

HONOR AND OBEDIENCE

THE TRIAL OF ALFRED GUSTAV JODL AT NUREMBERG, 1945-1946

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An Abstract
Presented to the
Graduate and Research Council of
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In Partial Fulfillment
of the Requirement for the Degree
of Master of Arts

by
Donald Jerome Carlson
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At the time of its inception in 1945, the International Military Tribunal was hailed as a landmark in international law. It was seen as a positive step in the outlawing of wars of aggression, as well as the commission of war crimes. This thesis will argue that the Nuremberg Tribunal failed in this attempt.

This thesis will advance this theory, first by examining the case against one of the defendants, Colonel-General Alfred Gustav Jodl, Chief of the Planning Section of the German General Staff. Jodl was indicted, tried, convicted, and executed for his alleged part in the Nazi conspiracy to wage aggressive war. His defense was based on obedience to superior orders, which was denied him as a defense.

Secondly, this thesis will show the inability of the participating powers to adhere to the judgment of Nuremberg. The Tribunal, though adjudging guilt, did not specifically address the questions of war crimes or superior orders. The Tribunal's judgment was predicated on the assumption that each nation would police its own military forces to insure that these crimes would not be perpetrated. All four of the major allied powers who sat in judgment at Nuremberg failed to adhere to the Tribunal's recommendations. Most disheartening of all, the United States, which brought forth the basic concept of the trial and pushed so hard for a legal determination on the question of war crimes, was found particularly guilty because of its actions in South Viet

Nam. It not only denied that war crimes had been committed but, when confronted with evidence of the existence of these crimes, failed to take definitive and appropriate action.

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To the Graduate and Research Council:

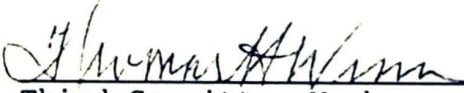
I am submitting herewith a thesis written by Donald Jerome Carlson entitled "Honor and Obedience: The Trial of Alfred Gustav Jodl at Nuremberg, 1945-1946." I have examined the final copy of this paper for form and content, and I recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Arts, with a Major in History.



Major Professor


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TABLE OF CONTENTS

Chapter	Page
I The Precedents	1
II The Man	19
III The Road to Nuremberg	31
IV The Trial	42
V Verdict, Appeal, and Execution	79
VI The Vindication	92
VII In Retrospect	99
Glossary	111
Appendix A: The Commando Order	114
Appendix B: Genesis of the Commando Order with Particular Emphasis on Jodl's Participation Therein	117
Bibliography	120

"No, no!" Said the Queen
"Sentence first - verdict afterwards."

--Lewis Carroll

Are all they conquests, glories, triumphs, spoils,
Shrunk to this little measure?

--William Shakespeare

We cannot afford to ignore the indications that perhaps to an extent unparalleled in our history, the essentials of liberty are being disregarded. Very recently information has been laid by responsible citizens at the bar of public opinion of violations of personal rights which savor of the worst practices of tyranny.

--Chief Justice
Oliver Wendell Holmes

Chapter I

The Precedents

Ever since Cain slew his brother Abel, man has always been at war. For just as long, the defeated have been at the mercy of the victors. The Romans even gave it a name: "Vae Victis" which translated liberally means "Woe to the conquered." The land, the people, the nation were at the mercy of the victors.

By the end of the eighteenth century more enlightened men were trying to establish a system of international law that would somehow protect the civilian population and the prisoners of war. The first move towards that end came at the end of the Napoleonic Wars. After Napoleon's second defeat, the victorious Allies met in Vienna where they tried to return to a Europe as it had been before the wars. Others came with the idea of destroying France. But cooler heads prevailed. It would be folly to destroy France, and hence the political equilibrium of Europe. Rather than punish the defeated nation, the delegates decided to punish Napoleon and a few of his followers. As Albert G. D. Levy explained: "Criminal responsibility was determined in accordance with the Latin maxim 'Actus Non Facet Reum Nisi Mens Sit Rea'; literally, 'Only an individual can possess a mind that can be filled with vicious intent.'¹

¹Albert G. D. Levy, "The Laws And Procedures of War Crimes Trials," The American Political Science Review, XXXVIII, (December, 1943) :105.

