol, at which point Frau Wybrands was pulled inside by her husband, Eldbert, who in his own statement confirmed her testimony in its essentials.²⁸

Fritz Fidelak claimed to have been in Emden on August 4, 1944, but was well acquainted with Langer, the principal (and possibly sole) murderer of the American prisoners. Fidelak had been Langer's immediate superior in an army company responsible for guarding the prisoners of war who worked on Borkum's fortifications. Fidelak testified that he had received a phone call from Langer in which the latter had described the circumstances of his shooting of the American prisoners. He had been off duty and in town shopping when he had encountered the marching column of Americans and their guards. He had joined the procession and had shot the Americans "while they were attempting to escape." Fidelak claimed to have reported the conversation to the captain in command of the company but then to have lost track of Langer after he had been transferred to the mainland, although he had received a postcard at some point in which Langer explained that he was being sent to the front.²⁹

Other witnesses contributed additional incriminating detail. Fifty-one-year-old Klaas Adel was bicycling home from work at the town hall at around 6 P.M. when he encountered an officer whom he identified as Lieutenant Weber riding his bicycle in the opposite direction and yelling, "Beat them to death! Here come the pigs!" Following at some distance were six prisoners and their guards. Adel saw one uniformed German beating the next-to-last American with his fists, but he saw no assaults by civilians. About 30 minutes later, he saw the bodies of the six Americans lying on Reede Strasse along the athletic field between Wybrand's store and Grupengiesser's house.³⁰ Fifteen year-old Hilde Glashoff had been out walking when she had seen the seven exhausted American prisoners under armed guard coming down Seldte Strasse. She estimated that "about 25 or 30" civilians were looking on, one of whom, a tall, slim man in a white shirt, had hit one of the Americans in the face with his fist. Although Captain Krolikovski was present, he had done nothing to prevent the assault or restrain the civilian.³¹ Jenni Glashoff, probably Hilde's mother, had witnessed assaults by two civilians on the prisoners. One of them was likely the same one described by Hilde, and both had been carried out in the presence of a passive Krolikovski.³² *Paterfamilias* Alfred Glashoff described the same attacks and identified not only Krolikovski but also Lieutenant Erich Wentzel as having made no effort to intervene.³³ Gerhard Stindt, a 61-year-old hotel owner, had served as assistant to the commander of Borkum's air-raid police, Klaas Meyer-Gerhardts. On the afternoon of August 4, 1944, Stindt had received two phone calls

from Mayor Akkermann, who was trying to contact Meyer-Gerhardt to tell him of the impending march of the prisoners through town. Akkermann, according to Stindt, was anxious to see "how tough the air-raid policemen were."³⁴ Dorothea Viehring, age 41, ran a tobacco shop and had watched the column of prisoners and guards, accompanied by Wentzel on his bicycle, moving down Strand Strasse. She denied having seen any violence inflicted on the Americans but related that, sometime later, Rimbach had come into her shop. He had held out his hand with the comment, "I also got a bloody hand out of this." In response to Frau Viehring's request for an explanation, Rimbach allegedly answered, "I have had my revenge."³⁵ Some testimony suggested behavior closer to harassment than criminal assault. In addition to the shouted insults and threats attested to by many witnesses, Jan Klieviet claimed to have seen one of the prisoners kicked in the shins.³⁶ Some testimony was potentially exculpatory. Gerhard Akkermann (not to be confused with mayor Jan Akkermann) was employed at the naval air base on the island. He recalled having been informed by a non-commissioned officer at around 4:00 or 4:30 P.M. that the night crew would have to guard seven prisoners who were to be brought to the base and evacuated to the mainland the next morning, suggesting that there had been no overt intent to murder the Americans.³⁷ Some testimony was hearsay of dubious value. Anne Akkermann reported that her sister had been told by Jean LaPierre, a French POW working on Borkum, the names of civilians who had beaten Americans and identified a Richard Kutscher as the murderer of Lieutenant Graham.³⁸ In his own sworn statement, Kutscher claimed to have been working at the air base all day. In the end, he would not be charged, nor would any of the other persons implicated by LaPierre.³⁹

Major Levine had also gathered evidence more tangible and less ambiguous in its import than the testimony of frightened suspects and often self-serving witnesses. Major Murray M. Braff was a medical doctor and pathologist by training who had been assigned to Levine's War Crimes Investigation Team. On October 8, 1945, he visited Plot D in Borkum's Lutheran cemetery, where, close to the cemetery wall and surrounded by a low enclosure of brick, were nine white crosses, each mounted on a small concrete pedestal. On seven was inscribed "U.S. Army," the name of the deceased, and "beerd" (*beerdigt* or buried) and the date of burial, with, according to German custom, the day preceding the month, "5.8.44." Striking a discordant note was a misreading of James Danno's given name, rendered by

those who had consigned him to his grave as "Jannes." The seven members of #909's crew were not alone in this corner of the cemetery. Present to the immediate right of Graham's grave (he was in death, as on the march, again at the end of the line) were two more, one that of a member of the Royal Canadian Air Force and the other that of a British Royal Air Force crewman. The bodies of the Americans were exhumed by German civilians and examined by Major Braff *in situ*. All had been buried uncoffined and, after more than a year in Borkum's damp, sandy soil, were badly decomposed. The apparent circumstances of their deaths had already been described to Braff by Levine and were readily confirmed by Braff's cursory examination. In five cases, bullet wounds that had entered the back of the skull were present. Danno's skull had completely disintegrated, making the identification of a cause of death impossible, while no wound could be found in Faber's remains, leading Braff to speculate that he had been shot in the neck. There was no evidence of a second bullet wound to any of the bodies, although, given their condition, that was clearly a possibility. The remains of the seven Americans were placed in zinc-lined coffins and temporarily reburied in the graves the Germans had provided for them.⁴⁰

The evidence assembled by Levine, if not devoid of the ambiguity present in many criminal cases, strongly indicated that some civilians had expressed murderous hostility toward the captured airmen that in a few cases had extended to assaults, while the naval personnel assigned to escort the prisoners had been ordered to withhold protection from them if they came under civilian attack. Some of the guards had struck the Americans with their rifle butts. But the actual murderer had belonged to neither group and had not been apprehended. On December 28, 1945, a case analysis was completed by Captain Charles D. Mathews of the Prosecution Subsection, Deputy Theater Judge Advocate's Office, War Crimes Branch. Two charges were preferred on January 8, 1946, against 23 Germans, alleging that they "did willfully, deliberately and wrongfully encourage, aid, abet and participate in the killing of" and "did willfully, deliberately encourage, aid, abet and participate in assaults upon" the seven crewmen of #909. The case was assigned the reference number 12-489 and referred by the Deputy Theater Judge Advocate's War Crimes Branch, United States Forces, European Theater (USFET), to the U.S. Seventh Army which, along with the Third Army, was then in control of the U.S. occupation zone, for trial.⁴¹

NOTES

1. "War Crimes, Island of Borkum," May 16, 1945, I Echelon, 21 Army Group, *U.S. v. Goebell et al.* (microfilm, frames 47, 52–54, reel 1).
2. "Memorandum for the Officer in Charge," *ibid.* (frames 59–60).
3. "Murder of Seven American Airmen on Borkum Island, 4 August 1944," June 27, 1945, *ibid.* (frame 68).
4. "Exhibit 1," *ibid.* (frames 90–91).
5. "Report," June 27, 1945, *ibid.* (frames 66–163).
6. "A Short Summary of the Facts: Murder of Seven American Airmen—Mistreatment of American Prisoners of War on Borkum Island," *ibid.* (frames 165–67).
7. "Introduction," 3, *ibid.* (frame 3).
8. "Memorandum to Lt. Col. B. F. Ellis," October 22, 1945, *ibid.* (frame 270).
9. "Testimony of Jan J. Akkermann," October 24, 1945, 4, *ibid.* (frame 287).
10. "Testimony of Raender Haksema," October 26, 1945, 2–3, *ibid.* (frames 291–92).
11. "Testimony of Josef Peter Hanken," November 2, 1945, 3, *ibid.* (frame 301).
12. "Testimony of Gustav Mammenga," November 5, 1945, 3, *ibid.* (frame 296).
13. "Testimony of Heinz Witzke," October 27, 1945, 2–4, 6, 11, *ibid.* (frames 305–7, 309, 314).
14. "Testimony of Jakob Valentin Seiler," November 1, 1945, 4, *ibid.* (frame 328).
15. "Testimony of Karl Weber," October 28, 1945, 3–7, *ibid.* (frames 318–22).
16. "Testimony of Walter Krolikovski," October 29, 1945, 2–7, *ibid.* (frames 333–38).
17. "Testimony of Emil Sobiech," October 27, 1945, 3–6, *ibid.* (frames 343–46).
18. "Testimony of Erich Wentzel," October 29, 1945, 2–14, *ibid.* (frames 350–62).
19. "Testimony of Kurt Goebell," October 29, 1945, 2–8, *ibid.* (frames 366–72).
20. "Testimony of Hermann Wulff," October 16, 1945, 2–6, *ibid.* (frames 379–83).
21. "Testimony of Karl Fick," October 16, 1945, 2–5, *ibid.* (frames 385–88).
22. "Testimony of Heinrich Rommel," October 16, 1945, 2–6, *ibid.* (frames 391–95).
23. "Testimony of Heinrich Heinemann," October 17, 1945, 2–5; "Testimony of Heinrich Heinemann," November 5, 1945, 2, *ibid.* (frames 402–5, 408).
24. "Testimony of Klaas Meyer-Gerhards," October 13, 1945, 2–4, *ibid.* (frames 416–18).
25. "Testimony of Erna Garrels," October 18, 1945, 2–3; "Testimony of Erna Garrels," October 19, 1945, 2, *ibid.* (frames 424–25, 428).

26. "Testimony of Rudolf Erdwiens," October 11, 1945, 2–3, *ibid.* (frames 446–47).
27. "Testimony of Johann Grupengiesser," October 12, 1945, 2–4, *ibid.* (frames 450–52).
28. "Testimony of Johanna Wybrands," October 11, 1945, 2–3; "Testimony of Elizabeth Biermann," October 12, 1945, 3; "Testimony of Elbert Wybrands," October 11, 1945, 3, *ibid.* (frames 455–56, 460, 472).
29. "Testimony of Fritz Fidelak," October 13, 1945, 2–3, *ibid.* (frames 467–68).
30. "Testimony of Klaas Adel," October 18, 1945, 2–3, *ibid.* (frames 475–76).
31. "Testimony of Hilde Glashoff," October 11, 1945, 2–3, *ibid.* (frames 479–80).
32. "Testimony of Jenni Glashoff," October 11, 1945, 3, *ibid.* (frame 484).
33. "Testimony of Alfred Glashoff," October 14, 1945, 3, *ibid.* (frame 487).
34. "Testimony of Gerhardt Stindt," November 5, 1945, 2–3, *ibid.* (frames 490–91).
35. "Testimony of Dorothea Viehring," October 9, 1945, 2–4, *ibid.* (frames 530–32).
36. "Testimony of Jan Klieviet," October 15, 1945, 3, *ibid.* (frame 508).
37. "Testimony of Gerhardt Akkermann," October 10, 1945, 2, *ibid.* (frame 521).
38. "Testimony of Anne Akkermann," October 10, 1945, 2, *ibid.* (frame 524).
39. "Testimony of Richard Kutscher," October 20, 1945, 2, *ibid.* (frame 496).
40. "Testimony of Murray M. Braff, Major, Medical Corps," October 8, 1945, *Record of Testimony*, 264–68, *ibid.* (frames 816–20); exhibits 56–63, *ibid.* (frames 783–90, reel 2).
41. "Case Analysis, Deputy Theater Judge Advocate's Office, War Crimes Branch, United States Forces, European Theater," *ibid.* (frames 231–44, reel 1); "Military Government Charge Sheet," January 8, 1946, *ibid.* (frames 537–39); "Memorandum to Theater Judge Advocate," n.d., *ibid.* (frame 254).

A Town Brought to Trial

U.S. v. Kurt Goebell et al. opened on the morning of February 6, 1946, in the ceremonial hall of the palace of the kings of Württemberg in Ludwigsburg. Lighted by high, graceful windows flanked by marble columns and hung with crystal chandeliers and lavish baroque wall decorations, it was an incongruous venue for the trial of a brutal case of mass murder. The evidence would be heard by a general military government court composed of seven officers of the U.S. Seventh Army holding the ranks of colonel and lieutenant colonel. Prosecution of the case was in the hands of a trial judge advocate, Major Joseph D. Bryan, and three assistant trial judge advocates, while the defense of the accused was to be directed by defense counsel in the person of Lieutenant Colonel Samuel M. Hogan and three officers in support. All of these were appointed from a pool of officers with legal training who had been assigned to the theater judge advocate for employment in war-crimes trials.¹ Supplementing Hogan's defense team were nine civilian German attorneys. At least in terms of manpower, the defense of the Borkum accused would not be found wanting.

Although 23 Germans had originally been charged in the case, only 15 defendants were actually present in the dock. American investigators had failed to locate and apprehend the remaining eight, although one would be found later and tried individually in a subsequent proceeding. The 15 defendants were equally distributed among three distinct groups: those who had held military rank as officers (Kurt Goebell, Walter Krolikovski, Erich Wentzel, Karl Weber, and Jakob Seiler); the guards, all of whom had been noncommissioned officers or enlisted men (Johann Schmitz, Johann Pointner, Günther Albrecht, Karl Geyer, and Heinz Witzke); and civilians (Jan Akkermann, Klaas

Meyer-Gerhards, Heinrich Rommel, Gustav Mammenga, and Heinrich Heinemann).² The most glaring absence from the courtroom was that of Langer, by universal agreement the prime and, perhaps, sole murderer of the seven American prisoners. The defendants would be tainted with the guilt that belonged primarily to him. Some of them would pay a heavy price.

At least one member of the prosecution team was aware of the moral ambiguities inherent in his assignment. Captain Edward F. Lyons was a sensitive 46-year-old New York attorney who continued to lament the alleged injustice of the Sacco-Vanzetti trial of a quarter-century earlier and enjoyed reading poetry with his wife. In postwar Germany, he agonized over the devastation around him and the dropping of atomic bombs on Japan against the background of his reading of Thoreau's idyllic *Walden* and was troubled by conversations with American officers who expressed opposition to the trial of German soldiers for violations of the laws of war, because "we, too, lined up prisoners, decided how many we wanted to send in tonight . . . and unconcernedly turned machine guns on the rest." He was distressed by the exploitation of German women by U.S. Army officers and lamented that "your typical officer over here seems to regard a woman as a utility and not as a human being."³ But, involvement in other cases, including those concerning the operation of concentration camps, made him and his colleagues acutely conscious of the profound evil that had infected German society under the Nazis. As an atrocity, the seven Borkum murders bore little comparison to the sufferings and deaths of many thousands in Buchenwald, but those accused of having perpetrated them would be prosecuted with equal vigor, and some would suffer comparable punishment.

But it would not be not for want of an energetic defense. The proceedings had been under way for less than 10 minutes when Captain Jim Phelps abruptly demanded the opportunity to individually interrogate the panel of officers sitting in judgment for possible bias, a self-evident possibility in a case in which officers of the U.S. Army were called upon to judge the accused murderers of brother officers. The request was peremptorily refused by the court's president, Colonel Edward F. Jackson, who, although not a lawyer, would act as law member throughout the trial. Defense counsel had to content itself with Jackson's simple "no" to the question of the presence of prejudice on the bench.⁴ Further largely pro forma procedural challenges by the defense that persisted into the afternoon gave further notice that the

defendants would be vigorously represented. The trial proper began with the reading of the charges, to which all defendants pleaded innocent.⁵ Major Bryan then delivered the prosecution's opening statement. It was a sober account of the events of August 4, 1944, that emphasized those collusive actions by the defendants that had allegedly turned the ostensible effort to deliver the seven prisoners to Borkum's airport into torment for the Americans and, ultimately, into a "death march."⁶ That it had been the actions of one man not in collusion with the defendants who had made the procession a "death march" was a fact awkwardly skirted. Langer's name was not mentioned and would be heard only rarely during the balance of the trial.

The prosecution's case continued with the key testimony of Major Abraham Levine, the war-crimes investigator who had secured the sworn statements on which the case against the defendants was based. Each defendant was identified by Levine as having been interrogated by him and was required to rise from his place in the dock as his name was called. Collectively, they accounted for 15 of the vital statements. But Levine testified that he had collected a total of 75–80 sworn statements, only a small fraction of which were included in the body of trial evidence. That discrepancy attracted the attention of defense counsel in the person of Captain Albert Hall. Under cross-examination, Levine explained that he had submitted the statements to the war-crimes branch of the judge advocate general's office and that the prosecution section of that agency had made the selection in building its case, although he also revealed that there had been some statements that he had not submitted on the grounds of irrelevance. But Levine assured the court that "My job . . . is to find the facts relating to a certain incident, and it makes no difference to me whether a witness tells me something for or against a certain individual."⁷

Those sworn statements were now to be supplemented by the testimony of prosecution witnesses. Unlike the pretrial sworn statements, this testimony was subject to defense scrutiny during cross-examination, although much of it was neither skillful nor effective. Robert Viehring had been serving with a naval artillery unit on the island and had watched #909 as it descended for its crash landing on the *Muschelfeld*. He had gone to the crash site and, as others had testified to Levine, had heard Captain Goebell exclaim to the noncommissioned officer who reported to him the capture of the Americans, "And you bring them to me alive?" Inflection was obviously crucial in interpreting the ambiguous rhetorical query. Viehring testified that he had

understood Goebell to mean, "Why do you bring them to me at all?" Ambiguity was not eliminated, although, in light of the later abuse and murder of the American prisoners, it was not difficult to assume a sinister connotation. Viehring had clearly been called by the prosecution to lay the first stone in the foundation of its theory that a murderous conspiracy had been hatched on August 4, 1944, that had resulted in the murders of seven American airmen. The witness was cross-examined by Dr. Ottmar Weber, one of the German attorneys hired to assist in the defense of the accused. It is unfortunate that the original testimony and Weber's challenges of it in German are not included in the trial record but only the extemporaneous and often awkward translations into English of court interpreters. What seems ambiguous in translation may have been less (or more) so *auf Deutsch*. Yet, it was the translations upon which the Army judges would reach their verdicts. German attorneys, moreover, were unfamiliar with Anglo-American adversarial trial procedure and often seemed confused, particularly at this early stage in the war-crimes trial program. In his cross-examination of Viehring, Weber appeared to egregiously misunderstand the witness's testimony when he accused him of contradicting himself and asked, "Do you mean to say that he did not care to receive any prisoners altogether? In that case why did he tell them to bring the prisoners to him alive?" Viehring was understandably perplexed by the question. Weber persisted: "Put yourself in such a predicament where you don't care to receive any prisoners, would you tell the men to bring the prisoners to you alive?"⁸ Listeners to the exchange must have been scratching their heads, and not for the last time.

But other efforts by the defense to cast doubt on prosecution testimony were more effective. Sixteen-year-old Walter Hawich had been attached to the air-raid police and had gone to the scene of #909's crash landing on August 4, 1944, identified the plane as American by, as he testified, "the star" and assisted in the posting of *Eintritt Verboten!* (Entry Forbidden!) signs around the wreck. He had then returned home, eaten and, reflecting the relatively idyllic conditions still prevailing on Borkum, gone to the beach for a swim. He had just come out of the water when he heard someone yell, "The American flyers are coming!"

He, along with other bathers, had hurried up to the Promenade, which ran along the beach, to watch the procession. The young Hawich described how the "one or two platoons" of Labor Service men, who had been drilling on the Promenade, broke formation, apparently in

response to an order, lined up on both sides of the street, and beat the passing prisoners with spades and shovels while their guards made no effort at intervention. The witness testified that he followed the procession, observed the tragic-comic travail of "the little flyer" and his falling trousers ("the pants kept falling down on his heels," Hawich noted), and Mayor Akkermann's efforts to incite the crowd with cries of "Beat the dogs" or "Beat the murderers," in response to which some of the onlookers had struck the prisoners with, again, the apparent acquiescence of the guards. At the point in the march at which the prisoners reached the city hall, where the little flyer collapsed, Hawich ceased his pursuit, although he heard a single shot, presumably Langer's mortal wounding of Graham. But, under cross-examination by Lieutenant John Davis, Hawich admitted that he had not actually heard any orders given to the Labor Service contingent exercising on the Promenade to form up on either side of the prisoners, nor did he believe that many blows had been struck by them. On the route to the city hall, moreover, he had seen only two civilians hit any of the prisoners; he maintained that the guards had occasionally "shoved" or "pushed" the men they were guarding with their rifle butts rather than hitting them, an admittedly subtle and subjective but nevertheless potentially significant distinction. Mayor Akkermann had not personally assaulted anyone, Hawich testified, nor had his inflammatory shouts apparently had much influence on the conduct of bystanders.⁹ The defense had enjoyed an early, if minor, victory in somewhat diluting the image of the march as a well-coordinated exercise in brutalizing defenseless American POWs.

But this success was trivial when measured alongside the dense body of evidence represented by Levine's sworn statements, and it was to these that the prosecution team now turned. Levine was recalled to the stand and asked to identify the pieces of evidence generated by his team that were now to be formally introduced into evidence. In addition to the crucial sworn statements, Levine had personally taken photographs relevant to the case, and his editorializing on some of them called into question his earlier assurances of objectivity. When asked by Major Bryan to identify one photograph, Levine replied that it showed a part of the sea wall facing the *Muschelfeld* and the Ostland Battery, as well as part of the road along which the American prisoners had been marched on their way to the town. "On this road," Levine added, describing events he had not witnessed, "the prisoners were led with their hands over their heads at a fast rate of march and were

mishandled on the way.” Captain Hall’s immediate objection was sustained by the court’s president, Colonel Jackson, although Levine continued to offer commentary on evidentiary photographs, including grisly scenes of the disinterment of the Americans’ decomposed corpses that, the defense argued, also went far beyond his personal knowledge.¹⁰

But the sworn statements were potentially far more damaging than photographs, no matter how gruesome, and the defense made a desperate effort to exclude them from evidence. There would be no allegations at this point that torture or other forms of duress had been employed in securing them, as would be claimed by the defense in the controversial Malmédy massacre case that would come to trial a few months later, but the defendants and others who had been interrogated by Levine during the investigation had been without legal counsel and undoubtedly were badly frightened, certainly, in some cases, deservedly so. The statements, moreover, had almost all been made in German, while the documents introduced by the prosecution were translations into English, leaving open the possibility that important nuances had been lost or distorted in the process. But on what legal grounds could the defense move that the statements be excluded as evidence?

Levine’s earlier assurances of impartiality would be qualified by his later testimony that he and other leaders of war-crimes investigation teams had been given to understand that they were to conduct their interrogations in such a manner that cases could be tried on affidavits alone, making investigators in practice instruments of the prosecution. A prosecution objection to the rather quixotic defense query as to whether the rights of the accused had been protected during the investigation was sustained by the president of the court.¹¹ In fact, the question of whether the defendants had “rights” in any meaningful sense was moot. Germany had ceased to exist as a sovereign entity, authority having passed wholly to the occupying powers, which were free to operate as they chose.¹² In principle, prisoners of war were protected by international law, most notably by the Geneva Convention Relative to Prisoners of War of 1929. But the sworn statements, whether made by military or by civilian suspects, all were prefaced by a formula that identified each deponent as “a German civilian.” The U.S. Army, in other words, did not recognize the defendants who had held military rank as prisoners of war. But this awkward reality was not openly addressed in the Ludwigsburg courtroom. Instead, the defense argued,

in opposition to the introduction of the first statement, that of Kurt Goebell, both that it was not the "best evidence" available, since the deponent could be readily questioned and cross-examined in court, and that, in any case, the sworn statement was not admissible under international law against those defendants who had been members of the German armed forces. The latter argument was rooted in Article 63 of the 1929 Geneva Convention, which stated that prisoners of war must be tried according to the same standards and procedures used by the detaining power in trying its own soldiers and that, under the U.S. Army's rules of court-martial, the sworn statements would be inadmissible as evidence. Moreover, inasmuch as the military government court sitting in Ludwigsburg differed in some significant respects from a U.S. Army court-martial (much looser rules of evidence governed in the former, for example), it lacked jurisdiction over the military defendants.¹³ A similar argument had been recently offered in an application to the U.S. Supreme Court for leave to file for a writ of habeas corpus in the case of Japanese general Tomoyuki Yamashita and had been rejected on the grounds that Article 63 applied only to the trial of captured enemy combatants for offenses committed while in captivity. Yamashita would be hanged on February 23, 1946, while the Borkum trial was still in progress. As the defense surely had anticipated, its objections were overruled by Colonel Jackson, although they would be restated as additional sworn statements were introduced by the prosecution and, in most cases, with equal futility.¹⁴

Having failed to exclude the sworn statements from evidence, defense counsel could at least cross-examine witnesses and compare their courtroom testimony with their earlier responses to Levine's interrogations. This produced some discrepancies and possibly weakened the prosecution's case for the existence of a conspiracy or common design whose intentional or at least foreseeable result was the death of the American prisoners. Policeman Karl Fick had told Levine that, on the approach of the prisoners and their guards, the Labor Service contingent had separated into two groups on either side of the Promenade, requiring the Americans to run a gauntlet of spade-wielding Germans, although he had seen only one prisoner actually struck. His courtroom testimony was slightly different. Now, it seemed, the Labor Service men had broken formation and surrounded the prisoners "helter-skelter." He reiterated that he had seen only one German actually strike a prisoner with his spade, while a few others had raised their implements, although "it was impossible to determine whether they intended to

beat the flyers or really [*sic*] intended to threaten them." He had seen no blood on the faces of the Americans.¹⁵ This version hardly suggested an organized assault. The English translation of Hermann Staats's affidavit stated that the witness had seen guards "hit" the prisoners with their rifle butts and that he was "sure" that Lieutenant Wentzel, riding at the head of his column on a bicycle, had seen it but had done nothing to prevent it. In court, however, Staats testified that he had seen "the small flyer" and one other prisoner "pushed" by their guards with rifle butts but did not believe "excessive force" had been employed. Moreover, Staats now "could not say" whether Wentzel had been aware of the guards' treatment of the prisoners.¹⁶ Gerhardt Stindt's affidavit stated that he had seen "the small flyer's" guard "always" hitting him with the butt of his rifle (although he amended that observation to "at least two times") and that, in front of the Dorf Hotel, "two or three" soldiers had come out of the building, "jumped" on one prisoner, and beat him. From the witness stand in Ludwigsburg, however, Stindt initially testified that the small flyer had been "either pushed or hit" twice by his guard and another prisoner kicked by a single soldier in front of the hotel. Under defense cross-examination, he then modified his testimony in regard to the treatment of the small flyer to an unambiguous "hit" rather than "push," but with the qualifier that "It was not brutal."¹⁷

To be sure, most courtroom testimony was generally consistent with statements made earlier to Major Levine, and discrepancies were generally minor, although suggestive of evidence that deserved to be taken with a degree of skepticism. Klaas Adel steadfastly maintained on both occasions that one of the defendants, Lieutenant Weber, had encountered him on the afternoon of August 4, 1944, and had declared, "There the pigs are coming, beat them to death." In both venues, too, Adel testified that he had seen a man in uniform, but possibly not one of the guards, punch a prisoner.¹⁸ On the other hand, while Johann Grupengiesser confirmed his earlier testimony to Levine that he had seen the shadowy Rimbach hit a prisoner with a piece of wood and a soldier who was clearly Langer shoot the last of the prisoners with a pistol, the *two* guards who in his sworn statement of the previous October had allegedly shot *two* of the Americans a second time had been reduced in his trial testimony to a single guard and a single prisoner.¹⁹

Grupengiesser was not challenged on the discrepancy, but Elizabeth Biermann was grilled by assistant defense counsel Lieutenant Davis

because she had testified to Levine that she had seen three bodies on coming out of Wybrand's store, whereas, in court, she claimed to have seen only two. In explanation, Frau Biermann suggested vaguely that "It is possible that I saw the three but the whole thing was too foggy in the distance to determine exactly what I saw." But she recounted without inconsistency or hesitation her comment critical of the mistreatment of a prisoner who had fallen to the pavement, undoubtedly Graham, and her having been reviled and threatened by a guard wearing a steel helmet (whom she was unable to identify) in response. She had then retreated with her daughter into Wybrands' grocery store.²⁰ Eldert Wybrands, the owner of the store, in contrast, testified that he had not seen Frau Biermann near or in his shop and that it had been *his* wife who had condemned the rough handling of the prisoners and been castigated in language virtually identical to that claimed by Frau Biermann to have been directed at her and threatened by a soldier in a soft cap, who had then proceeded to shoot down "three or four prisoners."²¹

A minor discrepancy between Wybrands's courtroom testimony and his statement made to Major Levine five months earlier led to a suggestion by Lieutenant Davis that the witness be shown his earlier affidavit to refresh his memory. That produced an interesting colloquy between two members of the defense team and Major Bryan for the prosecution, who objected to allowing the court interpreter to translate into German the relevant passage in Wybrands's sworn statement on the grounds that the interpreter might produce a version that differed from the German in which the witness had originally spoken to Levine. That possibly unwise although certainly apposite remark permitted the defense to renew its attack on this critical block of prosecution evidence.

HALL: If the court please, how else would the witness find out what the language meant unless the court interpreter translates the statement in question to the witness? The prosecution has objected on the ground [*sic*] that he might translate it differently than the investigator's interpreter did. If that is true it might be well that we should have all the statements of the prosecution reinterpreted.

PHELPS: Sir, can the defense have an objection to all of the statements introduced, because it is possible that the witness did not know what he was signing?

BRYAN: That is distinctly not the basis of the prosecution's objection.

DAVIS: For the purpose of avoiding any further argument on an extremely minor question, I will withdraw the question.²²

One suspects sarcasm on Davis's part. It was not, in fact, a minor question, but the president of the court had already made abundantly clear that any effort by the defense to exclude the sworn statements as they had been submitted would be futile, as Davis certainly knew.

The problematic character of some of the sworn statements when placed alongside courtroom testimony was thrown into high relief by the appearance of Erna Garrels, called as a witness by the prosecution. Frau Garrels, it may be recalled, had made two sworn statements to Levine in October of the previous year. In the first, she had asserted that her husband, Gerhard, had been in Emden on the day of the murders. She had also accused a neighbor of having kicked one of the Americans and testified to having seen one of the guards strike a prisoner with the butt of his rifle.²³ In the second statement, she had described a visit in the company of her husband and another, unnamed, person to the home of Klaas Meyer-Gerhards in June 1945. Meyer-Gerhards had allegedly told the Garrels couple of a confrontation between himself and Heinrich Heinemann, in which mutual recriminations of involvement in the attacks were exchanged. Frau Garrels also claimed that Meyer-Gerhards later tried to persuade her to reveal nothing of what he had shared with the couple to American investigators, an effort that had seemingly failed and that contributed to the fact that both he and Heinemann became defendants.²⁴ In spite of his wife's assurances that he had been in Emden on the day of the murders, Gerhard Garrels had been among the accused, but he was not in the defendants' dock in Ludwigsburg, apparently because, although arrested, he could not be produced for trial.

Under direct examination for the prosecution by Captain John A. May, Frau Garrels presented a coherent repetition of both of her statements to Major Levine.²⁵ Cross-examination by the defense, however, made the picture somewhat murkier. In response to questioning by Dr. Metzler, one of the German defense attorneys, Frau Garrels first stated that she had told Levine that she had not been present when her husband had visited the home of Meyer-Gerhards but, in the next breath, testified that in fact she had been.²⁶ That contradiction might have been the result of momentary confusion on the part of the witness,

but subsequent questioning by Captain Phelps suggested the possibility of perjury. Meyer-Gerhards had been Gerhard Garrels's superior in the wartime air-raid police, and Phelps had secured information indicating that bad blood had developed between the two men, which Frau Garrels admitted under cross-examination. Meyer-Gerhards had, in fact, been instrumental in Gerhard Garrels's having spent three days in jail for an undefined minor offense. Phelps probed the fact that Frau Garrels had made two statements to Levine on succeeding days. At the conclusion of the first, he pointed out, she had been asked by Levine if she had anything further to say, to which she had answered an unambiguous "no." Why, then, the second statement on the following day? When the witness answered evasively, Phelps proposed an explanation. Following the first sworn statement to Levine, Frau Garrels had approached Meyer-Gerhards and had asked him to sign an attestation to the effect that Gerhard Garrels had not been on Borkum on August 4, 1944. This, Meyer-Gerhards had refused to do, which Frau Garrels admitted. Moreover, Phelps indicated that he was in possession of an affidavit from the third man present at the alleged conversation involving the Garrels couple and Meyer-Gerhards, now identified as Franz Fleitner, asserting that the exchange described in Erna Garrels's second sworn statement had never taken place. But on this crucial point Frau Garrels refused to yield.²⁷

Erna Garrels's cross-examination had indicated the possibility not only that she had committed perjury but also that interpersonal conflicts and tensions within the closely knit and isolated population of Borkum might be influencing testimony. That hypothesis was supported by information presented shortly after court convened on the morning of February 19. Karl Fick, who had already testified for the prosecution, had approached members of the prosecution staff with the allegation that relatives of the accused present in Ludwigsburg and witnesses were in contact with one another in a dining room apparently provided by the U.S. Army for German witnesses and family members of defendants and that the testimony of witnesses was in danger of being tainted thereby. No evidence was presented that witnesses had been influenced by such contact, however, and Fick's motives in bringing the supposed problem to the attention of the prosecution are unclear. As a witness for the prosecution, he may have been expressing his own discomfort at being in contact with relatives of the accused, many of whom he undoubtedly knew well. In any event, Colonel Jackson directed that measures be taken to ensure the future segregation of

witnesses from members of defendants' families, a possibly impractical undertaking, as Major Bryan pointed out, due to severe limitations on available space. A warning to members of defendants' families to abstain from attempting to influence the testimony of witnesses may have been all that was attempted.²⁸

The testimony of prosecution witnesses continued with mixed effect. Housewife Henni Eilers had told Levine a simple story of having been with her two children on the corner of Franz Habich and Bahnhof Strassen on the afternoon when #909 had descended on Borkum. She had seen the American prisoners and their guards approaching "in good order" with their hands raised, when Mayor Akkermann arrived and began to shout, "There you come, you murderers. How many women and children have you killed today? Civilians, beat them, kick them, and knock them down." But the only violence she had personally seen was a guard striking a prisoner in the side with the butt of his rifle for having lowered an arm and a civilian delivering a body punch to another American. Distressed, she had then retreated with her children into a shoemaker's shop until the tumult had subsided. Frau Eilers's testimony for the prosecution conformed in all essentials to the sworn statement she had made for Levine, but, under questioning by Captain Lyons, she added some significant detail. She and her children had been alone on the street corner when Mayor Akkermann had arrived, but, in response to his inflammatory shouting, people had begun to stream from their houses to a total, Eilers estimated, of "twenty to thirty." On the other hand, what had been a blow from a rifle butt in the statement to Levine now had become a "push" and the punch delivered by the civilian, a strike with the flat of the hand. Beyond Akkermann and a now deceased "Herr Wegman," whom she belatedly remembered having seen kick a prisoner, Frau Eilers was able to identify no one as an assailant.²⁹

Perhaps the most articulate and in some ways the most compelling witness called by the prosecution was Fritz Vomel, a 44-year-old physician and a resident of Borkum since 1937. Vomel testified to having visited Mayor Akkermann after he had heard from some of his patients that seven American prisoners of war had been shot to death that afternoon and that the mayor had encouraged the population to attack them. Vomel claimed to have reproached Akkermann for his behavior, to which Akkermann had supposedly replied, "Do you perhaps have pity for these people who kill our women and children and have destroyed our cities? I don't understand your point of view."

Vomel's objections may not have been based on the moral nature of the atrocity but, rather, on its aesthetics. He testified that he had responded by pointing out that people under 15 years of age were not allowed to enter the town's slaughterhouse, yet defenseless prisoners had been murdered in the presence of women and children. If Akkermann had made a rejoinder, Vomel did not describe it.³⁰ Vomel also testified to having confronted August Haesiker, the commander of the Labor Service detachment on Borkum, as he was returning from his conversation with Akkermann. According to Vomel, he had declared to Haesiker that the people of Borkum would not have resorted to violence if the Labor Service men had not set an example by attacking the prisoners with their spades. Haesiker allegedly replied with a candor that suggested pride that he had given the order for the assault, to which Vomel claimed to have responded that, in that case, he should be ashamed.³¹

In its cross-examination, defense counsel made no effort to challenge Vomel's testimony but, rather, required him to expand upon it to the benefit of some of the defendants. Captain Hall elicited from Vomel a statement that Haesiker had not implicated anyone else in the decision to turn his Labor Service men loose on the prisoners, while, in response to questioning from Dr. Magenau, one of the German defense attorneys, the witness testified to Akkermann's basically decent, although "easily excited," personality. There had been people residing on Borkum who had been bombed out of their homes on the mainland (including Vomel's own mother), while Allied bombers passing overhead on their way to attack targets on the continent had driven Borkumers to air-raid shelters almost every day and night. All of this, plus the fact that occasional bombs jettisoned by aircraft in distress had produced scattered damage on the island may have made residents excitable and susceptible to incitements to violence.³²

On the afternoon of February 19, the prosecution wrapped up its case with two witnesses who were questioned about neither the murderers nor the alleged perpetrators. Otto Mennenga (not to be confused with defendant Gustav Mammenga) had been a naval chief petty officer and medic at Borkum's naval hospital at the time of the murders. The bodies of the murdered crew members of #909 had been brought there (Graham had been alive when he arrived at the hospital but died shortly after his arrival), and Mennenga was ordered to examine the corpses and prepare a report. When questioned on the witness stand more than a year and a half later, he remembered that each victim had

been wounded in the head and had a bloody and swollen face but no other wounds or bruises.³³ Mennenga's testimony was followed by that of Johann Eilgs, a 62-year-old gravedigger at Borkum's Lutheran cemetery. On August 5, 1944, he had driven to the naval hospital to collect the corpses of the murdered Americans, by now sewn into shrouds, and to transport them to the cemetery for burial. There, the bodies had been interred, each in its own grave, and the victims' names entered in the church registry by Pastor Doebbles, who conducted a burial service for the men of #909. Each grave had been marked with a simple white cross bearing the name of the deceased and the date of his death.³⁴

Among the perceived advantages to the prosecution of Mennenga's and Eilgs's testimony may have been the idea that, inasmuch as the two men were the last witnesses called by the prosecution, they were appropriate figures with whom to close the case by underlining the mortal consequences of the defendants' conduct. At the same time, however, their testimony, particularly that of Eilgs, served to humanize, if not the defendants, then at least the community in which the murders had taken place. The bodies of #909's crew had clearly been accorded dignified treatment, although one of the judges, Colonel Robert N. Hicks, may have been disturbed that the corpses had been interred in canvas shrouds, rather than coffins, and questioned Eilgs on that point. Eilgs responded simply that Germans on Borkum were being buried in that manner also, because the supplies of wood on the island for coffins had been exhausted. Hicks seemed satisfied.³⁵

Defense counsel now chose to revert to the stratagem that it had employed at the start of the trial—a challenge to the authority of a military government court to try defendants who were members of Germany's armed forces. The court had already spoken clearly on this issue, and the defense could not have been optimistic as to the likely outcome of Captain Hall's motion that all charges against Kurt Goebell, the senior military defendant, be dismissed on the grounds that the court lacked jurisdiction to try him. Perhaps it reflected a desire to demonstrate lawyerly ingenuity or a conscientious determination to pursue every conceivable avenue of defense in a case likely to have grim consequences for the defendants. In any event, Captain Hall's arguments were intriguing, if also, in practical terms, a waste of time.

Once again, the foundation of the challenge to the court's jurisdiction was Article 63 of the 1929 Geneva Convention on the treatment of prisoners of war, of which both the United States and Germany had been signatories. That article, it may be recalled, specified that

prisoners of war were to be tried by the same courts and according to the same procedures as members of the armed forces of the detaining power.

As Hall must have known, trial by U.S. Army court-martial, with its stricter standards of evidence, would not have guaranteed a more favorable outcome for the military defendants. In 1944, for example, seven captured German U-boat crewmen held in the United States were tried by court-martial for the murder of another German POW suspected of collaborating with his captors amid allegations that confessions had been extracted under torture. All were convicted and hanged at Fort Leavenworth.³⁶ Unlike the Borkum defendants, there had been no question of the status of those seven German sailors as prisoners of war to whom Article 63 of the Geneva Convention applied. According to Captain Hall, there should have been none either in the case of Captain Goebell and, by implication, the other defendants who had held military rank at the end of the war. Discharging those men as prisoners of war and reducing their status to that of civilians on suspicion of their having committed war crimes, and thus denying them the protections of the Geneva Convention, was comparable, Hall argued, to annulling the citizenship of an American upon charging him with a crime for which the penalty is loss of that citizenship.³⁷ Major Bryan's response skirted the issue of status, preferring the citation of U.S. regulations in *Rules of Land Warfare* and *Technical Manual for Legal and Prison Officers* that permitted the trial by military government courts of persons suspected of having committed war crimes and the observation that the German government had ceased to exist, its authority, including that to try German citizens, having passed into the hands of the occupying powers.³⁸ In any event, whether or not the defendants were prisoners of war was, from a juridical standpoint, irrelevant. A majority of the U.S. Supreme Court had already held that Article 63 applied only to offenses committed by prisoners of war subsequent to capture (the situation of the captured U-boat crewmen), although Associate Justice Wiley Rutledge had found that conclusion invalid and the arguments in support of it strained and unconvincing.³⁹ But no one in the Ludwigsburg courtroom could have been surprised when the president of the court, Colonel Jackson, denied the defense motion.⁴⁰ Similar motions on behalf of the remaining military defendants were similarly rejected.

In making largely pro forma motions to dismiss charges against defendants who had not held military rank and to whom the Geneva

Convention offered no protection, the defense adopted a more mundane stratagem. Following the opening of court on the morning of February 20, Captain Phelps moved that murder charges against Heinrich Heinemann and Gustav Mammenga and all charges against Heinrich Rommel and Klaas Meyer-Gerhards be dropped on the grounds of insufficient evidence. Phelps pointed out that the only evidence against Heinemann and Mammenga was that they had struck a prisoner, Mammenga admitting having done so. Neither could have foreseen the appearance of the hate-filled Langer with his pistol. Phelps caustically noted that he had witnessed the beating and stoning of German POWs as they had been marched through French towns with no expectation that someone in the crowd would shoot them. As far as Rommel and Meyer-Gerhards were concerned, there was no evidence that either had committed any acts of violence whatsoever against the Americans. Meyer-Gerhards, in fact, had ordered the mortally wounded Graham carried into the air-raid police office and had called for an ambulance.⁴¹

Phelps's motion gave the prosecution the opportunity to further develop a critical element in its case, one that had not been clearly articulated in the original charges brought against the defendants. Quite apart from acts of violence that each personally might or might not have committed, all had allegedly participated in an illegal common design or conspiracy, the outcome of which had been the ill treatment and deaths of the seven captured crewmen of the B-17, and all were, consequently, guilty of those crimes.⁴²

Conspiracy is a slippery legal concept, easy to state—an agreement between or among two or more persons to perpetrate a crime—but often problematic to prove, inasmuch as there is seldom unambiguous evidence to demonstrate its existence.⁴³ To a greater degree than many other offenses, its presence may lie in the eye of the beholder. The temptation to stretch the concept beyond the point warranted by the evidence may be particularly strong in cases involving collective threats or injuries to the nation.⁴⁴ It is an efficient means of dealing judicially with multiple enemies.