The next step towards Nuremberg took place across the Atlantic. During the American Civil War, President Abraham Lincoln worried about the legality and propriety of Federal military action against the Confederacy. He had read a treatise, "The Rules of War," by Johannes Lieber, a Swiss immigrant who had lived in Europe during the Napoleonic era and who had seen war's excesses. Lincoln was so impressed with Lieber's ideas that he had them issued by the Headquarters of the Union Army, in 1862, under the title: Special Orders Number 100. The noted military historian Richard S. Hartigan pointed out:

This policy had a profound effect upon the international laws of land warfare. . . It was a benchmark for the conduct of an army to an enemy. . . It was the first instance in western civilization in which a sovereign nation established formal guidelines for the conduct of its army towards an enemy.²

So impressive was this document that the nations of France, Great Britain, and Prussia adopted it. The Hague Conventions of 1889 and 1907 used it as a basis for setting limits upon actions of a belligerent Army. These conventions also defined the term "war crimes," but established no legal system to try those accused of war crimes. They also failed to take up the question of "Superior Command." Superior command is the concept that there are occasions when orders received by a soldier who, by the very nature of his duties,

²Richard S. Hartigan, Lieber's Code and the Articles of War, (Chicago: The President Publishing Company, 1983), 83.

is bound to obey without question. Because of the failure of the Hague Conventions to set up an apparatus for trying war criminals, the third step on the Road to Nuremberg took place at the end of World War One.

By the end of that war the Allies were determined to punish the Germans. Lurid accounts of "Hunnish" atrocities, many the inventions of French and British propaganda, filled the world with revulsion. By the time of the Versailles Conference, any thought of a negotiated peace under the "Fourteen Points" of Woodrow Wilson had been forgotten. As Alan Wykes, a British biographer of Hitler, pointed out: "The defeated enemy had signed an armistice on terms that were twisted beyond recognition . . . During the five months of wrangling there had been revealed attitudes of bitterness, greed, and gloating revenge that, though understandable, could have led only to contention in the future."³ The location and the date of the opening of the conference seemed contrived to embarrass the German delegates. As Louis L. Snyder pointed out:

The Treaty between the Allies and Germany was signed in the great "Hall of Mirrors" at Versailles, on June 28, 1919. Both the time and location were selected in a deliberate attempt to humiliate the beaten Germany. The date was the fifth anniversary of the assassination of Archduke Franz Ferdinand of Austria, the event that had set off World War One. The place was the same hall in which, in 1871, Chancellor Otto von Bismarck had

³Alan Wykes, Hitler, (New York: Ballentine Books, 1983), 29.

proclaimed the Second German Reich.⁴

The participants addressed the question of war crimes by inserting a clause into the treaty, Article 228, which specified a series of military tribunals to try those German citizens accused of committing war crimes. With the formation of the League of Nations, and the World Court, popular sentiment seemed to indicate that a world court would appear to be a better alternative; there would be less of a chance of "drumhead" trials. Both France and England rejected the idea. A few years later, the United States, though not a member of the League, followed suit.

During this period, England attempted to bring the ex-Kaiser, Wilhelm II, to trial. Lloyd George referred to him as the arch-criminal of all times. The Netherlands, where Wilhelm was now living in exile, however, feared a loss of sovereignty and declined to extradite the ex-ruler. With no hope of bringing the alleged criminals, numbering over 900, before a world court, the Allies coerced the new government of the Weimar Republic to hold the trial. The resulting Leipzig Trials of 1922 were a fiasco. Witnesses proved difficult to locate: many of the accused fled Germany; worst of all were the actions of the German authorities: "Of the 900 names indicted, 881 were dismissed or acquitted without legal action. For those actually brought to trial,

⁴Louis L. Snyder, Hitler's Third Reich: A Documentary History, (Chicago: Nelson-Hall, 1981), 16.

derisively short sentences were meted out. When several individuals awaiting trial escaped, the warden was praised."⁵ The Allied powers were not happy with the "justice" they were witnessing. As John Creel explained in his book War Criminals and Punishment:

The Belgian commission withdrew after the complete exoneration of the man they had accused. The French mission quit after the fifth case. The British went home after the sixth. The "Leipzig Travesty," as it was to be called, was brought before the Supreme Council of the League of Nations, but nothing was done about it, and the whole business disappeared out of sight, never to be revived.⁶

It is probable that the German courts arrived at these verdicts as a form of protest to the odious "Versailles Diktat." But if this were the case, the results returned to haunt the Germans in 1945, and resulted in the formation of the International Military Tribunal (IMT) at Nuremberg. As John and Ann Tusa observed: "Even had the German courts existed in 1945, it was highly doubtful that anyone would have trusted the Germans to try the prominent Nazi war criminals. Not after what had happened at Leipzig."⁷

The legal processes of the Weimar Republic seemed to confound the Allied attempts for justice. Events were proceeding in Germany which would make all that had proceeded

⁵John and Ann Tusa, The Nuremberg Trials, (New York: The McGraw-Hill Book Company, 1983), 19.