In arguing the charge of criminal conspiracy, both prosecution and defense relied heavily on the venerable *Wharton's Criminal Law*, first published in the mid-19th century (and still in print). What May's opening citation sounded like in the rough and not always ready translation of the courtroom to Germans who were unfamiliar with

Anglo-American legal concepts is difficult to imagine: "All those who assemble themselves together with an intent to commit a wrongful act, the execution whereof makes probable in the nature of things a crime not specifically designed but incidental to that which was the object of the confederacy, are responsible for such incidental crime."⁴⁵ But how was the existence of the "confederacy" to be proved? According to *Wharton's*:

The actual fact of conspiracy may be inferred . . . from circumstances and the concurring conduct of the defendants need not be directly proved. Any joint action on a material point or collocation of independent but cooperative action by persons closely associated with each other is held to be sufficient to enable the jury to infer concurrence of sentiment, and one competent witness will suffice to prove the cooperation of any individual conspirator.⁴⁶

In regard to membership in "riotous and tumultuous assemblies," as the crowds that lined Borkum's streets on the afternoon of August 4, 1944, arguably had been, May quoted *Wharton* to the effect that "All persons who are present and not actually assisting in their suppression may, where their presence is intentional and where it tends to the encouragement of the rioters, be *prima facie* inferred to be participants."⁴⁷

According to this principle, it appeared that only those Borkumers in attendance who had attempted to intervene on behalf of the prisoners, as Elizabeth Biermann had claimed to have done, were clearly excluded from the conspiracy so defined. But did their guilt extend to actual murder? There was no doubt of that, argued May:

Of course, the Defense will contend that Langer is the guilty man, that he fired the shots. Let us look into that for a moment. Why did Langer do this? You know a mob sometimes gives courage to a coward. A coward will do things when incited by a mob that he would not do otherwise. . . . Was not the coward Langer encouraged to do what he did by the action and, as the law says, the accessory? The man who aids and abets it is just as guilty if he stood by and aided and abetted in the commission of the crime. Yes, there was a common design in this case, all equally guilty. A damnable plan . . . that they designed there to torture, to abuse, and to murder these American flyers.⁴⁸

Whether Langer's actions are best characterized as those of a coward rather than a man crazed with grief and hatred is debatable, but the defense could also quote *Wharton*. Phelps noted that May had been selective in his citation of the section dealing with the liability of members of a conspiracy or common design. *Wharton*, he pointed out, also argues that

Where, however, a homicide is committed collaterally by one or more of a body unlawfully associated, from causes having no connection with the common object, the responsibility for such homicide attaches exclusively to its actual perpetrators. . . .⁴⁹

Had the prosecution offered any evidence, asked Phelps, that the defendants had conspired to murder the prisoners? *Wharton*, he pointed out, also holds that "a rioter is not responsible . . . for a death accidentally caused by officers engaged in suppressing the riot , nor in an affray are the original parties responsible for a death caused by strangers wantonly and adversely breaking in."⁵⁰

The latter characterization seemed to fit Langer's role reasonably well. Phelps accepted *Wharton's* dictum that, in a riot, "all present and not suppressing are participants," but that, he argued, meant merely that his clients had been rioters, not murderers, and that there were many other Borkumers in that category who were not on trial.⁵¹ Similar motions to dismiss charges were made on behalf of the remaining civilian defendants. Dr. Magenau, civilian German defense counsel for ex-mayor Jan Akkermann, in a gesture to which the adjective "quixotic" might be appropriately applied, argued that his client was subject only to German law, inasmuch as "it is a basis of law throughout the world that a criminal can only be punished by the law of the scene where the crime was committed." Under German law, he continued, a person can be punished only for a crime in which he has taken an active part or that he has encouraged, aided, or abetted. Akkermann might have encouraged, aided, or abetted the beating of the prisoners, but no evidence supported the notion that Akkermann intended that the prisoners were to be shot to death. His later apparent approval of the murders was legally irrelevant.⁵² But the brutal reality was that sovereignty in Germany had passed to the major Allied powers, who were free to do as they pleased. The prosecution did not deign to comment, and the court summarily denied all motions to dismiss.⁵³

Defense counsel, as its members had certainly anticipated, had no recourse but to call witnesses to rebut the evidence that the prosecution had presented in the course of the previous two weeks. But it was unprepared to do so. This was due, not to the attorneys' lack of industry but to the enormous burden of bringing to some kind of trial the huge numbers of Germans under suspicion of having committed war crimes. All American members of the defense team had been engaged in other trials until almost literally the eve of the Borkum proceedings, and they had had barely time to identify the witnesses they would require, much less locate and secure them, while the prosecution case had, in effect, been in preparation since the previous June. They had raised this as an objection to going to trial at the scheduled time but had been told that they might request a continuance if that should prove necessary by the time the prosecution had completed presenting its case. It was necessary. Not only would defense witnesses not begin to arrive before Saturday (it was now Wednesday), but also others would be even later. Moreover, the U.S. defense team had been ordered to prosecute another case before the conclusion of the Borkum trial. Little wonder that trials of multiple defendants alleged to have been parties to conspiracies or common designs were commonplace. In no other way could the Army hope to process the masses of Germans awaiting trial, but justice sometimes suffered as a consequence. A continuance already having been assured, the court adjourned until February 27.⁵⁴

NOTES

1. "Special Orders Number 33," February 2, 1946, Headquarters Seventh United States Army, *U.S. v. Goebell et al.* (microfilm, frame 259, reel 1); "Record of Testimony," 1, *ibid.* (frame 551); Maximilian Koessler, "American War Crimes Trials in Europe," *Georgetown Law Journal* 39 (1950–51): 30.

2. "War Crimes Branch, Summary Work Sheet," November 16, 1945, *U.S. v. Goebell et al.* (microfilm, frames 266–67, reel 1).

3. "Incidents Noted by E. F. Lyons," *Edward F. Lyons, Jr. Papers*, M14, 7, 13, 46, 80, and various unpaginated fragments, Snell Library, Northeastern University, Boston, MA.

4. "Record of Testimony," 2–3, *U.S. v. Goebell et al.* (microfilm, frames 552–53, reel 1). The fact that there was no lawyer among the officers hearing the case was in violation of military government regulations. See Military Government Germany, *Technical Manual for Legal and Prison Officers* (n.p., n.d.), Document XII-A, 1.

5. "Record of Testimony," 11–12 (frames 561–62).

6. *Ibid.*, 14–19 (frames 564–69).

7. Ibid., 19–30 (frames 569–80).
8. Ibid., 50–51, 59 (frames 600–601, 609).
9. Ibid., 68–80 (frames 618–30).
10. Ibid., 87–88, 97–99 (frames 637–38, 647–49).
11. Ibid., 312–13 (frames 864–65).
12. Richard Wiggers, "From Supreme Authority to Reserved Rights and Responsibilities: The International Legal Basis of German-American Relations," in *The United States and Germany in the Era of the Cold War*, ed. Detlef Junker, vol. 1 (New York: Cambridge University Press, 2004), 103–5.
13. On rules of evidence, see *Technical Manual for Legal and Prison Officers*, Document XII-A, 5; War Department Technical Manual 27–255, *Military Justice Procedure* (Washington, DC: U.S. Government Printing Office, 1945), 88–89; United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* 1, Annex 2 (London: His Majesty's Stationery Office, 1947), 117–18; Koessler, "American War Crimes Trials in Europe," 69–76.
14. "Record of Testimony," 100–113 (frames 650–63); A. Frank Reel, *The Case of General Yamashita* (Chicago: University of Chicago Press, 1949), 218; Koessler, "American War Crimes Trials in Europe," 48–49.
15. "Testimony of Karl Fick," October 16, 1945, 2–3, *U.S. v. Goebell et al.* (microfilm, frames 385–86, reel 1); "Record of Testimony," 345, 364–65, 367, *ibid.* (frames 900, 919–20, 922).
16. "Testimony of Hermann Staats," October 11, 1945, 3, *ibid.* (frame 281); "Record of Testimony," 371–72, *ibid.* (frames 926–27).
17. "Testimony of Gerhardt Stindt," November 5, 1945, 3–5, *ibid.* (frames 491–93); "Record of Testimony," 377A, 380, *ibid.* (frames 933, 937).
18. "Testimony of Klaas Adel," October 18, 1945, 2–3, *ibid.* (frames 475–76); "Record of Testimony," 387–88, *ibid.* (frames 944–45).
19. "Testimony of Johann Grupengiesser," October 12, 1945, 2–3, *ibid.* (frames 450–51); "Record of Testimony," 397–98, 402, *ibid.* (frames 955–56, 960).
20. "Testimony of Elizabeth Biermann," October 12, 1945, 3, *ibid.* (frame 472); "Record of Testimony," 405, 407, *ibid.* (frames 963, 965).
21. *Ibid.*, 419, 421 (frames 977, 979).
22. *Ibid.*, 424–27 (frames 982–85).
23. "Testimony of Erna Garrels," October 18, 1945, 2–3, *ibid.* (frames 424–25).
24. "Testimony of Erna Garrels," October 19, 1945, 2, *ibid.* (frame 428).
25. "Record of Testimony," 431–32, *ibid.* (frames 989–90).
26. *Ibid.*, 433 (frame 991).
27. "Record of Testimony," 435–46, *ibid.* (frames 993–1004).
28. *Ibid.*, 451–54 (frames 1009–12).
29. "Testimony of Henni Eilers," October 17, 1945, 2–4, *ibid.* (frames 1014–14); "Record of Testimony," 455–56, 459, *ibid.* (frames 1013–14, 1017).
30. *Ibid.*, 462 (frame 1020).
31. *Ibid.*, 463–64 (frames 1021–22).
32. *Ibid.*, 464–66, 468–70 (frames 1022–24, 1026–28).
33. *Ibid.*, 476–77 (frames 1034–35).

34. *Ibid.*, 478–80 (frames 1036–38).
35. *Ibid.*, 482 (frame 1040).
36. Richard Whittingham, *Martial Justice: The Last Mass Execution in the United States* (Annapolis, MD: Naval Institute Press, 1971), 153–219, 287.
37. “Record of Testimony,” 482–85, *ibid.* (frames 1040–43).
38. *Ibid.*, 486–88 (frames 1044–46).
39. *Yamashita v. Styer*, December 4, 1946, 6, “International Humanitarian Law, National Implementation,” <http://www.icrc.org>; A. Frank Reel, *The Case of General Yamashita* (Chicago: University of Chicago Press, 1949), 267–69.
40. “Record of Testimony,” 490, *ibid.* (frame 1048).
41. *Ibid.*, 491–95 (frames 1049–53).
42. On the concepts of conspiracy and common design and their roles in the Army’s war crimes trials, see Koessler, “American War Crimes Trials in Europe,” 82–83. In the Borkum trial, the two terms appear to have been used interchangeably.
43. “Conspiracy,” *Oxford Companion to American Law*, ed. Kermit L. Hall (New York: Oxford University Press, 2002), 144–45.
44. On this point, see Marie E. Siesseger, “Conspiracy Theory: The Use of the Conspiracy Doctrine in Times of National Crisis,” *William and Mary Law Review* 46 (December 2004): 1177–78.
45. “Record of Testimony,” 497 (frame 1055).
46. *Ibid.*, 497–98 (frames 1055–56).
47. *Ibid.*, 498 (frame 1056).
48. *Ibid.*, 499 (frame 1057).
49. *Ibid.*, 500–501 (frames 1058–59).
50. *Ibid.*, 501 (frame 1059).
51. *Ibid.*, 502 (frame 1060).
52. *Ibid.*, 506–7 (frames 1064–65).
53. *Ibid.*, 508–9, 52 (frames 1066–67, 1079).
54. *Ibid.*, 521 (frame 1079).

“Worms on the Ground”

When court reconvened, the defense opened with testimony from the defendants, which, like that of prosecution witnesses, sometimes differed from the sworn statements they had made to Major Levine the previous fall. Gustav Mammenga had testified to Major Levine the previous November that he had been on duty in the office of the air-raid police on the afternoon of August 4, 1944. Mayor Akkermann had telephoned the office and, according to Mammenga, had said to someone whom he had claimed not to know, “Now we will see what you air-raid policemen are made of.” The meaning of the statement was unclear, even nonsensical, but it was apparently uttered in the context of notifying the air-raid police that the American prisoners were about to be marched through town. In light of the fate that was about to befall the crew of #909, Akkermann’s words assumed a sinister import, an interpretation supported by other elements of Mammenga’s testimony. He admitted that, as the prisoners and their guards approached, he had left his office and had struck the small flyer who was having trouble with his pants “two or three times” with his open hand. This, he had told Levine, had been in response to the “order” that had been received by his office from Akkermann. Shortly thereafter, he had heard a shot and seen a soldier with pistol in hand standing over the prostrate form of “the little flyer.” Mammenga’s superior, Klaas Meyer-Gerhards, had then ordered the mortally wounded Graham carried inside the air-raid police office. But, when under direct examination by defense counsel, Mammenga had testified that *he* had taken the phone call from Akkermann, had not attached any significance to it, and had “slapped” one of the prisoners twice on the back when he had heard someone yell, “Beat them, beat them, they killed my wife and my child,” which

brought to his mind his son, who had been killed in action. He had not hit the prisoner very hard, however, as he had been recovering from injuries suffered in a motorcycle accident. As he was about to return to his office, Mammenga testified that he heard a shot, turned, and saw a soldier holding a pistol, the same soldier, he thought, whom he had heard yelling. In this version of the events, Mammenga denied that the American who had been shot was the same one he had hit. The prisoner was carried into the air-raid police office, where Mammenga claimed to have provided him with a pillow and wiped blood from his face. When questioned by the defense concerning the inconsistencies between his courtroom testimony and that given earlier to Levine, Mammenga's explanations were vague.¹ But, by giving the witness the opportunity to testify that he and his comrades had attached no particular importance to Akkermann's phone call and that some solicitude had been shown for the mortally wounded Howard Graham, the testimony may have made somewhat less plausible the prosecution's contention that the murders of the American airmen had been the products of a criminal conspiracy.

Heinrich Heinemann testified that, on the afternoon of August 4, 1944, he had been working in his father's butcher shop when he learned from customers that downed American flyers were being marched through Borkum and would be passing the shop in a few minutes. Heinrich summoned two French prisoners of war who were employed in Heinemann's shop to accompany him to watch the procession.² When questioned by Levine on October 17, 1945, Heinemann had described a chaotic scene in which, as the prisoners and their guards marched by, civilians were running around the street but not attacking the prisoners. Heinemann had returned to the butcher shop but then set out on his bicycle to catch up to the procession after having been told by a customer that one of the prisoners had been shot at the town hall. On arriving there, he found no one and continued on, finding six prisoners, their guards, and a crowd near the Dorf Hotel. There, he saw "mostly all" of the guards hitting the Americans with their rifle butts while Lieutenants Weber and Wentzel and Captain Krolikovski looked on impassively. Heinemann claimed to have paused for a chat with some of the onlookers, taking the opportunity to denounce the brutal treatment of the prisoners. Pedaling on, he heard shots and saw a tall soldier with a long face and "a brutal look in his eyes" methodically shoot each of the remaining prisoners in the back of the head with a 7.65 mm pistol. One of the guards, whom he

described as a petty officer with a heavy mustache, shot two of the Americans a second time with his *Pistole 08*. "Upset and excited," he hurried home.³

In the weeks that followed, Heinrich Heinemann had found reasons to reconsider elements of his self-exculpating statement. One of these was probably the fact that, subsequent to his sworn statement to Levine of October 17, Karl Weber had sworn to having seen Heinemann beat a prisoner. On November 5, he reappeared in Levine's office to make a supplementary statement. Civilian spectators, including himself, had not been entirely passive, it appeared. In a revision of his account of having pursued the procession on his bicycle, Heinemann alleged that he had tried to pass the prisoners and their guards but had lost his balance and, trying to avoid falling, had "pushed" the shoulder of one of the Americans twice, propelling him to one side. He had also seen a now deceased civilian named Wegman hit some of the prisoners.⁴ On the stand in Ludwigsburg, Heinemann was clearly nervous and apprehensive. When questioned about the alleged "accident" and whether he had actually hit one of the Americans, Heinemann responded with frantic defensiveness: "No, I did not hit any one of them. I am not guilty and I just got into this thing!" When asked why he had made a second statement to Levine about the allegedly inoffensive shoving of the American, Heinemann replied piously, "Because my conscience told me that it was only the right thing to do, to tell the whole truth." He denied that his "conscience" might have been stimulated by Levine's suggestion that he had witnesses to Heinemann's beating of a prisoner, but he was no longer willing to assert that almost all of the guards had struck the prisoners, and some of the blows had possibly become mere "pushes." Melodrama thickened with Heinemann's irrelevant assertion that he had resigned from the SA (Storm Troopers) as a consequence of a boycott against his father's shop by the Nazi Party and SA because his family were "half-Jews."⁵ Ironically, an ethnic status that, a year earlier, had brought peril to the holder was now sought for protection.

Major Bryan's cross-examination was heavy with sarcasm, as he led Heinemann through a recounting of his pursuit of the column on his bicycle, "because of sheer curiosity, I never had seen foreign soldiers before." Bryan's mocking reaction to that explanation was followed by a savaging of the witness's description of his "accidental" contact with a prisoner as he allegedly attempted to prevent himself from falling:

BRYAN: You merely placed your hand on one, is that all you did?

HEINEMANN: That is true. I was going past the column of flyers in front of the Rathaus, [and] all of a sudden one man from the crowd of people jumped in front of my bicycle and I commenced to fall, so I supported myself with my left hand on the flyer's right shoulder. . . .

BRYAN: So all you did was place your hand on the flyer's shoulder, is that all?

HEINEMANN: Yes.

BRYAN: And you saw the guards just push the flyers with the butts of their rifles, is that all you saw?

HEINEMANN: Either push them or tap them.

BRYAN: And is that just as true as everything else you have testified about?

HEINEMANN: Yes.⁶

If Heinrich Heinemann's testimony was a gift to the prosecution, Heinrich Rommel's was more likely to elicit a measure of sympathy from the court. Heinemann had been free to avoid personal involvement in the events of August 4, 1944, but not Rommel. He, along with Karl Fick, had constituted Borkum's tiny police force on that fatal afternoon. Rommel, but not Fick, was a defendant because he had been in the police station at around three o'clock when the telephone had rung. The caller had been the senior naval officer on the island, Captain Goebell. Rommel's testimony did not diverge significantly in its essentials from his sworn statement made to Levine the previous October, but questions from multiple defense attorneys, both U.S. Army and German civilian, elicited additional detail. Rommel was questioned closely on the exact language used by Goebell in his phone call and expressed certainty that Goebell had used the word "unfortunately" in regard to the capture of the seven Americans and had drawn his attention to the "edict" of Reich Minister Goebbels. Rommel professed ignorance of the intent of Goebell's phone call and testified that he had been "worried" by the information that the prisoners were going to be marched through town, rather than transported by vehicle, as had been earlier practice. He claimed in Ludwigsburg, as he had done in his earlier statement to Major Levine, that he had never heard of Goebbels's "edict," which in any event had not been a formal directive but merely an editorial opinion. That such distinctions had been seriously blurred

in the administrative and moral chaos of the Third Reich was an important issue that, however, was not broached. But, if he had been in the dark about the purpose of Captain Goebell's phone call and concerned about the mode of transportation, why had he not asked for clarification? When pressed on those points, Rommel answered incongruously that "I never gave it a second thought" and lamely added, "What could I have answered or told the commander of the island, the highest officer present?"⁷ Rommel also provided a more dramatic account of his post-surrender confrontation with Goebell. He had sought out Goebell in his office as he investigated an incident in which a resident of Borkum had been killed after wandering into a minefield that had presumably been laid by the island's naval forces during the war. Goebell took the opportunity to ask Rommel about the mood of the townspeople, observing, "I never get a chance to get out of here and see anything." Rommel responded that the populace was apprehensive about the possibility of Allied retaliation for the killing of the Americans and was blaming the naval commander for having failed to prevent it. That, Rommel testified, had precipitated an explosive exchange:

GOEBELL: I? It was not my fault. I had nothing to do with it.

It was the fault of those who incited the population and those who hit the flyers.

ROMMEL: Captain, in that case, why did you speak to me over the telephone about it?

GOEBELL: It was your job to protect the flyers.

ROMMEL: Then, Captain, why did you refer me to the edict of Reichminister Goebbels?

GOEBELL: I never did such a thing.

ROMMEL: Captain, I have nothing else to speak to you about in this matter.

In fact, Rommel testified, he had an additional request for Goebell. "Then," he testified to have said, "you better [*sic*] give me a pistol and I will kill myself because I don't want to have anything to do with this whole mess." Rommel had not killed himself at that time and became very much a part of the "whole mess." While being transported by British occupation forces to the mainland for the trip to Ludwigsburg, however, he had jumped from the boat into Emden harbor in an apparent attempt at suicide.⁸ It was unsuccessful, and Rommel found himself on trial, possibly for his life.

Subsequent to his brief phone conversation with Goebell on August 4, 1944, as he had informed Levine four months earlier, Rommel had telephoned Gestapo commissioner Struwe on the mainland for guidance and was informed that the transport of the American prisoners was a military matter, for which the police had no responsibility. He had then taken a call from Mayor Akkermann, who directed Rommel to inform the commander of Borkum's emergency service, identified only as "Boelts," of the prisoners' impending arrival in the town and to mention that Goebell had made reference to Reich Minister Goebbels's "edict." Rommel had then set out on his bicycle for Boelts's house, intending to continue on to the police station. He found Boelts wary, declaring that he knew nothing about a Goebbels edict, although admitting that he had read "once or twice" in the newspaper and perhaps heard on the radio that protection should not be given to downed Allied aircrew because of the prevailing state of "total war." Nevertheless, Rommel testified, Boelts had declared that he and his men would have nothing to do with any demonstration against the captured Americans and believed that the police should hold themselves aloof, as well, a position with which the witness had expressed agreement. Proceeding from Boelts's house to the police station, Rommel claimed to have encountered a few soldiers who told him that Labor Service men had been fired on by #909 as it approached the *Muschelfeld* for its emergency landing.⁹ It seems unlikely that aircrewmembers about to carry out an emergency landing in enemy territory would have been so foolish as to fire at persons at whose mercy they were likely to soon find themselves, although the possibility cannot be entirely excluded. One or more of the B-17's gunners might have fired reflexively at Germans on the ground in response to heavy fire from Borkum's guns. Another defendant claimed that he had found expended American .50-caliber ammunition on the beach near the crash-landed bomber. Even if the Americans had fired, of course, their captors would not have been justified in abusing and ultimately killing them after capture, although, if civilians had been the apparent targets, Goebbels's oft-cited "edict" would appear to have applied. But Rommel had not included this allegation in his statement to Levine the previous October, and why he should have presented it now is unclear, as it was of little value to his own defense. In any event, no effort was made by either prosecution or defense attorneys to probe the matter more deeply. Nor, at this point in the trial, did either the defense or the prosecution appear to have been aware of Himmler's earlier and more relevant order to police officials

not to intervene in situations in which civilians attacked captured Allied airmen, and Rommel did not raise it, suggesting the possibility that he, if not Gestapo commissioner Struwe, was unaware of it. Rommel went on to testify that he had been at the police station when he learned of the murder of the prisoners and had proceeded to the scene, where he blocked off the area where the bodies lay at the behest of one of the naval officers who was present.

Rommel's degree of responsibility, if any, for the protection of the American prisoners was the issue central to his presence in Ludwigsburg as a defendant. His defense was based on the directive he had received from Struwe to the effect that the transport of the prisoners was a purely military affair and on the argument that he, as a policeman, lacked jurisdiction over military personnel. But, if the matter of the American prisoners was a purely military affair, asked Captain May for the prosecution, why had he accepted orders from a naval officer to secure the murder scene? And what was the nature of the authority over him wielded by Akkermann? Had it been as mayor or as local leader of the Nazi Party? When Rommel was pressed to respond to the question of whom he would have obeyed—the naval commander of the island or the mayor/party leader—if the two had given him contradictory orders, this simple official was reduced to responding with a plaintive "Everything happens to me now at this time. I never thought about it before." In any case, it was irrelevant to the fact that Rommel had made no effort to protect the Americans because he had been told by his police superior on the mainland that the conveying of the prisoners through the town was a purely military responsibility.¹⁰

Klaas Meyer-Gerhards's testimony in Ludwigsburg went well beyond his sworn statement made to Major Levine the previous October. Questioned by German civilian defense counsel Metzler about his activities as chief of Borkum's air-raid police, Meyer-Gerhards explained that he had been asked to join the organization in 1940 because he was the only person on the island who was able to drive an automobile and had assumed the position of leadership of a force of 32 men and 8 female nurses in August 1943. His men had been unarmed until near the end of the war, when they had been conscripted into the Nazi last-ditch militia, the *Volkssturm*. Number 909 had not been the first Allied bomber that Meyer-Gerhards had seen on Borkum. In 1942, an RAF bomber had crashed about 30 meters from the main motor route outside town. When Meyer-Gerhards arrived on the scene with medical

personnel in an ambulance, he found the aircraft in flames but managed to extract four of the crew alive. Two of them subsequently died, possibly the occupants of the graves in Borkum's Lutheran cemetery alongside of which the murdered crewmen of #909 had been buried. At least prior to their absorption into the *Volkssturm*, the defendant emphasized, the job of the air-raid police was "saving lives and extinguishing fires"—"Saving Lives Is the Main Job" was their motto, he claimed. As he had informed Levine, Meyer-Gerhards testified in Ludwigsburg that he had seen #909 descending towards the *Muschelfeld* on August 4, 1944, and had driven to the crash site with several of his subordinates. By the time they arrived, the prisoners had been removed. Meyer-Gerhards ordered "keep-out" signs to be posted, then departed. In his statement to Levine the previous October, he testified that he had gone home for lunch and a nap. His siesta had been interrupted by a phone call from one of his men with the information that Akkermann had telephoned the air-raid police office wanting to speak with him. He tried to return the call but found the mayor's line busy and left for his headquarters in the Central Hotel on Seldte Strasse. It was at this point that that his courtroom testimony diverged significantly from his sworn statement. In the latter, his narrative went directly to a description of his encounter with the column of prisoners and their guards near his office, the shooting of Graham, and the carrying of the mortally wounded "little flyer" into the air-raid police office, where Meyer-Gerhards claimed to have prevented Langer from delivering the coup de grace. Testifying in Ludwigsburg, Meyer-Gerhards embellished his story with a suspiciously self-exculpating account of a phone conversation with Akkermann that had supposedly occurred after the defendant had reached his office but before the prisoners had arrived. Akkermann had allegedly informed him of Goebbels's decision to march the prisoners through the town, of Dr. Goebbels's "decree" in regard to downed Allied airman, and his desire that "an example be set." Meyer-Gerhards claimed to have indignantly rejected any suggestion that the air-raid police should participate in a demonstration against the prisoners with a peremptory "You can't give me such an order."¹¹

Meyer-Gerhards's account of subsequent events was also more dramatic and favorable to himself (and other Borkumers) than his statement to Levine. He testified that, on hearing the approach of the American prisoners and their guards, he terminated his conversation with Akkermann and stepped outside. Almost immediately, he saw

Howard Graham fall to the pavement about three meters from the door to his headquarters and a German soldier push his way through the crowd of onlookers and fire a pistol at the fallen American. General pandemonium ensued, with spectators shouting "That's low," "That's dirty," and "That's unfair," while Meyer-Gerhards ordered Graham carried into the air-raid police office. Two of his subordinates took Graham by the head and feet, while Meyer-Gerhards supported his midsection. Ordering personnel in his headquarters to administer immediate first aid, he went to his phone to summon an ambulance but was interrupted by Langer, who had entered the office with pistol in hand and the offer to "finish him off." As Meyer-Gerhards had told Levine, he responded with outrage and told Langer to "get the hell out of here" and "that man is not an animal." Langer ran outside and Meyer-Gerhards, locking the door, called for an ambulance. Anticipating an obvious query from the prosecution, Metzler asked why Meyer-Gerhards had made no effort to arrest or restrain Langer. The air-raid police were unarmed, he explained, and lacked the authority to arrest anyone. He claimed, moreover, to have been in shock. "I am fifty years old. I participated in the First World War. In other words, I have participated in eleven years of war. That was the most terrible experience I have ever had in my life."¹²

It was in the interest of all of the defendants that the court be reminded that it had been the absent Langer, and not they, who had actually murdered the American prisoners. Meyer-Gerhards testified that, while he had not known Langer personally, a friend of his had and had described him as a man with an "evil personality," some of which was attributable to head injuries suffered in World War I, although the loss of his wife and children had made him "crazier yet." Langer's problematic behavior was illustrated by a bizarre anecdote involving a cat he had been given and on which he seemed to dote. After having showered affection on the animal and catching small fish for it to eat, he suddenly seized it and placed it in a barrel of tar, where it died. "This man was the harm [*sic*] of our island," Meyer-Gerhards observed.

Yet, the "harm of the island" might have been prevented from killing the remaining prisoners if he had been restrained after his assault on Graham, and Meyer-Gerhards had, arguably, been in the best position to have done that. Why, Major Bryan asked for the prosecution (as Metzler had anticipated), had he made no effort to do so? The defendant repeated that he had had no authority over military personnel

and that, in any event, he had been unarmed and concerned primarily with protecting Graham from further harm. When asked why, if he had ordered Langer to leave the air-raid police office, he had not also demanded that Langer surrender his pistol, Meyer-Gerhards replied not without plausibility, "That a man in such a rage would have never given me his pistol. That was an impossibility." Although admitting that if Langer had been "exterminated," "the rest of it could have been prevented," the damaging fact was that he had made no effort whatever to restrain the murderer.¹³

The morning of Monday, March 4, saw the appearance in the witness chair of one of the key defendants and a central figure in the Borkum atrocity, former mayor and local Nazi Party leader Jan Akkermann. Under questioning by Dr. Magenau, one of the German civilian defense lawyers, Akkermann described his roots in the petit bourgeoisie, one of the mainstays of support for the Nazi Party as it was struggling to come to power. He had been born on Borkum in 1892 and had lived almost all of his life there, running a grocery store and rooming house and, along with his wife, raising two daughters and two sons. He had been a public-spirited resident, too, having become a member of Borkum's School and Resort Councils in 1924. But "public spirit" had had a sinister political dimension. Akkermann had joined the Nazi Party in December 1930, a few months after it achieved its first great electoral success in national politics. In 1932, he had become *Ortsgruppenleiter* or local party boss of Borkum, antecedent to his assumption of the office of mayor, in 1935. Akkermann did his best to portray himself as an honorable citizen and family man, which, in his own restricted terms, he may well have been. He had not used his positions as mayor and party leader to enhance his business, he assured the court, nor did he lie, steal, cheat, or "whore." His multiple responsibilities resulted in chronic overwork, and this, combined with an impulsive personality, he implied, helped explain his behavior on the afternoon of August 4, 1944. His own experience a few days before had also been relevant. He had visited Emden, where his meal in a restaurant had been interrupted by an air-raid alarm. Returning to the scene the following day, he found the area flattened by bombs.¹⁴

While Akkermann had attempted to offer extenuating circumstances for his conduct on August 4, 1944, he made no effort to seriously challenge what other witnesses had testified about it as, indeed, he had abstained from doing in his sworn statement to Major Levine. He had been at home when a phone call from Goebell's headquarters

informed him of the capture of the Americans and the intention to march them through the town "in accordance of the decree of Dr. Goebbels." He had phoned the air-raid police office and encouraged them to "show now the kind of guys you are" but passed it off as the kind of "drastical" [*sic*] joke that he was known to frequently make. He admitted having encouraged his employees to take to the street on the approach of the Americans; he also acknowledge having observed to one of them that "You lost everything in Hamburg, in your block of houses over 40 children have been killed" and querying Rommel about the so-called Goebbels decree. Most damaging to Akkermann's legal prospects was his candid admission that, as the column of prisoners and their guards passed his house, he had shouted, "There are the murderers, the ones that killed your women and children, the ones that bombed your homes, beat them on the neck [*sic*], beat them!" He denied having personally assaulted the prisoners and suggested that he had not intended that any serious harm should come to the Americans. Rather, Akkermann, testified, "It was more or less an outlet. Everybody was yelling there, everybody in his own way, to let those flyers who had come over there every day at 8000 meter altitude, to show them how we feel, as worms on the ground." Moreover, Akkermann added in response to a question from Magenau, he had assumed that the prisoners would be protected, a blatant falsehood in light of his earlier admission that he had raised the matter of the Goebbels "decree" or "edict" with Rommel. He claimed to have been both "scared" and "shocked" when he learned that all seven American prisoners had been murdered.¹⁵

Scared and shocked, perhaps, but had Akkermann been remorseful? The earlier testimony of Dr. Fritz Vomel for the prosecution had suggested that he had not been. Vomel, it may be recalled, had described a meeting with Akkermann in which he had condemned the mayor's conduct during the prisoners' march through town. Akkermann had replied, in effect, that "these people who kill our women and children" had gotten what they had deserved. While not denying in Ludwigsburg that he had expressed that sentiment, Akkermann and his attorney attempted to place those words in a context that would diminish their damaging impact. To the annoyance of the prosecution but with the indulgence of the court, Akkermann described the events of August 5, 1944, the day following the murders. The defendant had been in his office around noon when Borkum's air-raid alarms sounded. Initial reports were contradictory. Some indicated that bombs had fallen into

the sea; others suggested that they had fallen in the vicinity of the railroad station. The latter proved to be the case, although it is clear that this was not a serious attack and may, indeed, have been the chance result of an Allied bomber in distress jettisoning its bombs, an event that the people of Borkum had experienced in the past. Akkermann accompanied Meyer-Gerhards to the scene. Ten bombs had fallen, one of which, a dud, had struck a locomotive and killed one of the crew. The post office had been badly damaged, as had a number of nearby houses. One of these, Akkermann testified, was his own. His wife and daughter, he claimed, had been "under a rubble of glass." He did not indicate that they had been seriously injured, if at all, but it was while this experience was fresh in his mind that he had been reproached by Dr. Vomel for his role in encouraging attacks on the prisoners, and Akkermann freely admitted that he might have said something like, "If things like this happen, why is it not right?"¹⁶ The prosecution saw no need to cross-examine, and Akkermann's self-destructive candor continued in the face of questioning by the judges. When asked by Colonel Jackson whether he had anticipated that the prisoners would be beaten by the mob, Akkermann conceded that he had but added that "I never figured that there would be any killing." Akkermann suggested that, if his intentions had been genuinely murderous, he could have done much more than merely stand on a street corner and yell a few imprecations. As Nazi *Ortsgruppenleiter*, he could have mobilized Borkum's party members to form a gauntlet through which the Americans would have had to march.¹⁷ That thin evidence of restraint was unlikely to have impressed the panel of officers who would determine Akkermann's fate.

When questioned by Major Levine more than four months earlier, Walter Krolikovski, on August 4, 1944, commander of the 216th Anti-aircraft Battalion, had delivered a self-exculpating statement according to which he had been uninvolved in the murderous events of that day and had been the innocent victim of a fallacious report of the murders made to him by a noncommissioned officer, although the non-com, Sergeant Schmitz, had denied it.¹⁸ In Ludwigsburg, this theme was much embellished. He testified that he had first become aware of trouble on August 4, 1944, while dining at around 5 P.M. in the officers' mess, situated in an annex to the Dorf Hotel, where his own office was located. An orderly interrupted his meal to inform him that the American prisoners were being led down the street and that "something was happening." Although, as he emphasized, he had no role to play in

the movement of the prisoners to the air base and had been entitled to finish his meal, a sense of "responsibility to look after them" impelled him to leave his table and run outside.

He saw a crowd of "30 to 40 people" and one prisoner on the pavement trying to get up and, simultaneously, to pull up his pants. He also observed a civilian who appeared to have just kicked the helpless prisoner. Finding such conduct against his "nature as an old soldier," Krolikovski professed to have been outraged and to have pushed the civilian away, "coming close to hitting him and knocking him down"; he also reproved the mob, shouting, "Damned business, what's going on here?" and admonishing people to "hurry up and beat it and that they should be ashamed." The crowd dispersed, and Krolikovski claimed to have been satisfied that the prisoners would be able to proceed unmolested. He was allegedly "shocked" to learn from Lieutenant Erich Wentzel a short time later that all of the prisoners had been shot. Krolikovski phoned the information to Captain Goebell, who replied with a dismissive "I can't change anything" and ordered him to question the guards and draft a report. The entire guard detail was called into Krolikovski's office, he testified, and its commander, Sergeant Schmitz, directed to relate the incident. Schmitz allegedly stated that the prisoners had been attacked by Labor Service personnel and that one of them had been "shot at"; then, they had been beaten to death by a mob near the athletic field. Schmitz's statement was then typed up by Wentzel, Krolikovski's adjutant, who delivered the report to Goebell, although the defendant admitted that he had made no effort to verify its contents.¹⁹

Krolikovski's claim of shock and moral outrage at the abuse and ultimate murder of the American prisoners was seemingly contradicted by testimony to the effect that, on the day following the murders, he reproved members of Searchlight #3 of Battery 7, near whose position #909 had landed and who had made the initial capture, for not having killed its crew immediately, thus sparing everyone the complications that had followed from their apprehension. When questioned on this matter by German civilian defense counsel Wacker, Krolikovski explained unconvincingly that he had been speaking under the influence of rumors that had then been current to the effect that #909 had been firing its guns as it had descended and that he had simply scolded members of the searchlight battery for not having made use of a machine gun located at the battery to return fire.²⁰

Whether or not the bomber had been firing as it approached the *Muschelfeld* was legally irrelevant, but, then, so were the remarks that Krolikovski was alleged to have made the day following the murders. The defendant's cross-examination on more substantive issues would reveal an important and troubling facet of the Borkum trial.

NOTES

1. "Testimony of Gustav Mammenga," November 5, 1944, 3, *U.S. v. Goebell et al.* (microfilm, frame 296, reel 1); "Record of Testimony," 523–27, *ibid.* (frames 1081–85).
2. "Record of Testimony," 539 (frame 1097).
3. "Testimony of Heinrich Heinemann," October 17, 1945, 2–5, "Testimony of Gustav Mammenga," (frames 402–5).
4. "Testimony of Heinrich Heinemann," November 5, 1945, 2, *ibid.* (frame 408).
5. "Record of Testimony," 542–45, *ibid.* (frames 1100–1103).
6. *Ibid.*, 552–53 (frames 1110–11).
7. *Ibid.*, 562, 572–73 (frames 1120, 1130–31).
8. *Ibid.*, 573–74 (frames 1131–32).
9. *Ibid.*, 562, 569 (frames 1120, 1127).
10. *Ibid.*, 580–82, 586 (frames 1138–40, 1144).
11. *Ibid.*, 599–604 (reel 2, frames 13–18); "Testimony of Klaas Meyer-Gerhards," October 13, 1945, 3–4, *ibid.* (reel 1, frames 417–18).
12. "Record of Testimony," 613–14, *ibid.* (reel 2, frames 18–21).
13. *Ibid.*, 613–14 (frames 27–28).
14. *Ibid.*, 630–34 (frames 44–48).
15. *Ibid.*, 632, 635–38 (frames 49–52).
16. *Ibid.*, 639–40 (frames 53–54).
17. *Ibid.*, 647–48 (frames 61–62).
18. "Testimony of Walter Krolikovski," October 29, 1945, 2–7, *ibid.* (reel 1, frames 333–38).
19. "Record of Testimony," 657–66, *ibid.* (reel 2, frames 71–80).
20. *Ibid.*, 667 (frame 81).

Divided Counsel

Krolikovski was subjected to a tough cross-examination for the prosecution by Major Bryan, who pressed him vigorously on the matter of having submitted a false report on the circumstances surrounding the prisoners' deaths.¹ This, of course, had no direct bearing on the killing of the Americans, happening of necessity after the murders had taken place, but it served to damage the images of those involved and supported the notion of a criminal conspiracy that had been sustained after the crime to which it had given rise had taken place. But it was in the nature of a trial in which multiple defendants of varying status and levels of authority were being prosecuted simultaneously that Krolikovski had to try to defend himself against attacks on his testimony not only by the prosecution but by members of the defense counsel, as well. These men, both U.S. Army and German civilian attorneys, were defending not the 15 defendants collectively but categories of defendants or even specific individuals. This sometimes meant that they attempted to lessen or refute the apparent guilt of their clients by imputing responsibility to other defendants, a situation that necessarily worked to the advantage of the prosecution. Defense counsel Lieutenant John Davis attempted to destroy Krolikovski's credibility with questions as biting sarcasm as Bryan's about the report that had falsely placed blame for the killings exclusively upon civilians who had allegedly beaten the prisoners to death. Krolikovski's confused and contradictory responses to Davis's probing as to when he had learned the actual circumstances of the murders could have done him little good in the eyes of the panel of Army officers who would judge him:

DAVIS: Later you found out that they were shot, did you not?

KROLIKOVSKI: No. I didn't find that out later. A copy of the police reports were [*sic*] handed to me. . . .

DAVIS: At that point, you knew that the flyers were shot, didn't you?

KROLIKOVSKI: No. I didn't know that they had been shot. I doubted the whole affair.

DAVIS: You still thought that they were beaten to death by the civilians, didn't you?

KROLIKOVSKI: No. Not that alone. I testified that I doubted the whole affair.

Davis asked sarcastically if Krolikovski believed that the American prisoners could have been both beaten to death and shot to death.

DAVIS: Does that seem perfectly compatible to you?

KROLIKOVSKI: Both could be true, yes.

Krolikovski had not learned the truth, he claimed, until after the war had ended, nine months later.²

The first witness to testify on the morning of March 6 was defendant Erich Wentzel, a particularly problematic and even tragic figure in the prosecution's narrative of criminal conspiracy. Like those of millions of men on both sides, his peacetime life had been profoundly altered by the outbreak of war. At the time of his trial, he was 45 years old and married and had two children, a 10-year-old daughter and a 4-year-old son. As a teenager near the end of an earlier world war, Wentzel had received training as a naval artilleryman and had been called up for service in that capacity as an enlisted man on the eve of Germany's invasion of Poland in 1939. The war had interrupted Wentzel's career in a sporting-goods business established by his parents in Neuwied, control of which he had assumed. He had made regular business trips to Great Britain and spoke English, a fact that went far toward explaining his presence in Ludwigsburg as a defendant. Wentzel had been assigned to Borkum's 216th Flak Battalion and remained with that unit throughout the war, rising to the status of commissioned officer in January 1944, at which time he was also appointed adjutant to the battalion commander, Walter Krolikovski.³

Wentzel had made a sworn statement to Major Levine on October 29, 1945, while being held at Esterwegen. Levine's questioning had been aggressively hostile and Wentzel's replies, evasive. Many of the events

of August 4, 1944, he claimed not to remember. Levine had closed his interrogation with a blunt "You know that you have lied through this entire interrogation, didn't [*sic*] you?"⁴ Under more sympathetic questioning by German defense counsel Dr. Schoeck more than four months later, Wentzel demonstrated an improved memory. He explained that he was in his office in the Dorf Hotel on August 4, 1944, when he heard Borkum's antiaircraft guns open fire and someone yelling from a neighboring office that an aircraft was visible and clearly the target. He ran to his window and saw the plane losing altitude and turning left toward the island. Borkum's old lighthouse blocked his view of #909's final moments in the air, but he was certain that the B-17 had come down on the island. Curiosity, rather than duty, prompted him to bicycle to the crash site, which he correctly guessed to be the *Muschelfeld*. On the way, he testified, he encountered Captain Goebell, who ordered him to proceed to the nearby Ostland Battery, where the American crewmen had been taken, to conduct an interrogation. Wentzel observed that questioning captured air personnel was a function of the Luftwaffe, to which Goebell replied that he merely wanted to ascertain whether the bomber had been shot down by Borkum's guns. When he arrived at the battery, Wentzel found the prisoners being searched and their personal belongings deposited in large envelopes, one for each man. The interrogation took place in front of the battery's mess bunker and, Wentzel recalled, lasted no more than 15 minutes, as the Americans refused to provide much information beyond identifying themselves. One revealed his position on the bomber, and another asserted that #909 had crashed because of "the blocking of the connection from the wheel," possibly an attempt by the American airman to mislead his interrogator. Wentzel testified that he quickly abandoned the effort as clearly futile.⁵

A fateful moment for Wentzel occurred when he overheard the commander of the Ostland Battery, Lieutenant Jakob Seiler, giving directions to the guard detail that was to escort the prisoners through town to the airfield for transportation to the mainland. "Are you clear on all points? Is it clear to you which way to take?" Wentzel recalled having heard Seiler ask. The noncommissioned officer appointed to lead the group, Sergeant Josef Schmitz, confessed that he was unfamiliar with part of the route, whereupon Wentzel, whose bicycle had been left leaning against the sea wall and who had been ordered by Krolkovski to return to his office, volunteered to show the way at least as far as Borkum's hotel district. But he was in no hurry. As the column

marched from the battery, around the *Muschelfeld*, and toward the sea wall in the direction of town, Wentzel veered off to examine the skid marks left by #909 as it slid along the sand toward its resting place. He had been motivated to do this, he testified, because of assertions he had heard by members of the battery that they had been fired on by the B-17 as it came in to land. He claimed, in fact, to have earlier found “quite a few” empty .50-caliber machine-gun cartridge casings in the sand. He caught up with the column, he testified, shortly before it reached the sea wall.