⁶John Creel, War Criminals and Punishment, (New York: The Robert M. McBride Company, 1944), 125.

⁷Tusa, Nuremberg Trial, 19.

before seem redundant. In June of 1933 Adolph Hitler legally came to power. For fourteen years his National Socialist German Worker's Party had railed against the provisions of the Treaty of Versailles. He preached the doctrine that the Jewish Socialists had sold Germany out. Relentlessly Hitler preached "Deutschland Erwache: Die Juden sind unser ungluck," (Germany Awaken: The Jews are our bad luck.) In 1935 he promulgated the Nuremberg Racial Laws which was the first step in a systematic exclusion of Jews from German life. Concentration camps such as Oranienberg, Bergen-Belsen, and Dachau were opened to hold the Jews. Many individuals such as journalists and diplomatic personnel were aware of what was going on. But, while deploring these actions, there was little that could be done. This was an internal problem in Germany, and the general feeling was one of indifference.

On November 5, 1937, Hitler convened the Hossbach Conference. It gave Hitler the opportunity to let a select few in on his plans for European aggression. Among the items covered was Hitler's plans for the eradication of the Jews. Starting on September 1, 1939, Hitler turned his plans into reality. As the Germans moved deeper into Europe, tales of horror unparalleled in history began to surface.

At first the rumors were generally dismissed simply because it was incomprehensible that a civilized nation could be capable of perpetuating such crimes. In France there

were instances of the murdering of resistance fighters and commandos which were accessible and verifiable. In late 1941, while still at peace, Franklin D. Roosevelt warned: "One day a frightful retribution will be exacted."⁸

Later that year Prime Minister Winston Churchill told the House of Commons:

The massacres of the French are an example of what Hitler's Nazis are doing in many countries under their yoke. The atrocities committed in Poland, Yugoslavia, Norway, Holland, Belgium, and in particular behind the German front in Russia exceed anything that has been known since the darkest and most bestial ages of humanity. The punishment of these crimes should now be counted among the major goals of the war.⁹

Later, in August of 1942, Franklin D. Roosevelt repeated his warning:

When victory has been achieved, it is the purpose of the Government of the United States, as I know it is the purpose of each of the United Nations, to make appropriate use of the information and evidence in respect to the barbarous crimes of the invader in Europe and Asia. It is only fair that they should have their warning that the time shall come when they shall have to stand in the courts of law in the very countries they are now occupying, and answer for their acts.¹⁰

Given their "warning" according to the rules of American fair play, the Axis nonetheless continued their reign of murder.

In January 1942, the representatives of nine countries which had been overrun by the Germans met in London and signed The

⁸Ibid., 21.

⁹Ibid., 23.

¹⁰Whitney Harris, Tyranny on Trials: The Evidence at Nuremberg, (Dallas: The Southern Methodist University Press, 1954), 125.

Saint James Declaration stating that the punishment of war crimes, whoever committed them, was the principle aim of all governments represented at the conference. This declaration was quickly approved by the governments of the United States, Great Britain, France, and Russia as well as the other participating nations.

The next year saw the formation of the United Nations War Crimes Commission (UNWCC), established by the United States, Great Britain and seventeen other Allied countries. The main purpose of this group was to identify those individuals of any country alleged to have committed war crimes. In December of 1943, at a conference of foreign ministers in Moscow, a joint declaration was issued which stated:

At the time of granting any armistice to any government which may be set up in Germany, those officers and men and members of the Nazi Party who have been responsible for, or who have taken part in, the above atrocities, massacres, and executions will be sent back to the countries in which their abominable deeds were done so that they may be judged and punished according to the laws of those liberated countries and of the Free governments which will be erected within.¹¹

Cooperation needed to establish some sort of judicial process was nearly destroyed at a meeting of the "Big Three" at Teheran in late 1943. At a dinner for the three leaders, Stalin rose to make a last toast. Joseph J. Hydecker, a participant remembered:

Stalin Rose: He had already proposed a dozen or so toasts. But he suddenly introduced a new ominous note into the festivities. "I Drink" he said, "to the

¹¹Tusa, The Nuremberg Trial, 23.

quickest possible justice for all German war criminals. I drink to the justice of the firing squad."¹²

Churchill jumped up, his face livid, and shouted that the British people would never stand for something like that. It went against all concepts of Anglo-Saxon justice. "President Roosevelt, trying to defuse the situation, asked Stalin how many did he intend to shoot. Stalin shouted: '50,000.' Roosevelt jokingly asked if the number could be reduced to 49,900. The whole thing might have been a joke on Stalin's part; but it soured Anglo-Russian relations from then on."¹³

With all the promises and declarations, no move had been made to implement any procedures for actually carrying them out. By late 1944, the Allied forces had landed in Europe. Quickly came instances of American and other Allied soldiers being murdered by members of the Waffen SS, the military arm of the infamous SS. After the incident of almost 300 American soldiers being massacred at Malmedy, in Belgium during the "Battle of the Bulge," an enraged General Dwight D. Eisenhower, Commander of SHAEF, demanded to his superior, General George C. Marshall, that something be done. It was about this time that two Jewish inmates, Alfred Weczler and Rudolph Vrba escaped from the death camp at Auschwitz and

¹²Joseph Hydecke and Johannes Leeb, The Nuremberg Trial: A History of Nazi Germany As Seen Through the Testimony, Edited and translated by R. A. Downie, (Cleveland: The World Publishing Company, 1962), 184.

¹³Ibid., 184-185.

provided the world with first hand accounts of the German attempts to obliterate the entire Jewish race. The furor created by the Jews of America was overwhelming. President Roosevelt was in an election campaign, and he was quite concerned with the possible loss of the Jewish vote if some sort of positive action was not forthcoming. The President decided that the War Department should prepare an outline of a possible course of action. The Secretary of War delegated the responsibility to the G1 section of the Office of the Chief of Staff of the Personnel Division of the Army. To this office was assigned Lieutenant Colonel Murray C. Bernays. Bernays was related to the famed Viennese psychoanalyst Sigmund Freud by marriage; he had married a niece of Freud. His task was twofold. First, he would gather all the available information pertaining to atrocities committed against American servicemen; then, because he was a lawyer by profession, Bernays was asked to examine the political and legal implications of a trial under international law.

Up to this point any discussions on the subject of war crimes seemed to move in a retrograde direction toward the failed standards of Versailles. Discussions ranged from Summary Court Martials to the Secretary of the Treasury, Henry Morgenthau's plan for the complete agrarianization of Germany. Even Winston Churchill, who had argued vehemently with Stalin at Teheran, wrote his Foreign Secretary Anthony Eden:

. . . There is no doubt that this is the greatest and most horrible crime ever committed in the while history of the world, and it has been done by scientific machinery used by normally civilized men, in the name of a great state. It is quite clear that all concerned who may fall into our hands including the people who obeyed orders by carrying out the butcheries, should be put to death after their associations with the murders have been proved.¹⁴

Bernays had a close friend in Washington with whom he could confide. His name was Colonel Mickey Marcus. Marcus would gain fame for building the modern Israeli Army; but, at this point in his career, he was assigned to the Army Civil Affairs Division, which was tasked with formulating policy toward Germany after the war.¹⁵ Bernays first proposed his idea for a trial to Marcus: "Not to try these beasts would be to miss the educational and therapeutic opportunity for our generation, they must not be tried alone for their specific aims, but for the bestiality from which these crimes sprang."¹⁶ Marcus liked the ideal of the trial and told Bernays to put his notions into concrete proposals. Both Marcus and Bernays were concerned about the view the world would take of a trial. Also, Secretary of the Treasury Henry Morgenthau Jr.'s extreme solution on war crimes appeared overly vindictive. Marcus agreed with Bernays that: "Retribution should not appear to be a Judaic act of vengeance.

¹⁴Robert H. Conot, Justice at Nuremberg, (New York: Carroll and Graf, Publishers, Incorporated, 1983), 11.

¹⁵Ibid.

¹⁶Ibid.