At this point in his narrative, Wentzel made an admission that would weigh heavily against him. He observed, he said, that one guard, Witzke, was not maintaining the five-meter intervals between the prisoners that he had been ordered to do, with the result that the last American in the column was coming close to stumbling over the heels of the man in front of him. Wentzel repeatedly reprimanded the guard and ultimately recommended to Sergeant Schmitz that he be replaced. He had thus voluntarily assumed a degree of command authority over the column and, it could plausibly be argued, responsibility for the prisoners and their well-being.⁶

Initially, according to Wentzel, there was no difficulty with the people of the town. As the column approached the seawall, bathers ran up from the beach to gawk but did not behave in a threatening manner. Wentzel recovered his bicycle and pedaled ahead along the Promenade, which ran atop the seawall. He passed a group of Labor Service men drilling with spades in front of the Kaiserhof Hotel, where they normally exercised at around 4 P.M. each afternoon. This, too, was a perilous element in Wentzel’s testimony. He was about to turn onto Strand Strasse as the route of march specified when his attention was attracted by someone waving. Looking over his shoulder, he noticed that the column of prisoners and guards led by Sergeant Schmitz was turning prematurely at Victoria Strasse. According to Wentzel’s trial testimony, he then rode back to the column to redirect it on to the Promenade. That, however, would take it past the Labor Service men before reaching Strand Strasse. By that time, Wentzel testified, the Labor Service detachment had been dismissed from its drilling, and its members were in “wild disorder” as they streamed—so Wentzel thought—toward the nearby Victoria Hotel, where they were quartered. Secure in the belief that Schmitz would now follow the correct route, he rode on well ahead of the column and observed no difficulty with the Labor Service members; he did

not stop to talk with the leader of the detachment as some witnesses claimed to have observed.⁷

Wentzel now sought out Lieutenant Karl Weber, the commander of another of Borkum's flak batteries, whose headquarters were on the Strand Strasse. His purpose in seeking Weber was not explained but the two, according to Wentzel, discussed the crash landing of #909 and whether any of Weber's guns had been involved in what they believed had been the "shoot-down." During the conversation, the prisoners and guards overtook and passed the two men. According to Wentzel, the column was out of sight as he, accompanied now by Weber, climbed on his bicycle and followed. The two men caught up with the procession as it was crossing the railroad tracks at the corner of Bahnhof and Franz Habich Strassen, where Wentzel recalled having seen a crowd of Borkumers, among whom was Mayor Akkermann, in a state of considerable agitation. From the mob had come yells to the effect that the prisoners should be beaten as "the murderers of our women and children."⁸ There followed Wentzel's primary effort to refute the prosecution's contention that he had been a party to a conspiracy to mistreat the American captives. He had attempted to move once again to the head of the column but found his way impeded by the crowd, which, he testified, was pressing toward the prisoners in a threatening manner. Some townspeople were evidently punching the Americans. His objective now was to protect the prisoners and to move the column through the mob as quickly as possible, which he was able to do after about a half-minute, escaping the press of spectators at the corner of Franz Habich and Neue Strassen. He now claimed to have been intent on proceeding with Weber to their superior, Captain Krolikovski, to report that the crowd had become hostile and had attacked the flyers. As he approached the Dorf Hotel, he heard someone shout that one of the prisoners had "fallen" in front of the town hall. Hurrying to the scene, Wentzel testified, he saw one of the prisoners lying on the pavement and overheard members of the air-raid police announcing that an ambulance had been summoned and that their intention was to carry the American into their headquarters opposite the town hall. Believing the situation to be well in hand, Wentzel resumed his ride to Krolikovski's headquarters. The prisoners and their guards had again passed him, he testified, and he was able to see ahead of him the raised hands of the Americans. Reaching his destination, he encountered Krolikovski running from the building, evidently in pursuit of the column. While Wentzel was parking his bicycle, Krolikovski returned. As the two men

conversed, passersby coming from the direction in which the column had marched shouted that the remaining prisoners were lying in front of the athletic field. Wentzel and Weber were sent to investigate, and they encountered Sergeant Schmitz, who had led the column, on his way back to the Dorf Hotel. Wentzel claimed to remember Schmitz's verbatim reply when asked what had happened: "I don't know that myself. There was a big crowd there. All of a sudden we were pushed away by the crowd and then it happened. The flyers were all lying on the ground having been beaten to death by the populace."⁹

Wentzel testified that he rode forward to where the murdered Americans lay, then returned to the Dorf Hotel and related to Krolikovski what he had learned. Krolikovski replied that he had already ordered the men who had escorted the American prisoners to report to him. Sergeant Schmitz made an oral statement, a summary of which Krolikovski had Wentzel reduce to writing. This was then read to the remaining guards, who, according to Wentzel, were invited to make additions or corrections. None did. Krolikovski wrote a report of his own, and both were sent to Captain Goebell, the island's commandant.¹⁰

Wentzel knew that he was on trial for his life and naturally attempted to place his conduct on August 4, 1944, in the most favorable light. Not surprisingly, he was subjected to a brutal cross-examination. Major Bryan confronted him with a number of differences between his sworn statement made to Major Levine and his trial testimony. Some of these discrepancies resulted from the fact that Levine had put often very different questions to Wentzel than had his civilian defense attorney, Dr. Schoeck. Bryan noted that Wentzel, in response to a query by Levine, had conceded that he had been aware of Dr. Goebbels's screed discouraging protection by German military personnel of captured Allied airmen who came under attack by civilians, an issue that Wentzel had not addressed in his trial testimony. Bryan probed the implications of that awareness for Wentzel's conduct on August 4, 1944. Why, he asked, did Wentzel think Goebbels's commentary had been published? Wentzel answered evasively. "The truth of it was," Bryan countered, "that it was issued because Allied airplanes bombed German cities, isn't that true?" Wentzel allowed that it might have been a factor.¹¹ Dr. Schoeck had asked Wentzel whether he had been aware of cases of violence against prisoners of war prior to the events of August 1944, an obvious effort to suggest that there had been no reason to take unusual precautions with the crew of #909. Wentzel replied ingenuously,

“Not in Borkum. But it was known to me that in France or Belgium prisoners had been mistreated.”¹² Schoeck had moved quickly on, but Bryan had taken note. What was the policy in regard to Allied airmen captured on Borkum, Bryan wanted to know. “As far as I can remember,” Wentzel answered, “there was a provision whereby all prisoners belonging to the Allied Air Force [*sic*] had to be taken over the shortest and quickest route to the nearest air force authorities. I am speaking from the island to the mainland.” That, Wentzel continued, required transporting prisoners to the air base on Borkum and flying them to the nearest airfield on the mainland. “What would be the shortest and quickest route to the airport on Borkum Island from Ostland Battery?” asked Bryan. “Doubtlessly the railroad,” Wentzel freely conceded. The purpose of Bryan’s line of questioning quickly became clear:

Now, having heard about prisoners having been mistreated in Belgium and France, and knowing about these regulations concerning the transport of Allied flyers, didn’t it occur to you that there was something strange about the route chosen in this case? . . . And yet, having knowledge of Dr. Goebbels’ decree, you volunteered to accompany that column without being ordered to do so, isn’t that right?¹³

Wentzel replied that, at the time, he had seen no connection among the Goebbels decree, the abuse of flyers in France and Belgium, and the march of the seven American prisoners through the town of Borkum, the purpose of which, he believed, was simply to show the prisoners to the populace. “Here prisoners are taken. You can see by that [*sic*] that we have protected you.” But even that, Bryan was quick to point out, was a violation of the Geneva Convention, which forbade the exposing of POWs to public curiosity.¹⁴

Bryan next turned to the matter of the prisoners’ violent encounter with the detachment of Labor Service men. How had it happened that they had been given the opportunity to assault the Americans with spades? Wentzel had testified that Schmitz had led the column down the wrong street before he reached the detachment. In redirecting it, Wentzel inadvertently exposed the prisoners to attack. Bryan would have none of it. In Ludwigsburg, Wentzel had testified that his attention had been drawn by two waving uniformed figures to the fact that Schmitz had misdirected the column. But his account of that stage of the march earlier given to Levine had been a bit different. In that

statement, "two men in uniform" had "beckoned" to him, in response to which he had ordered Schmitz to redirect the column, and it was this new direction that led the prisoners past the exercising unit. It was on Wentzel's earlier (and potentially more incriminating) description of the rerouting of the prisoners at the apparent behest of the Labor Service members that Bryan focused. Had Wentzel determined who these two men were? He had not, nor could he now remember what color uniform they were wearing. "Well, was there any similarity between those uniforms and the uniforms the Labor Service wore?" Bryan wanted to know. Wentzel could not remember that, either. What had he thought their gesticulations meant? "I thought that they meant to indicate that this one particular road was to be taken and for that reason I looked around where the column was going, and at that time I saw that they had turned into Victoria Strasse." Bryan apparently thought the implausibility of outsiders knowing the prescribed route would be evidence enough to obviate the need for further exploration of that point, and he moved on to the march of the American prisoners between two rows of spade-wielding Labor Service men, the violent consequences of which Wentzel claimed not to have seen, as he had been riding well ahead of the column.¹⁵

On the matter of the actual murder of the crew of #909, Bryan's cross-examination reached an intensity that the chief of the defense team, Lieutenant Colonel Hogan, characterized as "approaching something like the third degree," and Wentzel's plausibility, always tenuous, was clearly wilting. His claim that he had not known how the flyers had died, in spite of having admitted to Levine knowledge of Graham's shooting death, and assertion that he had made no effort to view the victims, although he was within a few feet of them, stretched credibility beyond the breaking point, as Bryan was at pains to emphasize. "Having given instructions to the guards about keeping civilians away and seeing the corpses of these pilots [*sic*] on the ground, you did not bother to find out what happened to them, did you?" Wentzel admitted that was true, although explicable on the grounds that "I had to return [to Krolikovski's office] immediately."¹⁶

On the following morning, March 7, Dr. Schoeck, on redirect, attempted to repair some of the damage that Bryan had done. But the little he accomplished was more than neutralized by the questioning of Lieutenant Davis, who, although a member of the defense team, was defending the guards and was clearly not interested in exculpating Wentzel. If anything, his examination was more hurtful to the

defendant's cause than Bryan's cross-examination for the prosecution had been. Davis caustically challenged Wentzel's central contention that his function on the march had been solely that of showing the uncertain Schmitz the prescribed route. He pounced on Wentzel's crucial revelation that he had reprimanded the guard Witzke for failing to keep the prescribed distance between the prisoner he was guarding and the American ahead of him: "that was the method which you had intended to use to show Schmitz which was the route to be used?" Refusing to accept the contention that Wentzel had lacked authority to alter the route at his discretion, Davis pressed him on his failure to circumvent the hostile crowds through which the American POWs had been forced to march. Not only had he directed the column past the Labor Service contingent but, some guards had testified, he had redirected it a second time to lead it in front of the town hall, where additional assaults had taken place: "Don't you think it is rather a coincidence that every time you interfered and made the guards change the route they wanted to take, that the flyers got beaten as a result?" The objection of Captain Hall for the defense to the combative and purely rhetorical question posed by a fellow member of the defense team was overruled by Colonel Jackson, and the best that Wentzel could manage in response was the unhelpful observation that, after all, the prisoners had "allegedly" been beaten all along the route through Borkum. A scornful questioning of the defendant on his acceptance of Schmitz's report that the Americans had been beaten to death by the mob capped Davis's devastating "defense" examination.¹⁷

In the bizarre circumstances prevailing in the Borkum trial, it was now up to Hall, defense counsel for the officers, to attempt to undo the damage done by his colleague and codefense counsel. In questioning Wentzel about Sergeant Schmitz's report on the manner in which the prisoners had been murdered, Davis had asked sarcastically, "Can you think of any reason why a man would tell a stupid lie like that?" Wentzel could offer no explanation, but Hall tried. Among the sworn statements assembled by Major Levine was one taken from Karl Geyer on October 25, 1945, in the British 101 Civil Internment Camp, the former Nazi concentration camp at Esterwegen. On August 4, 1944, the Austrian Geyer had been an enlisted man assigned to Searchlight #3 of Battery 7 on Borkum and had served as one of the guards on the fatal march. He had, of course, witnessed the shooting of the American prisoners by Langer. When asked by Levine to elaborate on what he had seen, he replied, "As I heard the next shot, I turned around and

saw Sgt. Schmitz with a pistol in his hand shoot one of the flyers in the back of the head." Civilian defense counsel Dr. Kerchbaum objected to the introduction of Geyer's assertion on the grounds that it was irrelevant to Wentzel's testimony. Hall argued that the prosecution and defense counsel for the guards

are attempting to show that these officers are lying when they say the report was made to them that the flyers were beaten to death. I would like to [*sic*], at a time when the point is fresh in all our minds, show the court that there is positive basis for Schmitz and all the guards to do a little lying on their own.

The objection was overruled, and Kerchbaum's skepticism that Schmitz would have independently fabricated the story while knowing, as he must have, that the true cause of the prisoners' death would quickly become evident, is not compelling.¹⁸

Wentzel's claim that he had had no official responsibility for the column as it marched from the Ostland Battery through the town was further undermined by the testimony of Karl Weber. Weber had been interrogated by Levine at Esterwegen on October 28, 1945, and testified that he had first seen the column of prisoners and guards on Strand Strasse, in the vicinity of the headquarters of the medium anti-aircraft battery he commanded. He had spoken to Wentzel and, on the basis of the latter's statement that he was directing the column in its march through Borkum, concluded that he was in charge, a conclusion he repeated in the Ludwigsburg courtroom. He had then ridden on his bicycle after the column on his way to deliver a report to battalion headquarters.¹⁹ But, under questioning by civilian defense counsel Dr. Dreher, Weber provided additional information. Contrary to the testimony of many other witnesses, he claimed that he had seen the guards making a genuine effort to protect the prisoners when they came under attack from civilians. "Yes, they tried to prevent it time and time again. They tried to push the civilians away from the flyers with the butt [*sic*] of their rifles," he asserted. Geyer had distinguished himself by seizing "a 15- or 16-year-old fellow by his collar and [throwing] him literally off the street." When queried by Dreher as to why he had not included this in his earlier sworn statement, Weber replied simply that Levine had not asked. In his own sworn statement, Geyer had claimed simply to have "tried to push the civilians away." Weber was less commendatory of his own

conduct. "All I could do was attempt to push my bicycle through the crowd."²⁰ Municipal employee Klaas Adel had been considerably less complimentary. In his sworn statement to Major Levine, he had asserted that Weber had declaimed from his bicycle, "Beat them to death. Here come the pigs!"²¹

In his cross-examination, Major Bryan reacted skeptically to Weber's description of Geyer's efforts to protect the prisoners. Levine might not have questioned Weber on the subject, he noted, but, at the end of the interrogation, he had asked Weber, as he had asked all witnesses he had questioned, if there was anything he wanted to add. Why had he not taken advantage of that opportunity? Weber replied that he had not thought of it at the time and added, "I must also say that the interrogation took place in Esterwegen, where morally and physically we were pretty beaten down." With presumably unintentional irony, Bryan followed this question with one concerning Weber's knowledge of the Geneva Convention.²²

Defendant Jakob Seiler was examined by Dr. Engelhorn and provided detailed information on the capture and processing of the American prisoners. Seiler had recently been promoted to the command of the 216th Flak Battalion's Ostland Battery. The battery had joined in the firing at #909 as it approached Borkum, and Seiler had watched as the big plane touched down on the beach and became entangled in a barbed-wire fence. He testified that he had received orders by telephone to bring the American crew to his battery's position, a task that was accomplished in less than an hour of the landing by a few enlisted men led by a senior noncommissioned officer named Hoppe. Seiler also dispatched the battery's medic, a Corporal Roesing, in case any of the crew had been injured in #909's rough meeting with the sands of the *Muschelfeld*. Roesing reported that only one crewman had been even slightly injured, having sustained a minor head wound, which the medic had bandaged. With hand gestures, Seiler directed the Americans to empty their pockets. One prisoner retained a map, Seiler noticed, leading to individual searches of each of the Americans. It was a fairly relaxed procedure, with the prisoners not required to keep their hands raised except when being "frisked." As the searches progressed, Captain Goebell and several other officers, including Wentzel, arrived. At that point, Seiler testified, the atmosphere became tenser. Goebell ordered that a guard be provided for each of the prisoners, all of whom were to keep their hands raised at all times. That Goebell could be a difficult commander was suggested by the consequences

of a concomitant decision that the prisoners' shoes would have to be removed as part of the search. One of the guards proceeded to untie the shoes of the Americans, only to be reprimanded by Goebell for performing so undignified a task. Goebell then ordered Seiler to have each prisoner's belongings placed in a large brown envelope inscribed with the owner's name. Seiler observed that his ignorance of English might produce problems, to which Goebell replied that the English-speaking Wentzel would now take over.

Goebell then turned his attention to the movement of #909's crew for evacuation to the mainland once Wentzel's brief interrogations were completed. Seiler testified that Goebell ordered the guards to take the prisoners through the town according to a specified route and that the Americans were to keep their hands raised throughout the march, were forbidden to talk, and were to maintain an appropriate interval between each captive and the man ahead of him. Any attempt to escape was to be dealt with by the use of weapons. More relevant to the case at hand, Seiler asserted that he had been ordered to "make clear to the guards" that, should civilians attack the prisoners, they were to take no action against them, although he was uncertain as to whether Goebell had made specific reference to the editorial on the treatment of downed Allied flyers issued by Dr. Goebbels. In any event, he thought that unimportant, inasmuch as the propaganda minister lacked authority to issue orders to the military. The fact that the Wehrmacht high command had itself issued orders that harmonized with Goebbels's screed went unmentioned. In fact, it may have been unknown to the naval defendants, who presumably would have included it as part of their defense had they been aware of it.

Seiler testified that he had designated Sergeant Schmitz as the leader of the column, a good choice, he thought, in that Schmitz had proven himself to be a reliable subordinate and had had experience transporting Russian POWs who had been employed as laborers on Borkum to another assignment on the mainland. Schmitz had professed his unfamiliarity with the prescribed route, whereupon Wentzel had offered his assistance. But, in spite of Captain Goebell's order that the guards were to take no action against hostile civilians, Seiler anticipated no difficulty. Borkumers had not been subjected to heavy Allied bombing and were usually placid. He believed that Goebell's motive in ordering the prisoners marched through town had been to demonstrate to the populace "that Borkum's entire [*sic*] aircraft defenses that been successful for once, because they had always been negatively judged."²³

Seiler's testimony had been coherent and plausible, but members of the defense team representing other defendants sought to discredit it. For example, Dr. Weber, representing Goebell, undertook to impeach Seiler by exposing his Nazi associations. He freely admitted to having joined the Nazi Party in December 1932, before Hitler had come to power, and to having served as a leader in the Hitler Youth from 1935 until 1939. He had also been employed in a store operated by *Kraft durch Freude* (Strength through Joy), the organization within the German Labor Front that provided German workers with cut-rate theater tickets and vacations and promised to provide them with an affordable "people's car," the Volkswagen. Seiler's explanation that he had accepted party employment as a consequence of having been unable to find a job as an electrician, a job for which he had been trained, seemed implausible, given Germany's booming war production economy in the years immediately preceding the outbreak of war. In an effort to accelerate what amounted to defense cross-examination of Seiler and Dr. Engelhorn's efforts to repair the damage caused by it, the prosecution's Major Bryan objected that testimony of this nature was irrelevant, inasmuch as the defendant was not on trial for his party associations.²⁴

Bryan's own cross-examination turned to more substantive issues. What had Seiler understood to be the significance of Captain Goebell's order that the prisoners were not to be protected against hostile civilian action? Had he not anticipated that something bad might occur? Seiler answered blandly that he had regarded it "as an order just like any other and I passed it on as such." Moreover, it was unusual to find many civilians on the streets of Borkum unless a train had arrived or a movie was letting out, an observation that seemed to clash with Seiler's earlier suggestion that the purpose of conducting the prisoners through the town was to demonstrate the success of the island's anti-aircraft defenses to the populace. But, Bryan wanted to know, had Seiler been unaware of the terms of the Geneva Convention, according to which POWs were to be treated "humanely and protected against violence, insults, and public curiosity"? Seiler responded that, although he had heard of the Geneva Convention, he had never received any formal instruction on the proper treatment of prisoners. He added that, while the Americans had been in his custody, he had treated them humanely. Bryan clearly overreached when he belabored Seiler for not knowing that, under Article 6 of the Geneva Convention, prisoners were to be allowed to keep their personal effects, a provision that was

commonly violated on both sides. Captain Hall for the defense piously requested that the trial record show that Bryan had been reading from a copy of the Army's *Rules of Land Warfare*.²⁵

Kurt Goebell, on August 4, 1944, the commander of Borkum's military forces, was the defendant central to the drama being played out in Ludwigsburg. If a conspiracy to mistreat the American POWs had existed, he, as the source of the order to march the prisoners through town and as the person who had notified Mayor Akkermann of his intentions, with an alleged reference to Dr. Goebbels's inflammatory remarks, had been the initiator. When interrogated in Esterwegen on October 29, 1945, he had responded to many of Levine's provocative questions with "I don't remember."²⁶ In Ludwigsburg, more than four months later, his memory was much improved. His testimony began on the morning of March 11 with questioning by civilian defense counsel Dr. Weber. Goebell, an engineer and chemist in civilian life, had been a recent arrival on the island, having been transferred to Borkum from command of a flak battalion in Wilhelmshaven. He had been at home, an apartment in the barracks, with his wife as #909 approached and had run outside with his binoculars in response to the roar of Borkum's antiaircraft batteries. The plane had seemed to be taking evasive action when a shell exploded just above it, close enough, he thought, to be considered a hit. It then swung around, seemingly in preparation for landing, although hills prevented Goebell from seeing the final phase of #909's descent. He immediately proceeded to the crash site on the *Muschelfeld* but found that the crew had already been removed. Goebell was informed by one of Seiler's men, possibly Hoppe, that seven American prisoners had been taken. This puzzled him, as he knew that a B-17 normally carried a crew of 9 or 10. Not knowing that Kazmer Rachak and Quentin Ingerson had bailed out from #909 over the mainland, Goebell suspected that dead or wounded crewmen might still be on board and searched the plane. Instead, he found material presumably intended to facilitate escape of the crew if brought down over enemy territory, including road maps and water-purifying tablets. Goebell claimed to have immediately recognized the import of these and other items as a result of having earlier examined other American aircraft and their crews shot down around Wilhelmshaven. These investigations, he testified, had uncovered European currencies, German ration cards, compasses concealed in buttons, and, implausibly, swords contained in rubber packages. As a consequence, Goebell claimed to have been wary of the possibility of an escape attempt by

#909's crew, although escape from an island in the North Sea would appear to have been highly unlikely. Goebell categorically denied having asked any of the men who had effected the capture why they had brought the prisoners to him alive and conjectured that the witness who had made that assertion had misinterpreted a query by Goebell as to whether there might be crewmen still alive inside the B-17.²⁷

The issue of Goebell's subsequent communication with Mayor Akkermann was of critical importance to the prosecution's theory that a conspiracy or common design to humiliate and physically harm the American prisoners had been initiated by the two men. What information had Goebell transmitted to Akkermann and why? Goebell explained that, when he had assumed military command of the island, he and Akkermann had agreed to share information on occurrences on the island if one became aware of it before the other. As best he could remember, he testified, he had instructed his adjutant, Lieutenant Dr. Baier, to "Inform the burgomeister that a plane had been shot down and that the prisoners would be taken to the pier." Notable by its absence was any reference to Propaganda Minister Goebbels's rant on the treatment of captured Anglo-American airmen.²⁸

What, then, of the route through town that Goebell had prescribed? There had been nothing at all sinister in that, Goebell was at pains to emphasize. There was, to be sure, a shorter route, but that would have taken the column past construction sites where hundreds of forced laborers—Dutch, Belgian, French, Italians, Poles, and Russians—were employed in the building of fortifications. Goebell claimed that he had feared trouble, possibly an escape attempt by the Americans facilitated by the forced laborers if the two groups of captives had been brought into contact or proximity. If escape from the island was unlikely, the possibility of a sympathetic demonstration by the forced laborers did not seem implausible. Why, then, had Goebell not ordered the American prisoners transported by rail? The witness conceded that railroad tracks passed very close to the Ostland Battery and that two apparent ways to employ that mode of conveyance had existed. One involved the use of a small gasoline-powered railcar—described by Goebell as a "track automobile," probably a Wismar *Triebwagen* and possibly the same buslike vehicle now gaily painted red and yellow that one can ride on Borkum today.²⁹ But, at that stage of the war, Goebell explained, gasoline was so scarce that such an option had been out of the question. Only wounded military personnel were allowed to be transported by gasoline-powered vehicles. Borkum's

officers themselves traveled by foot, bicycle, or horse. There was also a scheduled train, powered by a coal-fired steam locomotive, but that would not have been available before the evening and, in any event, was used to transport the foreign workers, contact with whom Goebell was determined to avoid. Goebell further asserted that he had prescribed a route different from the one actually taken. If his original instructions had been followed, the Labor Service contingent, as well as the crowds on Franz Habich Strasse and the town hall would have been avoided.³⁰

Goebell estimated that he had remained at the Ostland Battery for about 20 minutes, then departed to return home. On the way, he paused to inspect the marks #909 had left on the shore as it skidded to a halt. As other witnesses had done, Goebell claimed to have found numerous empty cartridge casings indicating, he thought, "that the crew had been shooting to the very last moment." Once in his apartment, Goebell phoned the commander of the Luftwaffe air base on the island, a Lieutenant Colonel Plachte, to alert him to the fact that seven American prisoners were on the way and were likely to arrive in approximately an hour and a half and to tell him to make preparations to transport the captured airmen to Emden, on the mainland. From there, they would be taken to the Luftwaffe's interrogation center at Oberursel, near Frankfurt am Main. He followed up the call to Plachte with one to Police Chief Rommel, notifying him that the column of prisoners and their guards would shortly march through town. This, he testified, had been purely routine and similar to an alert that might have been issued to the fire brigade in case of approaching thunderstorms or a warning to the air-raid police should enemy aircraft be picked up on radar. These parallels with potentially destructive phenomena, natural and manmade, were probably ill chosen and clashed with Goebell's subsequent testimony that he had had no reason to anticipate trouble on the march. Borkum was a peaceful place, and the number of bombs that had fallen on the island had been minimal. Testimony to the contrary, he thought, had been greatly exaggerated. But Goebell seemed to equivocate when asked by Weber whether he had mentioned Dr. Goebbels's inflammatory statement in his conversation with Rommel. While he had denied having made such a reference when Rommel had made his bizarre visit to Goebell in June 1945, as a consequence of which the police chief had requested a pistol for the purpose of suicide, he now wanted not "to preclude the possibility that I mentioned this speech [*sic*] at that time." When asked why

he might have mentioned Goebbels's comments to Rommel, Goebell responded vaguely that "he wanted to place the police on alert for security reasons," seemingly contradicting his earlier statement that he had had no reason to anticipate trouble in the course of the march. Yet, he had been "shocked" when informed by Krolikovski that the Americans had been "beaten to death."³¹

Goebell claimed to have initiated an investigation, although what that entailed was not explained, nor had any other witnesses mentioned such an effort. He reported the fatal "beatings" to his superior on the mainland, Admiral Scheuerlin, who initially told him to do nothing pending the receipt of further orders, then informed him that the investigation would be assumed by the Emden office of the Gestapo, presumably because the report had stated, falsely, that the murders had been committed by civilians. He attempted nothing further until near the end of the war, by which time he had assumed complete control of the island, including the civilian population. Goebell claimed to have then referred the case to a court-martial shortly before Borkum was occupied by Canadian forces, implying that he, in effect, had initiated the process that was now being played out in Ludwigsburg. But, from the start, rumors and the alleged hostility of the civilian population to the garrison had obstructed (and, by implication, continued to obstruct) efforts to get at the truth.³² Goebell concluded his questioning by Weber with a rambling and largely irrelevant effort at self-justification:

The incident or the incidents were surrounded by a tremendous mass of rumors and these rumors were exaggerated to such an extent that one was no longer able to differentiate between truth and rumor. In conclusion, I want to cite the following example. There existed a drive in Borkum from unknown sides to work against the armed forces, and for that reason the rumor was spread that all the flyers that had been shot were buried under a manure pile . . . and that they had been undug [*sic*] at a later time when they were buried in the cemetery; that an investigation to get behind the truth of this rumor was started by Brigadier Patrie and myself, but when the grave digger and the navy chaplain were interrogated the lie was uncovered immediately. . . . And a further thing which I would like to add is that before the war was concluded I had asked the population to contribute for the purpose of keeping up this cemetery.³³

Indeed, Major Levine had found the graves of the murdered Americans well manicured. Unfortunately for Kurt Goebell, respect for the corpses of the crew of #909 was not at issue but, rather, how the crew had *become* corpses.

Once again, a defendant was exposed to vigorous cross-examination by defense lawyers representing other accused. In an effort to challenge the credibility of Goebell's testimony that he had had no reason to anticipate trouble during the march, German civilian defense counsel Baur asked why he had specified that seven guards were to accompany the prisoners. Wouldn't two have been adequate? Goebell exploded in exasperation

if I had sent along twenty guards you would have asked me now why so many; if I would have sent two guards you would have asked me why so few. Where should I find the right number? The right number is one guard per man. It's very easily done afterwards to make uncountable [*sic*] propositions. Believe you me that if I had known what was coming off I would have done everything possible and everything within my power to prevent it.³⁴

Baur zeroed in on Goebell's assertion that the route along which the prisoners had been marched had been chosen to minimize opportunities for escape. Borkum, after all, was an island. To where could the Americans have escaped? As before, Goebell defended himself energetically:

The size of Borkum is being underestimated [*sic*] by this question. Borkum has 36 square kilometers; the whole northern part of it was a chain of dunes with old pill boxes from the last war; and I want to guarantee you that conditions existed at that time to leave the island unseen at any time and go either to the continent or to Holland. This problem concerned me very much. I therefore gave an order to a tech sergeant to go to Emden and back and not get caught, without traveling papers or money or any other material you would take, and he carried out that task.³⁵

Baur did not bother to raise the obvious point that escape for a single native speaker of German familiar with local conditions and clothed inconspicuously bore little resemblance to the challenge that would

have confronted seven Americans clad in U.S. Army Air Forces flight suits.

The grilling to which Goebell had been subjected by members of the defense team left the prosecution with little to do, and it contented itself with a brief and perfunctory cross-examination.³⁶ It was left to the U.S. Army officers sitting in judgment to pose a fundamental question as to the location of the primary weight of responsibility for the fate of #909's crew. "The court would like to know," began Lieutenant Colonel Versace, "who was the person that showed the greatest negligence in the conduct of this march?" Versace's use of the word "negligence" is interesting, in that negligence is a matter very different from conspiracy. Was Versace, in effect, offering Goebell the opportunity to accept guilt for a lesser offense? Goebell was initially evasive. "I can practically not [*sic*] answer that question because it was one continuous chain of events, one following the other, and a differentiation or distinction of events can hardly be made in this connection." But Versace was persistent. "You have admitted that the responsibility of protecting these flyers lay in the military. Who disallowed that responsibility [*sic*], in your opinion?" Goebell responded more imaginatively, but with no greater specificity:

The happenings . . . could not be foreseen by anybody, and I should like to put . . . it to be the forces of a higher power. If a marching order is given to troops and these troops march along and on the way there is a dud, a bomb that has not been exploded, when by the shaking of the ground by the marching troops this bomb comes to an explosion [*sic*] and men are . . . killed, the responsibility does not lay [*sic*] with the man who ordered the march because nobody knew about this dud.

Colonel Versace seemed incredulous. "From your remarks, you would like us to believe that this was an act of God?" "No," replied Goebell, "I only mean to say that those were circumstances that you could not have foreseen."³⁷

Colonel Barden adopted a different approach, asking Goebell whether it was not true that, had the column adopted the march route he had originally prescribed, the Labor Service detachment, as well as the crowds on Franz Habich Strasse and in front of the town hall, would have been avoided, to which Goebell, who had already testified to that effect, agreed. And was it not Lieutenant Seiler who had

specified the route actually taken? Goebell hesitated to accept the apparent invitation to pin the blame on a subordinate. While agreeing that Seiler was the only person to whom he had given instructions with regard to the route, he refused to condemn Seiler on the grounds of ignorance of "what further circumstances" might have been involved. But the purpose of Barden's line of questioning quickly became evident. Was not Goebell attempting to suggest that the events of August 4, 1944, were the consequences of a conspiracy hatched by several of his subordinates, including Seiler, and aided and abetted by Wentzel and Weber? And wasn't he simply trying thereby to cover up the fact that he himself "was the key man who actually engineered this whole route of march and course of events?" Goebell, of course, indignantly denied it: "Never have I had the idea to send those men on a death march. Never!"³⁸

Defendant Johann Pointner had been questioned by Major Levine at Esterwegen on October 26, 1945. The 24-year-old Austrian had commanded one of the big anti-aircraft searchlights on the island and had seen #909 make its crash landing approximately one kilometer from his position at around 2 P.M. on the afternoon of August 4, 1944. He and two other men had proceeded to the site and had found the seven Americans standing "in formation" outside the plane. One requested permission to bandage the head of a crewmate (at variance with other testimony, which credited a German medic with the bandaging), which Pointner granted, while "the small flyer," clearly Graham, voluntarily surrendered a pistol. Responsibility for the prisoners was quickly assumed by a squad from the Ostland Battery, which escorted them to their position, while Pointner and his comrades were left to guard the big bomber until about 4 P.M., when he was notified that he, Witzke, and Geyer were to serve as part of the escort for the POWs. On arrival at the Ostland Battery, Pointner stated that he had reported to Lieutenant Seiler, who informed him that the prisoners were to be marched through the town, "and if the civilians wanted to do anything to these flyers, then we must not protect the flyers in any way." Moreover, the prisoners were to keep their hands raised throughout the march, and any American who lowered his hands, much less attempted to escape, was to be shot. The first guard to shoot a POW would be rewarded with a bottle of *schmaaps*. At sharp variance with Wentzel's testimony was Pointner's claim that he had been appointed to lead the column because he was familiar with the prescribed route. Wentzel's defense suffered further damage from Pointner's assertion that it had been he

who had redirected the column past the RAD detachment and again when Pointner sought to lead it on a shorter and less congested route to the airport. Following the murder of the flyers, all guards had been ordered to report to Krolikovski's headquarters in the Dorf Hotel. There, Wentzel had read aloud a statement to the effect that the Americans had been beaten to death by civilians, in spite of efforts by the guards to protect them. Pointner and his comrades were directed to sign it and did so.³⁹

In Ludwigsburg, under questioning by defense counsel Dr. Baur, Pointner confirmed the essentials of his earlier sworn statement, but with at least one significant addition. The order that #909's crew was not to be protected from civilian attack had apparently not been the first time the issue of allowing prisoners to be assaulted had been addressed. Pointner testified that some time prior to the crash landing, a Lieutenant Ahrens, who was not identified further, had informed a meeting of position leaders in his battery that, in the event that prisoners were taken in future, they were not to be protected. As soon as Pointner had returned to his duty station following the murders, he found a message to the effect that no one was to talk about the incident, and censorship of personal mail would be tightened to ensure that news of it would not spread outside Borkum. Absent was Pointner's earlier claim that Seiler had offered a bottle of *schnaaps* to the first guard to shoot a prisoner. And, under questioning by other civilian defense attorneys, Pointner admitted that he had arrived late at the Ostland Battery and might not have heard the instructions that Seiler had given as to the precise route to be taken.⁴⁰ Wentzel's deviations, therefore, might not have been deviations at all but simply efforts to adhere to orders issued by a superior officer. Major Bryan's cross-examination was limited to a perfunctory extraction from Pointner of a confirmation that the sworn statement he had made in Major Levine's presence had, to the best of his knowledge, been truthful.⁴¹

Günther Albrecht had been questioned by Major Levine in Esterwegen on October 25, 1945. He was the equivalent of a private and was serving with the Ostland Battery when #909 landed on Borkum. Ordered by Seiler to serve as one of six guards during the search and interrogation of the prisoners, he had witnessed the abuse of one of them when Petty Officer Jakob Wittmaack, apparently annoyed by the American's gum chewing, knocked the wad out of his mouth with a blow to the face. He had not heard Seiler give orders that the prisoners were not to be protected if attacked by civilians, but he had heard later

from Geyer and Witzke that such orders had been given. As the column was leaving the Ostland Battery, however, Seiler had allegedly ordered Albrecht to hit one prisoner with his rifle butt for not holding his hands high enough. He had refused to do so, Albrecht informed Levine, and had been threatened with disciplinary action by Seiler. Sometime later, he received a similar order from Sergeant Schmitz, which he claimed to have again defied, limiting himself to the benign admonition in English, "Boys, hands up." When Howard Graham ("the small, fat flyer" to Albrecht), struggling with his pants, fell in front of the Rathaus, Albrecht testified that he was attempting to help him to his feet when he was pushed aside by an army private who shot the American behind the right ear. He had then helped to carry the mortally wounded Graham into the office of the air-raid police.

Albrecht's effort at self-exoneration was matched by his willingness to incriminate others. Wentzel, whom Albrecht assumed was in charge of the column, had done nothing to protect the prisoners. Wittmaack had beaten the Americans, while Schmitz had expressed satisfaction when told that the six remaining POWs had been murdered. Moreover, he and Wittmaack had requested ammunition for their pistols following the march, suggesting that they might have expended some in helping Langer to accomplish his murderous purpose.⁴²

In the witness chair in Ludwigsburg more than four months later, Albrecht had the opportunity to expand his description of the events of August 4, 1944, particularly his own allegedly blameless role. Under the benevolent questioning of civilian defense counsel Dr. Dieterich, the 23-year-old Albrecht revealed that he had been a recent arrival on Borkum, having been drafted from his civilian job as a shipyard worker in November 1943. On Borkum, he had been assigned to the flak battery commanded by Lieutenant Seiler and, on August 4, 1944, as he had informed Levine, had been ordered to serve as a guard for the prisoners, although he professed to have had no knowledge of where they were to be taken. As the column proceeded along the Promenade to Victoria Strasse, he recalled having seen a group of Labor Service men a short distance ahead. Just as the column was turning onto Victoria Strasse, he heard some of them shout, "Bring them here, bring them here." It was at that point, Albrecht testified, that Wentzel redirected the column towards the Labor Service members.

All of a sudden we were surrounded by men of the RAD. I heard a voice telling the RAD men to beat the flyers. . . . Later on I found

out that he was the man in charge of the RAD platoon. He used the following words and I quote, "Beat them boys, beat them." I did see several spades up in the air and I assumed that some of the flyers were actually hit.

Albrecht was unable to protect the prisoner he was guarding because he had been "pushed away" by several of the Labor Service men. He denied ever having struck an American, limiting himself to a gentle admonition in English when the prisoner he had been guarding lowered his hands, but he accused Wittmaack of having hit a POW on three occasions. "It is not my nature to hit defenseless persons," Albrecht intoned. When Graham fell over his loose trousers in front of the town hall, Albrecht turned to help him to his feet, although "the little flyer" was not the man whom he had been assigned to guard. While he had been rendering assistance, Albrecht claimed, he had been shoved aside by a figure in the uniform of an army private, who had shouted "Go away, go away!" That had been followed immediately by the sound of a shot, and Albrecht observed, in variance with his earlier sworn statement to Levine, that Graham had "received a shot into the *left* rear part of his head." Dieterich asked him why he had not at least tried to identify the assailant, to which Albrecht responded with well-prepared pathos:

At that moment I was so much shocked by what happened that I couldn't think straight. You can put yourself into this kind of predicament [*sic*], you are trying to assist somebody and all of a sudden that somebody is shot by somebody else. It was all strange to me. The flyer was still moving when at that time the people from the SHD [air raid police] office came and one of them said we should help grab [*sic*] the flyer. . . . The first thing that injured flyer needed was aid.

Albrecht testified that he tried to catch up with the column but found the remaining prisoners already dead on the Reede Strasse near the athletic field. He was then instructed by Wittmaack to report to battalion headquarters in the Dorf Hotel, where Wentzel read to the assembled guards the statement fallaciously describing the beating deaths of the POWs on the Reede Strasse by civilians. Wentzel directed the guards to sign the document. But why had Albrecht been willing to sign it? Albrecht answered that he had assumed that the statement had been based on an oral report made to Krolikovski by Schmitz and

that the latter had been acquainted with the circumstances of the prisoners' deaths. Dieterich was quick to guide Albrecht into a modified restatement of his assertion that the document had referred only to the killings of the six prisoners on the Reede Strasse and not to the shooting of Graham near the town hall, the circumstances of which Albrecht had just dramatically described, a version of the statement not in agreement with the testimony of other witnesses. When he and his comrades returned to the Ostland Battery, Albrecht remembered "positively" that he had been ordered by Seiler not to speak or write about the incident and also, somewhat contradictorily, commanded to state that the flyers had been beaten to death if he was ever asked about the means by which they had been killed. Follow-up questioning by other defense counsel and members of the prosecution team failed to move Albrecht significantly from his testimony.⁴³

Thirty-four year-old Heinz Witzke was arrested on June 16, 1945, and interrogated under oath by Major Levine at Esterwegen on October 27. He testified that on August 4, 1944, he had been serving with Searchlight #3, Battery 7, of the 216th Naval Antiaircraft Battalion and had seen #909 come down on the *Muschelfeld* some 700 to 800 meters from his position. He and Private Johann Pointner were the first Germans to arrive at the scene and found Walthall's crew standing alongside the aircraft with their hands raised. Witzke and Pointner were shortly joined by a contingent from the Ostland Battery. The two thereupon returned to their searchlight position. At around 3:30 that afternoon, Witzke and Pointner, along with Karl Geyer, were ordered to report to the Ostland Battery for service as guards for the march that was to take the American POWs to the airfield for transportation to the mainland. Witzke recalled that, before the march began, Seiler had issued an order to the effect that

The flyers must go with their hands over their heads at a fast pace. If any one of them stepped out of line, then they were attempting to escape and we must shoot them at once. In the event that the civilians attacked these flyers, we must do nothing to prevent them from doing so. And further he said that in the event that the flyers did not hold their hands over their heads correctly, we were to beat them with our rifles.

The procession set out at around 4:30 P.M. and was commanded, he believed, by Lieutenant Wentzel.

Witzke testified to having begun the march guarding “the little flyer,” Howard Graham, but claimed that Wentzel had ordered him to change places with Geyer as the column was proceeding down Strand Strasse after he refused to beat Graham for having lowered his hands. Graham, the recipient of the most abuse due to his wayward trousers and the first POW to be killed, was obviously someone from whom Witzke was at pains to separate himself. Levine had challenged him on this assertion, noting that other witnesses had testified to the contrary. Witzke admitted the lie but stoutly denied having beaten Graham and claimed that, at the time that Graham had been shot, the prisoner had no longer been under his supervision. In front of the athletic field, he recalled, an army private had jumped out of the crowd, yelled, “You have killed my wife and children,” then shot the prisoner he was guarding at that time, as well as the prisoner next in line, who was guarded by Geyer. He had heard additional shots but had not seen additional POWs fall. Witzke concluded his sworn statement with the familiar description of having been required to sign a fallacious account of the murders.⁴⁴

Questioned by civilian defense attorney Dr. Baur in Ludwigsburg, Witzke offered testimony that differed only in minor respects from the sworn statement he had given Levine. Now he and *two* other men from his searchlight position had been the first to arrive at #909’s crash site, and Witzke presented a fuller, if not more plausible, explanation of the shifting responsibility for guarding Graham as the march had proceeded. Wentzel had switched Witzke to the prisoner ahead of him, but, as the column marched through the hostile Labor Service contingent, Graham had moved ahead, making him once again Witzke’s responsibility, which he remained until they reached the town hall, where a disorderly press of civilians forced the two apart just before Graham was shot by Langer. At the athletic field, Witzke now claimed to have been “jumped from behind” by a figure shouting “You took my women [*sic*] and children” as he put a pistol to the neck of the prisoner Witzke was then guarding and fired. And, although he had earlier testified that he believed that Wentzel had been in charge of the march, he undermined that statement by testifying that he had not seen Wentzel between the time that he was relieved of responsibility for Graham and the arrival of the column at the athletic field. Under later questioning by defense lawyer Captain Hall, he now testified that he thought Sergeant Schmitz had been in charge of the guards.⁴⁵

Once again, another member of the defense team energetically probed the defendant's testimony. Hall was the only attorney on either side to raise a pertinent point: Witzke and others had testified that Seiler had ordered the guards to provide no protection to the prisoners should they come under attack by *civilians*. But Langer was a member of the Wehrmacht and was clearly identifiable as such by his uniform. Why had no effort been made to protect the prisoners against him? Witzke answered that Langer had taken him and his comrades by surprise. "Then you assume that from one end of the column to the other, in all this crowd and shooting, that everybody was completely surprised, is that correct?" asked Hall sarcastically. "I cannot judge the situation as it was," responded Witzke, who, of course, had just done precisely that.⁴⁶

Johann Schmitz had been the senior noncommissioned officer in the procession that had conducted the crew of #909 through Borkum. Whether he had been the actual commander of the group and what he had told his superiors about the deaths of the POWs were central issues in the trial. The 52-year-old Schmitz, a veteran of World War I, had been questioned by Major Levine in Esterwegen on October 27, 1945. He recalled having seen #909 come down on the *Muschelfeld* and had seen the crew brought into the Ostland Battery about an hour later. After some two hours had elapsed, Seiler had ordered him to serve as one of the guards for the prisoners and had personally lined up the column in preparation for departure. Schmitz did not recall an order requiring the prisoners to keep their hands above their heads but confirmed that Seiler had ordered that any prisoner attempting to escape be shot and that civilian attacks on the Americans not be resisted. Schmitz claimed ignorance of who had been in command of the column, obviously attempting to minimize his own responsibility but also seeming to confirm Wentzel's story of his own fortuitous inclusion in the march. When Seiler began to explain to him the route that was to be taken, Schmitz (who was implicitly admitting to at least having been designated the leader of the column) had professed unfamiliarity with the town, whereupon Wentzel had volunteered to show the way. In the course of the march, Schmitz denied having done any more than "push" some of the prisoners and claimed that, when the Americans had been attacked by the Labor Service men, he had yelled, "Don't do that." And, although implicating Wittmaack in having fired at a prisoner near the athletic field, the scene of the murders of six Americans, he asserted that his own pistol

“went off accidentally” when he tried to keep civilians “from taking things from the flyers.” Nor had he misled Krolikovski as to the circumstances of the POWs’ deaths. He had informed him that they had been shot by an army private and Wittmaack but had then signed a false statement typed out by Wentzel without having read it. Of all of the affidavits extracted by Levine, Schmitz’s was probably the most blatantly implausible.⁴⁷

Schmitz was no more noteworthy for consistency than he was for persuasiveness. When questioned by German civilian defense counsel Dr. Kerschbaum in Ludwigsburg, he denied that Seiler or anyone else had organized the column prior to its departure, asserting that “there was no formation formed actually.” In direct contradiction of his statement to Levine, he now testified that Seiler *had* ordered that the prisoners be required to keep their hands above their heads and that, at the march’s fatal conclusion, he had not actually seen Wittmaack fire at a prisoner but had simply observed him with pistol in hand. When challenged on the latter discrepancy, Schmitz claimed that deafness had prevented him from hearing the statement he had made to Levine when it was read back to him, and he denied having made the accusation against Wittmaack. On his own innocence of wrongdoing, he was, of course, adamant.⁴⁸

In a bizarre departure from the testimony of the accused, Lieutenant Davis called to the stand Willi Gutermuth, a doctor of medicine currently interned by the British. He proceeded to question Dr. Gutermuth on the effects of smoking on the human body, on which subject he professed to be an expert. What, Davis asked, would be the impact of smoking a cigarette on a smoker who had been deprived of tobacco for an extended period and who was called upon to testify immediately thereafter? Gutermuth answered that result might be euphoria intense enough to diminish his reasoning abilities and self-control, and he supported his contention with a description of a personal experience. After not having smoked for an extended period, he was given an American cigarette, which he proceeded to smoke. “The effect was that I became more or less dizzy, that is, I felt a kind of joyousness and did things which ordinarily I would not have done. This condition is increased by malnutrition.” As a consequence, Gutermuth had recommended that prisoners who were about to be interrogated not be given cigarettes.