Summary execution, no matter how justified, could not serve as a substitute for justice."¹⁷

In formulating his proposals, Bernays arrived at a key point. He felt that even if every Nazi criminal had been caught and tried, the problem still would not be solved. Nazism itself would not be touched. These atrocities he felt were not individual acts but part of a giant conspiracy. This conspiracy was the outcome of many years of exposure to the ravings of Hitler. He stated in his proposals that:

The crimes and atrocities were not single or unconnected but were the outcome of the basic conspiracy of the Nazi Party; this conspiracy, based upon the Nazi doctrine of racism and totalitarianism, involved murder, terrorism, and the destruction of peaceful populations in violation of the laws of war.¹⁸

Bernays proposed an international tribunal to condemn these wanton acts. The tribunal was to give the German nation a sense of guilt, responsibility, and realization as to what it had done. If this realization was not impressed upon it, he felt that Germany would only recognize that she had lost another war. And, if the responsibility were not acknowledged, Germany might well again walk down the wrong road.

Bernays was able to swing Secretary of War, Henry L. Stimson, to his point of view. One month later Stimson and Secretary of State, Cordell Hull, presented to President

¹⁷Ibid.

¹⁸Ibid., 12.

Roosevelt a joint memorandum entitled "The Trial and Punishment of European War Criminals" in which they supported Bernays's concept. Unfortunately, the plan became known as Secretary of War Henry L. Stimson's, and, for all his efforts, Bernays was eased out of the picture. He was present at the trial in Nuremberg, but only as a member of the U. S. prosecution.

Many individuals involved with the preparations anticipated that the proposition for the trial would be put on the agenda of the Big Four meeting to be held later that year at Yalta, but it never was. Roosevelt, however, sent a delegation to London to present the idea to the English. The British government was not at all happy with the idea of the trial. Churchill and his government were adamant that Hitler, Himmler, and any other major Nazi leader suffer the death penalty out of hand. After weighing the matter, the British opinion was that the problems created by a trial far outweighed those created by summary execution.

Throughout the next few months the United States worked on the British opposition to a trial. Then, in April, President Roosevelt died suddenly. The new President, Harry S. Truman, was committed to pursuing the course for a trial. In May, 1945, World War Two ended in Europe. Adolph Hitler, Heinrich Himmler, and Joseph Goebbels committed suicide. With their deaths, the British opposition to a trial began to soften. By the end of May, most of the foreign ministers

agreed to the American demand for a trial. There were, however, many problems still to be solved. The Anglo-American concept of "Common Law" was alien to the "Continental" system as practiced in France and Russia. Throughout the summer of 1945, the Americans hammered at their hesitant allies.

On August 8, 1945, the United States, Great Britain, France, and Russia, along with nineteen other nations, signed the London Charter. This document was issued in two parts: the first was simply a reaffirmation of what had been decided at the Moscow Conference; the second part was more technical in aspect, setting up the machinery and protocol for the tribunal.

The London Charter was a landmark in international law. It created the International Military Tribunal (IMT). The Tribunal would consist of eight justices, two each from each of the four major Allied powers. The primary and alternate justices would all sit in judgement. Decisions would be reached by majority vote. However, in the event of a tie vote, the vote of the President of the Tribunal would be the deciding vote. The defendants would be tried on four specific counts: conspiracy to commit aggressive war; crimes against peace; war crimes; and crimes against humanity. "The basic groundwork was in place but there still remained much

legal wrangling."¹⁹

Primary among the problems was that of Russian participation in the trial itself. Many of the European nations, Great Britain in particular, argued that Russia was unfit to sit on any world court. They deplored the past record of the Soviet judicial system and its actions. They remembered the "Great Purges" of the 1930s, the emasculation of the Army High Command; and, the elimination of the "Kulacks" from society. But to leave Russia out of any war crimes trials would be a great injustice. Many of the bloodiest chapters of Nazi inhumanity took place on her soil. No other nation had suffered such losses to her civilian and military population as had the Soviet Union. Many felt, however, that the Russians would use the trial for vindictive retribution. The meetings that had led up to the London Charter had indeed nearly floundered over the question of Russia's willingness to accept the normal standards of western justice.

Between July 13 and August 2, 1945, the Big Three met again in Potsdam, a suburb of Berlin. President Roosevelt had died suddenly and had been replaced by Harry S. Truman. Winston Churchill had been defeated in England's first post war election. Britain's new Prime Minister was Clement Atlee, the Labor Party leader. Only Joseph Stalin remained of the original "Big Three." Basically, the future of Ger-

¹⁹Tusa, Nuremberg Trials, 60.

many and the rest of Europe had been decided at Yalta. At Potsdam, the leaders began the first formal talks on the idea of a war crimes trial, and Stalin was finally won over to the western point of view.²⁰ Truman, who had been bombarded by Morgenthau who was trying to bring him around to his radical ideas, finally made a definite statement:

Our case against the major defendants is concerned with the Nazi master plan, and not with the individual barbarities and perversions which occurred independently of a central plan; what we are convinced was a grand concerted pattern to incite and commit aggression."²¹

During the preliminary sessions of the conference, Stalin had been trying to convince Truman to try individuals only. Finally, by the sheer weight of the American enthusiasm for the concept of a conspiracy, a compromise was reached.

In addition to the various organizations and governmental agencies, Truman acceded to Stalin's desire that individual defendants would be tried for their complicity in the grand conspiracy. There would be subsequent trials where individuals would be tried for specific acts. The Allies agreed to compile a final list of war criminals in their individual possession from which a list of major war criminals would be selected.

The trial concept nearly came to ruin over the Russian demand that the trial be held in their zone of occupation,

²⁰Ibid., 84.

²¹Tusa, Nuremberg Trials, 84.

specifically in Berlin. It seemed a logical suggestion; Berlin was occupied by all four Allied powers. But it was logistically a nightmare. The western powers felt that being surrounded by the Russian Zone, logistics would be almost impossible. They feared that they would be at the mercy of the Russians for all logistical support. From food to accommodations, everything would have to come through the Russian Zone. It was feared that the Russians would use their position as a bargaining chip to get their way at the trial.

After an extensive survey it was discovered that there was no building in Berlin, let alone the entire Russian Zone, that was available for use. Nuremberg, the city of the Nazi rallies of the 1930s, could provide a building large enough to hold the Tribunal and its staff. It was the Palace of Justice. It had been severely damaged in the many air raids over Nuremberg, but a survey by Allied engineers concluded that it could be put in shape for the trial. The Russians resisted this suggestion obstinately. It seemed the Russians were determined to sabotage all efforts to start the trial. They even suggested that they would boycott it completely. The Allies retaliated by simply informing the Soviets that they would hold the trial with or without them. It began to strike home to the Russians that the Western powers were serious about their intentions and, if the Russians wanted to participate in the trial at all, they would have to modify

their stance. Finally, they relented.

They agreed to conduct the trial at Nuremberg. They also consented to bring those alleged criminals that they had in their possession to Nuremberg for the trial, along with those other prisoners who were to appear as witnesses for the prosecution and the defense.

The rest of the Allies had already concurred. However, in a gesture of conciliation, the western powers agreed to hold the first session of the Tribunal in Berlin. Here, for the first time, the indictment would be read in public, along with the final list of major war criminals. Among the names on the list, for the first time, appeared the name of Alfred Gustav Jodl.

Chapter II

The Man

What is a patriot? Webster's New World Dictionary defines a patriot as: "A person who loves and loyally or zealously supports his own country." In his own way Alfred Gustav Jodl was a patriot. He personally did not order acts of atrocities, nor did he, like other generals, such as Luftwaffe General Hugo Sperrle or Wehrmacht General Erich von Bach-Zelewski, personally take part in them. He was an intelligent man and a brilliant tactician whose grasp and knowledge of military matters were evident in German military campaigns from Norway in 1940 until the end of the war. He was first and foremost a soldier. His main fault was that he was so dedicated to "his" Germany that he chose to serve it to the best of his ability, even after its leadership had been taken over by Adolph Hitler and his evil regime.

To arrive at the Allied definition of Jodl's alleged conspiracy with Hitler, one must return to the waning days of 1918. The appearance of the American Army in France had tipped the balance of power in Europe. In 1918, the Allies were able to mount massive offensives in Europe. When Germany sued for an armistice, many Germans felt that she had not lost the war. Battles had been lost; but the Army had not been destroyed. It was retreating toward the German border in good order. Most of all, discipline remained strong, in contrast to the mutinies that racked the German Navy, and some of the army garrisons at home. As political

turmoil and revolution began to hamper the fledgling government at home, many felt the Army remained the only cohesive force capable of dealing with the chaos which was engulfing Germany as the war began to go badly for the Kaiser's empire; food shortages, fuel shortages, and labor problems turned Germany into a battlefield. Mobs ruled the streets. When Wilhelm II abdicated and fled to Holland the reins of government were taken by the Social Democrats. But in the German mind, Socialism equated with Communism, and fears of what had only recently happened in Russia colored their political thinking. Indeed German Communists were trying to undermine the new government. Pitched battles between mobs of the Communist "Left" and the nationalist monarchist "Friedkorps" were daily occurrences. The specter of a Communist coup appeared imminent. The struggling government wished to call the Army home to put down the threat. The Allies had no stomach for a Bolshevik presence in Central Europe and gladly acquiesced.