It was a desperate ploy that sought to bring into consideration the conditions under which many of the defendants had been held,

including being given inadequate food, prior to their interrogations by Major Levine. But the issue of malnutrition, pressed by German defense counsel Dr. Wacker, went too far for Davis, and his objection to that line of questioning as irrelevant was sustained by Colonel Jackson. Major Bryan, cross-examining Guterthuth for the prosecution, endeavored to undermine whatever impact the witness's testimony had by suggesting that he was an antismoking fanatic who had been relieved of his duties as head of a camp hospital for that reason. Guterthuth denied the charge of fanaticism, noting that he was simply opposed to smoking by people in ill health, a condition in which he clearly believed many of the prisoners to have been.⁴⁹

Defendant Karl Geyer had made his statement to Levine on October 25, 1945. On the day of #909's landing on Borkum, Geyer had been serving in Pointner's searchlight battery and had seen the B-17 skid to a halt on the *Muschelfeld* about 200 meters from his position. He had not gone to the plane but saw others run to it and make prisoners of the crew. He watched as they were then marched to the Ostland Battery. At around 4 P.M. he, Pointner, and Witzke were ordered to report to the battery to serve as escorts for the Americans and were directed not to interfere if the POWs came under attack from civilians. But Geyer added additional dramatic detail. Seiler asked the arrivals where they had come from. "The searchlight battery," Geyer replied. That was not quite what Seiler had meant.

He then asked two of us [again] where we came from and if our houses had been bombed. We told him Austria and that our homes were not bombed. He then asked why we didn't shoot the prisoners right away. I said our planes go out and pick flyers up from the water, so why should we shoot them here. He said that was no excuse.

Then, according to Geyer, Seiler had asked who among the assembled group knew the way from the battery through the town. Apparently assuming that Seiler was interested primarily in a route to the air base, Geyer and Pointner had recommended a road that circumvented populated areas. Seiler was alleged to have brusquely rejected the suggestion, along with Geyer's subsequent query about the possible use of the railroad. Geyer claimed also to have interceded several times for Graham in the course of the march, requesting of Wentzel a pause so that "the little flyer" could fix his pants, all to no avail. He was also

“positive” that Schmitz had shot one of the prisoners in the back of the head during the final bloodletting at the *Sportsplatz* because he had seen him do so. He confessed to no wrongdoing of his own, nor had Levine explored that issue.⁵⁰

When questioned by members of the defense team in the Ludwigsburg courtroom, Geyer deviated from his earlier sworn statement in some noteworthy respects. Gone was the account of Seiler’s inflammatory remarks upon his arrival at the Ostland Battery, and Geyer now claimed to have tried to protect the American he was guarding by shoving some of the hostile Labor Service men aside with his rifle. When his prisoner was approached by a civilian intent upon beating him, Geyer described having grabbed the man by the collar and shoved him aside. And he no longer testified that he had actually seen Schmitz shoot a prisoner; rather, he asserted that he had simply witnessed Schmitz pulling a pistol away from the head of an American. Geyer, according to his own account, had neither hit nor even pushed anyone. In both his statement to Levine and in the witness chair in Ludwigsburg, Geyer described a visit by Captain Krolikovski to Searchlight #3 a day or two after the murders in which the battalion commander had reprimanded him and his comrades for not having killed #909’s crew as soon as they had stepped out of the plane, a remark that Geyer claimed to have protested.⁵¹

Captain Hall pressed Geyer on that part of his sworn statement for Levine in which he had claimed to have seen Schmitz shoot a prisoner in the head, an allegation that he had modified in his courtroom testimony. Geyer responded vaguely that he had requested that his sworn statement be revised when he arrived at Ludwigsburg. The exchange went to the critical issue of the reliability of the sworn statements, on which the prosecution case was largely based. In order to repair the potential damage to their credibility, the prosecution’s Captain May questioned Geyer sharply on the circumstances under which he had produced the statement. Had he requested that Levine make any changes to the document before he had signed it?

No. But I told Major Levine from the very beginning that I received a very poor education. I have called for witnesses to testify to that. My own company chief gave me orders never to do any phone duty because I couldn’t write. I was in no way able to listen and write at the same time. For that reason, I asked Major Levine to read [the statement] back to me very slowly.

This, Geyer testified, Levine had not done, creating for Geyer a problem in comprehension aggravated by alleged poor hearing.⁵² Once again, the credibility of the sworn statements had been challenged, although this effort was to be as futile as those earlier in the trial had been.

NOTES

1. "Record of Testimony," 682–84, *U.S. v. Goebell et al.*, 682–84 (microfilm, frames 96–98, reel 2).
2. *Ibid.*, 694–99 (frames 108–9).
3. *Ibid.*, 719–20 (frames 133–34).
4. "Testimony of Eric Wentzel," October 29, 1945, *ibid.* (frames 355–56, 363, reel 1).
5. "Record of Testimony," 721–24, *ibid.* (frames 135–38, reel 2).
6. *Ibid.*, 728–29 (frames 142–43).
7. *Ibid.*, 729–33 (frames 143–47).
8. *Ibid.*, 733–34 (frames 147–48).
9. *Ibid.*, 738–41 (frames 152–55).
10. *Ibid.*, 742–43 (frames 156–57).
11. *Ibid.*, 759 (frame 172).
12. *Ibid.*, 726 (frame 140).
13. *Ibid.*, 760–62. (frames 173–75).
14. *Ibid.*, 762, (frame 175).
15. Testimony of Erich Wentzel," October 29, 1945, 6, *ibid.* (frame 354, reel 1); "Record of Testimony," 763–66, *ibid.* (frames 176–79, reel 2).
16. *Ibid.*, 768–70 (frames 181–83).
17. *Ibid.*, 771–82 (frames 184–95).
18. *Ibid.*, 193, 202, 784–85 (frames 745, 754, reel 1; frames 197–98, reel 2).
19. Testimony of Karl Weber," October 28, 1945, *ibid.* (frames 318–19, reel 1).
20. Record of Testimony," 798, *ibid.* (frame 210, reel 2); "Testimony of Karl Geyer," October 25, 1945, 200, *ibid.* (frame 752, reel 1).
21. Testimony of Klaas Adel," October 18, 1945, 2, *ibid.* (frame 475); "Record of Testimony," 805–6, *ibid.* (frames 217–18, reel 2).
22. *Ibid.*, 811–12 (frames 223–34).
23. *Ibid.*, 819–29 (frames 232–43).
24. *Ibid.*, 833–34, 838 (frames 247–48, 252).
25. *Ibid.*, 841–44 (frames 255–58).
26. "Testimony of Kurt Goebell," October 29, 1945, 3–4, 6–8, *ibid.* (frames 367–68, 370–72, reel 1).
27. "Record of Testimony," 854–57, *ibid.* (frames 268–71, reel 2).
28. *Ibid.*, 857–58 (frames 271–72).
29. Holger Bloem and Wilke Specht, *Borkum: Nordseeinsel unter Weitem Himmel* (Norden: Verlag Soltau-Kurier-Norden, 2009), 5.

30. "Record of Testimony," 859–62 (frames 273–76, reel 2).
31. *Ibid.*, 863–64 (frames 277–78).
32. *Ibid.*, 865 (frame 279).
33. *Ibid.*, 866 (frame 280).
34. *Ibid.*, 877 (frame 291).
35. *Ibid.*, 878 (frame 292).
36. *Ibid.*, 886–90 (frames 300–303).
37. *Ibid.*, 896–97 (frames 309–10).
38. *Ibid.*, 897, 899 (frames 310–312).
39. "Testimony of Johann Pointner," October 26, 1945, "Record of Testimony," 220–29, *ibid.* (frames 772–81, reel 1).
40. *Ibid.*, 906, 918, 921–22 (frames 319–331, 334–35, reel 2).
41. *Ibid.*, 934 (frames 347).
42. "Testimony of Günther Albrecht," October 25, 1945, "Record of Testimony," 206–16, *ibid.* (frames 758–68, reel 1).
43. *Ibid.*, 935–38, 941–48, 950–58 (frames 348–51, 354–61, 363–71, reel 2).
44. "Testimony of Heinz Witzke," October 27, 1945, 2–11, *ibid.* (frames 305–14, reel 1).
45. "Record of Testimony," 965–73 (frames 378–86, reel 2).
46. *Ibid.*, 974–75 (frames 387–88).
47. "Testimony of Johann Josef Schmitz," October 27, 1945, "Record of Testimony," 169–77, *ibid.* (frames 719–27, reel 1).
48. *Ibid.*, 989, 995, 997–98 (frames 402, 408, 410–11, reel 2).
49. *Ibid.*, 1020–25 (frames 433–38). On Nazi attitudes toward smoking, see Robert N. Proctor, *The Nazi War on Cancer* (Princeton, NJ: Princeton University Press, 1999), 173–247.
50. "Testimony of Karl Geyer," October 25, 1945, "Record of Testimony," 193–94, *ibid.* (frames 745–46, reel 1).
51. *Ibid.*, 1027–36 (frames 440–49, reel 2).
52. *Ibid.*, 1036, 1043 (frames 449, 456).

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The crew of #909, standing from left to right (back row) Lieutenants Quentin F. Ingerson, Harvey M. Walthall, William J. Myers, Howard S. Graham, (front row) Sergeants Kazmer Rachak, J. Hesner (not on the August 4, 1944 mission), Kenneth Faber, James W. Danno, William W. Lambertus, William F. Dold. (486th Bombardment Group Association and Quentin F. Ingerson)



A nun makes her way through the streets of Würzburg, devastated by Allied bombing. (U.S. National Archives)



Site of the Ostland battery with the tracks of Borkum's railroad clearly visible. (U.S. National Archives and 486th Bombardment Group Association)



At Borkum's Rathaus (town hall) Lieutenant Howard S. Graham, the "little flyer," was mortally wounded. (U.S. National Archives and 486th Bombardment Group Association)



Major Abraham Levine testifies during the Borkum trial. (U.S. National Archives)

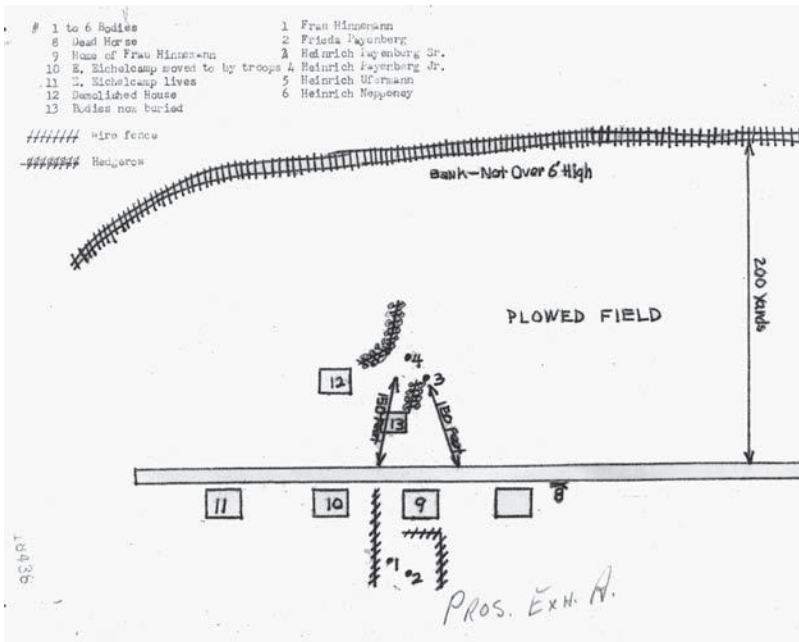


Defendants in the Borkum trial leave the courtroom under guard. (U.S. National Archives)



178528

Few photos were taken of U.S. Army courts-martial. This one shows a World War II trial. (U.S. National Archives)



Prosecution Exhibit A shows the locations of the murders of Voerde civilians. (U.S. National Archives)



Erich Wentzel is about to be hanged at Landsberg prison. (U.S. National Archives)



The monument to the murdered crewmen of #909 was dedicated on August 4, 2003. (486th Bombardment Group Association)

Fed to the Lions

The court adjourned on Thursday, March 14, for a long weekend. When it reconvened on March 18, the prosecution recalled as a rebuttal witness Major Levine, perhaps reflecting the perceived seriousness of Geyer's challenge. Under questioning by Major Bryan, Levine described the process by which the statement had been presented to the witness for verification prior to signature. Although written in English, the statement was read to the witness in German by the interpreter, Rudolph Kaufman, a German-born U.S. Army private who had come to the United States with his parents in 1938. The witness, according to Levine, had been urged to listen carefully and to correct any errors. After the answer to each question had been read, Levine had asked the witness in German if it was true. "When the statement came to that part of the testimony where Geyer described how Schmitz had shot one of the flyers I went over it personally three times and asked him three times whether or not he was positive that what he said was the truth and each time he said 'Yes, that's the truth.'"¹

In its cross-examination of Levine, the defense pointed out that statements by other witnesses had fingered Langer as the sole shooter, one of many inconsistencies probably inevitable in a trial of 15 defendants and the testimony of a good many more witnesses. In any event, Levine was scheduled to depart for the United States the following day and had no further role to play in the trial whose evidentiary foundation he had laid.²

By March 18, the Borkum trial had dragged on for almost six weeks, and Colonel Jackson was becoming impatient. He therefore announced that afternoon that, beginning the following day, court would be in session from 9 A.M. until 10 P.M., with recesses for lunch and dinner.

This would be a grueling schedule for all participants, but particularly so and even dangerous for German civilian counsel, which resided in Stuttgart, nearly 10 miles away via a transportation system still devastated by a war less than a year past. A 10 P.M. adjournment, Dr. Baur pointed out, would not permit a return to Stuttgart before the curfew that had been imposed by U.S. military government. Colonel Jackson's terse "we will arrange for passes" was probably cold comfort.³

Emil Sobiech had been deputy commander of the 216th Naval Anti-aircraft Battalion and had watched as #909 had made its descent onto the *Muschelfeld*. When interrogated by Major Levine in Esterwegen on October 27, 1945, he explained that he had been ordered by his immediate superior, the battalion commander Walter Krolikovski, to investigate the crash. He bicycled initially to the Ostland Battery, where he encountered several other officers, including Seiler, Wentzel, and the island commander, Goebell. Sobiech noted the presence of the seven American prisoners, who were in the process of emptying their pockets, and observed Goebell replace one of the guards who was not being "strict enough." He remained at the battery long enough to hear Goebell order the prisoners marched over the beach and through the town, specifying the streets that were to be used, directions that, according to Goebell's own testimony, were later changed. Sobiech then visited the crash site to inspect the bomber, pedaled home, then went on to his office in the Dorf Hotel. Searching for Krolikovski in order to make his report, he encountered several soldiers, who informed him that one of the POWs had been shot at the town hall and that the Americans had been beaten by Labor Service men and civilians in the course of the march. Krolikovski went back inside to take a phone call, then returned to the street, where he talked to a group of passing civilians. In great excitement, he directed Sobiech to proceed to the athletic field to ascertain what had transpired. Sobiech again took to his bicycle. On reaching the field, he found a crowd standing around the dead Americans. Sobiech rode back to the Dorf Hotel to report but was brushed off by Krolikovski with a dismissive "I know all about it." Sometime later, he was ordered by the battalion commander to refrain from talking or writing about the incident and to convey the order to the rest of the battalion.⁴

Under questioning by defense counsel in Ludwigsburg, Sobiech provided a more nuanced account of his experiences, one that, not surprisingly, was more favorable to himself. After he had arrived at the Ostland Battery, he testified, he had engaged one of the prisoners in

friendly conversation, asking the American where he had been born, a subject of interest to Sobiech as he had once visited the United States. He claimed to have interceded for the prisoners with Goebell, requesting that they be allowed to lower their hands after they had been searched and questioned, and assured the court that, had he been in a position to do so, he would have taken steps to protect the prisoners from attack. Goebell, however, had insisted on strict treatment of the POWs, not only reprimanding and replacing guards considered lax but snarling about "these damned German humanitarian ideas and just now when women and children are being killed in Bremen." In its cross-examination, the prosecution was content to elicit from Sobiech a confirmation of the truthfulness of his sworn statement to Major Levine.⁵

The problem of conflicting defenses among the 15 defendants was never better demonstrated than in the testimony of former general of infantry Hans-Karl von Scheele, brought from U.S. Internment Camp 78 at Zuffenhausen to serve as a witness for the enlisted men. A soldier since 1911, von Scheele not only had much experience as a combat commander but had served at the end of the war as president of Nazi Germany's highest military court. Under questioning by Lieutenant Davis and several of the German defense attorneys, von Scheele explored the command relationship between German enlisted men and their officers. When confronted with the "hypothetical" situation in which seven enlisted men under the command of a sergeant were ordered to conduct prisoners of war to a given destination and were accompanied by an officer who had volunteered to show them the way, von Scheele reached a conclusion dangerous to the officer, Wentzel: under those circumstances, the enlisted men would be justified in assuming that the officer was effectively in command. While the enlisted men would also have been required to refuse to carry out an illegal order, such as withholding protection from the prisoners if they came under attack, and "punishment for not having carried out any such order would have been impossible," liability for an illegal order lay with the officer who had issued it, while the enlisted man would have been acquitted if he could have convinced the court that he had not realized the illegal nature of the order. But what if the order had been justified on the basis of a statement by a high government official, such as Dr. Goebbels? Von Scheele replied that, while Hitler was the "supreme power in the German state" and had the power to issue orders to anyone in that polity, Goebbels had not shared in that power and,

more to the point, had possessed no authority over the armed forces. The more pertinent question of what orders concerning the treatment of captured Allied airmen might have come down through the armed forces chain of command was once again not explored.

But clearly the Borkum incident had not played out according to von Scheele's principled analysis. No one, officer or enlisted man, had been punished or even reprimanded for the assaults and murders, and Langer, who had turned an ugly demonstration into a massacre, had been removed from the island, while Borkum's naval authorities had been permitted to sweep the matter under the rug. That, von Scheele opined, had been due to extralegal factors, "the incessant attacks upon German cities and [the] German people. . . . You have to consider that in consideration of the situation at that time. . . I do consider that this was the reason." Von Scheele, it might be assumed, was probably well acquainted with the "extralegal" murder of prisoners of war, given his own wartime service on the Eastern Front, where huge numbers of Soviet POWs had been murdered by the Germans.⁶

Forty-one-year-old Oscar Born was not a defendant, although, as adjutant to Goebell, the island commander, he had been intimately associated with one of the principals in the case. It is difficult to believe that he had not been interrogated by Major Levine but, if he had been, a copy of his sworn statement had not been entered into evidence, nor is one present in the voluminous documentation of the Borkum case. In any event, his account of Goebell's conduct on August 4, 1944, was in sharp variance with the testimony of other witnesses. Under questioning by Dr. Weber, civilian attorney for Goebell, Born testified that he had gone to the Ostland Battery following #909's emergency landing and found Goebell already there. Goebell, it would appear, had been a largely passive spectator. Born had not heard Goebell order the prisoners marched on a specific route through Borkum or telling the guards that protection was to be withheld in case of civilian attack. To Born's knowledge, Goebell had never spoken of Dr. Goebbels's "decree" on the treatment of downed Allied airmen, either, although he had mentioned to Born a speech made by Goebell's immediate superior, Admiral Scheuerlen, in which the latter had complained that "too many prisoners were being taken." Goebell, however, had rejected the implications of Scheuerlen's comments out of hand. In regard to Goebell's decision not to adopt a march route that bypassed the town or to transport the prisoners by rail, Born explained, as Goebell had earlier done, that bypassing the town would have put the

Americans in contact with sympathetic foreign laborers and that fuel shortages had prevented the use of the small, gasoline-powered locomotive. The persuasiveness of the latter argument, however, was weakened by Born's revelation that Goebell had traveled to the crash site by automobile, which he had then sent to bring a war correspondent to the scene.⁷ And, on the matter of the mendacious report on the manner in which the American prisoners had been murdered, Born's credibility crumbled under sharp questioning by Lieutenant Davis.

DAVIS: Now, as a matter of fact, when did you find out that these Flyers were shot and not beaten to death?

BORN: I found out about that much later.

DAVIS: How much later?

BORN: At the time when investigations were conducted after the capitulation.

DAVIS: At that time you found out that the seven Flyers had been shot and not beaten to death?

BORN: Yes.

DAVIS: And up until that time you hadn't heard that the Flyers had been shot to death?

BORN: No.

DAVIS: Do you remember one Flyer who died by the Rathaus?

BORN: No.

DAVIS: You never knew that one Flyer had been shot to death at the Rathaus? (the witness hesitates a while before answering)

BRYAN (prosecution): I'm just wondering what we're waiting for. Does the witness understand that there is a question pending and that he is expected to answer?

BORN: Yes. I believe to remember now that in the report a Flyer that had been shot was mentioned.

DAVIS: You believe now to remember that?

BORN: Yes.

DAVIS: But you never saw Captain Krolikovski's report, did you?

BORN: I had to work on the report in which there was contained the statement of the guards.

DAVIS: As a matter of fact, don't you know that that report that contained the statement of the guards had nothing to say about the Flyer at the Rathaus?

BORN: I can't remember that.

DAVIS: I thought you just said that you remembered that it told about a Flyer being shot at the Rathaus?

BORN: It's possible I am mixing up these things with the stories that were told later that were regarded by us as rumors.

DAVIS: Then there were rumors circulating on Borkum Island, were there, about the way the Flyers died?

BORN: Yes.

DAVIS: But you didn't believe them?

BORN: No.⁸

Once again, a member of the divided and mutually antagonistic defense team had succeeded in discrediting a defense witness. Cross-examining for the prosecution, Major Bryan needed only to continue Davis's line of questioning.

BRYAN: As a matter of fact, it was a matter of common knowledge all over Borkum Island on 4 August and 5 August 1944, among civilians as well as military personnel, that all seven of these Flyers had been shot to death and not beaten to death, isn't that true?

BORN: So many rumors circulated on Borkum Island you didn't know what to believe and you didn't believe anything.

BRYAN: Did you hear or didn't you hear that the Flyers had been shot and not beaten to death on either 4 August or 5 August, 1944.

BORN: As I said before there were so many rumors you could believe them all or believe none.

BRYAN: I move to strike out the answer as not responsive.

PRESIDENT: The witness will answer the question.

BORN: By way of rumors I heard both, either believing both or not believing both.⁹

The degree to which personal animosities and petty disputes might have played a role in the accusations and counteraccusations contained in some of the evidence against the defendants was the theme of testimony provided by a series of tangential witnesses called by defense counsel as the trial struggled toward its conclusion. Jakob Klein, a tax expert in civilian life and an observer in Borkum's radar installation on August 4, 1944, testified that it was well known among the

enlisted men of Borkum's naval garrison that Goebell was disliked by his subordinate officers, although Klein was unable to supply specifics to buttress that assessment.¹⁰ Leni Meyer-Gerhards, wife of one of the accused, Klaas Meyer-Gerhards, testified to the long-standing animosity between her family and that of Erna Garrels, one of the witnesses against her husband, due to business competition between the two families, and between Garrels and the Heinemann family, also represented in the prisoners' dock in the person of Heinrich, the latter hostility rooted in Heinemann's refusal or inability to supply parts for a bicycle belonging to the Garrels family. Frau Garrels, she believed, would willingly impute guilt for attacking the Americans to members of either family in order to protect her own husband.¹¹

Important testimony concerning the responsibility of police personnel to protect prisoners of war was provided by Heinrich Fisher, a 39-year-old policeman from Emden who held the rank of major. A police official since the days of the Weimar Republic, Fisher was at the time of the trial commander of the Emden gendarmerie under the authority of British occupation forces. Fisher confirmed that civilian policemen such as the defendant Rommel would have had no authority to arrest military personnel guilty of crimes against prisoners of war, but he was evasive on the question of police competence with regard to civilians who had committed offenses against POWs who were in military custody. The air-raid police, as mere auxiliaries, Fisher testified, had no independent arrest authority over military personnel or civilians. When confronted with the situation that had occurred following the shooting of Howard Graham in front of the Rathaus, in which Langer had offered to "finish off" the American but had been chased away by Meyer-Gerhards, Fisher was ambivalent. The air-raid police leader had not been "required" to make an arrest, leaving open the possibility that he might have had the legal authority to do so. In a brief but sharp cross-examination, Major Bryan probed the issue of police authority over civilians who were assaulting prisoners in military custody, to which Fisher continued to respond evasively. Bryan scored a minor victory with the witness's answer to his final question:

BRYAN: So then the truth of it is that both the Wehrmacht, the guards, would owe a duty as well as the policeman [*sic*] to prevent an attack from civilians?

FISHER: Yes.¹²

But it was a member of the defense counsel, Lieutenant Davis, who finally raised a significant issue related to the status of the police in Nazi Germany. Since 1936, *Reichsführer-SS* Heinrich Himmler had been the German national chief of police (*Chef der deutschen Polizei*). The German police, therefore, although they had continued to perform “traditional” police functions, had also been part of the broader SS imperium that was the primary executor of murderous Nazi ideological goals, reflected in the concentration and extermination camp system, in which millions had perished. Himmler had, in fact, anticipated Goebbels by almost a year with regard to captured Allied aircrew, and in an administratively more substantial, less rhetorical form. On August 10, 1943, almost a year prior to the Borkum murders, he had ordered police personnel not to intervene in cases of civilian attacks on downed Allied airmen, a fact clearly more relevant to Rommel’s passivity than Goebbels’s editorial. This directive was among the thousands of incriminating documents gathered in Nuremberg for the four-power trial of major German war criminals, although how it had come to the attention of Davis is not clear. He queried Fisher about his knowledge of orders from Himmler with regard to police conduct in such situations. Fisher initially claimed ignorance, but Davis was persistent.

DAVIS: To the best of your memory, no orders were issued as to the treatment of captured flyers, is that correct?

FISHER: Only the order was issued that in case a plane should crash and members of the crew of this plane should be captured or taken prisoner by the police, they were to be taken to a camp, a prison camp, and the wounded men were to have medical attention right away and that the police were to contact the nearest Luftwaffe agency and hand these prisoners over to the Luftwaffe.

DAVIS: . . . as a matter of fact, isn’t it true that orders were passed down by Himmler to the police chiefs of the various towns to the effect that if civilians wanted to make a demonstration against the Flyers, the police were not to protect them?

FISHER: That order is not known to me since I was doing front-line duty from 1943 to 1944.

The answer indicated Fisher’s possible prevarication, as Davis had not specified the date of Himmler’s directive. That possibility was

promptly confirmed by Fisher's clearly rattled and implausible response to Davis's final question.

DAVIS: But you have heard of the order, haven't you?

FISHER: Afterwards, when I returned, but not written orders; it was just talk among the population. It was not known to the police where this order came from, but it was generally known among the population also.¹³

The trial wound down with the sweeping together of miscellaneous bits of testimony and evidence. Emil Sobiech was recalled to the witness stand by the defense and offered testimony to the effect that Goebell had expressed regret for having given orders that had led to tragedy, lamenting that "One has done so many good things in life and once one has failed, that decides one's fate." Much of whatever impact Goebell's alleged expression of self-pitying remorse might have had was lost when, under questioning, Sobiech was unclear about the circumstance under which he had heard or learned of the remark.¹⁴ The defense attempted to turn one of the sworn statements secured by Levine to its advantage by reading it into the record. Gerhardt Akkermann (not to be confused with defendant Jan Akkermann) had informed Levine that he had been a machinist employed at Borkum's airfield on August 4, 1944. At around 4 P.M. that afternoon, he was told by a sergeant that the night crew would have to guard seven POWs who were to arrive later for transportation to the mainland the following day, suggesting that the death or serious injury of the Americans had not been intended by Goebell and his subordinates. Several hours later, the same sergeant had informed Akkermann that the prisoners had been shot to death, which highlighted the implausibility of the claims by Goebell, Wentzel, and others that they had remained ignorant of the true causes of the deaths of #909's crew.¹⁵ The prosecution read into the record the sworn statement of Emil Fokuhl, an electrician who had also been the driver of the small, gasoline-powered locomotive that operated on a line that passed near the Ostland Battery and ran to the airfield. In fact, Fokuhl had made a run on the afternoon of August 4, 1944, to an electric cable break apparently caused by #909's crash landing. Although the car attached to the locomotive was capable of carrying only six people, Fokuhl testified that a passenger car of larger capacity had been readily available.¹⁶

Court opened on Thursday, March 21, 25 minutes late due to undefined "trouble with the armored cars" that escorted the truck conveying the defendants to the palace, apparently a not uncommon occurrence and evidence that the U.S. Army considered the German defendants (or, perhaps, their supporters) serious threats.¹⁷ The time had arrived for prosecution and defense to summarize their respective evidentiary narratives and deliver final arguments. Captain Lyons led off for the prosecution team with a relatively dispassionate summary of the evidence against each defendant.¹⁸ It was left to Captain May to interpret the evidence and to breathe life and passion into a case that may have demonstrated nothing more than intemperate remarks, isolated rough treatment of the Americans by a few individuals, and a callous, although officially encouraged, negligence that had unwittingly set the stage for Langer's murderous assault, rather than the conscious homicidal conspiracy argued by the prosecution.

May characterized the trial as one addressing "a great tragedy that has been committed against our country . . . in savage violation of the rules and usages of war." Images of a Christlike journey to the place of death were evoked by May's recalling "the cross those seven American boys had to bear" and "the poor flyers with their hands over their heads, their faces bloody, with the guards hitting and prodding them along [*sic*] with their rifles, civilians . . . rushing into the mob, hitting and beating, with Krolikovski occupying the grandstand seat, like a Roman emperor watching the Christians of old being fed to the lions."¹⁹

More important than lending pathos to the evidence was assembling it into a context demonstrating conspiracy or common design that would make all of the defendants guilty of criminal assault and murder. How the actions (or inactions) of the defendants resulted in the deaths of #909's crew could best be understood, May argued, in terms of the dynamics of mob action.

They did not all participate in exactly the same manner. Members of mobs seldom do. One will undertake one special or particular action and another will perform another particular action. It is the composite of the actions of all that results in the commission of a crime. Now, all legal authorities agree that where a common design of a mob exists and the mob had carried out its purpose, then no distinction can be drawn between the finger man and the trigger man. No distinction is drawn between the one who,

by his acts, caused the victims to be subjected to the pleasure of the mob or the one who incited the mob or the one who dealt the fatal blows.²⁰

Goebell's call to Akkermann had initiated a series of events that had culminated in Langer's fatal shots in front of the athletic field. Using mechanical imagery that would be employed in other U.S. Army mass trials of Germans accused of war crimes, May continued: "Yes, may it please the court, we have the civilians, we have the officers, and we have the guards, 'C' for civilians, 'O' for officers and 'G' for guards. C-O-G, and cogs they were. Cogs in the wheel of common design, all equally important, each part doing the part assigned to it. And the wheel of wholesale murder could not turn without all the cogs."²¹

Adding an additional helping of melodrama, May concluded with a recitation of the names of the victims—William Lambertus, William J. Myers, James W. Danno, William P. Dold, Harvey M. Walthall, Kenneth Faber, and Howard S. Graham—and a summons to recognize that the Borkum trial served a purpose that transcended the punishment of 15 persons complicit in their murders.

Where they were from we do not know. Some, perhaps from the great North, some, perhaps, from the industrial East, some, perhaps, from the golden West, and perhaps some from the sunny Southland. We know not where, except they were just Americans, their young lives sacrificed on the altar of German Nazism . . . yes, victims of a system we now seek to destroy for all time to come.²²

The Borkum defendants, it appeared, were to suffer for more than the deaths of seven American airmen.

Major Bryan concluded the prosecution's summation with a discussion of the finer points of law relevant to the charge of conspiracy or participation in a common design. According to Bryan's reading of the venerable *Wharton's Criminal Law*, the threshold for proving conspiracy was modest. It need not be proved that the defendants had formulated a plan to commit criminal acts but, rather, a conspiracy could be inferred from the actions of two or more persons apparently directed towards the commission of a crime. But not only actions were relevant. All persons intentionally present at the scene of criminal acts and not assisting in their suppression might be assumed *prima facie*

to have been participants. Moreover, all participants, active or passive, were liable for “incidental” felonies that might not have been objectives of the original conspiracy but that were consequences of it. Under the prosecution’s interpretation of conspiracy, much of the population of Borkum might have been charged with the murders of #909’s crew.²³

Bryan could not avoid an allusion to the ticklish issue of “superior orders.” Although the military defendants, by and large, had simply denied having mistreated the prisoners or having intentionally withheld protection from them, frequent references to Dr. Goebbels’s “decree” had seemed to imply the influence of higher authority in the atrocity (with the existence of more relevant Wehrmacht orders either ignored or unknown). The issue was an awkward one because, until November 15, 1944, the U.S. Army’s own *Basic Field Manual: Rules of Land Warfare*, in discussing the liability of soldiers for violations of the laws of war, had stated that “individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders.”²⁴ Had the tables been turned and had Americans soldiers been tried for the murders of POWs on August 4, 1944, a defense of superior orders might well have led to an acquittal as, in fact, it had for Captain John Compton when he had been court-martialed for the murder of Axis POWs in Sicily in 1943.²⁵ But, as Bryan was quick to point out, this provision of the manual had been fundamentally changed. Superior orders were no longer to be deemed a complete defense but might be taken into consideration in determining the degree of a defendant’s guilt and in mitigation of his punishment. He might also have noted that the London Charter of the International Military Tribunal, which was trying the major German war criminals at Nuremberg, had incorporated the same standard. Bryan closed his argument by observing that “the old Mosaic law demanding an eye for an eye, a tooth for a tooth and a life for a life has not been repealed by any legislative body of any civilized nation and is fully accepted by the judicial systems of such nations. . . . Thus and only thus can justice be meted out.”²⁶

The defense rebuttal, not surprisingly, was directed primarily at undermining the credibility of the prosecution’s theory that the Borkum killings had been the products of a conspiracy or common design to which the defendants had been party. Success would be determined by the impact of their efforts on the minds of the officers sitting at the front of the courtroom who would judge the defendants and assign

punishment—if those minds were open to arguments in defense of former enemies accused of the murders of other American officers and men. The German civilian attorneys, to whom the American concept of conspiracy was largely unfamiliar, engaged in ponderous and often poorly translated analyses and refutations of the evidence against the specific individuals whom they had defended. Captain Phelps, however, delivered a sometimes sardonic critique of the prosecution case as it applied to the civilian defendants.

If all persons consensually present at a mob action were guilty of the criminal consequences, Phelps wondered, why was the number of defendants so small? And, if May had been prosecuting a lynching case in his native South Carolina, would he have presented the “mob theory” so eloquently? The first point was hardly compelling, and the second was a cutting though fundamentally irrelevant aside, as racist southern jurisprudence was not on trial in Ludwigsburg. More to the point was Phelps’s construction of a much tighter set of criteria for conspiracy than the prosecution had offered. To be sure, Mayor Akkermann had stood on the corner of Franz Habich and Bahnhof Strassen, attempting to incite the crowd, but had he “set into force a series of acts which could have been reasonably foreseen and did ultimately result in this unlawful homicide?” Had the prosecution demonstrated that Langer had shot the prisoners *because* he had been incited to do so by Akkermann? There was no evidence that Langer had even heard Akkermann’s shouts, and, Phelps pointed out, prisoners had been beaten before the procession had reached the place along the march route where Akkermann had placed himself. Nevertheless, Phelps was willing to concede that there might have been a conspiracy between Akkermann and some of the officers to encourage the beating of the prisoners by civilians, but there was no evidence of a conspiracy to kill them. The evidence against the other civilian defendants, he argued, was even thinner. Delicately avoided as it had been in all of the arguments by the defense as well as the prosecution was the obvious point that the apparent loss of Langer’s wife and children to Allied bombing would appear to have provided more than adequate stimulus for Langer’s deadly assault.²⁷

Phelps closed his argument with an effort to put the Borkum trial into broader context. Following World War I, he noted, the Allies had permitted Germany to try its own war criminals, and the results had been farcical. A handful out of hundreds of men accused by the Allies had been tried, half of whom were acquitted, and the remainder given

light sentences. Phelps feared that the pendulum, now under Allied control and in an atmosphere of war-bred hatred, had swung too far in the other direction. The policy was not only "reactionary" but hypocritical. Phelps revealed that he had commanded an infantry platoon at Anzio and knew from personal experience that the U.S. Army had not always treated German POWs in accordance with the laws of war. American violations had either gone unpunished or had been visited with lenient penalties. Phelps illustrated the point with the case of a GI who had been court-martialed for mistreating German POWs, sentenced to two years' imprisonment, then pardoned after outraged congressional intervention. "Gentlemen, is it any less a war crime if we commit the act than if our enemy violates the rules of land warfare?" Phelps's rhetorically expressed confidence that the Ludwigsburg court would deal with Germans no more severely than it would with Americans accused of similar offenses was in fact, as he must have known, a slim hope.²⁸

Further critiques of the prosecution's conspiracy theory were delivered by Lieutenant Davis and Captain Hall. The notion that a conspiracy existed to kill the American POWs was, on its face, incredible, Davis argued. Preparations had been made to receive the prisoners at the airfield that evening in anticipation of their movement to the mainland the following day. The guards may have obeyed illegal orders to withhold protection from the prisoners, but it would not have been unreasonable for them to have supposed that the Americans, characterized by Goebbels as murderers of German women and children, were themselves war criminals undeserving of the rights due POWs under international law. And, of course, the actual murderer, Langer, had been a wholly independent force totally unconnected to the defendants. Were the guards to be condemned, Davis declared dramatically, the sacrifice of #909's crew, who "flew their last mission to help make our system of law a reality in the world," would be desecrated.²⁹ The officers may have used poor judgment, Hall conceded, but the tragic outcome of the march was a result of the irresponsible conduct of Akkermann and the unforeseen intervention of a madman. The evidence for conspiracy was so thin, Hall observed mockingly, that the prosecution was obliged to bring in Roman emperors and the throwing of Christians to the lions!³⁰ The fear that the officers sitting in judgment might not weigh the evidence dispassionately or be free to do so was implicit in Davis's admonition to the bench to resist "pressure from above," the "sudden spotlight of publicity," and "veiled threats" and

in Hall's urging that the judges overcome "the understandable prejudices of our time."³¹

It was 8:15 P.M. on the evening of March 22 when Colonel Jackson, president of the court, ruled that no further argument would be heard. The court was closed six minutes later, and the panel of officers hearing the case retired to reach their verdicts.³²

There is no record of the deliberations of the seven officers who decided the Borkum case. The court was reconvened at 11:05 P.M., the panel having spent an average of approximately 10 minutes in determining the guilt or innocence of each defendant. Given the reams of convoluted testimony that had been given over the previous six weeks, not to mention the sworn statements that had been secured by Major Levine, it is difficult to avoid the conclusion that the deliberations were superficial. Colonel Jackson ordered the court interpreter to call the name of each accused, who was to stand as his verdict was pronounced. Goebell, the top-ranking defendant, was first. "Kurt Goebell, the Court in closed session at least two thirds of the members present at the time the vote was taken concurring in each finding of guilty, finds you of the particulars to charge one [murder] guilty; of charge one, guilty; of the particulars to charge two [assault] guilty; of charge two, guilty"³³

Over the next 25 minutes, the same form was followed for the remaining 14 Germans. The other four officers—Krolikovski, Weber, Wentzel, and Seiler—were also pronounced guilty of both charges and their particulars, as was Schmitz, the senior noncom. Pointner, Geyer, Albrecht, and Witzke, all enlisted men, were acquitted of murder but found guilty of assault. The civilians Rommel, Mammenga, and Heinemann received like verdicts, but Akkermann was convicted on both charges. Meyer-Gerhards was acquitted of both.³⁴

Although it was now approaching midnight, Colonel Jackson was determined to bring the proceedings to an end before adjourning. The convicted defendants were invited to present statements of extenuating circumstances—essentially pleas for mercy—before sentencing. Whether out of despair, exhaustion, or recognition of guilt, none did. The court closed for 40 minutes, then reconvened in the early minutes of a new day. Goebell rose as Colonel Jackson called his name. "Kurt Goebell, the Court, in closed session, at least two thirds of the members present at the time the vote was taken concurring, sentences you to death by hanging at such time and place as higher authority may direct."³⁵

Wentzel and Seiler heard the same grim formula, while Krolikovski was sentenced to life in prison and Weber to 25 years. Schmitz was condemned to the gallows, while Pointner, Albrecht, Geyer, and Witzke were given prison sentences ranging from 4 to 11 years. Of the civilians, Rommel, the policeman, received a sentence of 2 years, Heinemann 18, and Mammenga 20. Akkermann was sentenced to hang. The Borkum trial officially concluded at 12:30 A.M.³⁶

NOTES

1. "Record of Testimony," 1045–47, *U.S. v. Goebell* (frames 459–61, reel 2).
2. *Ibid.*, 1047–55 (frames 461–70).
3. *Ibid.*, 1069 (frame 484).
4. "Testimony of Emil Sobiech," October 27, 1945, 2–7, *U.S. v. Goebell* (frames 342–47, reel 1).
5. "Record of Testimony," 1072–73, 1084, *ibid.* (frames 488–89, 500, reel 2).
6. *Ibid.*, 1085–93 (frames 501–8).
7. *Ibid.*, 1096–1100, 1103 (frames 511–15, 518).
8. *Ibid.*, 1107–08 (frames 522–23).
9. *Ibid.*, 1111–12 (frames 526–27).
10. *Ibid.*, 1116, 1120–21 (frames 530, 534–35).
11. *Ibid.*, 1135–36 (frames 549–50).
12. *Ibid.*, 1143–1148a (frames 557–59, 562–63).
13. *Ibid.*, 1148b–49 (frames 564–66); Vasilis Vourkoutiotis, *Prisoners of War and the German High Command: The British and American Experience* (New York: Palgrave Macmillan, 2003), 188.
14. "Record of Testimony," 1156, 1161–62, *U.S. v. Goebell* (frames 573, 578–79, reel 2).
15. "Testimony of Gerhardt Akkermann," October 10, 1945, 1169–70, *ibid.* (frames 586–87).
16. "Testimony of Emil Fokuhl," October 12, 1945, 1173–74, *ibid.* (frames 590–91).
17. *Ibid.*, 1176 (frame 593).
18. *Ibid.*, 1178–85 (frames 595–602).
19. *Ibid.*, 1187 (frame 604).
20. *Ibid.*, 1186 (frame 603).
21. *Ibid.*, 1188 (frame 605); James J. Weingartner, *Crossroads of Death: The Story of the Malmédy Massacre and Trial* (Berkeley and Los Angeles: University of California Press, 1979), 101.
22. "Record of Testimony," 1189, *U.S. v. Goebell* (frame 606, reel 2).
23. *Ibid.*, 1190–92 (frames 607–9).
24. U.S. War Department, *Basic Field Manual: Rules of Land Warfare* (Washington, DC: U.S. Government Printing Office, 1940), 87.
25. *United States of America v. Compton, Capt. John T.*, Clerk of Court, U.S. Army Judiciary, Arlington, VA, 63.

26. "Record of Trial," 1193–94, *U.S. v. Goebell* (frames 610–11); "Charter of the International Military Tribunal," Article 8, *The Avalon Project at Yale Law School*, <http://avalon.law.yale.edu/imtconst.asp>.

27. "Record of Testimony," 1203–06, *U.S. v. Goebell* (frames 620–23).

28. *Ibid.*, 1206–07 (frames 623–24).

29. *Ibid.*, 1269, 1273, 1276–77 (frames 686, 690, 693–94).

30. *Ibid.*, 1278–79 (frames 695–96).

31. *Ibid.*, 1268, 1279 (frames 685, 696).

32. *Ibid.*, 1280 (frame 697).

33. *Ibid.*, 1280–81 (frames 697–98).

34. *Ibid.*, 1281–83 (frames 698–700).

35. *Ibid.*, 1283 (frame 700).

36. *Ibid.*, 1284–86, (frames 701–3).

Germans as Victims

War-crimes trials were common events in the immediate aftermath of World War II, an almost unimaginably savage conflict. The overwhelming majority of them, such as the Borkum trial, were held to punish the recently defeated enemy, but not all. In July 1945, four American soldiers were tried by U.S. Army courts-martial in Czechoslovakia for offenses committed the previous March in the German town of Voerde. Unbeknownst to the participants, these proceedings would have important implications for Germans' assessment of the Borkum case and for post-World War II U.S. war-crimes justice in general.

The U.S. Eighth Armored Division, the "Thundering Herd," was a latecomer to the European war, entering combat in eastern France in January 1945 against a German army fast coming to the end of its resources, both human and material. Within the month, the division was moved north to the Netherlands to take part in the drive of Lieutenant General William Simpson's Ninth Army to the Rhine, which was crossed on March 26.¹ On the following morning, elements of the division, the 49th Armored Infantry Battalion reinforced by Company B of the 36th Tank Battalion, entered the German town of Voerde. Shortly after breakfast, Second Lieutenant Robert A. Schneeweiss, the 24-year-old commander of one of Company B's tank platoons, ordered 18-year-old Private Francis Nichols and 19-year-old Private Glen Joachims to accompany him to test their weapons or, more ominously, to hunt for Germans. Approaching a nearby house, they were informed of the presence inside of two male civilians. Declaring that he would "take care of them," Schneeweiss entered the dwelling with the young privates. Under orders from Schneeweiss, Joachims and Nichols took the Germans into the basement and shot them to death.

Schneeweiss also directed 19-year-old Private William Peppler to shoot two women who had been discovered a short distance away. Through the window of a house, Peppler observed the women rummaging through a chest of drawers. He fired into or around the window but stated that he could not bring himself to fire directly at the women. Reporting his reluctance to Schneeweiss, he was ordered to return to the house with Nichols and to kill them. As the two GIs approached, the terrified women attempted to flee but were cut down by M-3 "grease gun" submachine-gun fire in the backyard of the house. Schneeweiss joined the two privates and, finding the women still alive and groaning and thrashing about, killed them both with his .45-caliber pistol. Nichols then departed for a "KP" (kitchen patrol) assignment, while Schneeweiss and Peppler continuing hunting "Krauts." Finding two male civilians crossing a plowed field, Schneeweiss opened fire with an M-1 rifle. Both men fell wounded along a hedgerow at the edge of the field. Peppler appears to have fired in the direction of the victims but, perhaps still resisting orders to murder civilians, might not have aimed at them. In any event, it was Schneeweiss who once again finished the job with bursts from Peppler's M-3. One or possibly two more German civilians apparently were also murdered, but the circumstances of these killings, for reasons that are not clear, were not investigated.²

Like the Borkum murders, the killings in Voerde were not classic "heat-of-battle" atrocities, in which the victims were done to death during or immediately after the rage, fury, and confusion of combat. The U.S mechanized group to which Schneeweiss's platoon belonged had traveled from Venlo in the Netherlands to Voerde without encountering enemy resistance other than a lightning-fast strafing run on the night of March 26–27 by a German jet aircraft (probably a Messerschmitt 262) in the vicinity of Herongen, a raid that, although alarming, had done little damage to the column and none to Company B. Schneeweiss had seen virtually no combat. His only experience of being under fire from German ground forces had occurred when he had test-fired the guns of his tank from the west bank of the Rhine at targets on the far side and had received some German mortar fire in return. He had attempted to fire the .50-caliber machine gun mounted atop the turret of his tank at the marauding German jet but had failed to get the weapon into operation before the enemy plane was gone. Nor had Schneeweiss viewed evidence of Nazi mass atrocities in liberated concentration camps,

an experience that often filled GIs with hatred of all things German. There had, in fact, existed nearby a facility for the infant children of Eastern European women employed as slave laborers at Krupp's gigantic manufacturing complex in Essen where large numbers had died of disease and neglect, but that had been evacuated before the arrival of the Americans. No German forces had been present in Voerde to contest the GIs' advance, and the only shooting that had accompanied the capture of the town had been from GIs dispatching the local population of chickens.³

Most atrocities in World War II went unreported and unpunished. But, unlike the German failure to take action against Langer or anyone else involved in the Borkum atrocity, the U.S. Army, to its credit, moved swiftly to investigate most of the Voerde murders. These were glaring violations of Article 46 of the Hague Convention (IV) of 1907, which requires an occupying army to respect the lives of persons in occupied territory, while Article 19 of the U.S. Army's *Rules of Land Warfare* states that "It is now universally recognized that hostilities are restricted to the armed forces of belligerents. Inhabitants who refrain from acts of hostility . . . must not be injured in their lives or liberty, except for cause and after due trial."⁴

Killing large numbers of enemy civilians by remote and impersonal air attack, if not simply ignored or denied, was rationalized as an unavoidable necessity of war, but the face-to-face murder of peaceful residents of a small town, including two women, could apparently still disturb. The incident was reported to the intelligence officer of the Eighth Armored Division's Combat Command B, Major John Elting, at around 10 A.M., by Lieutenant Georgi, his prisoner interrogation officer, and by Captain Coleman, the command's military government officer, both of whom may have been more sensitive to atrocities than combat troops. Elting reported what he had been told to the commander of Combat Command B, Colonel Edward Kimball, who ordered Elting to conduct a preliminary inquiry. Witnesses were interviewed and probable responsibility fixed on a lieutenant from the 36th Tank Battalion's B Company. All of the company's lieutenants were assembled for scrutiny by the witnesses, and Schneeweiss was identified as the culprit. Elting had Schneeweiss disarmed and arrested and reported his findings by telephone to the Eighth Armored's inspector general, Lieutenant Colonel Harold G. MacAdams, along with the information that Schneeweiss was being sent to XIX Corps headquarters in nearby Lintfort.⁵ MacAdams found him there

in military police custody and questioned him that evening and for much of the following day. Schneeweiss initially denied his guilt:

Well, all I can say is I can't believe I am here to be tried for something like that. I didn't kill any civilians. . . . Everything seems to be all jumbled up to me, I can't figure it out for myself. These two men that were with me can vouch for the fact that I didn't shoot those civilians.⁶

Schneeweiss claimed that he had been on an innocent excursion with some enlisted men of his platoon who had wanted to test-fire their small arms. He had seen dead civilians, but only after having been told about them by unidentified informants. Schneeweiss conceded that, as a German civilian had bicycled past, he had "made a crack to the fellows that I would get him on the second bounce" but observed that, had he been intent on killing civilians, he would have shot the man immediately.⁷ Lieutenant William Kellner of Headquarters Company, 49th Armored Infantry Battalion, had been one of "the fellows," and he told MacAdams a somewhat different story. He had been speaking to Schneeweiss about what to do with civilians in order to free up housing for the occupying forces. Schneeweiss had allegedly observed, "Well, in the 36th [Tank Battalion] we either shoot them or kick them out," to which he had added, "I just got two." The cyclist had then pedaled by, prompting Schneeweiss to ask Kellner if he had seen the man. In response to Kellner's answer that he had, Schneeweiss had replied, "Well, he's not going to come back."⁸ Tech. 5 Nathan Schumer remembered Schneeweiss asking how civilians were treated, to which Schumer had replied that they followed orders and moved civilians if that was necessary. He recalled Schneeweiss responding with "we don't want any part of them, we either shoot them or drive them in front of us."⁹ Sergeant Donald J. Welch of the 49th Armored Infantry Battalion offered a more expansive narrative:

It was on the 27th of March, we were looking for billets, and we were down at this one house, and there was [*sic*] two dead civilians down in the basement, and then we waited for our platoon sergeant . . . and while we were standing there, this officer and three enlisted men walked by us . . . and this officer said "see that fellow coming down the road on the bicycle? Well, we're going to shoot him." So I said to the other sergeant that was

with me, "he won't shoot him," and the officer said, "the hell I won't. . . ." But he didn't shoot him and let him go on past him. And then somebody from the rear hollered up that he wanted one of the KP's with him, so he said "get the hell back there," and he [Nichols?] said, "no, I want to go with you." So he told him to get the hell back, and this guy turned around and went back. Then he walked on up the road and, in the meantime, me and the two sergeants went back in the house and I said, "let's turn around and see if he is really going to shoot him." So we went out . . . and we saw him stop, and there were two civilians there close to an orchard, and he shot three times. They dropped over dead and he went over to them with a submachine gun and shot them five or six times.

MacAdams questioned Welch about the killing of the two women. The sergeant replied that he hadn't witnessed those murders but that Schneeweiss had mentioned that he had "killed five of them" that morning.¹⁰ The other two sergeants, Francis Stemock and John Dauhinis, testified similarly to Welch.¹¹

Schneeweiss had assured MacAdams that the "two" men who had been with him on the morning of the 27th would vouch for his innocence; when questioned by MacAdams the following day, Private Glen Joachims did precisely that. Schneeweiss had not fired a shot while in his presence, he claimed, and the only dead civilians he had seen had been in the basement of the house. When asked directly by MacAdams whether he himself had shot civilians, Joachims flatly denied it. He had fired his submachine gun, but only to test it.¹²

But Private William Pepler testified with greater candor, although reluctantly and with considerable circumlocution. He had seen dead civilians in a field where he had been firing, had been told by Schneeweiss that they were going to "shoot Krauts," and had also seen Schneeweiss firing an M-1 rifle, but, when asked by MacAdams whether he had seen anyone shoot the civilians, he initially declined to answer. But when asked whether *he* had shot civilians, Pepler surprisingly replied that he had, although he quickly withdrew his answer when reminded of article 24. Candor reasserted itself at the close of the interrogation.

MACADAMS: Do you have anything else to say before we close this part of the investigation?

PEPLER: I think not. I had no reason for killing any civilians as they didn't have rifles.

MACADAMS: I though you said a minute ago that you did kill some?

PEPLER: Well, that was under orders.¹³

Private Nichols was even more forthcoming, although with a greater effort to claim extenuating circumstances. He had seen civilians killed and, although reminded of his right not to incriminate himself, admitted that he had participated. But he claimed, without elaboration, that the two men murdered in the basement had been "Heinie soldiers in civilian clothes," of whom Schneeweiss had said, "Take the bastards downstairs and shoot them." The women, in Nichols's mind, had become looters who had been shot while trying to escape. In any event, he claimed, the commander of the 36th Tank Battalion, Major John van Houten, had said that the outfit's "first job is to kill civilians."¹⁴

On March 30, MacAdams confronted Schneeweiss with the overwhelming evidence against him. After having heard a synopsis of the testimony, Schneeweiss seemed close to incoherence, responding with a feeble "I can't figure it out" and "I don't know what to do, Colonel," then "I don't know what to say. I have no more witnesses. It is a good way to fight for your country." Finally, in a quasi-confession combined with an effort to protect Joachims, Nichols, and Pepler, Schneeweiss declared:

I don't know what has come over me. I've been in a fog ever since it happened. It wasn't their fault, they would listen to any officer. They shouldn't suffer for anything I did. They were just obeying orders, that's all. They are as foolish as I am, I guess.¹⁵

But what of the German victims who, in the testimony gathered from the GIs, had been faceless ciphers for whom scant sympathy had been shown? The bodies had been identified and buried by the temporary mayor of Voerde, Johann Hellmich, and Ernst Eichelkamp. MacAdams questioned the two men, along with some unidentified residents of the town, on April 1. Some of the dead had been personally known to Hellmich, while the names of others were provided by relatives. The two men who were shot in the basement of the house visited by Schneeweiss, Nichols, and Joachims were the householder, Heinrich Ufermann, and his son-in-law, Heinrich Neppeney, while

the two women were Therese Hinnemann and her sister, Frieda Payenberg. Hinnemann had resided in the house behind which she had been killed, and she had been cleaning the dwelling with Payenberg's help. Heinrich Payenberg Sr. and Heinrich Payenberg Jr., presumably related to Frieda, although MacAdams did not probe the matter, were the men shot in the open field. A Dietrich or Fritz Lorberg (Eichelkamp was uncertain) was one of possibly two other civilians murdered on March 27 under circumstances that were not investigated. The Germans were not asked whether they had witnessed any of the killings, although Eichelkamp volunteered that "We didn't see anything so we don't have anything [more] to say."¹⁶

The case against the Borkum defendants had been based on the theory that they had consciously and willfully engaged in a criminal conspiracy to ill treat American prisoners of war and that that conspiracy had led directly to the prisoners' deaths. The U.S. Army approached the Voerde killings very differently. The four suspects were held in custody in the Ninth Army stockade while the war ground on to its conclusion, on May 7–8, 1945. Later that month, the men were subjected to psychiatric examinations intended to determine whether they had been sane and capable of distinguishing right from wrong at the time of the murders. This was standard procedure in court-martial proceedings stemming from serious offenses under the Articles of War, although it was nowhere in evidence in the Army's preparation of war-crimes cases against German defendants. Some of the witnesses whom MacAdams had questioned had characterized Schneeweiss's demeanor on the day of the murders as odd and had suggested that the lieutenant had been "battle happy," in spite of the fact that he had not been involved in significant combat. There seems to have been an implicit reluctance to accept that "normal" American soldiers were capable of the murders of unarmed persons who posed no threat to them, although no questions had been raised as to the sanity of the Germans accused of complicity in the Borkum killings. A three-member board of Army psychiatrists found Schneeweiss, Pepler, Nichols, and Joachims "free from mental defect, disease or derangement" that would have prevented them from distinguishing right from wrong and adhering to the right and refraining from the wrong at the time of the murders.¹⁷

The movements of the Eighth Armored Division in the immediate postwar period for occupation duty in the Harz Mountains area of central Germany and then in Czechoslovakia delayed the opening of the courts-martial until July.¹⁸ Schneeweiss was to be tried separately

from Joachims, Nichols, and Peppler, another significant difference with the Borkum trial. There would be no conflicting defenses between officer and enlisted men in their trials, nor was there a hint of alleged conspiracy in the cases brought against them, although it would not have taken much imagination to have constructed such a theory including others besides the four men actually tried. The battalion commander had allegedly said *something* that had seemed to encourage the killings, and there had been no apparent effort from other GIs to discourage Schneeweiss's openly proclaimed murderous ambitions, and at least one of them had passively watched as he had shot the two male civilians in the open field. Major Bryan's conception of conspiracy as applied to the Borkum defendants would have embraced a good many more men than Lieutenant Schneeweiss and the three privates.

Schneeweiss appeared before a general court-martial convened on July 21 in Rokycany, Czechoslovakia, charged with violation of the 92nd Article of War, which dealt with the crimes of murder and rape, in the killings of the two Heinrich Payenbergs, Frieda Payenberg, and Therese Hinnemann, but strangely, not with the basement murders of Neppeney and Ufermann. The 92nd Article mandated the death penalty or life imprisonment for those found guilty. Technically, therefore, Schneeweiss was charged not with a war crime under international law but with an offense under the U.S. Army's own internal code. Early in the trial, however, "judicial notice" was taken of Article 19 of the Army's *Rules of Land Warfare*, which echoed the Hague (IV) Convention's protections of civilian populations.¹⁹

Serving as judges and jury were nine officers, most holding the rank of lieutenant colonel, with Brigadier General and West Pointer Charles F. Colson as law member (and, as the senior officer, presumably president). A single defendant, however, required much smaller prosecution and defense teams than would 15. Responsible for prosecuting Schneeweiss were trial judge advocates Captain Roger Joseph and Captain John Putnam, while defending him were Captain Albert Joven and Captain William Behrens.²⁰ More striking was the difference in tone between the two trials. At Rokycany, there was none of the pathos and drama or expressions of moral outrage on the part of the prosecution that had been so much in evidence in Ludwigsburg. The Borkum trial had been in part a morality play enacted before an audience, whose purpose was the exposure and punishment by the forces of good of a thin slice of the Nazi evil. A substantial photographic record

of the Borkum atrocity and trial was created by the U.S. Army that keeps alive the tragedy and drama of the events. We are able, many decades later, to recoil in horror at photographs of the decomposed corpses of the victims, view the route of the "death march" as it was little more than a year after the atrocity, and look upon the faces of the defendants, including those who were hanged seconds before they dropped into eternity. The courts-martial in Rokycany, by contrast, were closed, prosaic, and tightly controlled exercises by the U.S. Army in the maintenance of internal discipline that brought to trial only those men accused of personally violating the 92nd Article of War. There are no photographs of the victims, of the locations of the murders, or of the courts-martial themselves. The only visual evidence of the Voerde atrocity is a crude hand-drawn map of the tiny area in which the murders had taken place, introduced by the prosecution in Schneeweiss's court-martial as "Exhibit A."

The trial of Robert Schneeweiss began with the testimony of the first prosecution witness, First Lieutenant Richard Redmon of the 49th Armored Infantry Battalion. Redmon described having viewed the bodies of six German civilians on the morning of March 27. He had descended into the cellar of the Ufermann house in the company of Captain Pfister, the battalion dental officer, and Captain Gaulet, its medical officer, and had discovered the bodies of two male civilians lying side by side on the concrete floor, one face up and the other face down. Considerable blood was in evidence, along with several spent .45-caliber shell casings. When asked whether the bodies had still been warm, the witness replied that he had not touched them, but he was prevented from relating what Captain Gaulet had told him, that being hearsay evidence, which was excluded from courts-martial, although freely admissible in the war-crimes trials of enemy personnel. Similarly, Redmon's testimony that the positions of the bodies of the two men in the field and the two women in the yard of the Hinnemann house suggested that they had been running at the time of their having been shot was stricken as "opinion." The defense limited itself to inquiring whether Redmon knew the identities of the bodies he had viewed, which he denied.²¹

The prosecution next called Major Morris Labess who, on March 27, had been the surgeon of the Eighth Armored Division's Combat Command B. He had been approached that morning by Lieutenant Georgi, who had invited him to come along and "see something." Labess may have examined the bodies of all of the murdered civilians, but he was

questioned only about the four of whose killings Schneeweiss was accused. Of the two "females," one had been young and the other, middle aged. The two were lying close together. The older woman had been shot through the head, with brain matter protruding from the exit wound at the back of the skull. Her companion had been shot through the breast, and no exit wound had been visible. Labess estimated that they had not been dead for more than an hour to an hour and a half, as the bodies had still been warm. Uncongealed blood had dripped from their wounds. The two men whose bodies were found in the field had been also middle aged. The face of one of them had been partially shot away. They, too, had been killed recently. Labess was confident that all four had died by small-arms fire, rather than by shrapnel from exploding artillery shells.²²

Having established the deaths and the means thereof of the four German civilians, the prosecution turned to establishing the responsibility of Schneeweiss for their murders. Private Francis Nichols, one of the alleged participants and soon to face his own court-martial, appeared as a prosecution witness, assured of his right not to be forced to incriminate himself. The prosecution's original intent was to allow the witness to offer, in his own words, a narrative of his experiences that morning. The defense, however, objected that to allow Nichols to speak freely and at length might create "a good chance that the witness will bring into evidence certain facts that should not be brought out at this trial." What these "facts" might have been was not explained, although the objection probably referred to the danger of self-incrimination. In any event, the objection was sustained, and Nichols began carefully controlled testimony under prosecution questioning.²³

Nichols testified that he had been a member of Schneeweiss's platoon and on KP duty with Company B's field kitchen when the company had entered Voerde on the morning of March 27. The kitchen had been placed between two houses, one of which he, Schneeweiss, and several other unnamed GIs had entered with the apparent intention of requisitioning it for use by U.S. troops. Present also were two civilians, one of whom was described by Nichols as wearing "regular civilian clothes" and the other a "civilian shirt" and what "looked like a pair of German army shoes and sort of black pants with a stripe on the side." When asked what had happened to the two civilians, Nichols declined to answer, as he did when asked about the cause of death of the two "females" whose bodies he admitted having seen

that morning. Both refusals were accepted by the prosecution without comment.²⁴

Precisely how members of Schneeweiss's platoon had been instructed to behave toward German civilians was of obvious importance to the prosecution case and to Schneeweiss's defense. In his statement to MacAdams four months earlier, Nichols had asserted that the 36th Tank Battalion's commander, Major John van Houten, had declared that the battalion's "first job is to kill civilians" as the unit was about to cross the Rhine. The defense evidently saw in this potential mitigation of Schneeweiss's responsibility for his conduct. Nichols was given a copy of the earlier statement and invited to read it. Having done so, he observed that "there was an error." Asked to explain, he replied, "Where it says about our job was to kill civilians [*sic*], that was wrong, he said to kill Germans. He said our first job was to kill the enemy, that was the Germans, and his job was to see that we all got through all right and could get back to the states again." But when asked what he understood van Houten to have meant by "Germans," whether "soldiers, women, men," Nichols answered, "He talked about both," immediately qualifying that statement with "I don't remember exactly what he said." On redirect, the prosecution succeeded in obscuring the issue even further by eliciting from Nichols that he thought van Houten had been encouraging the killing of "mostly" German soldiers and that, in any case, he was uncertain that Schneeweiss had been present to hear the major's ambiguous pep talk. Ironically, it had been van Houten who, as a matter of administrative form, had brought the charges against the defendant.²⁵

Nichols' testimony was followed by that of Private Pepler, whose questioning by the prosecution was also prefaced by a reminder of the protections against self-incrimination contained in the 24th Article of War. Pepler immediately attempted to avail himself of it by refusing to reveal what Schneeweiss had said to him on March 27 or even whether he had been in his company. Directed by the court to answer, he replied that he had been approached by Schneeweiss at around 7 A.M. and told "to go down the road and get a few Krauts." When asked what he had understood the lieutenant to have meant, Pepler answered, "I understood him to mean to kill the Krauts," an interpretation that had been based, he added, on his awareness that two civilians had already been shot in the basement of their home. How he had acquired this prior knowledge was a matter not pursued, although the fact that he had "heard" of their killing resulted in

the testimony being stricken as hearsay, again, a category of evidence readily admissible in U.S. Army proceedings against Germans, such as the Borkum trial.²⁶

I went down the road, he said they were in the first house. I looked in the first house, but there was no one there. I went to the second house and there were two women in there. It looked like they were looting. I could see through the window. I fired a few rounds around the window panes and they went to the back of the house. I got scared and came back to the company. I told him I can't do it [*sic*]. He told me to go out anyway, male or female, kill them.²⁷

Peppler sought to continue his narrative but was again reminded of his right not to incriminate himself and stopped. Under continued questioning by the prosecution, he described the location of the bodies of the two women, still alive although wounded in the legs before Schneeweiss killed them with his .45, but not his own role in wounding them, and Schneeweiss's shooting of the two male civilians in the field.²⁸

In its cross-examination of Peppler, the defense attempted to elicit testimony suggesting that Schneeweiss's actions had been the consequence of temporary insanity. Peppler seemed willing to help, but the 18-year-old, when asked to describe Schneeweiss's demeanor, could only answer vaguely that "he seemed a little unusual" or "peculiar," testimony the insubstantial nature of which the prosecution emphasized in its redirect. Peppler's observation that Schneeweiss had not slept for 24 hours prior to the killings did little to resuscitate the case for diminished responsibility. Sleep deprivation is one of the more common afflictions of men at war. The defense touched on Major van Houten's "pep talk" prior to the Rhine crossing but made no effort to exploit Peppler's recollection that "He said that the Germans will be eliminated and it was his job to get us over and it was his duty to get us back."²⁹

Before Peppler left the witness stand, one of the judges succeeded in eliciting from him testimony that reflected a bit of the horror of that bloody morning in Voerde.

COURT: You testified a while ago that you and Lieutenant Schneeweiss saw these two women and you further said you

thought they were wounded at that time. Were they standing, sitting, walking, lying, running, what were they doing?

PEPPLER: They were lying.

COURT: You further testified that they were not dead, but injured. How do you know if they were lying down?

PEPPLER: They were jumping around [*sic*] and making noise.

COURT: After the Lieutenant fired, did you see them jump, did you see the missiles hit them?

PEPPLER: I saw the holes and the blood.³⁰

Sergeants Welch and Dauphinis recounted what they had witnessed on the morning of March 27 (and told MacAdams), Dauphinis adding that, as Schneeweiss had fired his M-1 at the two civilians in the field, he had heard a GI shout, "You got him!"³¹ Colonel MacAdams described his interrogations of Schneeweiss, noting in response to questions by the defense that the defendant had seemed rational and emotionally stable.³²

Van Houten did not testify on the critical issue of what he might have told Schneeweiss, for he was not present, nor was his absence explained. Instead, his then-executive officer, Major Frank E. Moore, appeared as a witness for the prosecution. Moore remembered that Schneeweiss had asked van Houten "what his policy was towards the Germans." The battalion commander had replied that "our mission was to destroy the Germans," although Moore assumed that both Schneeweiss and van Houten had understood "Germans" to mean the German army.³³ But would so seemingly self-evident a point have required elucidation or even mentioning? No one asked the question. Major Malcolm J. Dugas of the 49th Armored Infantry Battalion, to which Schneeweiss's company had been attached in Voerde, testified that the battalion's policy toward German civilians had been to treat them "justly, firmly and fairly."³⁴

The court adjourned at midafternoon at the request of the prosecution to permit the appearance of the Eighth Armored Division's psychiatrist, a crucial witness in light of the defense's introduction of Schneeweiss's alleged mental derangement. The trial resumed on the morning of July 23 with Major Nathan N. Root, a psychiatrist with pre-war experience in New York's famed Bellevue psychiatric hospital, on the witness stand. Root had been a member of a three-man board that had included two other Ninth Army divisional psychiatrists. It had examined Schneeweiss on May 26, questioning him on his background,

his family life, "and his mental processes at the time of the alleged offenses." This was standard procedure, Root pointed out, in cases involving serious infractions of the Articles of War. Schneeweiss had been found to have been able to distinguish right from wrong and of adhering to the right and refraining from the wrong; he was also found capable of cooperating in his own defense.³⁵ His defense counsel might have legitimately questioned whether an obviously rather superficial examination had much probative value but limited itself to noting that the psychiatrists had interviewed Schneeweiss two months subsequent to the murders.³⁶

Major Root's testimony marked the conclusion of the prosecution phase of the trial. The defense introduced several witnesses who testified as to their impressions of the defendant's mental state at the time of the murders. In the absence of a plausible claim of superior orders, demonstrating some degree of mental incapacity was Schneeweiss's only conceivable defense in a case in which the murders in question were incontrovertible and that multiple witnesses had seen the defendant commit. These witnesses, while testifying that Schneeweiss had seemed nervous, unstable, or abnormal, also emphasized that their impressions were based on very brief contact.³⁷ One explained that his conclusion that Schneeweiss "was a little off" was based on the crimes themselves—that only an unstable personality would have been capable of committing them, although a factor contributing to that instability might have been sleep deprivation.³⁸ This was pretty thin stuff and unlikely to neutralize the report of the psychiatric board, superficial as its examination might have been.

The defense had nothing to lose by calling upon Schneeweiss to speak for himself. His defense counsel led him through a lengthy biographical disquisition that was patiently tolerated by the court and by the prosecution. He had been one of five children—the next to youngest—of a working-class Milwaukee family. His father had been a heavy drinker, he testified, often spending his paycheck on booze, leading to "pretty stiff arguments" between his parents and the necessity of his mother's taking a job, leaving the children to fend for themselves. Schneeweiss recalled nightmares about "large animals and falling off buildings" and frequently wet his bed. He had been an indifferent student and, at the age of 15, had spent "a week or two" in a detention home for truancy, following which he had completed his formal education in a vocational school. Childhood surgery for

osteomyelitis, he testified, had made him reluctant to engage in fights, resulting in mockery from other boys.

If Schneeweiss had found employment following technical school in the Depression-wracked U.S. economy, it did not enter into his testimony. He had enlisted in the Wisconsin National Guard in February 1939 and had become a soldier in the U.S. Army following the federalization of his Guard unit the following year. The 32nd Infantry Division, made up of the federalized Wisconsin and Michigan National Guard, trained at Camp Beauregard, Louisiana, before shipping out for the Pacific in the fall of 1942. Schneeweiss had not accompanied the division, however, because of a hip injury sustained in a motorcycle accident. Following his recovery, he applied for admission to Officer Candidate School, from which he graduated as a second lieutenant in April 1943. But he was shuffled from one training assignment to another, not reaching the European Theater until early 1945, where he was posted for about a week to the Second Armored Division before being transferred to the Eighth shortly before it crossed the Rhine.

Schneeweiss's marriage had been less peaceful than most of his army career. From the start, he testified, it had been tumultuous, with divorce threatened frequently by both parties. Nevertheless, he revealed, his wife was currently pregnant and due to deliver within a week or two. His two brothers had both been discharged from the service, one from the army because of an unspecified "nervous condition" that resulted, his mother had informed him, in spasms and foaming at the mouth, the other from the Marine Corps due to "combat fatigue."

Schneeweiss's testimony, carefully guided by defense counsel, painted a self-portrait of an insecure young man whose problems were the result of a chaotic early life. Against that background, his conduct upon entering a combat zone was understandable and, he and his defense counsel no doubt hoped, excusable, particularly in the light of the battalion commander's alleged directive prior to the crossing of the Rhine from the Netherlands. Schneeweiss testified that van Houten had said that "everything on the other side of the Rhine was considered a Kraut, a German," and that "our mission was to kill Krauts." When cross-examined by the prosecution on his interpretation of van Houten's instructions, Schneeweiss responded, "I don't know, to me a German is a German, that's the way I felt about it all the time. If the Germans were going to fight, there was no sense of [*sic*] us sitting back and being as good-hearted as we had always been . . . and if they were going out for total war, we could do the same." When asked if he

had considered unarmed civilians a personal threat, Schneeweiss answered, "Well, I was afraid of them all. I didn't trust any of them."³⁹

Schneeweiss's testimony was followed by the reappearance of Major Root, but this time as a defense witness. A lengthy questioning by defense counsel that clearly tried the patience of the divisional psychiatrist probed the likely response of a "hypothetical" subject whose life mirrored that described by Schneeweiss to the circumstances that the defendant encountered when his outfit had crossed the Rhine into Germany. But the effort of the defense to elicit from Root an unambiguous concession that such a man might have lapsed into temporary insanity was unsuccessful, although Root admitted that the "hypothetical" subject "was emotionally unstable to a certain degree."⁴⁰ In its cross-examination, the prosecution contented itself with leading Root through a restatement of the psychiatric board's conclusion that Schneeweiss had been able to distinguish right from wrong and to adhere to the former while abstaining from the latter.⁴¹

The trial ended with closing arguments from defense and prosecution, which, unfortunately, were not recorded in the transcript. The court was closed for an unspecified period, and, upon reconvening, the president announced that Schneeweiss had been found guilty of all four charges, but with an important reservation. The defendant was guilty of killing four German civilians but without malice aforethought and premeditation. It was clearly a compromise verdict, probably indicating a degree of acceptance of the argument that Schneeweiss's mental faculties had been diminished at the time. It was a crucial distinction in that, in effect, it found the defendant not guilty of an offense under the 92nd Article of War, which would have mandated a death penalty or, at least, life imprisonment. Instead, he was declared guilty of violating Article 93, a catch-all provision that covered numerous offenses ranging from manslaughter to sodomy and for which a court-martial could impose any penalty it chose. The court that had tried Lieutenant Schneeweiss chose to dismiss him from the service with forfeiture of all pay and allowances and to sentence him to prison at hard labor for 25 years.⁴²

Privates Nichols, Joachims, and Pepler were tried jointly three days later accused, as Schneeweiss had been, of violating the 92nd Article of War in the killings of the six German civilians. Pepler was charged with the killings of the two women and the Payenberg males, while Joachims and Nichols were accused of the murders of Ufermann, Nepeney, and the two women. The inclusion of Joachims in the killing of

Therese Hinnemann and Frieda Payenberg is odd, in that no recorded pretrial testimony had implicated him in their deaths, and the error was later recognized.⁴³ Many of the same witnesses who had testified in the Schneeweiss court-martial appeared on the witness stand in the trial of the three privates.

One of them was Major Root, who had participated in a psychiatric examination of the defendants, which had found all three capable of telling right from wrong and adhering to the former. All three seemed to have been normal American teenagers of the period, although one had revealed a childhood fear of large dogs, while another complained of shyness. All three reported having girlfriends. One admitted to still being a virgin, while another confessed to having contracted gonorrhea at age 16. Only one of the defendants had graduated from high school, while the remaining two had eight and nine and a half years of formal education. In the course of his psychiatric examination, one of the young men had apparently revealed another incident, which, unaccountably, had not been included among the charges brought against either him or Lieutenant Schneeweiss. Private Pepler reported that "later," possibly after the killings of the two women and the Heinrich Payenbergs, he had been ordered by Schneeweiss to "clean out another house" containing German civilians. Proceeding to the dwelling, he found six women, four children, and one adult male. Protesting to Schneeweiss that he could not "take action" against these civilians, Pepler was ordered to "call the man out of the house." He "feels sick," he informed the board, whenever he thought of the incident, suggesting that the male civilian may also have been murdered. Schneeweiss had seemed generally antagonistic toward civilians, had thrown stones at children to keep them from his tank, and had once fired into the ground to frighten away Dutch children. Nichols informed the examining board that no one had seemed to know what to do with Vorderde's civilian population and that Schneeweiss had opined that they should all be killed. Nichols expressed the belief that killing civilians was wrong but also that, if he were to be given orders in future to kill civilians under similar circumstances, he would obey them.⁴⁴

The leading prosecution witness was the recently convicted Schneeweiss, who, however, seemed confused and often offered vague answers to the questions put to him. He had difficulty remembering the names of the three defendants and was unable to identify the town where the killings had taken place. He could not recall which of the privates he had ordered to kill Ufermann and Nippney in the

basement of their house, nor could he remember what words he had used in issuing the order. His memory failed him when he was asked who had accompanied him in the killings of the two Heinrich Payenbergs, although he testified that there had been "a large group of men around." When asked what order he had given that resulted in their deaths, he replied, perhaps sarcastically, "Fire!"⁴⁵ Schneeweiss may have been more valuable to the defense. In its cross-examination, it elicited from Schneeweiss the information that Pepler had resisted when he had ordered the three men to accompany him for the obvious purpose of killing civilians and that, in response, "I made it clear in the platoon that whenever I gave an order it would be carried out."⁴⁶ That testimony provided support for a defense motion to dismiss the case, on the grounds that the defendants had reluctantly participated in the killings in obedience to superior orders. While the defense conceded that "a man must exercise judgment and be reasonable," it argued that there were limits to a subordinate's liability when an order to which he had expressed reservations was repeated. The prosecution responded with the observation that an "illegal order does not have to be obeyed" and maintaining that the fact that some of the defendants had protested the orders demonstrated that they thought them unreasonable and unjustified. The motion to dismiss was denied.⁴⁷

The primary defense witnesses were the defendants themselves, who had expressed a desire, presumably on the advice of defense counsel, to testify on their own behalf. Private Joachims testified that he had arrived in Scotland from the United States on February 15, 1945, having thereafter been shuttled to England, shipped across the English Channel to France, then to Belgium, and finally to Holland, where he joined the Eighth Armored Division at Venlo. He could have been with the Eighth only a few days before his unit had moved into Voerde on February 27. Joachims described having had "chow" at the field kitchen that morning, then joining another man in the cleaning of the guns of their Sherman tank. He was interrupted by Lieutenant Schneeweiss, who ordered him to get his "grease gun" (M-3 submachine gun) and accompany him to a nearby house. Joachims testified that he objected on the grounds that he had not yet finished the maintenance of the guns but that Schneeweiss "told me to get it and come anyway." Once at the house, where he found an undetermined number of GIs, he was ordered by Schneeweiss to take two German civilians into the basement and to shoot them. Asked by defense counsel what

he had thought of the order, he replied, "I didn't think it was right. I didn't want to do it." Whether or not he had expressed that opinion to Schneeweiss at the time is not clear, but it was obviously useful for counsel to assume it. "What did he say?" Joachims was asked. "Take them down and shoot them anyway," the defendant replied. The Americans then left the house and were standing outside when, according to Joachims, Schneeweiss commented that he had seen some women in a neighboring residence. "He wanted some guys to go with him." Joachims testified that he told the lieutenant that "I didn't want to" and, while Schneeweiss was engaged in conversation, "took off and went back to the tanks," where he claimed to have remained for the remainder of the day.⁴⁸

Joachims's testimony was a mixed bag, in that it both indicated that he had recognized that the order to shoot Ufermann and Nippeney in the basement had been improper but also that he had carried it out nevertheless, while having refused to accompany Schneeweiss in a hunt for the women. In its cross-examination, the prosecution homed in on the crucial issue of a subordinate's willingness to carry out patently illegal orders.

PROSECUTION: When Lieutenant Schneeweiss gave you the order, did you think it was a proper order?

JOACHIMS: It wasn't a proper order, but he is a superior officer.

PROSECUTION: Did you think he had the authority to order you to kill a civilian?

JOACHIMS: I have always been taught to follow an order.

PROSECUTION: Have you been taught to follow an order no matter how illogical or outrageous that order might be?

JOACHIMS: What do you mean by that, sir?

PROSECUTION: Have you been taught to follow any order an officer might give you, no matter how outrageous it might be? For example, if he you ordered you to commit suicide, would you feel yourself obligated to carry out that order?

JOACHIMS: I had the Articles of War read to me and I believe there is an Article of War on that, sir.

That was an ambiguous answer. It is not clear whether Joachims was conceding fault or offering a defense. He likely had in mind Article 64, defining the offense of "assaulting or willfully disobeying superior

officers," which carried with it the possibility of the death penalty. The punishable offense, however, was disobedience to a *lawful* order, which Schneeweiss's clearly was not. The dialogue continued.

PROSECUTION: If you thought an officer were intoxicated or insane, would you feel obligated to obey his orders?

JOACHIMS: No, sir.

PROSECUTION: If you thought an officer were in his right mind and completely sober, would you feel obligated to obey every order he gave you even if that were an order that was manifestly outrageous, if it outraged your sense of righteousness and justice and fairness?

JOACHIMS: No, sir.

PROSECUTION: Did you hesitate on this occasion when Lieutenant Schneeweiss gave you the order?

JOACHIMS: I did.

PROSECUTION: Do you consider yourself a reasonable man of normal understanding?

JOACHIMS: Yes, sir.

PROSECUTION: What is your education please?

JOACHIMS: I went through grammar school and high school, twelve years.⁴⁹

It had been a sober and decorous exchange, far removed from the open hostility and sarcasm that often characterized prosecution (and sometimes defense) examinations of defendants in the Borkum trial. The testimony of Private Peppler was somewhat earthier, although his treatment was no less gentle. Under questioning by defense counsel, Peppler described his initial involvement in the events that had resulted in his arrest and court-martial. He had gone to the kitchen truck for "chow" and had encountered Schneeweiss, who indicated a desire to speak with him after he had eaten.

I went over to him and he was talking with Corporal Jones and he said there is [*sic*] a couple of women at the first house down the road and he said go get them. I looked at him and thought he was kidding at first, then he said go and get them so I went down the road by myself. I went to the first house where he said they were supposed to be and they weren't in the first house. . . . I went to the next house and there was [*sic*] two women in the front room going through drawers or something.

Peppler had then “fired around the window panes of the house to scare them,” after which he returned to Schneeweiss to report, “I couldn’t do it. They were women.” Schneeweiss had replied, he testified, “Women or male, Krauts alike [*sic*], shoot them.”⁵⁰ Defense counsel did not question Peppler on his role in the killing of the women or, later, in the deaths of the two Heinrich Payenbergs in the field. These would be explored by the prosecution in its cross-examination.

Upon returning with Nichols to the house where he had found the women, Peppler testified, he had found them “in the driveway” about 50 feet from the road. He admitted to having fired at them but “hit them in the legs and knocked them down.”

Schneeweiss, who had been following Peppler and Nichols, walked to within 10 feet of the women and fired “about a clip and a half” from his pistol into them. Peppler admitted having subsequently accompanied Schneeweiss “up the road,” where the two Heinrich Payenbergs had been killed. After Schneeweiss fired at them with an M-1 rifle, Peppler testified, the lieutenant ordered him “to go out and finish them off” but claimed only to have “fired a few shots in the general direction” without, he believed, hitting them. Seemingly assuming the role of the defense, the prosecution asked the defendant if he had hesitated to obey the order to shoot the two women. Peppler replied that he had. When asked why, he responded plaintively “I just didn’t think it was right.” Then, volunteering the reason why he had complied, “I didn’t know no [*sic*] better.” The prosecution’s final question to Peppler elicited an answer that poignantly expressed the stresses and moral inversions to which men (and boys) at war are exposed.

PROSECUTION: Do you consider yourself a reasonable man of ordinary understanding?

PEPPLER: When I was back in civilian life, yes.⁵¹

Private Nichols’s testimony in his own defense further explored the central issue of a private’s understanding of the degree of his obligation to obey orders.

DEFENSE: Were you ever told you had no right to question an order of an officer?

NICHOLS: Not until we carried out the order, sir.

DEFENSE: What were your instructions on that point?

NICHOLS: When it came to an officer we were supposed to carry out the order and ask questions afterwards.

Nichols explained how, on the morning of March 27, he had been ordered to “take those two Germans who were in the house down in the basement and kill them.” The defendant’s initial reaction, he testified, was to do nothing. “When he told me I stood there, I didn’t know what to say or do and then he told me again.” The fatal consequences of the repetition were left undescribed by Nichols, but not so Schneeweiss’s order to the defendant and Peppler to “get” the two women following Peppler’s initial refusal to shoot them, although with an obvious effort at self-justification. When the two young soldiers reached the house, Nichols testified, “it looked like they were looting to me, going through everything in the front room, drawers and everything . . . they seen [*sic*] us coming and took off on a dead run.” Peppler had then opened fire.⁵² It was left to the prosecution to elicit from Nichols a description of his own contribution to the killing of the women. He had fired as they had run but had only wounded them. It was Schneeweiss who fired the fatal shots. Nichols, too, claimed to have “hesitated” before carrying out Schneeweiss’s orders, but, when asked whether he believed Schneeweiss had had the authority to order him to kill unarmed civilians, he answered with a mildly equivocal “I would say so, yes.”⁵³

Prosecution and defense made statements in summation, which, as in Schneeweiss’s trial, were not recorded. The court closed for an unspecified period of time and, upon reopening, announced that the three defendants had been found innocent of the charge and specifications.⁵⁴

Both the Borkum trial and the courts-martial of Schneeweiss, Joachims, Nichols, and Peppler were precipitated by indisputable violations of the laws of war. In Borkum, seven prisoners of war in the custody of the German armed forces were subjected to public abuse, both verbal and physical, then shot to death. In Voerde, six (and probably two more) German civilians engaged in activity in no way threatening to U.S. Army forces occupying the town were arbitrarily murdered by American soldiers. Was one crime more heinous than the other? Comparisons are difficult to make and not likely to produce useful conclusions, although many might agree that the wanton killing of peaceful noncombatants is particularly repugnant, if no more a violation of international law than the murders of POWs. What is beyond serious dispute, however, is that the U.S. Army addressed the two incidents in radically different ways.

The United States regarded the trials of Germans accused of war crimes as the culmination of its crusade against the Nazi evil, the depths

of which we still struggle to comprehend. That moralistic zeal, fully justified when directed against genocide, the mass starvation, sadism, and murder perpetrated in the concentration camps, and the killings of helpless thousands of the mentally ill and handicapped in "euthanasia" facilities, may have been less appropriate in its application to lesser crimes that were in large part the spontaneous by-products of the stresses of war. The Borkum atrocity, to be sure, had been stimulated by official encouragement and facilitated by orders to military and police personnel that clearly contravened international law. Moreover, the failure of German authorities to punish the perpetrators had been tantamount to tacit approval of what they had done, but it is not unreasonable to suppose that the murderous foray of Langer, the actual killer of #909's crew, was the action of a man traumatized by the death of his family in an Allied air raid and probably needed no external instigation.

The psychological conditions of the four defendants in the Voerde courts-martial was investigated by U.S. Army psychiatrists in an effort to determine their state of mind at the time of the murders. A finding that they were not able to distinguish right from wrong when they entered Voerde would have presumably led to acquittal on the grounds of insanity, temporary or otherwise. In the Borkum case, the actual murderer was not on trial because he could not be found. The defendants, all alleged to have been accessories to the ill treatment and murders of the American POWs, were assumed a priori to have been capable of distinguishing right from wrong, with no allowance being made for the psychological impact of years of progressively heavier Allied bombing, in addition to the open encouragement of the atrocity by a criminal regime, under which they had lived for more than 10 years.⁵⁵ The Borkum trial included 15 defendants divided into three categories—civilians, officers, and enlisted men. Their defenses were frequently antagonistic, meaning that efforts to defend members of one group often cast blame on members of another. Examinations of defendants belonging to one group by defense attorneys defending another were often as damaging as the questioning by prosecutors. Two separate courts-martial, on the other hand, heard the cases against the American officer, Schneeweiss, and his enlisted subordinates, Joachims, Nichols, and Pepler, and, although the defendants were used as prosecution witnesses in one another's trials, their cases did not directly impinge upon one another. Hearsay evidence, freely admissible in

the Borkum trial, was expressly excluded by the rules under which the Americans were tried.

The contrast in overall tone between the Borkum trial and the Voerde courts-martial is dramatic. In the former, of course, the U.S. Army was trying the enemy for the murders of American soldiers and did so with ferocious determination. In the latter, the Army was trying its own for the unlawful killing of Germans, who, although noncombatants, were nevertheless citizens of the nation with which the United States only a few months before had been at war. The Army, to its credit, nonetheless brought those men to trial, but it proceeded against them with a moderation suggesting a degree of reluctance, perhaps even sorrow, that was far removed from the vengeful zeal shown by the prosecution in the Borkum trial. German witnesses to the Voerde murders, whose testimony might have enhanced the emotional impact of the case against the defendants, were not called. There were no allusions in the Voerde courts-martial to a Christ-like martyrdom of the victims. But, again to the U.S. Army's credit, prosecutorial zeal in the Borkum case was matched by a zealous if also internally conflicted defense, which was forced by the structure of the mass trial to do some of the work of the prosecution. Most significant, of course—certainly from the perspective of the defendants—was the difference in outcome of the trials: for the Borkumers, 14 out of 15 convictions with five death sentences; for the GIs, three acquittals and one 25-year prison sentence. Posttrial processing of the two cases would reflect once again a double standard of justice that sometimes clashed with an apparent commitment to due process for a defeated enemy.

NOTES

1. Charles R. Leach, *In Tornado's Wake: A History of the 8th Armored Division* (Nashville, TN: Battery Press, 1992), 60, 83, 138.

2. "Review by Staff Judge Advocate," n.d., 4, *United States v. Second Lieutenant Robert A Schneeweiss* (Clerk of Court, U.S. Army Judiciary); "Statement of Investigating Officer," April 2, 1945, *ibid.*; "Division Judge Advocate's Review," September 10, 1945, *United States v. Private Glen Joachims, Private William Pepler, and Private Francis F. Nichols*, *ibid.* Trial records specify the location of the crime as "Vorde," but Voerde was clearly the scene of the murders. The likelihood of two additional killings is indicated by Voerde's archivist. Günther Wabnik to James J. Weingartner, e-mail, July 24, 2006 (in Weingartner's possession).

3. "Review by Staff Judge Advocate," November 9, 1945, 1–2, *U.S. v. Schneeweiss*; Ulrich Herbert, "Labor as Spoils of Conquest," in *Nazism and German Society*, ed. David F. Crew (New York: Routledge, 1995), 250.

4. "Laws of War: Laws and Customs of War on Land (Hague IV)," October 18, 1907, Article 46, *The Avalon Project at Yale Law School*, <http://www.yale.edu/lawweb/avalon/lawofwar/hague04.htm>; U.S. War Department, *Basic Field Manual: Rules of Land Warfare* (Washington, DC: U.S. Government Printing Office, 1940), 6.

5. "Testimony of Major John R. Elting," March 28, 1945, *U.S. v. Schneeweiss*; "Record of Trial," 29, 44, *ibid.*

6. "Testimony of 2nd Lt. Robert A. Schneeweiss, 01017469, Company B, 36th Tank Battalion, 8th Armored Division, APO-258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, at Lintford [sic], Germany on 27 March, 1945," *Pre-Trial Investigating Officer's Report*, 1, *U.S. v. Schneeweiss*.

7. *Ibid.*, 2.

8. "Testimony of Lieutenant William W. Kellner, 04473345, Headquarters Company, 49th Armored Infantry Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945, at Bruckhausen, Germany," *ibid.*, 7.

9. "Testimony of Tec. [sic] Nathan Schumer, 39410382, Headquarters Company, 49th Armored Infantry Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945, at Bruckhausen, Germany," *ibid.*, 8.

10. "Testimony of Sergeant Donald J. Welch, 36301956, Headquarters Company, 49th Armored Infantry Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945 at Bruckhausen, Germany," *ibid.*, 16.

11. "Testimony of Sergeant Francis Stemack, 33594770, Headquarters Company, 49th Armored Infantry Battalion, 8th Armored Division, APO 258, U.S. Army;" "Testimony of Sergeant John W. Dauphinis, 32852384, Headquarters Company, 49th Armored Infantry Battalion, 8th Armored Division, APO 258, U.S. Army," both "taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on March 28th, 1945 at Bruckhausen, Germany," *ibid.*, 19–23.

12. "Testimony of Private Glen D. Joachims, 37698990, Company B, 36th Tank Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945 at Bruckhausen, Germany, *ibid.*, 27–29.

13. "Testimony of Private William Peppler, 36913733, Company B, 36th Tank Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945, at Bruckhausen, Germany," *ibid.*, 31–34.

14. "Testimony of Private Francis F. Nichols, 36913735, Company B, 36th Tank Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 28 March, 1945, at Bruckhausen, Germany," *ibid.*, 35–36.

15. "Further Testimony of 2nd Lt. Robert A. Schneeweiss, 01017469, Company B, 36th Tank Battalion, 8th Armored Division, APO 258, U.S. Army, taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 30 March, 1945 at Loberich, Germany," *ibid.*, 41–42.
16. "Testimony of Johann Hellmich, temporary Burgomeister of Vorde [*sic*], Germany " and "Testimony of Ernst Eichelkamp, Holshausen, Vorde [*sic*], Germany," both "taken by Lt. Col. Harold G. MacAdams, Inspector General, 8th Armored Division, on 1 April, 1945 at Vorde [*sic*], Germany," *ibid.*, 43–47.
17. "Report of Proceedings of Board of Medical Officers," May 26, 1945, *ibid.*; "Reports of Proceedings of Board of Medical Officers," May 26, 1945, *U.S. v. Joachims, Peppler and Nichols*.
18. Leach, *In Tornado's Wake*, 188–89.
19. "Proceedings of a General Court Martial," 4, 9, *U.S. v. Schneeweiss*.
20. *Ibid.*, 2.
21. *Ibid.*, 6–9.
22. *Ibid.*, 9–11.
23. *Ibid.*, 12–13.
24. *Ibid.*, 13–14.
25. *Ibid.*, 5, 14–16.
26. *Ibid.*, 16–18.
27. *Ibid.*, 18.
28. *Ibid.*, 18–20.
29. *Ibid.*, 20–22, 24.
30. *Ibid.*
31. *Ibid.*, 28.
32. *Ibid.*, 31.
33. *Ibid.*, 33.
34. *Ibid.*, 35.
35. *Ibid.*, 37–38.
36. *Ibid.*, 38.
37. *Ibid.*, 39–44.
38. *Ibid.*, 46–47.
39. *Ibid.*, 48–59.
40. *Ibid.*, 60–65.
41. *Ibid.*, 66–67.
42. *Ibid.*, 67–68; U.S. War Department, *The Articles of War* (Washington, DC: U.S. Government Printing Office, 1920), 24.
43. "Arraignment," *U.S. v. Joachims, Peppler and Nichols*; "Division Judge Advocate's Review," September 10, 1945, *ibid.*
44. "Record of Trial," 17–20; "Report of Neuropsychiatric Examination," May 26, 1945, Subject: Private Glen D. Joachims"; "Report of Neuropsychiatric Examination, May 26, 1945, Subject: Private William Peppler"; "Report of Neuropsychiatric Examination, Subject: Private Francis F. Nichols," *ibid.*
45. "Record of Trial," 21–23, *ibid.*
46. *Ibid.*, 24–25.
47. *Ibid.*, 33.
48. *Ibid.*, 35–37.

49. *Ibid.*, 37–38.

50. *Ibid.*, 39–40.

51. *Ibid.*, 40–42.

52. *Ibid.*, 43–45.

53. *Ibid.*, 45–46.

54. *Ibid.*, 46.

55. Ellery C. Stowell, an eminent American legal scholar, argued in 1945 that allowances should be made for “the emotional strain of bombed civilians who have lost their homes and loved ones through what they erroneously believed were acts in violation of the laws of war.” Maximilian Koessler, “American War Crimes Trials in Europe,” *Georgetown Law Journal* 39 (1950–51): 92.

Posttrial Drama

The Borkum and Voerde trials as legal processes did not end with the handing down of verdicts and the subsequent sentencing of those found guilty. Both were subjected to review, a much more protracted process for the former than for the latter. Trials before U.S. Military Government Courts that resulted in penalties more severe than two weeks in prison or fines in excess of 250 Reichsmarks underwent multilayered scrutiny by lawyers, who often reached conclusions from the evidence that were very different from those of the line officers who had served both as judges and juries. Cases in which the death sentence had been imposed required additional review and confirmation by the Theater Commander.¹ It was also possible for dissident attorneys and members of the court to interject themselves into the posttrial process. The most notable example is that of Colonel Willis M. Everett Jr., chief defense counsel in the Malmédy massacre trial, in which 73 former members of the Waffen-SS were tried and found guilty of murdering U.S. POWs and Belgian civilians during the Battle of the Bulge. Forty-three were sentenced to death and the rest to varying terms of imprisonment. Everett fought for 10 years to overturn what he was convinced had been a miscarriage of justice.² Four days after the Borkum court adjourned, three members of the nine-member panel of officers that had heard the case filed a petition for clemency on behalf of the lead defendant, Kurt Goebell, the island commander who had been sentenced to death. Colonels Barden, Miller, and Versace had not been persuaded of Goebell's guilt beyond a reasonable doubt by the evidence presented against him and requested that his death sentence be commuted to something "less severe."³ But posttrial reviews were a process influenced not only by purely juridical perspectives but also by

political considerations. Although Germany had surrendered unconditionally to the Allies and had, for a time, been deprived of national sovereignty, the United States could not afford to ignore German opinion, particularly as relations with the Soviet Union deteriorated and Germany—at least those parts under the control of the Western allies—made a gradual transition from enemy to be punished to potential ally to be courted.⁴ The Borkum trial and many other U.S. war-crimes trials would not be fully played out until well into the decade of the 1950s. Death sentences were commonly commuted and prison sentences substantially reduced. Goebell's death sentence, for example, was reduced to life imprisonment in 1948, and he was released on parole in 1956.⁵ Jakob Seiler was also spared the gallows and eventually freed.⁶ Jan Akkermann, Johann Schmitz, and Erich Wentzel, however, were hanged at the U.S. War Crimes Prison No. 1 at Landsberg in the fall of 1948. Akkermann died essentially because he had incited the crowd against the American airmen and Schmitz because he had led the guard detail that had failed to protect the prisoners and may have shot one of them a second time after Langer's attack. Wentzel's death was due to his having been the only officer accompanying the prisoners on their fatal march and the allegation he had intentionally led them into harm's way. Why these men, particularly Akkermann and Wentzel, should have been hanged while Goebell and Seiler, described by an American reviewer as "the wire pullers of the atrocious incident," had their death sentences commuted is far from clear. The disapproval of Rommel's conviction, on the other hand, seems appropriate. No credible evidence had linked the policeman to the mistreatment and eventual murders of the crew of #909.⁷

While the review process lumbered on, a second "Borkum trial" was conducted more than a year after the first one had ended. This was a much briefer affair than the "parent" proceeding and was confined to a single day, June 26, 1947. Its brevity was due in large part to the fact that it involved a single defendant and was based on the mass of evidence that had been presented in the earlier trial, an arrangement that was employed in a number of U.S. Army war-crimes trials of Germans. Standing trial was August Haesiker, one of those persons who had been identified as a suspect during the investigation that had preceded the mass trial of the previous year. Trial procedure had been refined in the intervening year and a half and progressed more smoothly. It is likely, too, that some of the zeal that had been evident in earlier prosecutions had, by mid-1947, faded.

Haesiker had held the rank of *Oberstfeldmeister* (Captain) in the *Reichsarbeitsdienst* (National Labor Service) and was serving on Borkum at the time of the murders. He had been identified during the investigation that preceded the first trial as the RAD leader who had arranged the first assault on #909's crew, a gauntlet of men armed with spades through which the hapless POWs had to march. In a sworn statement made to Major Levine, Fritz Vomel described a conversation with Haesiker, in which he claimed to have reproved the latter for having ordered his men to beat the Americans, an act that Haesiker had allegedly admitted.

Haesiker was tried before a General Military Government Court under the presidency of Colonel Charles F. Johnson to which 10 officers (3 more than had tried Haesiker's 15 predecessors) holding the ranks of colonel and lieutenant colonel had been appointed, although only 6 were actually present as the trial commenced. Its site was the former Nazi concentration camp at Dachau, where U.S. Army war-crimes trials had been centralized in October 1946. Unlike the court for the main Borkum trial of the previous year in Ludwigsburg, this one had an officer with formal legal training to serve as "law member," Lieutenant Colonel David H. Thomas. As the earlier 15 had been, Haesiker was charged with "violations of the laws and usages of war" for allegedly having aided and participated in assaults upon #909's crew and in their subsequent murders, to which he pleaded "not guilty." The case against him would be presented by an American civilian attorney, Harry D. Pitchford, while his defense was in the hands of Captain William Gordon. In contrast to the earlier trial, no German attorneys participated.⁸

The prosecution case was simplicity itself. No witnesses were called; instead, Pitchford introduced into evidence 14 of the sworn statements secured by Major Levine prior to the main trial. The first of these had been made by Major Murray M. Braff, the pathologist who had examined the bodies of the American flyers after they had been exhumed from Borkum's Lutheran cemetery in October 1945, followed by two statements by Heinz Klinger, a German surgeon who had been on duty at Borkum's naval hospital on August 4, 1944, and who had examined the bodies of #909's crew, and Otto Mennenga, a medical aide. These statements served to establish the fact that the Americans had been murdered and, through Klinger's second statement and in Mennenga's, that there had been evidence of trauma other than bullet wounds. A statement by Johann Eilts, the sexton of the Lutheran

cemetery, described the burial of the victims accompanied by a service read by Pastor Doebbels, a German naval chaplain.⁹ Other statements described the attack on the flyers by the Labor Service detachment, while only Fritz Vomel's identified Haesiker as the instigator.¹⁰ No challenges to the admissibility of these statements were offered by defense counsel. Haesiker's defense was simpler still—his own testimony; the testimony of two defense witnesses, Rita Hinterberger and Charlotta Hochmuth, that he had been lounging on the beach with them at the time the American POWs had been marched through Borkum; and his denial that he had admitted to Vomel that he had orchestrated the Labor Service beatings.¹¹ It took the court 20 minutes to find Haesiker guilty of having participated in the beatings but innocent of the murder charge and another 10 minutes to agree on a sentence of 10 years in prison, to be calculated from July 5, 1946, presumably the date of his apprehension.¹² Had he stood trial in Ludwigsburg a year earlier, his sentence would almost certainly have been far more severe.

Erich Wentzel had allegedly conferred with Haesiker and had contrived to alter the march route in order to lead the prisoners through the gauntlet prepared by the RAD members. Wentzel's case is a particularly problematic example of the administration of justice to Germans accused of war crimes by the U.S. Army. He had been the highest ranking German on the march through Borkum and had arguably led the American prisoners into danger while doing nothing to protect them. No one had accused him of personally injuring any of #909's crew. Yet, according to the theory employed by the prosecution, he had participated in a common design that had resulted in the murders of seven POWs. He was therefore guilty of murder and deserved to die. And die he would, but only after having spent 38 months in prison. During that period his case, like many others, underwent a multilayered review. The justice dispensed to its enemies by the U.S. Army may have been harsh and sometimes seemingly arbitrary, but it was not precipitous.

Wentzel was 45 years old at the time of his trial, married, with two children. His social background was solidly middle class. Wentzel's parents had owned a business dealing in sporting equipment in which he had become a principal and stockholder, often traveling abroad in the prewar years on company business, in the course of which travels he had become proficient in English. It was this facility that got him involved with the American prisoners in the first place. His prewar international business associations were mobilized postwar to save him

from the gallows. In response to entreaties from his wife, Wera, British businessman E. W. Thompson wrote of Wentzel's "gentlemanly" demeanor and his certainty that "he would not be implicated in any plot to murder any person. He came from Norwegian stock and was quite different from the usual aggressive German type."¹³ London sportswear manufacturer Ernest Hinton, who had known Wentzel since 1929, remembered him as "not pro-Nazi" and "incapable of the action alleged against him."¹⁴ Ragnar Laurel of Stockholm had found Wentzel to have been someone with "an undoubtedly healthy feeling for what is right and wrong. I only know too well that he, with his quiet ways, would never do any harm to anybody."¹⁵ Copenhagen businessman Victor Skjold Heyde concluded that Wentzel had been "anti-Nazi" and, according to his observations, someone who had "treated everybody decently."¹⁶ A Swiss representative of Wentzel's firm, Max Schneider, thought it significant that correspondence from Wentzel had not been signed with "Sieg-Heil" or "Heil Hitler."¹⁷ With the assistance of Toni Kloewer, a Christian Democratic deputy in the reviving postwar German political system, Wera Wentzel succeeded in contacting Erich Loewenstein, a possibly Jewish schoolmate of her husband's who, as Eric Livingston, was living in San Francisco. Livingston-Loewenstein pronounced Wentzel "absolutely respectable and unable to take part in such an atrocious deed."¹⁸

Although these letters were superficially impressive, coming as they did from persons who, for the most part, had no reason for charitable feelings toward Germans, they were, from a purely legal standpoint, irrelevant, as was a letter from Hans Carls. Father Carls was director of the Roman Catholic charity Caritas and, as political prisoner 29400, an inmate of Dachau concentration camp from 1941 until 1945. He knew Wentzel and thought it "impossible" that he could have been involved in the murder of the American airmen. His execution, Carls was convinced, would be an act of judicial murder, and he begged U.S. authorities for a reconsideration of the case, which he was certain would exonerate Wentzel.¹⁹ But that would require more than the character references, no matter how poignant, that Frau Wentzel forwarded to Army lawyers who would review the case. Within a month of her husband's conviction and sentencing, she had directed an international "Appeal to the Sense of Justice" to persons as diverse as President Truman, Eleanor Roosevelt, General Dwight Eisenhower, the president of the International Red Cross, and Pope Pius XII, urging them to intervene on behalf of her husband, in order that "to the millions of human

sacrifices exacted by this dreadful war and its shattering effects, the life of a husband and father . . . who was among the few who always stood up for justice and human dignity and who had nothing to do with the crime of which he was accused, not be added."²⁰

More practically if less dramatically, Frau Wentzel attempted to engage Albert Hall, a member of the defense team during the trial and now a civilian, to represent her husband, an effort that seems to have been unsuccessful.²¹ Instead, Rolf Galler, a German lawyer based in Heidelberg, was secured for the purpose at the end of 1946 and would represent Wentzel for almost two years in a vain attempt to save him from the gallows.²²

In an appeal dated February 22, 1947, and directed to U.S. Army reviewers, Galler argued that Wentzel had been convicted on flimsy and primarily circumstantial evidence that failed to demonstrate that he had been a party to a conspiracy to harm the Americans and that should not be accepted as proof of guilt "where the question of life or death is involved." Not only had Wentzel not been proved to have been a conspirator but, according to Galler, no direct evidence (as opposed to inferential evidence) had been offered to prove that a conspiracy had ever existed. "Incriminating" orders (i.e., to abstain from interfering should the prisoners be attacked by civilians) may have been issued, but this had occurred before Wentzel's arrival at the battery where the Americans were being held prior to the march. Evidence of Wentzel's noninvolvement in the alleged conspiracy, he argued, had been available in the form of eyewitnesses who would have testified to that effect had they been called upon to do so, testimony that Galler had secured in a number of sworn affidavits. Wentzel's reason for participating in the march was an innocent willingness to serve as guide along the prescribed route.²³ Haesiker's arrest and incarceration at Dachau in preparation for his upcoming trial permitted Galler to secure a sworn affidavit from the former RAD leader. Although concerned primarily with his own exculpation, Haesiker testified not only that he had not spoken to Wentzel during the march, as Schmitz had claimed, but that he considered it "absolutely improbable" that any attack on the prisoners by the RAD had occurred at all.²⁴

But multiple witnesses more impartial than Haesiker, who was obviously more concerned with his own survival than Wentzel's, had testified that it had, although the prosecution's argument that Wentzel had been a party to the attack had been based on rather thin circumstantial evidence. Moreover, it was clear that none of the Americans had been

seriously injured in the alleged assault or, for that matter, in any of the other attacks by individual civilians that had taken place prior to the shootings by Langer. But U.S. reviewing authorities remained fundamentally unmoved by the avalanche of paper directed their way by Wentzel's supporters. Wentzel's presence as the highest ranking German on the march, his failure to protect the prisoners from attack, and his complicity in the production of a false report on the cause of the Americans' deaths were irrefutable and decisive. The "Review and Recommendations" of the Deputy Judge Advocate's Office, 7708 War Crimes Group, dated August 1, 1947, found the evidence against him sufficient to sustain both the verdict and sentence, on the grounds that "the accused very actively furthered and contributed to the plan which resulted in several illegal killings."²⁵ Wentzel seemingly could not escape from the tentacles of the prosecution's conspiracy theory.

Yet, the U.S. Army moved slowly, partly because of the large volume of cases that had to be reviewed on multiple levels. Those involving death sentences were subjected to three reviews. Following their scrutiny at the Deputy Judge Advocate's office, cases moved on to the Theater Judge Advocate before finally reaching the Theater Commander (and head of military government in the U.S. zone of occupation), where they received their final reviews. In light of the 489 trials that had been conducted by the U.S. Army by the end of 1947, this was a daunting task.

But, in a larger context, the Army's dilatory approach to executing the Borkum death sentences was likely the consequence of growing general criticism of the Army's war-crimes trial program coming from the United States. This had been stimulated by controversy surrounding the high-profile Malmédy massacre case, in which 73 former members of the Waffen-SS had been convicted by a U.S. Army military government court in July 1946 of the "killing, shooting, ill-treatment, abuse and torture of members of the armed forces of the United States, and of unarmed Allied civilians" during the Battle of the Bulge.²⁶ Although the alleged offense was on a much larger scale than the Borkum murders—in addition to a substantial number of Belgian civilians, approximately 80 U.S. POWs were slaughtered in the central event that gave the massacre its name—the issues were not dissimilar. The defendants were accused of having "acted together in this shooting and killing of prisoners of war, each man a cog-wheel in a monstrous slaughter machine."²⁷ Of the accused, 43 were sentenced to death and 22 to life imprisonment. The remaining 8 received prison

sentences ranging from 10 to 20 years.²⁸ But Colonel Willis M. Everett Jr., chief defense counsel in the trial, refused to accept the outcome, alleging that the defendants had been convicted largely on the basis of pretrial statements that had been secured only because the interrogators employed various forms of deception and duress, including mock trials and beatings. In addition Everett, although not a combat soldier, had heard enough from men who were in a position to know that American soldiers, too, were guilty of sometimes killing prisoners of war but in most cases had escaped punishment for it. At the end of the trial, he wrote to his family that the president of the court, a brigadier general, had approached him to say that judging the Malmédy defendants had been “the hardest thing he had ever done,” because he had been aware of U.S. guilt for similar crimes.²⁹

Everett’s public campaign of criticism following his return to the United States eventually resulted in a full-blown investigation of the Malmédy trial by the U.S. Senate, in which Senator Joseph McCarthy played an inflammatory role. Everett’s allegation of gross mistreatment of German war-crimes suspects may have encouraged the Borkum convicts to make similar claims of pretrial abuse. On May 18, 1948, for example, Johann Schmitz declared in an affidavit that he had been beaten about the head with a pistol during his preliminary interrogation by Lieutenant Fisher and threatened with being shot while interrogated later by Major Levine.³⁰ Others convicted in the Borkum trial made similar allegations and worse. Karl Weber complained of being kept in solitary confinement and given starvation rations while in pretrial custody in Esterwegen and asserted that his weight had fallen from 160 to 106 pounds.³¹ Erich Wentzel composed a lengthy statement cataloging the various abuses to which he claimed to have been subjected beginning while he was still on Borkum:

The interrogation lasted about one hour. All of a sudden, Fisher jumped to his feet, got his pistol out of his pocket and put it against my heart. He called me names—fokking [*sic*] bastard, etc.—and said he was going to shoot me at once. He yelled and raged so that I told him that I could not get all his words. Another lieutenant came into the room and told Fisher: “Stop that, put that gun away” [clearly, the “good cop, bad cop” routine]. But Fisher shouted: “No, I’ll do it right away,” putting his pistol against my forehead. After a while, he calmed down. . . . Interrogation commenced at 22:00 (10:00) P.M.; at around 2:00 A.M. I was allowed

to go to my quarters. . . . On 16 June 1945 I was arrested and taken to Esterwegen camp. About the end of October 1945, I was interrogated by Major Levine. . . . Right after my first answers Major Levine shouted at me: "You are a liar," and this went on like that through the interrogation. . . . He kept twisting around every answer . . . and several times he said: "Now you have put the rope round your neck." I hardly knew what to say anymore and all my objections and explanations were shouted down, only that part being recorded in the minutes that Levine himself had formulated. Whenever I wanted some amendments to be made, he said: "That is not important."³²

Even allowing for the possibility, even the likelihood, of exaggeration by a man desperate to escape the gallows, it is probable that the pretrial interrogations of the Borkum defendants were not the calm and decorous events suggested by the sworn statements that were placed in evidence. That brutal tactics were sometimes employed is not unlikely, although the veracity of these allegations more than 60 years after the events is beyond verification.

The fight for survival eventually led Wenztel, as it did many other convicted Axis war criminals, to file a petition for a writ of habeas corpus with the U.S. Supreme Court. Prospects for success were not good. In February 1946, the Court had rejected a similar petition filed on behalf of Japanese general Tomoyuki Yamashita, who had been sentenced to hang by a U.S. Army court sitting in Manila for war crimes committed in the Philippine capital by Japanese troops. Frank Reel, Yamashita's attorney, argued that Yamashita had not received a fair trial as mandated by the Fifth Amendment to the U.S. Constitution. By a six-to-two vote, the Court refused to grant certiorari, holding that the trial was not reviewable by civilian courts, but only by military authorities. Justice Frank Murphy, in a dissenting opinion, argued eloquently to the contrary in language that is relevant to the contemporary "war on terror."

no exception is made as to those who are accused of war crimes or as to those who possess the status of enemy belligerent. Indeed, such an exception would be contrary to the whole philosophy of human rights which make the Constitution the great living document that it is. The immutable rights of the individual, including those secured by the due process clause of the Fifth Amendment,

belong not only to the members of those nations that excel on the battlefield or that subscribe to the democratic ideology. They belong to every person in the world, victor or vanquished, whatever may be his race, color or beliefs.³³

The Court continued to reject similar appeals by convicted enemy war criminals, although by diminishing margins. Willis Everett's petition on behalf of the Malmédy defendants failed in May 1948 on a four-four vote, with Justice Robert Jackson, former U.S. chief prosecutor at Nuremberg, abstaining.³⁴ But the odds of success seemed to be improving and, in any event, appeals to the Supreme Court delayed the execution of death sentences. Consequently, a petition for a writ of habeas corpus was submitted on behalf of Erich Wentzel by Rolf Galler on July 30.

It was a densely argued document in excellent English of nearly 100 pages. Galler challenged Wentzel's conviction on multiple grounds. The Ludwigsburg court had lacked jurisdiction, he asserted, and its trial procedure had been, in any event, contrary to international law. The prosecution case had been based largely on pretrial statements secured under duress, and "the totality of departures from the principles of fair trial and due process of law vitiated the entire proceedings, trial and sentence." Finally, "even if the verdict of guilty should be upheld, the facts and evidence before the court did not warrant the penalty of death."³⁵

The concluding element of Galler's brief was probably the most persuasive. Was Wentzel deserving of the death penalty, particularly in light of the fact that the death sentence of Kurt Goebell, the island's former commander, had by this time been commuted to life imprisonment? Even if the prosecution's theory of conspiracy or common design was to be taken seriously, Goebell, as the instigator of the march through town, had to be seen as at the center of it. But the accusation of conscious participation in a criminal design was far from credible, Galler argued. Wentzel had had nothing to do with the organization of the march or the issuing of orders as to how it was to be conducted, nor had he been placed in command of the column. When he volunteered to accompany the prisoners and their guards as a guide, he had no reason to anticipate the attacks that were to follow, which, in any event, were of little consequence until Langer, an entirely independent actor, intervened. Galler must have recognized that Wentzel's collaboration in the production of a report that falsely placed blame for

the killings on the civilian population could be construed as tangible as opposed to circumstantial evidence of participation in a criminal conspiracy and argued less persuasively that his client had been at the time genuinely ignorant of the true cause of the prisoners' deaths. But it is hard to quarrel with Galler's conclusion that, however the evidence against Wentzel might be construed, a sentence of death was excessive.³⁶ Galler's carefully crafted arguments on the defects in the case against Eric Wentzel proved nugatory. As it had done repeatedly in other war-crimes cases, the Supreme Court during its October 1948 term refused to accept jurisdiction.³⁷

But Washington had intervened in Wentzel's case in another way. Controversy over the quality of the U.S. Army's war-crimes justice, particularly in regard to the Malmédy massacre trial, had led Secretary of the Army Kenneth C. Royall to order a stay of all executions and to appoint a three-man commission chaired by Texas Supreme Court justice Gordon Simpson to investigate the more than 100 death sentences that had been handed down in war-crimes cases by U.S. Army courts and sustained on review. The commission was established in July 1948 and submitted its report in September, after having selectively examined trial records and posttrial reviews and appeals that included Galler's Supreme Court brief. If they read it, the commission's members seem not to have been impressed. A relatively small number of death sentences was recommended for commutation, but Wentzel's was not among them.³⁸

It appeared that all that now stood between Erich Wentzel and the gallows at Landsberg prison was Theophil Wurm, the 80-year-old Protestant bishop of Württemberg, whose moral authority was enhanced by a record of modest resistance to the Nazi regime. In postwar Germany, Wurm had emerged as one of the spokesmen for Germans who believed that they had become victims of Allied injustice.³⁹ The Cold War, moreover, was heating up dramatically. In June 1948, in an effort to block the Western Allies from establishing a West German state, the Soviet Union cut off land access to West Berlin, an event that did much to change U.S. perceptions of Germans from enemies to be punished to crucial allies in a struggle to contain communism. Bishop Wurm made several appeals on behalf of Wentzel, the latest in the form of a telegram to Secretary of the Army Royall. Even though Wentzel's petition to the Supreme Court had been denied and his death sentence upheld by the Simpson Commission, Colonel James Harbaugh, European Command judge advocate, was respectful enough of Wurm's

influence to caution that “we had better keep Wentzel on the protected list until we know what he [Wurm] does as a result of the Department of the Army cable to him [of] 16 October 1948.” That message had noted the Simpson Commission’s recommendation but had added that “you may, of course, take the matter up with the Commanding General European Command who is the final reviewing authority and has complete jurisdiction over all war crimes cases.”⁴⁰ If Wurm attempted further action, it did not impress Harbaugh, who instructed a subordinate a month later to inform “the Evangelical people” that they had until November 26 to submit materials on behalf of Wentzel.⁴¹ The condemned man himself meticulously penciled in both English and German a “Petition for Clemency” to General Clay, European commander and military governor, emphasizing the devastating impact his execution would have on his ailing mother, his wife, and his two children, ages 6 and 12, and expressing the belief that conscience would shortly compel those who had given damaging testimony against him to save their own skins “to testify and clear up the events of August 4, 1944, which I personally regret very much.”⁴²

But General Clay personally reviewed Wentzel’s case on November 23 and gave his death sentence its final confirmation. A desperate telegram to Clay from Wentzel’s wife, Wera, was answered coldly by Clay’s chief of staff, Lieutenant General Clarence Huebner: “It is regretted that the executive clemency which you requested in your telegram of 30 November, 1948 cannot be granted.”⁴³

A telegram from Rolf Galler, Wentzel’s German attorney, to General Clay crossed Huebner’s reply to Wera Wentzel. It read in its entirety:

STARS AND STRIPES EDITION TWENTY NOVEMBER
PAGE ELEVEN REPORTS THAT US JUSTICE DEPARTMENT
PAROLE BOARD WASHINGTON PAROLED US LIEUTEN-
ANT WHO MARCH 1945 SHOT DOWN FOUR GERMAN CI-
VILIANS IN COLD BLOOD AFTER REDUCING ORIGINAL
SENTENCE FROM TWENTYFIVE TO EIGHT YEARS STOP
URGENTLY PRAY THAT EQUAL JUSTICE BE APPLIED IN
BORKUM ISLAND CASE US VERSUS GOEBELL BY YOUR
EXCELLENCY GRANTING CLEMENCY TO ACCUSED ERIC
WENTZEL WHO IN AUGUST 1944 DID NOT PERSONALLY
KILL OR MALTREAT OR OTHERWISE ACT IN COLD BLOOD
STOP SUPREME COURT DENIED DECISION FOR WANT OF

JURISDICTION STOP EXECUTION WENTZEL SIXXED [sic]
FOR FRIDAY THIRD DECEMBER LANDSBERG PRISON STOP⁴⁴

It is not clear how Galler had gotten access to the U.S. Army newspaper, but the brief article of about 130 words, entitled "Board Frees Officer in German Slaying," which shared a page with a much longer article bemoaning higher prices for Thanksgiving turkeys in the United States, revealed that a U.S. Army lieutenant who had been sentenced to 25 years' imprisonment for "allegedly" participating in the murders of four German civilians had been paroled and was on his way home to rejoin his wife and two children. The lieutenant's defense counsel, the article explained, had argued that the defendant had been "fired by Kraut-killing propaganda" and had not been "really responsible for his actions."⁴⁵ Huebner was unmoved. He replied to Galler that the case against Wentzel had to be judged on its own merits and that the evidence against him had been found "amply sufficient" to support the sentence.⁴⁶ A final petition for stay of execution, this time from the Roman Catholic Bishop of Limburg with supporting affidavits, reached the European Command's Judge Advocate General's office at 11:20 A.M. on the morning of December 3, 1948. Major Floyd Lundberg noted matter-of-factly that "inasmuch as the execution had been performed prior to receiving the petition . . . it is recommended that they be filed with the record of trial and that no [review] board action be taken."⁴⁷

The American lieutenant whose release had come to Rolf Galler's attention was, of course, Robert Schneeweiss. Schneeweiss's case, too, had undergone multiple posttrial reviews. Lieutenant Colonel Sam Russ, the Eighth Armored Division's judge advocate, produced an analysis of Schneeweiss's court-martial dated August 4, 1945, in which he found the evidence adequate to support the court's findings and recommended that "in view of the atrocious nature of the accused's offenses" the sentence of 25 years in prison be approved, a recommendation that was accepted by Major General John M. Devine, the division's commander.⁴⁸ Captain Abraham Hyman, an assistant staff judge advocate with USFET (U.S. Forces, European Theater), concurred but added the tart observation that "there was no recommendation for clemency in this case and there is nothing in this record that persuades me that the accused deserves any clemency beyond that which has already been extended to him by the court." The opinion that Schneeweiss

had not been adequately punished was shared by USFET's staff judge advocate, Brigadier General E. C. Betts, who appended to Hyman's review the recommendation that "the court be criticized for the inadequacy of the sentence."⁴⁹

As required for cases of this nature under Article of War 48, Schneeweiss's trial records were then forwarded to the field army to which the Eighth Armored Division belonged for final confirmation. In the waning months of 1945, that happened to be none other than General George S. Patton Jr., then languishing in relative inactivity and disgrace following his relief from command of the Third Army as a result of his occupation policies in Bavaria, widely regarded as being "soft" on Nazism. The Schneeweiss case reached his desk as he was serving as temporary commander of the rapidly shrinking USFET. On November 13, 1945, a Patton less bloodthirsty than the combat commander who had encouraged war crimes by U.S. troops in Sicily more than two years earlier signed a confirmation of Schneeweiss's 25-year sentence, noting, however, that it was "wholly inadequate punishment for an officer guilty of such grave offenses. In imposing such meager punishment the court has reflected no credit upon its conception of its own responsibilities." Schneeweiss, since December 26, 1945, a civilian, was transported to the United States, where he was to be incarcerated in the federal penitentiary at Lewisburg, Pennsylvania, although, in fact, he seems to have served his sentence in the U.S. penitentiary in Leavenworth, Kansas.⁵⁰

As in the case of Erich Wentzel, efforts were made to ameliorate Schneeweiss's less ominous prospects. Leading the campaign for revision or clemency was Robert Schneeweiss himself. Prior to the final confirmation of the outcome of his court-martial, Schneeweiss had sought but had not gotten an appointment to plead his case personally with Patton. Presumably to aid him in the framing of appeals, the Army had provided Schneeweiss with a copy of his trial record shortly after his conviction, although, in a floridly hand-printed letter, he requested that his wife be provided with one as well, "if a spair [*sic*] copy is available" (it would cost \$15.40, he was informed).⁵¹ Unlike Erich Wentzel and his wife, Wera, Robert Schneeweiss and his wife, Fannie, were able to turn to legislators of their own national government for assistance, although the Wisconsin senators and congressmen seem to have limited their intervention to requesting information about the case from the U.S. Army. Among the interested lawmakers was the state's still relatively obscure junior senator, who, after having been

briefed by the War Department on the case, declared that he "wished to have the brutal nature of this affair made clear."⁵² In this context, it is interesting to note that, in 1949, Joseph McCarthy would play a prominent role in a Senate investigation of the controversial Malmédy massacre trial and express outrage at what was alleged to have been Army brutality in extracting confessions from the German defendants.⁵³

Private American citizens, however, were more sympathetic to Schneeweiss. The Milwaukee chapter of the American Veterans of World War II (later AMVETS), petitioned President Harry Truman to "use your influence" to suspend Schneeweiss's sentence.⁵⁴ On January 25, 1947, 15 employees of the Burbank (California) *Evening Review*, reacting to an unidentified article on the Schneeweiss case, sent an indignant letter to the War Department protesting the subject's imprisonment.

We think the sentence itself a far greater crime than the supposed offense warranting the sentence. The article mentioned that he killed these people WHILE IN COMBAT [*sic*]. What about all the German civilians killed in the bombings over Nazi territory? What about the common soldier, the other men who have killed German civilians? Are they all in prison too? A 25 year prison term is a serious enough sentence on any basis, regardless of the crime committed. It is not even thanks enough, [*sic*] however, to an honest man who has fought for his country. This matter is offending our sense of justice, right and Americanism. Please give it the consideration it is due.⁵⁵

The letter would have made interesting reading in Voerde and Borkum, although a better understanding of the Voerde killings might have tempered the outrage of writers whose "sense of justice, right and Americanism" seemingly embraced the belief that the deaths of civilians incidental to combat were acceptable, at least if those civilians were *enemy* nationals. Colonel Hubert Hoover, the assistant judge advocate general, responded with a brutally frank description of the circumstances under which the murders of which Schneeweiss had been convicted had occurred. Schneeweiss's unit had not been "actively engaged with the enemy," and the killings of two women and two "elderly" male civilians had been "deliberate and entirely unprovoked."⁵⁶ The directors of Milwaukee's Algonquin Club seem to have been under a misapprehension similar to that of the Burbank journalists. In a conceptually confused letter of April 2, 1947, addressed

to Wisconsin's congressional delegation, the club's secretary, expressing the wishes of the directors, requested that the circumstances of the "alleged crime of killing four German civilians" be investigated and Schneeweiss retried, believing that a retrial would "more than likely warrant his complete pardon." Congressman John C. Brophy, representing Wisconsin's Fourth Congressional District, forwarded the letter to the War Department's congressional liaison officer, with the observation that he had had "considerable correspondence in connection with this case," which he had passed on to the War Department with the request that "when this boy's [sic] case is again reviewed the various expressions of interest may be noted."⁵⁷

Schneeweiss was to be neither retried nor pardoned, but Major General Thomas H. Green, army judge advocate general, signaled early in 1947 that he was not likely to serve out his full sentence. In a letter to Louisiana senator Allen J. Ellender, who, for reasons that are obscure, had been contacted by Schneeweiss, Green explained that the former lieutenant's case would be regularly reexamined and that "by continued good conduct and the demonstration of his rehabilitation he may be able to earn a reduction in his sentence."⁵⁸ The occasion to demonstrate "rehabilitation" had already come in the form of a research program exploring treatments for malaria, which required participants to be infected with the disease and for which Schneeweiss volunteered. It was an opportunity for redemption not available to Erich Wentzel, and it led to a reduction of Schneeweiss's sentence to 12 years on July 30, 1948, and to his parole, on November 12, three weeks before Wentzel climbed the steps of Landsberg's gallows. Schneeweiss remained on parole until August 1952, when the secretary of the army ordered the remainder of his 25-year sentence remitted.⁵⁹

NOTES

1. Eli E. Nobleman, "Procedure and Evidence in American Military Government Courts in the United States Zone of Germany," *Federal Bar Journal* 8 (January 1947): 238, 246.

2. James J. Weingartner, *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre* (New York: New York University Press, 2000), 49–217.

3. "Petition for Clemency for Kurt Goebell," March 26, 1946, *U.S. v. Kurt Goebell et al.* (frame 13, reel 3). In trials before military government courts, only a two-thirds majority of the judging officers was required for verdicts and sentences, including the death penalty. In U.S. Army courts-martial, capital

punishment demanded unanimity. Maximilian Koessler, "American War Crimes Trials in Europe," *Georgetown Law Journal* 39 (1950–51): 28–29.

4. On this subject, see Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany* (Westport, CT: Greenwood Press, 1989), 69–86. See also Kerstin von Lingen, *Kesselring's Last Battle: War Crimes Trials and Cold War Politics, 1945–1960*, trans. Alexandra Klemm (Lawrence: University of Kansas Press, 2009), 174–83.

5. Colonel J. L. Harbaugh Jr. to Elizabeth Goebell, March 5, 1948, *U.S. v. Goebell* (frame 201, reel 3); "Order of Parole," February 14, 1956, *ibid.* (frames 955–57, reel 4).

6. "Order of Parole," December 30, 1953, *ibid.* (frames 959–61, reel 6).

7. Maximilian Koessler, "Borkum Island Tragedy and Trial," *Journal of Criminal Law, Criminology, and Political Science* 47 (July–August 1956): 192–93.

8. "Record of Testimony," 2, *United States v. August Haesiker* (frame 527, reel 7), Records of the United States Army Commands, 1942–, RG 338 (National Archives, Washington, DC).

9. "Testimony of Major Murray M. Braff," October 8, 1945; "Testimony of Heinz Klinger," October 14, 1945; "Testimony of Heinz Klinger," October 15, 1945; "Testimony of Otto Mennenga," October 15, 1945, *ibid.* (frames 587–605).

10. "Testimony of Fritz Vomel," October 10, 1945, *ibid.* (frames 677–79).

11. "Record of Testimony," 20–23, 32–34, 48, *ibid.* (frames 539–42, 551–53, 567).

12. *Ibid.*, 57–59 (frames 576–78).

13. E.W.C. Thompson to Wera Wentzel, April 24, 1946, "Erich Wentzel: Clemency Petitions, II; Mar. 20, 1946–April 2, 1948," *U.S. v. Goebell* (frame 345, reel 5).

14. Ernest C. Hinton to Colonel Bard, April 25, 1946, *ibid.* (frame 348).

15. Ragnar Laurel to Wera Wentzel, April 23, 1946, *ibid.* (frame 276).

16. Victor Skjold Heyde to Wera Wentzel, April 22, 1946, *ibid.* (frame 262).

17. "Eidesstattliche Erklärung," April 5, 1946, 3, *ibid.* (frame 357).

18. Toni Kloewer to Wera Wentzel, August 18, 1946, *ibid.* (frames 352–53).

19. Hans Carls to Col. Bard, May 2, 1946, *ibid.* (frame 317).

20. "Denkschrift (Appell an den Gerechtigkeitssinn)," April 14, 1946, *ibid.* (frames 260–61).

21. Wera Wentzel to Albert W. Hall, September 15, 1946, *ibid.* (frames 277–79).

22. Heidelberg was a center for German lawyers active in war-crimes cases. See Robert Sigel, "Die Dachauer Prozesse und die deutsche Öffentlichkeit," in *Dachauer Prozesse: NS-Verbrechen vor amerikanischen Militärgerichten in Dachau 1945–48. Verfahren, Ergebnisse, Nachwirkungen*, ed. Ludwig Eiber and Robert Sigel (Göttingen: Wallstein Verlag, 2007), 75.

23. "In re: United States vs. Goebell et al. Petition in Supplement to Petition of Review Filed on Behalf of Erich F. Wentzel," February 22, 1947, *U.S. v. Goebell* (frames 374–92).

24. "Eidesstattliche Erklärung," May 15, 1947, *ibid.* (frames 410–12).

25. "United States v. Kurt Goebell, et al. Review and Recommendations," August 1, 1947, 21, *ibid.*
26. "Record of Trial," 5, *U.S. v. Valentin Bersin et al.* (frame 10, reel 1).
27. *Ibid.*, 76 (frame 81).
28. *Ibid.*, 3251–67 (frames 738–54, reel 4).
29. Willis M. Everett to family, n.d., Papers of Willis M. Everett Jr. (in author's possession).
30. "Affidavit by Johann Schmitz," May 18, 1948, *U.S. v. Goebell et al.* (frame 147, reel 5).
31. "Affidavit by Karl Weber," May 20, 1948, *ibid.* (frames 155–56).
32. "Affidavit by Erich Wentzel," April 28, 1948, *ibid.* (frames 144–45).
33. *Yamashita v. Styer*, Sec. 56, *Open Jurist*, openjurist.org/327/us/1/yamashita-yamashita-v-styer-us; A. Frank Reel, *The Case of General Yamashita* (Chicago: University of Chicago Press, 1949), 219.
34. *United States Supreme Court, Lawyers' Edition, Advance Opinions, 1947–1948*, 92, No. 17 (Rochester: Lawyers' Cooperative, 1948), 1051–52.
35. "In the Matter of United States vs. Kurt Goebell et al.," 3–5, *U.S. v. Goebell*, 3–5 (frames 31–33, reel 5).
36. *Ibid.*, 86, 93–97 (frames 114, 121–25).
37. "Memorandum for Colonel Fleischer," October 18, 1948, *ibid.* (frame 494).
38. Buscher, *The U.S. War Crimes Trial Program in Germany*, 38; Colonel J. L. Harbaugh to Chief, War Crimes Trial Branch, Civil Affairs Division, Department of the Army, August 11, 1948, *U.S. v. Goebell* (frame 468, reel 5).
39. Norman J. W. Goda, *Tales from Spandau: Nazi Criminals and the Cold War* (New York: Cambridge University Press, 2008), 76.
40. "HQ Department of the Army from Chief Civil Affairs Division to CINCEUR," October 16, 1948; "HQ Department of the Army from Chief Civil Affairs Division to EUCOM," October 16, 1948; "Memorandum for Colonel Fleischer," October 18, 1948, *U.S. v. Goebell* (frames 494–96, reel 5).
41. "Memorandum for Colonel Schiller," October 18, 1948 (with notation dated November 18, 1948), *ibid.* (frame 487).
42. "Petition for Clemency (Gnadengesuch)," November 14, 1948, *ibid.* (frames 584–85).
43. General Huebner to Wera Wentzel, December 2, 1948, *ibid.* (frame 507).
44. Rolf Galler to General Lucius D. Clay, *ibid.* (frame 513).
45. "Board Frees Officer in German Slayings," *Stars and Stripes* (European ed.), November 20, 1948.
46. Huebner to Galler, December 3, 1948, *U.S. v. Goebell* (frame 490, reel 5).
47. "Memorandum of Major Floyd M. Lundberg," December 6, 1948, *ibid.* (frame 532).
48. "Division Judge Advocate's Review," August 4, 1945, 5–6; "Headquarters U.S. Forces, European Theater," December 26, 1945, 2, *U.S. v. Schneeweiss*.
49. "Review by Staff Judge Advocate," November 9, 1945, 4, *ibid.*
50. "Headquarters U.S. Forces, European Theater," December 26, 1945, 3, *ibid.*

51. Robert A. Schneeweiss to the Adjutant General's Department, May 23, 1946; Major Frank C. Alfred to the Warden, U.S. Penitentiary, Leavenworth, Kansas, September 16, 1946, *ibid.*

52. "Memorandum for the Judge Advocate," April 9, 1947; Major Alfred to General Hoover, n.d., *ibid.*

53. *Malmedy Massacre Investigation: Hearings before a Subcommittee of the Committee on Armed Services, United States Senate, Eighty-First Congress, First Session, Pursuant to S. Res. 42* (Washington, DC: U.S. Government Printing Office, 1949), 217, 247, 367, 782.

54. Milwaukee County Council of Veterans of Foreign Wars to the President, February 11, 1947, General File, box 2161, White House Central Files, Harry S. Truman Papers (Harry S. Truman Library, Independence, MO).

55. Employees of the *Burbank Evening Review* to the Provost General [*sic*], War Department, January 25, 1947, *U.S. v. Schneeweiss*.

56. Colonel Hubert D. Hoover to publisher, *Burbank Evening Review*, n.d., *ibid.*

57. Algonquin Club Inc. to Senators Wiley and McCarthy, Representatives Kersten and Brophy, April 2, 1947; John C. Brophy to Liaison Officer, War Department, April 7, 1947, *ibid.*

58. General Thomas H. Green to Senator Allen J. Ellender, January 24, 1947, *ibid.*

59. "AGPK-CR 201, Schneeweiss, Robert A.," July 30, 1948; "AGPK-CR 201, Schneeweiss, Robert A., August 15, 1952, *ibid.*;" "Board Frees Officer in German Slayings," *Stars and Stripes*, November 20, 1948.

Two Kinds of Justice?

Eric Wentzel (and two other men) died for their association with the murders of seven American POWs, although only one of them may have actually shot a prisoner (the evidence was ambiguous). Lieutenant Robert Schneeweiss suffered three years of imprisonment for having personally killed four German civilians, and three young accomplices were acquitted of charges that they had murdered six. Given the fact that Joachims, Nichols, and Pepler were still in their teens, it is hard to find fault with their acquittals, although U.S. Army courts convicted Germans who had been as young as 16 at the time they had committed their offenses.¹ We must confront the glaring disparity between the outcomes of the two cases while, at the same time, avoiding any suggestion of moral equivalence between the overall German and American records of criminality during World War II.

That the U.S. Army judged war crimes committed by its own members by a more indulgent standard than that applied to comparable crimes committed by the enemy is suggested not only by a comparison of the Voerde and Borkum cases. Had the Biscari massacre of 1943 been judged by standards similar to those applied in the Malmédy massacre trial, George Patton would have been sentenced at least to life in prison, if not death, Sergeant Horace West and Captain John Compton would certainly have faced death, and many other officers and men would have been subject to a wide range of punishments for having played various roles in a conspiracy or common design to murder Axis POWs. The Malmédy massacre was characterized by Army lawyers as the work of “hardened and dangerous criminals,” while the War Department’s Bureau of Public Relations urged that no publicity be given to the Biscari murders, partly on the grounds that to do so

“would arouse a segment of our own citizens that are so distant from combat that they do not understand the savagery that is war.” German atrocities, it appears, were the products of undeniable Nazi depravity, while comparable American crimes were merely the regrettable but unavoidable consequences of war.²

To be sure, some GIs expressed their disgust at the Biscari murders. The chaplain of the 45th Infantry Division reported that

several of the men . . . came to me to make a strong protest against the treatment of prisoners they were observing. They stated that they would not care to go on fighting if such brutal treatment [as] the shooting down of men who had their hands up and the shooting down of prisoners who were being escorted to the rear was to continue. They stated that they had come into the war to fight against that sort of thing, and they felt ashamed of their countrymen who were doing those very things.³

But others voluntarily participated in the murders, and there is no evidence that any U.S. soldiers attempted to prevent them. Patton was not tried, West was sentenced to a life term but released after a year, and Compton was acquitted on the grounds that he had simply been following orders. The source of those alleged orders, Lieutenant General George S. Patton, accompanied by legal counsel, was questioned in April 1944 by Lieutenant Colonel Curtis Williams of the Inspector General's Department to answer allegations “prejudicial to his character and standing.”⁴ Patton was worried. His own recorded recollection of his exhortations to the officers of the 45th Infantry Division prior to the invasion of Sicily was that he had gotten “pretty bloody, trying to get an untried division to the sticking point,” but that nothing that he had said could have been construed “by the wildest stretch of the imagination” as directing the murder of prisoners of war. This was clearly disingenuous and was contradicted by his own words. In a letter Patton wrote to his wife, Beatrice, the day before his meeting with Colonel Williams, he observed, “Now some fair-haired boys are trying to say that I killed too many prisoners. Yet, the same people cheer at the far greater killing of Japs. Well, the more I killed, the fewer men I lost, but they don't think of that. Sometimes I think that I will quit and join a monastery.”⁵

It would be unrealistic in the extreme to expect a state in the midst of a desperate war to sacrifice one of its most effective commanders

on the eve of the decisive campaign of the war in Western Europe as a consequence of his killing the enemy, even if it had been in violation of the laws of war. And bloody-mindedness was not undesirable in a commander, at least if he was on *your* side. In a letter written to the Army's inspector general, Major General Everett S. Hughes, a West Point classmate of Patton's, observed: "I am convinced that Patton is a fighter for he looks at war realistically and does what few men in our army have yet dared to do—talk openly about killing. George believes that the best way of shortening the war is to kill as many Germans as possible and as quickly as possible."⁶ It may have been a similarly "realistic" view of war that was expressed by Major van Houten to Lieutenant Schneeweiss.

Patton's career was not seriously jeopardized by his role in the killing of enemy POWs on Sicily. On the other hand, he came close to ending his career with the notorious incidents involving the slapping of two psychologically traumatized GIs whom he had encountered in field hospitals on Sicily (whose "shell shock" he considered an "invention of the Jews"), an act which prompted Eisenhower to send him a letter containing "the strongest words of censure written to a senior American officer during World War II."⁷

The double standard applied by the U.S. Army to comparable war crimes committed by its own members and those done by its adversaries is striking. The truism that the wrongs that one suffers generally seem more reprehensible than the wrongs that one inflicts, while undoubtedly relevant, is an inadequate explanation. It should come as no surprise that a nation involved in a life-and-death struggle against a ruthless and genocidal enemy, a struggle articulated and justified to its people as an apocalyptic moral struggle pitting absolute good against total evil, should strive to minimize its own transgressions while visiting upon its enemies draconian punishment for theirs. Might it be plausibly argued that, on the level of macrojurisprudence, the normative disparity shown in the fates of Erich Wenzel and Robert Schneeweiss were morally justified on the grounds that Schneeweiss had committed his crimes in the context of an effort to destroy one of human history's greatest evils, while Wenzel's seemingly less egregious offenses were committed in defending that evil against seven American airmen who had been engaged in bombing it into morally necessary rubble? That is a proposition with which many, perhaps most, Americans would probably have agreed in the immediate postwar years. Many probably still would.

And it is equally unsurprising, if lamentable, that a nation should value the lives of its own citizens more highly than those of "foreigners." This seems true even if the foreigners were not recent enemies but victims of that enemy's malevolence. Joachim Peiper, the lead defendant in the Malmédy massacre trial and the commander of the SS battlegroup responsible for the murder of American POWs, had also been adjutant to *Reichsführer-SS* Heinrich Himmler and almost certainly was consensually present as genocide was being planned. He confessed to having been a witness to the experimental gassing of prisoners. Yet, the United States saw fit to try him only for his role in the murders of surrendered American soldiers, to which the killing of Belgian civilians by his battlegroup was distinctly secondary.⁸ It is relevant, too, that the legal systems under which the Borkum and Voerde cases were tried served different purposes, as did the trials themselves. The Articles of War (since superseded by the Uniform Code of Military Justice) under which Schneeweiss was tried had been adopted to preserve discipline and good order within the U.S. Army, while war-crimes trials were imbued with a spirit of retribution for German atrocities, among the worst ever perpetrated. The punishment imposed on Schneeweiss may have served the ends of discipline adequately, but the most severe of the Borkum penalties were certainly excessive; the Borkum massacre, for all of its horror, was hardly comparable in moral terms to the operation of the Nazi concentration camps at Mauthausen, Dachau, and Buchenwald or the "euthanasia" facility at Hadamar, whose staff members were also tried and some hanged by the U.S. Army.

Some defense attorneys suspected that U.S. Army officers hearing cases against Germans accused of war crimes were under pressure to deliver verdicts of guilty. They may have been, but *United States v. Kurt Goebell et al.* was not a sham trial designed, like Stalin's show trials of 10 years before or the trials conducted before the "Peoples' Court" of Hitler's Germany, to deliver predetermined verdicts in the face of nonexistent or purely pro forma defenses. Although not as well protected as U.S. soldiers tried for similar crimes by court-martial, Germans being tried before U.S. Military Government Courts were assured the fundamentals of due process. Defendants were to be advised of charges prior to trial and to be represented by counsel of their choosing, in addition to an officer of the U.S. Army in cases in which the death penalty might be imposed. They were free, in most cases through their attorneys, to cross-examine witnesses against them and to summon defense witnesses with the assistance of U.S. authorities.

In the event of convictions, defendants might file petitions challenging the court's findings and sentences and setting forth reasons why they should be set aside, but multiple reviews by the Army's legal staff were automatic.⁹ That process, in company with a changing political and international environment, kept Erich Wentzel alive and in hope of reprieve for more than two years and reduced the sentences of most of his codefendants, sparing two of them the grim walk to Landsberg's gallows. Yet, in the face of much more compelling evidence in the Vorde case, three American soldiers were acquitted of murder charges on the grounds that superior orders had relieved them of personal liability for their acts, and a fourth, sentenced to 25 years in prison, was released after three. The defense of superior orders was raised in the Borkum trial, too, but was brushed aside by the prosecution and by posttrial Army reviewers in rebuttals stunning in their hypocrisy. It is true, it was argued in "Review and Recommendations" related to the Borkum trial of August 1, 1947, that, at the time of the murders of #909's crew, U.S. combatants were protected by superior orders from prosecution for crimes against persons protected by international law, but that was a pragmatic provision in the Army's field manual that did not nullify the principle of individual responsibility. "Formerly under the Rules of Land Warfare only the commanders ordering the commission of such illegal acts were responsible therefore," Major Bryan declared in his summation for the prosecution, "but the world is progressing and such is not the case today."¹⁰ Perhaps, but only, it appears, if the defendants were enemy combatants. Captain John Compton was acquitted of his role in the murders of Axis POWs on Sicily in 1943 on the grounds that he had been following orders from General George Patton. But, a few months prior to the Borkum trial, a U.S. Army military commission tried German General Anton Dostler for having ordered the deaths of 15 members of the U.S. Army who had been captured while on a sabotage mission behind German lines in Italy. Dostler based his defense on a *Führerbefehl* of October 18, 1942, in which Hitler ordered that, in reprisal for alleged Allied orders issued to commandos that Axis prisoners taken in the course of operations be killed, Allied commandos were to be "exterminated to the last man" in the course of combat or pursuit. Dostler was found guilty of violations of the laws of war and put to death by firing squad.¹¹ If similar punishments for similar crimes judged according to similar standards are necessary components of justice, the U.S. Army did not do justice in these cases.

But U.S. Army courts did not always judge their enemies harshly and inequitably. In the late summer of 1947, a nine-member U.S. general military government court heard a case against the notorious former *SS-Obersturmbannführer* (Lieutenant Colonel) Otto Skorzeny and nine other defendants. Skorzeny was well known to the Allies as the rescuer of Mussolini following the overthrow of his regime and as commander of an effort during the Battle of the Bulge to capture bridges over the Meuse River and sow confusion behind American lines by employing English-speaking German soldiers wearing captured U.S. uniforms. The operation, code-named *Greif* (Griffin), was a dismal failure but has provided raw material for the imaginations of popular historians and movie makers. It also provided Army prosecutors with the makings of a war-crimes trial.

Skorzeny and his codefendants were charged with violations of “the laws and usages of war” for having illegally used American uniforms and insignia, misappropriated property belonging to the International Red Cross, and, most serious, murdered more than 100 U.S. prisoners of war.¹² The charge of murder was loosely associated with the Malmédy massacre, for which 73 Germans had been tried and convicted the previous year. Skorzeny’s U.S. Army defense team was permitted to call Allied witnesses, who testified that they had used German uniforms in combat operations in probable violation of international law and had been ordered not to take prisoners.¹³ In his summation for the defense, Lieutenant Colonel Donald McClure argued that the laws of war had changed through universal practice since the Hague Convention (IV) of 1907. “Once there were days of chivalry,” he intoned. “In the Second World War, there were no days of chivalry.” The Skorzeny case, McClure argued, could not be judged by the standards of 1907, for in the intervening 40 years there had been two world wars that had altered the rules according to which war is waged.¹⁴ Whether or not the nine officers sitting in judgment of the case agreed is unknown, but they produced the verdict desired by the defense. The defendants were acquitted.¹⁵

Why the dramatic difference in outcomes between the Borkum and the Skorzeny trials? Beyond the attitudes of the officers who judged the cases—unknowable at this point—there are a number of relevant factors. The most important, clearly, is that the Skorzeny prosecution team had dropped the most serious charge—that of the murder of American POWs—as it concluded its presentation. That element of the case had been based primarily on a single affidavit, for which little

corroborating evidence could be found. Moreover, more than a year had passed since the Borkum trial, a year during which wartime passions had cooled and criticism of the quality of U.S. Army justice applied to Germans accused of war crimes, most evident in regard to the Malmédy massacre trial, had mounted. The prosecution noted pointedly that it did not care to base that element of its case on affidavits alone, as had been largely done in the now suspect Malmédy case.¹⁶

There was a link between the two proceedings in the person of Colonel Abraham Rosenfeld. Rosenfeld had served as law member of the Malmédy court and led the prosecution team in the Skorzeny trial, which experience he was to describe as “interesting” but “unpleasant.” He noted in a letter of October 8, 1947, to Willis M. Everett Jr., who had led the defense of the Germans accused of the Malmédy massacre, that “things have changed in the year since you were here.”¹⁷ What was in Rosenfeld’s mind is uncertain, but there are undeniable differences between the Borkum and Malmédy trials of 1946 and the Skorzeny trial of more than a year later. Perhaps most noteworthy is the fact that, in the Skorzeny trial, the defense was permitted to offer evidence that the Allies had been guilty of offenses similar to those with which the defendants in the case at hand had been charged. Testimony regarding U.S. violations of the laws of war had been explicitly excluded from the Malmédy trial and merely hinted at in the Borkum courtroom. In what was perhaps the dramatic high point of the proceedings, RAF Wing Commander Forrest Yeo-Thomas was questioned on his wartime efforts to organize French resistance activities, as well as his involvement in espionage and sabotage behind German lines. German uniforms obtained “by hook or crook” had often been employed, and Yeo-Thomas and his men, while so attired, had been prepared to engage in combat, in the course of which prisoners were not to be taken. It was with considerable relish that defense counsel explored this issue.

DEFENSE: In the event of discovery of danger [*sic*] or the prevention of discovery, what would the practice be?

YEO-THOMAS: Bump off the other guy!

DEFENSE: Did the court get the answer?

PRESIDENT: Yes, the court got it.¹⁸

It has been alleged that German criminality in World War II, for largely cynical and opportunistic reasons, was inadequately punished

and that the wartime Allied commitment to pursue the German authors of atrocities “to the uttermost ends of the earth . . . in order that justice may be done” was a “pledge betrayed.”¹⁹ It may have been, although one may legitimately ask whether “justice” for the worst of German crimes could ever have been achieved or, indeed, what it would have looked like. But the evaluation of postwar war-crimes justice has hitherto been incomplete. Surely a comparative appraisal of the manner in which the victors dealt with lesser crimes committed by their own personnel as well as by the enemy should enter into the analysis without fear that German criminality will thereby be “relativized” and in some sense excused on the grounds of rough moral equivalence. Nazi Germany’s crimes, of which the Holocaust and genocidal war in Eastern Europe are paramount, will always stand alone as constituting the nadir of human conduct during World War II.

NOTES

1. James J. Weingartner, *Crossroads of Death: The Story of the Malmédy Massacre and Trial* (Berkeley and Los Angeles: University of California Press, 1979), 35.

2. James J. Weingartner, “Americans, Germans, and War Crimes: Converging Narratives from ‘the Good War,’” *Journal of American History* 94 (March 2008): 1166.

3. “Statement of Lieutenant Colonel William E. King, Chaplain, 45th Infantry Division, July 16, 1943,” *United States of America v. West, Sgt. Horace T.* (Clerk of Court, U.S. Army Judiciary, Arlington, VA).

4. Orders to Lieutenant Colonel Curtis L. Williams, March 24, 1944; Brigadier General Philip E. Brown to the Deputy Chief of Staff, March 21, 1944, Record Group 159, File 333.9, Records of the Office of the Inspector General (National Archives II, College Park, MD).

5. Martin Blumenson, ed., *The Patton Papers, 1940–1945* (Boston: Houghton Mifflin, 1974), II: 431. Patton had attempted to cover up the massacre by suggesting that it be portrayed as the consequence of an attempt to escape by the prisoners. *Ibid.*, 288.

6. Major General Everett S. Hughes to Major General Virgil L. Peterson, April 7, 1944, Record Group 159, File 333.9, Records of the Office of the Inspector General.

7. Stanley P. Hirshson, *General Patton: A Soldier’s Life*, 393, 399; Carlo D’Este, *Patton: A Genius for War* (New York: HarperCollins, 1995), 533–36.

8. Jens Westemeier, *Joachim Peiper: Zwischen Totenkopf und Ritterkreuz* (Bisendorf: Biblio Verlag, 2006), 25–55; Richard Breitman, *The Architect of Genocide: Himmler and the Final Solution* (New York: Knopf, 1991), 95–168.

9. Eli E. Nobleman, “Procedure and Evidence in American Military Government Courts in the United States Zone of Germany,” *Federal Bar Journal* 8

(January 1947): 214–15; Maximilian Koessler, "American War Crimes Trials in Europe," *Georgetown Law Journal* 39 (1950–51): 67–69.

10. "Review and Recommendations," 4, *U.S. v. Goebell* (frame 30, reel 3); "Record of Trial," 1193, *ibid.* (frame 610, reel 2).

11. "The Dostler Case. Trial of General Anton Dostler, Commander of the 75th German Army Corps," United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (London: His Majesty's Stationery Office, 1947), I: 29, 32–33. The prosecution argued that Dostler's defense of superior orders was invalid on the grounds that the *Führerbefehl* was illegal and that, in any event, Dostler had violated the order by having held the Americans prisoner for 45 hours before having them shot. *Ibid.*, 33.

12. "Record of Trial," *U.S. v. Otto Skorzeny et al.*, 1, 5 (fiche 1), National Archives Record Group 153, Microfilm Publication 1106.

13. *Ibid.*, 526 (fiche 11).

14. *Ibid.*, 778 (fiche 14).

15. *Ibid.*, 799 (fiche 14).

16. *Ibid.*, 452 (fiche 9).

17. Abraham Rosenfeld to Willis Everett, October 8, 1947, Everett Papers (in author's possession).

18. "Record of Trial," 526–31, *U.S. v. Skorzeny* (fiche 11).

19. The theme and title of Tom Bower, *The Pledge Betrayed: America and Britain and the Denazification of Postwar Germany* (New York: Doubleday, 1982). See also Frank M. Buscher, *The U.S. War Crimes Trial Program in Germany* (Westport, CT: Greenwood Press, 1989), 159–64.

Memory

Erich Wentzel's ashes were buried on the afternoon of Wednesday, December 15, in Wuppertal's Vohwinkel cemetery. The *Wuppertaler Rundschau* reported that "over a thousand mourners . . . followed the urn with silent emotion." The Borkum prosecutors were not alone in employing religious imagery to sanctify the dead. In his eulogy delivered in the cemetery chapel, Pastor Posth likened Wentzel to Christ, crucified between the two thieves. "Seen in this light," the article continued, "Wentzel's tragic death receives its meaning." Speaking at the graveside, Caritas director Hans Carls embellished the image of Wentzel's Christ-like martyrdom by recalling the last words allegedly spoken by the deceased: "Lord, thy will be done." The mournful strains of *Ich hatt' einen Kameraden*, the traditional lament for a soldier fallen in battle, echoed over a grave that was covered by what was described as "a mountain of flowers."¹

Other published accounts were less ethereal. A bitter commentary that appeared in an unidentified German newspaper struck hard at the alleged injustice of Wentzel's conviction in Ludwigsburg and hanging in Landsberg and their possible consequences.

The German public has the right to be informed of what took place behind the closed doors of the American war tribunals, and what is taking place inside the walls of the Landsberg prison. The German public has this right, because one cannot assert that one wants to punish war crimes, while one is committing grave injustices oneself. We consider it our conscientious duty to take care that the future relations between Germans and Americans are not poisoned by the names of Dachau, Ludwigsburg and Landsberg,

and we fear that a dangerous hatred and nationalism can be engendered in the murky confusion of guilty and innocent. Therefore, we take up the case of Erich F. Wentzel of Wuppertal in order to show with what means and in what a spirit the Americans conducted many trials. Wentzel has meanwhile been executed; he died innocent, and he is not the only one.

There followed a recapitulation of the defense case for Wentzel and a provocative reference to a lurid accusation that Wentzel's wife had leveled against Major Abraham Levine, the chief of the Borkum investigation team. Wera Wentzel had claimed that, in the course of a visit to Borkum to learn something about her husband's condition during Levine's pretrial investigations, Levine had attempted to "seduce" her. Frau Wentzel's resistance to Levine's advances, the article asserted, had resulted in Erich Wentzel's solitary confinement for 14 days. And the author may have been aware of the Schneeweiss case. "It is significant in this context to learn from the American Army . . .," he observed sarcastically, "what the law is like that American soldiers are subject to." He continued:

They wanted to teach us Germans, they unrolled the horrors of the Hitler regime before our eyes. Now we have a right to know what really happened in Dachau, Ludwigsburg and Landsberg. We want to know what the standards were for the justice that engendered such "errors." The Americans must make it clear that justice is indivisible for victors and vanquished.²

It was a fair point. The article reflects the damage done to the image of U.S. Army war-crimes justice by proceedings such as the Borkum trial and its aftermath when compared to the Army's handling of the Voerde atrocity. The double standard applied by the United States in *comparable* atrocity cases in which Germans and Americans were perpetrators provided an all too facile means by which Germans could seek to minimize their own enormous burden of guilt for crimes that were very much worse. "What really happened" at Dachau, where most war-crimes trials conducted by the U.S. Army took place, included not only the prosecution and the sometimes draconian sentencing of Germans for crimes for the like of which Americans were commonly punished more leniently if at all but also trials involving offenses that were at the core of the Nazi system of mass murder—the operation

of the concentration camps at Dachau, Mauthausen, and Buchenwald and the Hadamar "euthanasia" facility where hundreds of thousands had been done to death.

The Borkum trial, with particular emphasis on the fate of Eric Wentzel, was the subject of a tendentious book published in 1952 under the title *Landsberg: Henker des Rechts?* (*Landsberg: Hangman of Justice?*). The question mark was disingenuous, as the author, K. W. Hammerstein (apparently a pseudonym used by Erich Wentzel's brother, Kurt) left no doubt as to his conviction that justice had gone to the gallows along with Wentzel. But a forward was contributed by Rudolf Aschenauer, defense attorney in numerous war-crimes trials, including the *Einsatzgruppen* case, in which 24 SS officers were tried for participating in the killing squads that murdered hundreds of thousands of Jews in Russia.³ Aschenauer was also a prolific propagandist who railed against alleged Allied injustices in the investigation and prosecution of Germans for war crimes, and the trial and execution of Erich Wentzel was prime grist for his mill. Wentzel, he declared, was "one of many" victims of Allied hatred and lust for vengeance, which had subjected Germans of all ages and social classes to brutal mistreatment and unjust trials, setting them on a path of suffering that led to the gallows or prison. Hammerstein/Wentzel's book would, he claimed, "prove that men like Erich Wentzel were not criminals, but victims of a justice system manipulated for political ends."⁴ In Aschenauer's hands, the death of Erich Wentzel became a weapon that, like the flawed Malmédy massacre trial, could be used to defame the whole of the Allied war-crimes trial program and, by implication, exonerate Germans for the horrendous crimes of the Third Reich.

Hammerstein/Wentzel's book offered a highly dramatized, semi-fictional account less of the Borkum atrocity itself, which he made no effort to deny, than of the subsequent investigation of the incident and trial of its alleged perpetrators by the U.S. Army. The anti-Semitism that had been at the foundation of the Holocaust was clearly evident in Hammerstein/Wentzel's treatment of Major Abraham Levine, leader of the investigation team. In an affidavit, Wera Wentzel had asserted that Levine had attempted to "seduce" her when she had approached him for information on her husband and a request that he deliver to him a letter.⁵ Hammerstein/Wentzel's lurid and heavily dramatized version of the alleged event would not have been out of place in the pages of Julius Streicher's virulently anti-Semitic Nazi newspaper, *Der Stürmer*. Having invited Wera Wentzel, "an elegant blond woman,"

to his hotel room for a cigarette, the "dark eyed" Levine allegedly informed her of her husband's perilous situation and boasted of his amorous successes with German women. Then, according to the author, he attempted to undress Frau Wentzel and forced her onto his bed. The account has Frau Wentzel succeeding in escaping Levine's clutches with an indignant "I am not one of your loose girls! I am a German woman, Herr Major! Among our officers it was self-evident that along with the uniform went the obligation to behave decently, and I believed that to be true throughout the world." She then resolved to leave the island rather than risk another encounter with Levine, convinced that her resistance to his advances had seriously damaged her husband's prospects.⁶

How closely Hammerstein/Wentzel's account approximates reality is now impossible to ascertain. Wera Wentzel had waited two and a half years after the alleged event to execute an affidavit of which her likely brother-in-law's description is a highly dramatized version. Her motives are clear—to weaken the case against her husband by revealing, exaggerating, or fabricating an incident that cast aspersions on the investigator who had secured the sworn statements that formed a major part of the prosecution case. In Hammerstein/Wentzel's hands, it became a device that degraded justified criticism of genuine abuses in U.S. war-crimes trial policy with the racism that had been the cornerstone of the Third Reich and the motivation for its most heinous crimes. Persons of all faiths except Jews had urged mercy for the Borkum convicts, the author pointedly noted, seemingly unconscious of the grotesqueness of the statement or, perhaps, confident that it would resonate positively with his readers.⁷

Hammerstein/Wentzel admitted that not all of the Germans held in Landsberg prison were innocent.⁸ That grudging concession, contained in a sparse three-sentence paragraph, hardly conveyed the enormity of the crimes of which some of them had been convicted. One of the last inmates of Landsberg to keep an appointment with its gallows was Oswald Pohl, wartime chief of the SS Economic and Administrative Main Office, a typically benign-sounding bureaucratic structure whose responsibilities included the brutal exploitation of hundreds of thousands of concentration-camp prisoners and the utilization of the "byproducts" of the murder of millions of Jews in the extermination camps. The injustices allegedly visited on Erich Wentzel and other Borkum defendants, on the other hand, were described in lurid detail. Beatings, starvation rations, and primitive living conditions not

dissimilar to those inflicted on prisoners in Nazi concentration camps were allegedly inflicted by Esterwegen's new masters on the suspects in the Borkum case being held there, while U.S. investigators extracted "confessions" in brutal interrogations and contrived to "misplace" inconvenient witnesses whose stories threatened to undermine the prosecution's case.⁹ Erich Wentzel had been singled out for a "frame-up" by Levine, the author implied, as revenge for Wera's resistance to his advances. Sergeant Schmitz, who had led the guard detail during the fatal march, bore the major burden of responsibility for the failure to protect the prisoners but, with Levine's connivance, had attempted (unsuccessfully) to save himself by shifting the blame to Wentzel. During the trial, the defense had been inept, while the officers sitting in judgment, the author claimed, had gotten drunk while deciding on the sentences to be imposed.¹⁰

It was a badly distorted account of the investigation and trial and an example of the inclination of many postwar Germans to regard themselves as victims, rather than the perpetrators or accomplices of Nazi criminality. Four years later, a very different appraisal of the Borkum trial was published in the United States by Maximilian Koessler in the scholarly *Journal of Criminal Law, Criminology, and Political Science*. Koessler was an Austrian-born lawyer who had been employed by the War Crimes Branch of the Army's Judge Advocate General's Department. Koessler was nothing if not a meticulous analyst of judicial proceedings. He had been assigned the Malmédy massacre case for review, a task that his boss hoped he would complete in three to four months. Six months later, he had completed evaluations of the convictions of only 15 of the 73 former SS men who had been tried and found guilty. He was not afraid to find fault with Army investigative and court procedure. Some of the Malmédy defendants, he concluded, had been convicted on inadequate evidence, and some pretrial sworn statements shared suspiciously similar wording, perhaps related to questionable interrogation techniques, including the use of false witnesses and mock trials.¹¹

Koessler's analysis of the Borkum trial, which he declared "was one of the most interesting among those American war-crimes cases which were tried outside Nuremberg," was apparently motivated by personal interest, rather than the result of an official assignment. He rightly passed off Hammerstein/Wentzel's book as "mostly based on hearsay and colored by the attempt to eulogize one of the defendants"; it, in fact, closed with an epitaph for Wentzel, the "victim of judicial

murder by an American military court." Koessler entitled his article "Borkum Island Tragedy and Trial," but his tragedy was not Hammerstein/Wentzel's but, rather, the "cruel ordeal" and murder of #909's crew. He accepted as factual the description of the events of August 4, 1944, as they had been presented by the prosecution: the prior inflammatory editorial by propaganda minister Goebbels, elevated in the minds of the defendants to the status of a "decree"; the capture of the bomber's crew by members of the Ostland Battery under Lieutenant Seiler's command and its interrogation by Wentzel; the orders to the guard detail to conduct the prisoners by the longest possible route to the point of embarkation to the mainland; the assault on the prisoners by members of a Labor Service detachment with Wentzel's tacit approval, if not actual connivance; Mayor Akkermann's incitement of the crowd to attack the prisoners and the failure of the guards to protect them; Langer's shooting of the "little flyer," Howard Graham, and the failure to arrest the assailant, giving him the opportunity for a second attack in which he murdered the remaining prisoners; and, finally, the drafting of an official report on the incident that falsified the manner in which the crew of #909 had been done to death. But Koessler had serious reservations about the conclusions that the court had drawn from the narrative.¹²

An analysis of the thinking behind the verdicts was, as Koessler pointed out, impossible inasmuch as the officers who arrived at them had offered no explanation as to how they had reached their conclusions. But he was able to reasonably infer that the prosecution's theory of criminal conspiracy had played an important role in determining the Borkum trial's outcome, and with that he disagreed on both legal and evidentiary grounds. It was inappropriate, he argued, for the court to have applied American common-law concepts of conspiracy, concepts unknown to legal systems based on civil law, such as Germany's. Moreover, even under the American concept of criminal conspiracy, Koessler believed, there had been inadequate evidence to convict four of the five defendants, including Wentzel, of the murder charge. He doubted that the "spontaneous action of Langer" could be reasonably construed as a natural or foreseeable consequence of a scheme to expose the Americans to abuse by the civilian population.¹³

Koessler was more cautious in judging the matter of sentencing, although he clearly believed that the prison terms given to the defendants found guilty only on the assault charge were excessive. On the graver issue of the five death sentences, however, Koessler refused to

express an opinion, perplexing in view of his skepticism with regard to the evidentiary bases for those verdicts. The commutations of Goebell's and Seiler's sentences, however, seemed to him "highly questionable" in view of the two men's roles as the "wire pullers" behind the march that had resulted in the deaths of the seven American prisoners. Perhaps reflecting reluctance as a German-speaking immigrant to the United States to question the fundamental integrity of the trial, Koessler hastened to add that "nothing herein is meant to deny or question that all those who had to make decisions in the case discharged their duties in a most conscientious way, with the honest intention to find the truth, to be just, and to be fair."¹⁴

Hammerstein/Wentzel, surprisingly, made no reference to the Voerde murders and Schneeweiss's prison sentence and early release, although he may have been in contact with Rolf Galler, Erich Wentzel's German attorney, who had brought the disparity between the fates of the two men to General Clay's attention. Indeed, beyond noting that Langer's wife and children had been killed in an air raid on Hamburg, Hammerstein/Wentzel said nothing about German sufferings at the hands of the Allies *during* the war. In addition to the brief article in *Stars and Stripes* that announced Schneeweiss's parole and the unidentified article referred to by the employees of the Burbank *Evening Review*, which led them to conclude incorrectly that the German civilians for whose murders Schneeweiss had been convicted had been killed during a combat operation, there is a clipping in the Truman Library containing a photograph of Fannie Schneeweiss and her two children, ages 3 and 17 months, with an inset of a moderately handsome Robert Schneeweiss in his second lieutenant's uniform. The caption notes prosaically that a petition had been filed "in Washington" requesting the commutation of his 25-year sentence.¹⁵ But there is nothing on the Voerde murders comparable to Koessler's analysis of the Borkum case, although the former seems inherently no less interesting or significant than the latter. A routing slip in the Schneeweiss file dated February 20, 1950, at which time the file was classified "restricted," notes that a "technical historian" employed by the "Research Office of the Army" planned to consult the documents for a paper on the "Geneva Convention and its effect on physiological [*sic*] warfare," but a later addendum declares that "the historian found nothing she could use in her paper and so she made no notes."¹⁶ If the author had been interested more broadly in the effect of international law on the conduct of troops in battle, she might have found something worthy of note in

the Schneeweiss trial record. When asked by a member of the court if he had ever heard of the War Department's Field Manual 27-10 *Rules of Land Warfare* in the course of his military experience, Schneeweiss answered in the negative and added that not only had he never been required to read it but he had never seen a copy of it prior to his court-martial.¹⁷

Evidence that public memories of World War II are selective should shock no one. Why the Army's "technical historian," identified only as a "Dr. Bartimo," scrawled in pencil on a slip of paper, should have elected not to include the Schneeweiss case in her paper is not known, but to many Americans with a modicum of historical consciousness, the consumers of the never-ending flow of popular literature and visual treatments of World War II, the preservation of a sanitized image of their country's conduct of the war is a sacred obligation. To do otherwise, as was demonstrated by the controversy surrounding the proposed Smithsonian Air and Space Museum's exhibit to commemorate the 50th anniversary of the atomic bombing of Hiroshima, is to be guilty of "revisionism."¹⁸ That revising beliefs about the past on the basis of new information and altered perspectives, what historians must do in order to elevate their product above the perpetuation of what its consumers find familiar and comfortable, can generate high levels of resistance when it is applied to what is perhaps the most positively regarded collective experience in U.S. history is not surprising. But it imposes unfortunate and harmful limitations on public understanding of this most terrible of all wars and of war in general. The moral balance between the United States and its enemies in World War II is not significantly altered by the recognition that U.S. combatants, too, were sometimes guilty of gross violations of the laws of war but escaped the punishment for them that was often imposed on their enemies. When the author served as a consultant and "talking head" for a documentary television program on the Malmédy massacre, his suggestion to the producers that a broader perspective be provided by including at least a brief reference to similar atrocities committed by U.S. forces was received with something close to horror and peremptorily rejected. Information on the Biscari atrocities that recently appeared in a leading Italian newspaper and on Italian state television seems not to have registered with U.S. news media.¹⁹ Although some Germans have also resisted confronting aspects of their nation's far worse record of war crimes—the fact, for example, that the German Army willingly cooperated with Heinrich Himmler's SS and police

in waging a racial war of almost unimaginable barbarity in Eastern Europe—the broad outlines of German genocide are denied only by a lunatic fringe. More characteristic of present-day Germans seems to be a compulsive need to express remorse for the criminal acts of the Third Reich.

NOTES

1. "Die Beisetzung von E.F. Wentzel," *Wuppertaler Rundschau*, December 16, 1948, *U.S. v. Goebell* (frame 521, reel 5).
2. "Unabdingbare Fragen an einem Grabe," *ibid.* (frame 526). On German consciousness of an American double standard in regard to war crimes, see Richard L. Merritt, *Democracy Imposed: U.S. Occupation Policy and the German Public, 1945–1949* (New Haven, CT: Yale University Press, 1995), 168.
3. Norbert Frei, *Adenauer's Germany and the Nazi Past: The Politics of Amnesty and Integration*, trans. Joel Golb (New York: Columbia University Press, 2002), 110, 119, 121; Kurt Tauber, *Beyond Eagle and Swastika: German Nationalism since 1945* (Middletown, CT: Wesleyan University Press, 1967) I: 519, 714–15; Kerstin von Lingen, *Kesselring's Last Battle: War Crimes Trials and Cold War Politics*, trans. Alexandra Klemm (Lawrence: University of Kansas Press, 2009), 184.
4. K. W. Hammerstein, *Landsberg: Henker des Rechts?* (Wuppertal: Abendland Verlag, 1952), "Vorwort."
5. "Eidesstattliche Erklärung," April 16, 1948, *U.S. v. Goebell* (frames 136–37, reel 5).
6. Hammerstein, *Landsberg*, 113–15.
7. *Ibid.*, 199.
8. *Ibid.*
9. *Ibid.*, 93–96, 100–106.
10. *Ibid.*, 117–19, 125, 150–51, 169, 170, 191–92.
11. U.S. Senate, *Malmedy Massacre Investigation: Hearings before a Subcommittee of the Committee on Armed Services, United States Senate, Eighty-First Congress, First Session, Pursuant to Senate Resolution 42* (Washington, DC: U.S. Government Printing Office, 1949), 1338–66.
12. Maximilian Koessler, "Borkum Island Tragedy and Trial," *Journal of Criminal Law, Criminology and Political Science* 47 (July–August 1956): 183–89.
13. *Ibid.*, 193–96.
14. *Ibid.*, 196.
15. Schneeweiss photo, Official File, White House Central File, Harry S. Truman Papers, Harry S. Truman Library, Independence, MO.
16. "Routing Slip," Hattie Wright, February 20, 1950; handwritten note on slip, February 26, 1951, *U.S. v. Schneeweiss*.
17. "Record of Trial," 59–60, *U.S. v. Schneeweiss*.
18. Edward T. Linenthal and Tom Engelhardt, eds., *The Enola Gay and Other Battles for the American Past* (New York: Holt, 1996).

19. Gianluca di Feo, "I prigionieri italiani uccisi? Dite che erano cecchini," *Corriere Della Sera*, June 24, 2004, [http://archivioistorico.corriere.it/2004/giugno/24/prigionieri_italiani_uccisi_Dite_che_co_9_ . . .](http://archivioistorico.corriere.it/2004/giugno/24/prigionieri_italiani_uccisi_Dite_che_co_9_...) ; "Il 'Prigioniero' Giannola el il Silenzio sui Caduti di Biscari," *ibid.*, September 24, 2009, [http://archivioistorico.corriere.it/2009/settembre/24/Prigionero_Giannola_Silenzio_sui_Cad. . .](http://archivioistorico.corriere.it/2009/settembre/24/Prigionero_Giannola_Silenzio_sui_Cad...) ; Riccardo Giannola to James J. Weingartner, e-mail, September 1, 2009 (in Weingartner's possession).

August 4, 2003

On August 4, 2003, a small memorial was dedicated on Borkum to the seven American airmen who had been murdered there 59 years earlier. It is an incongruous intrusion in a resort community normally preoccupied with serving a thriving tourist trade. Current vacation literature entices the reader with the prospect of “sun on your skin, an endless vastness in view, sand between your toes, wind in your hair. . . . Borkum invites you to an unforgettable summer holiday.” Should the North Sea be uncooperatively calm, “the Flow Rider, the only indoor surfing facility in Northern Germany,” is available to simulate the waves that had sometimes washed onto Borkum’s wartime beaches the bodies of downed airmen.¹ The events of August 4, 2003, evoked memories of that grimmer Borkum.

Wilfried Krahwinkel, one of the island’s permanent residents and an employee of the narrow-gauge railroad that might have been used to safely transport the crew of #909 to the point of departure for the mainland, had developed an interest in Borkum’s World War II history. Some older residents casually mentioned to him that a number of “Canadian” prisoners had been murdered on the island, an issue unaddressed in local historical literature. Further research revealed that the victims had belonged to the U.S. Army Air Forces and introduced him to the webpage of the 486th Bombardment Group and its historian, Robin Smith, who provided him with the names of #909’s crew. Dr. Helmer Zühlke, one of Borkum’s physicians and the honorary director of its museum of local history, had been educated on the events of August 4, 1944, by Krahwinkel and by Bryan van Sweringen, an American historian who had become familiar with the records of the Borkum trial while serving as an intern at the U.S. National Archives

in the 1970s. He and his German-born wife had visited Borkum in the summer of 2002 and, in a dramatic gesture, had walked the route followed by #909's crew and their guards, placing a yellow rose at the scenes of their murders. Before leaving Borkum, van Sweringen deposited a summary of the atrocity at the museum. The contents of the document, Zühlke later recalled, had seized him and had refused to let go.²

Krahwinkel and Zühlke initiated a campaign to erect a memorial on Borkum to the murdered American airmen, whose bodies had long before been moved either to the United States or to the Ardennes American Cemetery in Belgium.³ Town councilmen and business people reacted hesitantly at first. Many Borkumers held ambivalent views on the events of August 4, 1944, and their aftermath, recognizing the inhumanity of marching #909's crew through the town without protection but also seeing injustice in the death penalties imposed for Langer's murderous acts. But it was also recognized that the American airmen bore no responsibility for flaws in U.S. Army justice. A decision was made to purchase a small stone monument, its cost defrayed by Borkum's Rotary Club. The memorial was erected in Borkum's war memorial square on Hindenburg Strasse and dedicated in a ceremony conducted on August 4, 2003, the 59th anniversary of the murders of #909's crew.⁴ Among the several hundred persons in attendance, many of whom were probably curious townspeople and vacationers, was a handful with a more compelling interest. Present were Quentin F. Ingerson, #909's navigator, and Kazmer Rachak, its flight engineer, both of whom had bailed out of their damaged B-17 in the vicinity of Bremen and fallen into the hands of less wrathful captors, thereby avoiding the death march on Borkum. They were accompanied by surviving relatives of the murdered airmen and the 486th's historian, Robin Smith. Also in attendance were representatives of the German government and the U.S. Air Force, the former to offer expressions of contrition for a criminal act for which they bore no responsibility, the latter to extol the sacrifice involuntarily made almost six decades earlier by #909's crew.⁵

The language of memory reflects the tensions inherent in the event that evoked it. A bronze plaque affixed to the rough-hewn stone contains the names and ranks of the seven victims, rendered in large capital letters. They are preceded by a statement in smaller characters in both German and English. The latter reads:

In Memory
of those US-Airmen

who were killed under tragic
circumstances on August 4th 1944
after being captured on our island.

But by whom? And what was the nature of these “tragic circumstances”? An uninformed visitor to Borkum might suppose that the prisoners had been run over by an out-of-control truck or crushed by a collapsing wall. Beneath the names of the murdered Americans, but in German only, is a statement that reads, “With them, we also remember the millions of soldiers in many countries who, in violation of international agreements regarding the treatment of prisoners of war, had to give up their lives [*ihr Leben lassen mussten*] in captivity.”⁶ Unmentioned was the fact that the most numerous of these were Soviet prisoners taken by Germany, of whom roughly 3.3 million of the approximately 5.7 million captured (58 percent) perished.⁷ By that standard, the Borkum atrocity—indeed, all atrocities inflicted by Germans on Americans—were minor. In any case, the monument seemed to suggest that the U.S. airmen had died as part of an impersonal and universal wave of wartime brutality.

German speakers at the dedication ceremony were less ambiguous than the text of the monument. Pastor Joachim Jannsen expressed remorse for a shameful act that occurred as “part of the darkest chapter in German history.”⁸ The murder of seven airmen who were engaged in an aspect of World War II that is not without a high degree of moral ambiguity was thereby implicitly linked to what is arguably the greatest crime in modern history, the Holocaust and the German genocidal war in Eastern Europe. Pastor Jannsen’s oratory alongside the obfuscating text of the monument exemplifies the extraordinary difficulty Germans experience in reconciling their own wartime suffering with the unparalleled catastrophe that Germany inflicted on Europe and doing it without alienating people with divergent perspectives in Germany itself and affected non-Germans, some of whom were among the spectators and participants.

Brigadier General Stanley Gorenc and Colonel Kerry Taylor, representing the U.S. Air Force in Europe and the U.S. Eighth Air Force, which had borne the brunt of the U.S. aerial assault on Germany, expressed a less ambivalent perspective. General Gorenc praised the people of Borkum for having confronted their history and lauded the murdered airmen for having made “the highest sacrifice for peace and freedom,” while noting darkly the willingness of Borkumers to “allow

a bitter inheritance to live on" in the form of the monument.⁹ Colonel Taylor recalled "the constellation of fighters and bombers" that had carried 350,000 airmen deep into Europe, of whom 26,000 had paid "the ultimate price."¹⁰ Borkum provided an ideal venue for reaffirming the comfortable proposition that the cost, both in American lives and in the products of U.S. industrial predominance, had been exacted in a war that in a moral sense had been self-evidently necessary.

That many more German civilians than American airmen paid the "ultimate price" was an aspect of the war central to the monument's historical context addressed by neither German nor American speakers. Reinhold Robbe, Social Democratic chairman of the Bundestag's Defense Committee, however, came close. With a brutal frankness unique in an otherwise delicately articulated event, Robbe raged against "blind Nazis," "guards devoid of decency," and civilians who had "humiliated and attacked" the American airmen. But, of course, there was also Langer, "a German soldier obsessed with hate who had executed the Americans one after the other." That Robbe used the German verb *hinrichten* (to execute), rather than *ermorden* (to murder), to describe Langer's act may have reflected a certain ambivalence, perhaps subconscious. In any event, no overt reference was made to the source of Langer's hatred—the death of his wife and children in an Allied bombing raid on Hamburg.¹¹

To have alluded to any of the roughly half-million civilians killed in Allied air attacks on Germany during World War II would have been awkward. Although in recent years Germans have felt increased freedom to grieve openly for their sufferings under American and British bombing, any reference to them while dedicating a memorial to the murdered crew would have seemed precariously close to an attempt to lessen the gravity of the Borkum atrocity and perhaps to relativize other German crimes that were infinitely worse. German-born author W. G. Sebald has observed that "a nation that had murdered and worked to death millions of people in its camps could hardly call on the victorious powers to explain the military and political logic that dictated the destruction of German cities."¹² But Sebald has also noted that "our vague feelings of shared guilt prevented anyone . . . from being permitted to remind us of such humiliating images as the incident in the Altmarkt in Dresden, where 6, 865 corpses were burned on pyres in February 1945 by an SS detachment which had gained its experience at Treblinka."¹³ To have pointed out that the physical results of mass killings, irrespective of their motivation and methodology, are

much the same would have violated the spirit of "shared guilt" that had produced the monument.

And there was the memory complex of the American guests to consider. While strategic bombing failed to live up to the full promise held out for it by its proponents, American airpower and the industrial and technical virtuosity that gave rise to it contributed significantly to a victory that was relatively economical of American lives, if profligate in its toll on enemy civilians, as well as on the citizens of countries under German occupation. The romance of clear-eyed young Americans waging high-tech war in the light of day (in contrast to their surreptitiously night-bombing British counterparts) in the face of sometimes crippling losses has not lost its appeal. The stirrings of conscience that have animated and embittered the American debate over the morality and necessity of bombing Japanese cities, particularly the atomic bombings of Hiroshima and Nagasaki, are not matched in post-war American ruminations over the appropriateness of the means by which Nazi Germany was brought down, surely in part a gauge of the horror that German genocide continues to evoke, and the "conventional" nature of the bombs employed against its authors. The onus for "indiscriminate" urban bombing, moreover, is borne primarily by the British, a not entirely equitable assessment, as even the modest degree of "precision" with which American bombers dropped their loads on German targets early in their war was partially abandoned in that war's latter stages. "Blind" bombing through thick cloud cover, using the primitive on-board radar then available, permitted a degree of accuracy that differed little from that of RAF Bomber Command's "area bombing." This led ball turret gunner Sergeant John Briol of the 457th Bomb Group to note grimly in his diary, "If we fall into most German hands now, they will kill us."¹⁴ The same realization prompted Bernerd Harding of the 492nd Bombardment Group to bury his pilot's wings following the shooting down of his B-24 over Germany on July 7, 1944.¹⁵ Even daylight bombing in conditions of good visibility often devastated areas far beyond the intended target. Briol's group was dispatched to bomb the marshalling yard at Mayen, "a little city of about 2000 people. We blasted the yards all right and the entire city with it. I saw the whole city disappearing and I suddenly realized again what a rotten business this was."¹⁶ But such brutal candor was remote from the atmosphere surrounding the dedication of the monument. The national anthems of the two countries were played, while members of the U.S. and German armed forces stood at attention. The

two elderly survivors of #909's crew saluted the memorial to their murdered comrades, while many in the audience wept, although, perhaps, not all for the same thing.¹⁷

The elaborate binational memorialization of the murdered crewmen of #909 stands in stark contrast to remembrances of the German civilians murdered in Voerde. The history of the 36th Tank Battalion, to which Lieutenant Schneeweiss had belonged, recalls Voerde only as a stop en route to an assembly area near Bruckhausen, a way station on the battalion's triumphant drive to victory over Germany less than two months later. The history of the Eighth Armored Division does not mention the town at all.¹⁸ As far as American memory of World War II is concerned, the Voerde atrocity is a nonevent. Interestingly, and no doubt for different reasons, the people of Voerde, although they have memorialized the martyred children of Buschmannshof, have repressed or, at least, have failed to register public memory of their own murdered citizens. When asked if German records dealing with the murders were available, city archivist Günter Wabnik replied to the author:

The city archives has previously been unaware of the event you describe. Records in this office give the cause of death of the six persons whose names you provided as having died through the effects of war. As a result of some research—information provided by residents at the time of the event—I now know that seven or eight civilians were shot to death by American soldiers. Besides those whom you named, Heinrich Tittmann and Gertrud Neukäter (?) (not yet fully clarified) also died.¹⁹

Gefallen durch Kriegseinwirkungen—died through the effects of war. That minimally informative language in Voerde's archives constitutes the memorial for perhaps eight of its citizens, eight among the many millions of civilian victims of World War II.

NOTES

1. "Borkum: Nordseeinsel mit Hochseeklima," <http://ew.borkum.de/>.
2. Jürgen Petschull, "Der Fliegermord von Borkum," *Biographie* 3 (2004): 90.
3. Robin Smith to James J. Weingartner, e-mail, March 27, 2010 (in Weingartner's possession).

4. Tönjes Akkermann, "Späte Ehrung für amerikanische Flieger," *Borkumer Zeitung*, July 1, 2003.
5. Wilke Specht, "Borkum erinnert an ermordete US-Gefangene," *Borkumer Zeitung*, August 5, 2003.
6. Petschull, "Fliegermord," 91.
7. Richard G. Evans, *The Third Reich at War* (New York: Penguin Press, 2009), 185.
8. Specht, "Borkum erinnert."
9. Ibid.
10. Colonel Kerry Taylor, "Borkum Commemoration Comments," August 4, 2003 (in Weingartner's possession; courtesy of Robin Smith).
11. Petschull, "Fliegermord," 91.
12. W. G. Sebald, *On the Natural History of Destruction*, trans. Anthea Bell (New York: Random House, 2003), 13–14.
13. Ibid., 98.
14. Donald L. Miller, *Masters of the Air: America's Bomber Boys Who Fought the Air War against Nazi Germany* (New York: Simon and Schuster, 2006), 366.
15. "World War II Pilot Will Return to Germany, Seek Lost Wings," *Belleville News-Democrat*, September 5, 2009.
16. Miller, *Masters of the Air*, 365.
17. Petschull, "Fliegermord," 91.
18. Frederick W. Slater, *Invincible: A History of the Men and Armored Might of the Thirty-sixth Tank Battalion*, 4, <http://www.8th-armored.org/books/36tk/36h-pg04.htm>; Charles R. Leach, *In Tornado's Wake: A History of the 8th Armored Division* (Nashville, TN: Battery Press, 1992), 138.
19. Wabnik to Weingartner, e-mail, July 24, 2006 (in Weingartner's possession).

Epilogue

German memorialization of the American airmen murdered on Borkum and American amnesia regarding the murdered civilians of Vorderde reflect the very different collective memories of World War II held by the two peoples. To generalize about anything as complex as the perspectives of millions of human beings on events now more than 60 years in the past is hazardous in the extreme, but it is probably not too daring to suggest that German and American collective memories regarding the Second World War are approximate opposites of each other. For most Germans, World War II was a profoundly negative event, in which a war caused by German aggression resulted in the deaths of approximately four million of their countrymen and cities reduced to vast landscapes of rubble. The war also earned for Germans the moral condemnation of much of the world for a campaign of genocide that murdered not only six million Jews but millions of others categorized as *Untermenschen*, while Germany subjected much of Europe to a brutal occupation.

To be sure, the precise character of this negative memory has manifested itself in changing forms over the decades since May 1945, a fact complicated by Germany's division between communist east and capitalist west until 1990. Germans' initial preoccupation with their own wartime and postwar suffering, understandable but intensely offensive to surviving victims of German aggression, exploitation, and genocide, gave way by the late 1960s and 1970s among a younger generation to a sharper consciousness of widespread German wartime criminality.¹ Some young Germans came to identify with Nazism's Jewish victims, learned Hebrew, and visited Israel. The American political scientist Daniel J. Goldhagen's controversial *Hitler's Willing*

Executioners: Ordinary Germans and the Holocaust, which posited that most Germans had been imbued with anti-Semitism and willingly accepted, if they did not actively participate in, the Holocaust, was published in 1996 and in translation became a best seller in newly reunified Germany, winning for its author a prestigious prize.² Jörg Friedrich's *Der Brand. Deutschland im Bombenkrieg 1940–1945*, which described in lurid detail the sufferings and deaths of hundreds of thousands of German civilians and the destruction of a rich material heritage under years of merciless bombing, also recognized that it was Hitler who was ultimately responsible for Germany's destruction.³ Yet, Friedrich's emphasis on the terrible toll exacted by the Allied aerial assault, couched in descriptive terms suggestive of the Holocaust, made some readers uneasy. An exhibition entitled "War of Extermination: Crimes of the Wehrmacht 1941 to 1944," which opened in 1995 and was seen by hundreds of thousands of visitors in 34 German and Austrian cities, revealed widespread resistance to its message that the German Army and not only the SS had been heavily implicated in the murders of millions of Jews and non-Jews in the Soviet Union.⁴ But, at the end of the first decade of the 21st century, well into the seventh decade after the start of World War II, Germans are still bringing to trial very old men for crimes committed during that war, although many war criminals have gone unpunished. Ninety-year-old Josef Scheungraber was convicted in August 2009 of having been responsible as a 25-year-old lieutenant for the murders of 10 Italian civilians in 1944 in reprisal for the killing by partisans of two German soldiers. He was sentenced by a Munich court to life imprisonment. On quite another level of criminality, the German trial of 89-year-old John Demjanjuk, charged with having been a party to the murders of 27,900 Jews in the Sobibor extermination camp, where he had served as a guard, began in Munich on November 30 of the same year.⁵

And Borkum is not the only German town to have memorialized murdered U.S. airmen. Little more than a year after the dedication of the Borkum monument, the industrial city of Rüsselsheim, home of the Opel automotive plant, unveiled a memorial to the seven B-24 crewmen killed there by a mob on August 24, 1944. It is a more imposing and emotionally compelling structure than the stone erected on Borkum's war memorial square, consisting of a wall more than six feet high on which appear larger-than-life-size photographs of the youthful American crew. Memory of the murders had percolated beneath the surface of life in Rüsselsheim for many years. Far more Rüsselheimers

than the 11 defendants who had been brought to trial by the U.S. Army in July 1945 had played supporting roles in the murderous assaults. Widespread fear of awakening a potentially dangerous sleeping dog had enforced silence until the chance encounter of an artist with a talkative older resident in the early 1990s resulted in the incorporation of the incident in a painting commissioned by city leaders and the opening of the murders to public discussion. The memorial was the eventual result.⁶ German guilt produces monuments to men who came not only to bomb but also, some Germans now believe, to liberate them.

The collective memory of World War II held by most U.S. citizens, by contrast, is dramatically different. To the majority of white Americans, World War II was “the Good War,” and challenges to that image are bitterly resisted. A notable example of this resistance is the uproar sparked by the Smithsonian Air and Space Museum’s proposed exhibit to commemorate the 50th anniversary of the dropping of an atomic bomb on Hiroshima, which, along with the nuclear attack on Nagasaki three days later, was the culminating event in the evolution of indiscriminate urban bombing during World War II. The original plan for the Smithsonian’s exhibit centered on a portion of the fuselage of the *Enola Gay*, the plane that carried the bomb to Japan, accompanied by artifacts from the devastated city, including a child’s scorched lunchbox and other evidence of the effects of the bomb on the civilian population. Accompanying text questioned the necessity of “nuking” Japanese cities and alluded to the postwar nuclear arms race that development and use of the bomb unleashed. News of the planned exhibit precipitated a storm of protest and invective from veterans’ groups, journalists, and politicians, who argued that “truth” had been distorted and the memory of American wartime heroism besmirched.⁷ The *New York Times* was moved to observe that the proposed exhibit’s critics would accept nothing less than “uncritical glorification of the American war effort.”⁸ Many academic historians defended the original plan and deplored the Smithsonian’s efforts to satisfy its critics. No satisfactory middle ground could be found. The original 10,000-square-foot exhibit was canceled and replaced by a minimalist display of the *Enola Gay*’s fuselage, accompanied by a bland identifying plaque.⁹

Cards left by visitors to the exhibit reflected a variety of responses, ranging from the inane (“It’s pretty stupid here. My legs hurt.”) to echoes of wartime hatreds (“They deserved what they got—should have been sooner.”) and the simplistically patriotic (“Please do not ever remove this. This is why we are here and free today.”). But there were

also statements of varying degrees of sophistication that were critical of the dropping of the bomb and the sanitized exhibit commemorating it. "A whitewash," declared one. "Murder by any other name is still murder. It is about time we admit the blood on our hands," proclaimed another. A similar conviction was expressed by the visitor who wrote: "The exhibit should never have been scaled back. This is an important if dark part of our history, and to not pay it its full due is a disgrace. I'm ashamed the museum gave in to outside pressure." Another asked more colloquially, "Why are we so chicken to own part of our action, fellas?"¹⁰

But, for most Americans, World War II is not history in any analytical sense but, rather, uncritical, patriotic myth, the stuff of celebration and self-congratulation. While many personal accounts of war experiences contain references to American atrocities and a few recent screen productions have alluded to them, these have not entered the dominant popular narrative of the war. Americans have constructed a memorial to the victims of the Malmédy massacre, located at the site of the atrocity, in the form of a rustic stone wall on which are mounted 86 plaques, each bearing the name of a murdered GI. It is much visited by American tourists. The dead now lie in cemeteries in Europe and the United States. The Italian victims of the Biscari massacre, on the other hand, have disappeared. Family members are unable to visit their graves, whose locations are unknown.¹¹

Unlike Germans, Americans have lacked a powerful motivation to critically assess this phase of their national history. A war experience that *did* occasion considerable critical self-assessment, the Vietnam conflict, with its American atrocities that were punished only nominally, if at all, seems to have more deeply embedded selective memory of World War II as the contrasting "Good War," a kind of retrospective antidote to those poisonous years of the late 1960s and early 1970s. Then, unlike in the Vietnam war, the enemy seemed unambiguously evil and the United States, which was attacked by the evil enemy, unambiguously good, and the war ended in the unambiguous victory of good over evil, for which the United States, in the minds of most Americans, was primarily responsible.¹² Threats to that treasured system of collective memory are greeted with outrage and rejected as "revisionist," an epithet (when used in this context) that overlooks the fact that all advances in human knowledge are and must be revisionist and that assumes that "true" historical understanding must be a fixed reality.

Surely one reason why the image of the Good War is so resistant to change is that, beyond its serviceability to the American collective ego, it is, in its broad outlines, true. The United States, while not the sole author of victory, was an indispensable factor in its achievement, and the enemy, certainly in the manifestation of Nazi Germany, *was* profoundly evil. Casual murders of prisoners of war—even the mass slaughter of noncombatants by aerial attack as part of a brutal effort to subdue an implacable and, in the case of Germany, genocidal foe—are in a different and morally far less reprehensible category from the programmatic extermination for its own sake of entire racial groups. Yet, the victims of the Voerde atrocity were neither combatants nor the civilian casualties of a combat operation. In the absence of any evidence to the contrary or a crude belief in the undifferentiated collective guilt of *all* Germans for Nazi crimes, it appears that they were at least as undeserving of their violent deaths as the crewmen of #909 were of theirs. Should they be memorialized, as well? Or has selective historical memory consigned them to oblivion?

NOTES

1. Robert G. Moeller, "The Politics of the Past in the 1950s: Rhetorics of Victimization in East and West Germany," in *Germans as Victims: Remembering the Past in Contemporary Germany*, ed. Bill Niven (Hound-Mills and New York: Palgrave Macmillan, 2006), 27–28; Bill Niven, "The GDR and Memory of the Bombing of Dresden," *ibid.*, 113–17; Ruth Wittlinger, "Taboo or Tradition? The 'Germans as Victims Theme' in the Federal Republic until the Mid-1990s," *ibid.*, 65–69; Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, MA: Harvard University Press, 1997), 27, 307–12; Atina Grossmann, *Jews, Germans and Allies: Close Encounters in Occupied Germany* (Princeton, NJ: Princeton University Press, 2007), 40; Bernhard Schlink, *Guilt about the Past* (Toronto: House of Anansi Press, 2009), 23–42.

2. Daniel Jonah Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Knopf, 1996), trans. Klaus Kochmann as *Hitlers willige Vollstrecker: Ganz gewöhnliche Deutsche und der Holocaust* (Berlin: Siedler, 1996). For a thoughtful locating of the Goldhagen phenomenon within the evolution of postwar German memory, see Michael Zank, "Goldhagen in Germany: Historians' Nightmare and Popular Hero. An Essay on the Reception of *Hitler's Willing Executioners in Germany*," *Religious Studies Review* 24 (July 1998): 231–40.

3. Jörg Friedrich, *Der Brand: Deutschland im Bombenkrieg 1940–1945* (München: Propyläen Verlag, 2002), 76. This book has appeared in English translation as *The Fire: The Bombing of Germany 1940–1945*, trans. Allison Brown (New York: Columbia University Press, 2006).

4. The complicity of the German army in genocidal war in the Soviet Union had been made clear earlier by German scholars in publications such as Helmut Krausnick and Heinz-Heinrich Wilhelm, *Die Truppe des Weltanschauungskrieges: Die Einsatzgruppen des Sicherheitspolizei und des SD* (Stuttgart: Deutsche Verlags-Anstalt, 1981), and Christian Streit, *Keine Kameraden: Die Wehrmacht und die sowjetischen Kriegsgefangenen 1941–1945* (Stuttgart: Deutsche Verlags-Anstalt, 1978). On the storm generated by the exhibit, see Omer Bartov, "The Wehrmacht Exhibition Controversy. The Politics of Evidence," in *Crimes of War: Guilt and Denial in the Twentieth Century*, ed. Omer Bartov, Atina Grossmann, and Mary Nolan (New York: New Press, 2002), 41–60; Hannes Heer, "Hitler War's": *Die Befreiung der Deutschen von ihrer Vergangenheit* (Berlin: Aufbau Verlag, 2005), 237–91.

5. Judy Dempsey, "Former Nazi Officer Convicted of Murdering Italian Civilians," *New York Times*, August 11, 2009. Demjanjuk was convicted and sentenced to death by an Israeli court in 1988 but was released in 1993 on the grounds of mistaken identity. Nicholas Kulish, "Man Tied to Death Camp Goes to Trial in Germany," *ibid.*, November 30, 2009.

6. Kevin Dougherty, "Memorial Honors Victim of World War II Mob," *Stars and Stripes* (European ed.), August 25, 2004.

7. Edward T. Linenthal, "Anatomy of a Controversy," in *History Wars: The Enola Gay and Other Battles for the American Past*, ed. Edward T. Linenthal and Tom Engelhardt (New York: Henry Holt and Company, 1996), 28–52.

8. "The Smithsonian and the Bomb," *New York Times*, September 5, 1994.

9. "Official Resigns over Exhibit of Enola Gay," *ibid.*, May 3, 1995; Richard Kohn, "History at Risk: The Case of the Enola Gay," in *History Wars: The Enola Gay and Other Battles for the American Past*, ed. Edward T. Linenthal and Tom Engelhardt (New York: Henry Holt and Company, 1996), 161.

10. "A Collection of Comment Cards Left by Visitors to the Enola Gay Exhibit at the National Air and Space Museum," <http://digital.lib.lehigh.edu/trial/enola/files/round4/commentcards.pdf>.

11. John N. Bauserman, *The Malmedy Massacre* (Shippensburg, PA: White Mane, 1995), 111–15; Ricardo Giannola to James J. Weingartner, e-mail, September 1, 2009 (in Weingartner's possession).

12. See Marilyn B. Young, "Dangerous History: Vietnam and the 'Good War,'" in *History Wars: The Enola Gay and Other Battles for the American Past*, ed. Edward T. Linenthal and Tom Engelhardt (New York: Henry Holt and Company, 1996), 199–209.

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Index

- Adel, Klaas, 43, 56, 95
Air-raid police, 77–78
Air strikes (aerial warfare): civilian casualties of, 10–11, 129, 137, 215; and Geneva Convention, 8; laws against, 13; during WWI, 5–7; during WWII, 3–4, 9, 205, 212
Akkermann, Anne, 44
Akkermann, Gerhardt, 125
Akkermann, Jan: and Goebbels's edict, 76, 98; guilt of, 66, 127, 129, 131, 198; intelligence reports to, 38, 99; orders by, 40, 44, 71–72, 78; prisoner abuse by, 14, 29, 31, 33–34, 53, 60; sentencing of, 132, 164; testimony of, 33, 80–82
Albrecht, Günther, 105–8, 131
Allied war crimes, 19–20, 129
Ambrose, Stephen, 19
American Veterans of World War II (AMVETS), 177
American war crimes, 18–19, 63. *See also* Schneeweiss, Robert A.; Voerde, Germany atrocity
Anglo-American forces, 2
“Anti-Nazi,” 31
Anti-Semitism, 1, 195, 212
Arrington, Grady, 19
Aschenauer, Rudolf, 195
Atomic bombs, 50, 200, 207
Axis war crimes, 17–18, 21, 128
Battle of the Bulge, 16–17, 163, 169, 188
Behrens, William, 142
Betts, E. C., 176
Biermann, Elizabeth, 42, 56–57, 65
Biscari massacre, 17–18, 20, 183–84, 200, 214
“Blind” bombing, 207
Bombs/bombing: aircraft for, 3–4, 6–7; by Allied forces, 12, 13, 61, 90, 96, 129, 157, 206; atomic, 50, 200, 207; “blind,” 207; on Borkum, 1, 81–82, 87, 100, 185, 213; civilian casualties from, 7, 8–10, 81, 129; by Great Britain, 3; and Hague Convention, 5–6; impact of, 7, 17, 207–8; urban, 9–10; during WWI, 6; during WWII, 213
Borkum, Germany atrocity: bombing of, 1, 81–82, 87, 100, 185, 213; cause of, 157; civilian casualties of, 14; conspiracy theory in, 52, 55, 64–66, 72, 85–86, 89, 98–99, 104, 126–30, 141–42; court-martial proceedings in, 15, 101, 128; hearsay evidence in, 157–58; investigation of, 29–32, 189; memorial for, 204–8; pretrial

- sworn statements of, 14, 33–45; *vs.* Skorzeny trial, 188–89; *vs.* Voerde atrocity, 142–43, 157–58, 163, 208, 211. *See also* Downed Allied airmen; *U.S. v. Kurt Goebell et al.*
- Bormann, Martin, 13
- Born, Oscar, 120–22
- Braff, Murray M., 165
- Briol, John, 207
- British Royal Air Force, 45
- Brophy, John C., 178
- Bryan, Joseph D.: cross-examination by, 73–74; and Goebbels's edict, 128; as head of prosecution, 49; objections by, 57–58; opening statement by, 51; and POW status, 63; questioning by, 53, 79, 85–92, 95, 97–98, 122; and superior orders defense, 187
- Buschmannshof compound, 2
- Carls, Hans, 167
- Charter of the International Military Tribunal, 21
- Children, as casualties, 2, 9–10, 151
- Civilian assaults, 43, 83, 94, 104–5
- Civilian casualties: from air strikes, 10–11, 129, 137, 215; from American troops, 135–40, 146–47; from bombings, 7, 8–10, 81, 129; of Borkum, Germany, 14; children as, 2, 9–10, 151; murders, 135–40, 146–47, 151–53; of Voerde, Germany, 135–40
- Colson, Charles F., 142
- Communism, 211
- Compton, John C., 20–21, 128, 183, 184
- Concentration camps, 32–33, 93, 136–37, 195, 197
- Conspiracy theory: in Borkum, Germany atrocity, 52, 55, 64–66, 72, 85–86, 89, 98–99, 104, 126–30, 141–42; Borkum *vs.* Voerde atrocities, 141–42; by Nazis, 16; *vs.* negligence, 103
- Counter Intelligence Corps (CIC), 29
- Court-martial proceedings: in Biscari massacre, 20; in Borkum, Germany atrocity, 15, 101, 128; under Geneva Convention, 55, 63; and POW mistreatment, 130; from refusing orders, 11; in Voerde, Germany atrocity, 141–44, 151, 154, 175–76; for war crimes, 186
- Dalbey, Josiah, 20
- Danno, James W., 14, 44–45, 127
- Dauphinis, John, 139, 147
- Davis, John: and conspiracy theory, 130; cross-examination by, 53, 56–58, 85–86, 92–93; and police intervention, 124–25; witness called by, 111–12, 119, 121–22
- Death sentences, 158, 163–64, 169, 172–74, 198–99
- Demjanjuk, John, 212
- Devine, John M., 175
- Disease concerns, 2, 137
- Dold, William F., 14, 127
- Dostler, Anton, 187
- Downed Allied airmen: and air-raid police, 77–78; Allied retaliation over, 75; attack by, 76; beating of, 11–12, 42, 166; bodies, examination of, 61–62; and conspiracy theory, 64–65, 72, 98–99, 127–30, 141; Danno, James W., 14, 44–45, 127; Dold, William F., 14, 127; Faber, Kenneth, 14, 127; Ingerson, Quentin, 4, 204; Lambertus, William W., 14, 127; memorial to, 203; and mob action, 126–27; Myers, William, 4, 14, 127; and police intervention, 124–25; possible escape by, 102–3; protection for, 76; Rachak, Kazmer, 4, 204; treatment of, 29–30; Walthall, Harvey M., 3–4, 14, 22, 34, 127; as war criminals, 15. *See also* Borkum, Germany atrocity; Graham, Howard S.; Langer, Erich; Prisoners of war; *U.S. v. Kurt Goebell et al.*
- HMS *Dreadnought*, 5–6
- Dreux, Dirk Johan Hendrik, 29
- Dugas, Malcolm J., 147

- Eichelkamp, Ernst, 140
 Eighth Air Force, 3
 Eighth Armored Division
 (“Thundering Herd”), 135, 141
 Eilers, Henni, 60
 Eilgs, Johann, 62
 Eilts, Johann, 165–66
 Ellender, Allen J., 178
 Ellis, Burton F., 10
 Elting, John, 137
 Erdwiens, Rudolf, 41–42
 Ernst Schliemann oil refinery, 3
 European Theater of Operations, 3
 Everett, Willis M., Jr., 163, 170, 172, 189
- Faber, Kenneth, 14, 127
 Fick, Karl, 37–38, 55, 59, 74
 Fidelak, Fritz, 43
 Fischer, Agnes, 41
 Fisher, Guin, 31, 41
 Fisher, Heinrich, 123–25
 Fokuhl, Emil, 125
 Franco-Prussian War, 2
 Friedrich, Jörg, 212
 Friedrichsfeld *Truppenübungsplatz*, 2
 Fritz, Stephen G., 18
 Fussell, Paul, 18
- Galler, Rolf, 168, 172–75
 Garrels, Erna, 41, 58–59, 123
 Garrels, Gerhard, 58–59
 Geneva Convention, 8, 37, 54–55, 62–64, 91, 95, 97–98, 199
 Genocide, 9, 13, 16, 19, 157, 186, 190, 201, 207, 211
 German Labor Corps, 32
 German war crimes: and criminal trials, 10, 129–30, 156–57; impact of, 190; magnitude of, 16, 211; POW murders, 18, 22–23; and predetermined verdicts, 186; punishment of, 189–90. *See also* Borkum, Germany atrocity
 Germany: attacks by, 6, 9, 86, 205; attacks on, 3, 11, 13, 150, 206–8; communism in, 211; and criminal conspiracy, 198; defense of, 1; police in, 124–25; postwar, 50, 54, 141, 173, 212; sovereignty in, 66; surrender of, 164; U-boats of, 2; war-production economy in, 97
- Gestapo, 15, 76
 Geyer, Karl, 93–95, 108, 112–14, 117, 131–32
 Giannola, Giuseppe, 17–18, 20
 Glashoff, Hilde, 43
 Goebbels, Josef, 12–13, 15, 23, 36, 38, 119–20, 124
 Goebbels’s edict, 36, 38, 75–76, 80–81, 90–91, 96, 99, 128, 198
 Goebell, Kurt: blame by, 39; dislike of, 122–23; and Geneva Convention, 37; Goebbels’s edict, 36, 38, 75–76, 80–81, 90–91, 96, 99, 128, 198; guilt of, 103–4, 120–21, 125, 127, 131; inspection of aircraft by, 98–99; orders by, 34–35, 87, 95–97, 125; and POW murders, 83; sentencing of, 131, 163–64, 172; testimony of, 15, 30, 98–104; and transporting prisoners, 99–101, 119. *See also* *U.S. v. Kurt Goebell et al.*
- Goldhagen, Daniel J., 211–12
 “The Good War,” 213–15
 Gordon, William, 165
 Gorenc, Stanley, 205
 Gould, J. W., 30
 Graham, Howard S.: abuse of, 37, 41, 57, 106–7; assistance to, 40, 64, 71–72, 109, 112; crash landing of, 14–15, 104; shooting of, 44, 53, 78–80, 92, 108, 123, 127, 198
 Great Britain: attacks by, 9, 11, 23, 206–7; attacks on, 6, 12; internment camps of, 93; operations by, 2–4
 Green, Thomas H., 178
 Grupengiesser, Johann, 42, 56
 Guillon, Roger, 30–32
 Gutermuth, Willi, 111
- Haesiker, August, 61, 164–66, 168
 Hague Convention, 5–6, 21, 137, 188
 The Hague Rules of Air Warfare, 7–8
 Haksema, Raender, 33

- Hall, Albert, 168
 Hanken, Joseph, 33
 Harbaugh, James, 173–74
 Hawich, Walter, 52–53
 Heinemann, Heinrich, 39–41, 58, 64, 72–76, 123, 131–32
 Hellmich, Johann, 140
 Heyde, Victor Skjold, 167
 Hicks, Robert N., 62
 Himmler, Heinrich, 12, 76–77, 124–25, 200
 Hinnemann, Therese, 141, 142, 151
 Hinterberger, Rita, 166
 Hinton, Ernest, 167
 Hitler, Adolf, 12–13, 119, 187, 212
 Hitler Youth, 29, 97
 Hochmuth, Charlotta, 166
 Hogan, Samuel M., 49, 92
 The Holocaust, 16, 190, 195, 212
 Hoover, Hubert, 177
 Huebner, Clarence, 174, 175
 Hughes, Everett S., 185
 Humane treatment legislation, 4–5
 Hyman, Abraham, 175–76
- Ingerson, Quentin F., 4, 204
 International Military Tribunal, 22
- Jackson, Edward F., 50, 112, 117–18, 131
 Jackson, Robert, 172
 Jannsen, Joachim, 205
 Japanese POWs, 19
 Jaworski, Leon, 23
 Joachims, Glen, 135, 139, 142, 150–54, 183
 Johnson, Charles F., 165
 Joint Chiefs of Staff, 32
 Joseph, Roger, 142
 Joven, Albert, 142
- Kaufman, Rudolph, 32, 117
 Kellner, William, 138
 Kimball, Edward, 137
 Klein, Jakob, 122–23
 Klieviet, Jan, 44
 Klinger, Heinz, 165
 Kloewer, Toni, 167
 Koessler, Maximilian, 197–98
- Krahwinkel, Wilfried, 203–4
 Krolikovski, Walter: abuse by, 43, 72; guilt of, 43, 126, 131; intelligence to, 107–8, 111; oral report by, 107–8; orders by, 118; reproof from, 113; sentencing of, 132; testimony against, 113; testimony of, 34, 82–86; trial of, 49
 Kutscher, Richard, 44
- Labess, Morris, 143–44
 Lambertus, William W., 14, 127
 Langer, Erich: guilt of, 65–66, 117, 129, 172; killings by, 40, 42–43, 56, 79–80, 109–10, 126, 169, 198, 206; lack of punishment for, 50, 51, 137; threats by, 31
 LaPierre, Jean, 44
 Lary, Virgil P., 1, 17
 Laurel, Ragnar, 167
 Levine, Abraham: abuse by, 171; accusations against, 194–96; inspection of graves by, 45, 102; investigation by, 41–42, 44–45; questioning by, 82, 93–94, 98, 111–12; as rebuttal witness, 117; statement collection by, 32; and sworn testimony, 34, 36–38, 51, 53–54, 71, 73, 165
 Lindbergh, Charles, 19
 Livingston, Eric, 167
 Loewenstein, Erich, 167
 Lundberg, Floyd, 175
 Lyons, Edward F., 50
 Lyons, Thomas J., 29–30
- MacAdams, Harold G., 137–40, 147
 Malmédy massacre: cause of, 16–20; controversy with, 169–70; defense in, 54, 172; documentary on, 200; investigation into, 177, 197–98; judgment of, 183; memorial to, 214; murder charges for, 188–89; posttrial process, 163; trial of, 22; U.S. intervention in, 173
 Malnutrition issues, 111–12

- Mammenga, Gustav, 64, 71–72, 131–32
 Mathews, Charles D., 45
 May, John A., 58, 64–66
 McCarthy, Joseph, 170, 177
 McClure, Donald, 188
 McDonald, D., 31
 Mennenga, Otto, 61–62, 165
 Meyer, Kurt, 19
 Meyer-Gerhards, Klaas: acquittal of, 131; attacks by, 58–59; charges against, 64; orders by, 71; testimony of, 40–41, 77–80; trial of, 50
 Meyer-Gerhards, Leni, 123
 Mob action, 126–27
 Moore, Frank E., 147
 Moscow Declaration, 22
 Müller, Otto, 9–10
 Murphy, Frank, 171–72
 Myers, William, 4, 14, 127
- Naval Antiaircraft Battalion, 34
 Nazi Labor Service men: abuse by, 14, 30–31, 35, 38, 52–53, 55, 83, 106–7, 110, 165–66; avoidance of, 100, 103; bombing of, 33; protection against, 110, 113, 165; testimony against, 61, 76, 88, 91–93, 106–7, 118, 166
 Nazi Party: “anti-Nazi,” 31; concentration camps, 32–33, 93, 136–37, 195, 197; crimes by, 23, 29, 190, 197, 215; evil of, 50, 73, 127, 156; police status under, 124; POW treatment by, 11–13, 15–16; punishment of, 22; support for, 80; testimony against, 97, 119; *Volkssturm*, 77; war effort of, 3
 Neppeney, Heinrich, 140, 142, 150
 Neukäter, Gertrud, 208
 Nichols, Francis: acquittal of, 183; testimony against, 135–36, 139, 155; testimony of, 140–41, 144–45, 151, 155–56; trial of, 142, 144, 150, 157
 Nuremberg Trials, 21, 22, 32, 128, 197
- Patton, George, 17, 20–21, 176, 183–85
 Payenberg, Frieda, 141, 142, 151
- Peppler, William: acquittal of, 183; testimony against, 152; testimony of, 136, 139–40, 145–47, 151, 154–55; trial of, 141–42, 150
 Phelps, Jim, 50, 57, 59, 64, 129–30
 Pitchford, Harry D., 165
 Pohl, Oswald, 196
 Pointner, Johann, 104–5, 108, 112, 131–32
 Pretrial sworn statements of, 14, 33–45
 Prisoners of war (POWs): assault on, 29–45; camps, 2; and court-martial proceedings, 130; and Geneva Convention, 8, 37, 54–55, 62–64, 91, 95, 97–98, 199; Japanese, 19; murder of, 16–12, 16–17, 22–23, 29–45, 83, 104, 184; Nazi Party treatment of, 11–13, 15–16; protection of, 33, 35, 123; treatment of, 8, 63, 90–91. *See also* Downed Allied airmen
 Psychiatric examinations, 141, 157
 Putnam, John, 142
- Rachak, Kazmer, 4, 204
 Redmon, Richard, 143
 Reel, Frank, 171
Respondeat superior, 21
 Robbe, Reinhold, 206
 Rogers, Norman J., 14, 22
 Rome, Morton E., 32
 Rommel, Heinrich: passivity of, 124; sentencing of, 131–32, 164; testimony against, 100–101, 123; testimony of, 36, 38–39, 74–77, 81; trial of, 50, 64
 Root, Nathan N., 147–48, 150–51
 Rosenfeld, Abraham, 189
 Royal Canadian Air Force, 45
 Royall, Kenneth C., 173
Rules of Land Warfare (U.S. Army), 137, 142, 200
 Russ, Sam, 175
 Rüsselsheim murders, 23, 212–13
- Scheungraber, Josef, 212
 Schmitz, Johann Josef: abuse against, 170; and downed airmen, 88, 90; guilt of, 109–11, 131; oral report by,

- 107–8; orders by, 106; sentencing of, 132, 164; shooting by, 112–13; testimony against, 82, 83, 90, 91–94, 96; testimony of, 34–36, 87; trial of, 49
- Schneeweiss, Robert A.: civilian murders by, 135–40, 146–47, 151–53; defense of, 145, 148–50, 152–53, 185; guilt of, 138; prosecution of, 143–48, 151–54, 157; psychiatric evaluation of, 147–48; release of, 175; sentencing of, 175–78, 183, 185; sympathy for, 177; trial of, 141–42, 143
- Schneider, Max, 167
- Sebald, W. G., 206
- Seiler, Jakob: and downed airmen, 14, 33, 36; guilt of, 112, 131; orders by, 35, 87, 105–6, 108, 110, 111; sentencing of, 132, 164; testimony against, 103–6, 108; testimony of, 95–97, 98; trial of, 49
- Siekermann, Florenz, 11
- Simpson, Gordon, 173
- Simpson, William, 135
- Skorzeny, Otto, 188–89
- Smith, Robin, 204
- Sobiech, Emil, 118–19, 125
- Staats, Hermann, 56
- Stemock, Francis, 139
- Stindt, Gerhard, 43–44
- Sworn statement issues, 54, 57–58
- Taylor, Kerry, 205–6
- Temporary insanity defense, 146
- Thomas, David H., 165
- Thompson, E. W., 167
- Tittmann, Heinrich, 208
- Truman, Harry, 177
- Ufermann, Heinrich, 140, 150
- Undefended attacks, 5
- United States (U.S.): American war crimes, 18–19, 63; attacks by, 9; and downed airmen graves, 213–14; and Geneva Convention, 62–63; German reeducation by, 23; and German surrender, 164; The Hague Rules of Air Warfare, 7–8; incarceration in, 176; and Malmédy massacre trial, 186; war criminal trials by, 21–22, 45, 156–58, 169–70, 194; and WWII, 200
- Urban bombing, 9–10
- U.S. v. Kurt Goebell et al.*: and conspiracy, 64–65, 72, 98; continuance of, 67; defendant abuse during, 196–97; and defense, 49–50, 53, 54–55, 61, 62–64, 67; Geyer, Karl, 93–95, 108, 112–14, 117, 131–32; Goebbels, Josef, 12–13, 15, 23, 36, 38, 119–20, 124; Goebbels's edict, 75–76, 80–81, 90–91, 96, 99, 128, 198; procedural challenges in, 50–51; and prosecution, 50, 60–62, 64, 66–67; and second Borkum trial, 164–65; segregation of witnesses, 59–60; sentencing in, 198–99; superior orders defense in, 187; sworn statements in, 54, 57–59; testimony in, 51, 52–53, 55–56, 71–82; translation issues in, 52. *See also* Akkermann, Jan; Bryan, Joseph D.; Davis, John; Goebell, Kurt; Krolikovski, Walter; Levine, Abraham; Meyer-Gerhards, Klaas; Rommel, Heinrich; Schmitz, Johann Josef; Seiler, Jakob; Weber, Karl; Wentzel, Erich
- U.S. v. Kurt Goebell et al.*, cross-examination: of Albrecht, Günther, 105–8; and defense, 92–103, 109, 121–22; final arguments in, 126–31; of Geyer, Karl, 108, 112–14; of Klein, Jakob, 122–23; of Pointner, Johann, 104–5; and prosecution, 85–92, 103, 122; of Sobiech, Emil, 118–19; testimony in, 85–86; of von Scheele, Hans-Karl, 119–20; of Witzke, Heinz, 108–10
- van Houten, John, 145, 147, 149, 185
- van Sweringen, Bryan, 203
- Viehring, Dorothea, 44
- Viehring, Robert, 51–52

- Vietnam conflict, 214
- Voerde, Germany atrocity: *vs.* Borkum atrocity, 142–43, 157–58, 163, 208, 211; civilian casualties of, 21, 135–40; court-martial proceedings in, 141–44, 151, 154, 175–76; history of, 2; psychiatric examinations, 141, 157; punishment for, 22, 23; superior orders defense in, 187; and war crimes, 2, 11. *See also* Nichols, Francis; Peppler, William; Schneeweiss, Robert A.
- Vokes, Chris, 19
- Volkssturm* (Nazi militia), 77
- Vomel, Fritz, 60–61, 81–82, 165, 166
- von Scheele, Hans-Karl, 119–20
- Wabnik, Günter, 208
- Walthall, Harvey M., 3–4, 14, 22, 34, 127
- War crimes: by Allied forces, 19–20, 129; by Americans, 18–19, 63; by Axis powers, 17–18, 21, 128; fair treatment for, 170–72; museum exhibits of, 213–14; penalty for, 142; and superior orders defense, 187–88; trials over, 194–95, 212; and U.S. trials, 21–22, 45, 156–58, 169–70, 194; in Vietnam, 214. *See also* Borkum, Germany atrocity; German war crimes; Voerde, Germany atrocity
- War Crimes Investigation Team, 32, 44
- Weber, Karl: abuse against, 170; guilt of, 30, 131; inspection of aircraft by, 98–99; sentencing of, 131, 132; testimony against, 33–35, 39, 42, 43, 56, 72, 89–90; testimony of, 73, 94–95; trial of, 49
- Weber, Ottmar, 52, 98, 100, 120
- Wegmann, Klaas, 37–38, 41
- Welch, Donald J., 138–39, 147
- Wentzel, Erich: abuse against, 170–72; burial of, 193; defense of, 104, 105, 194; and downed airmen, 14, 34–36, 39; family background, 166–67; guilt of, 119, 125, 131, 166–69, 193–94; and prisoner protection, 106; reprieve hope for, 187; sentencing of, 132, 164, 172–75, 183, 185; testimony against, 42–44, 56, 72, 83, 95–96, 105–13, 119; testimony of, 86–94; trial of, 49; as victim, 195–97
- Wentzel, Wera, 167–68, 174, 194–96
- West, Horace T., 20, 183, 184
- Wharton's Criminal Law*, 64–66, 127
- Williams, Curtis, 184
- Wittmaack, Jakob, 34, 105, 106–7, 111
- Witzke, Heinz, 33, 88, 108–10, 112, 131–32
- World War I, 5–9
- World War II (WWII): air strikes during, 3–4, 9, 205, 212; bombing during, 213; memories of, 211; Nazi regime, 11–12; POWs during, 8; prisoner camps during, 1–2; as “the Good War,” 213–15; and war crimes, 135
- Wulff, Hermann, 37
- Wurm, Theophil, 173
- Wybrands, Eldert, 57
- Wybrands, Johanna, 42
- Yamashita, Tomoyuki, 171
- Yeager, Chuck, 11
- Yeo-Thomas, Forrest, 189
- Zühlke, Helmer, 203–4

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