By the time that the Allies were ready to commence peace negotiations, the Germans had established a republican form of government known as the Weimar Republic, led by the President Friedrich Ebert, and the Chancellor Philipp Scheidemann, both Social Democrats. This attempt at a republican form of government was done simply because the Germans hoped to negotiate a treaty that would insure mild peace terms, based on Woodrow Wilson's "Fourteen Points." As Louis Snyder

points out:

. . . In fact, the Weimar Republic had been born with little or no preparation--almost as an afterthought. The men who created it wanted above all the approval of Allied leadership as a prerequisite for a soft peace. Those who had to live under it came to regard it as a temporary measure, a pause awaiting the restoration of the Hohenzollerns and the good old days. The Weimar Republic was unwanted, misunderstood, unloved from its very inception.¹

If Germany had expected an easy time at the conference she was to be greatly disappointed. England, Italy, France and various other powers came to the conference at Versailles determined to punish Germany, to exact the last drop of retribution. As William L. Shirer would write:

The day of reckoning arrived for the Germans in the late spring of 1919. The terms of the Treaty laid down by the Allies without negotiation came as a staggering blow to a people who had insisted upon deluding themselves to the last moment . . . Mass meeting denounced the Treaty. Chancellor Philipp Scheidemann spoke out in the Reichstag: "May the hand wither that signs this Treaty" . . . Reichs President Fredrick Ebert called it "Unrealizable and unbearable."²

From the day that the treaty was signed, the "Verdamnt Versailles Diktat" became the most hated object in Germany. It became the rallying point for every nationalist in Germany. Germans, from the revered Field Marshall Paul von Hindenburg to such Jew hating rabble rousers as Jules Streicher and Adolph Hitler, vilified it. Those who had signed it were to become known as the "November Criminals."

¹Snyder, Hitler's Third Reich, 3.

²William L. Shirer, The Rise and Fall of the Third Reich: A History of Nazi Germany, (New York: Exeter Books, 1987), 31-32.

Even the Armed forces who had been decimated by the treaty's terms castigated the government. Von Hindenburg, an avowed monarchist labeled the actions of the government at Versailles as the "Cochstross" or "The stab in the back." Of all of the clauses in the treaty, none was more hated than Article 231, the infamous "War Guilt" clause, which specified:

The Allied and Associated governments affirm, and Germany accepts the responsibility of Germany and her Allies for causing all the damages to which the Allies and their Associated governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Germany and her Allies.³

The clause called for a massive reparation payment of 132 Billion Gold Reichmarks to be paid over a forty year period. Germany was ill prepared to honor this commitment. The German economy plummeted. Germany was in financial turmoil. The government seemed incapable of taking any positive action. Chancellor after chancellor went down in votes of "no confidence." Von Hindenburg, who on March 29, 1925, was elected the second President of the Weimar Republic, was forced to rule by decree under the provisions of Article 48 of the Weimar Constitution which stipulated:

If a land (state) fails to fulfill the duties incumbent upon it according to the Constitution or the laws of the Reich, the Reich President can force it to do so with the help of the armed forces. The Reich President may, if the public safety and order of the German Reich are considerably disturbed or endangered, take such measures as are necessary to restore public safety and order. If necessary, he may intervene with the help of the armed

³Ibid., 18.

forces. For this purpose he may suspend, either partially or wholly the Fundamental Rights established in Articles 114, 115, 117, 118, 123, 124, and 153 . . .⁴

Democracy or any thought of it was rapidly being lost to Germany. Hindenburg considered himself caretaker and longed for the day he could return Germany to the Kaiser. The Army loved, revered and followed Hindenburg. The old guard such as von Seeckt and others were monarchist; however, many of the younger officers were enthralled with the new spirit of nationalism sweeping Germany. Early on in his career Hitler realized that the key to power in Germany was held by the Army. Early in his career he had written while in prison:

This (the army) was the highest school of the German nation, it was not for nothing that the bitterest hatred of those who from hatred and greed needed and desired the impotence of the Reich and the defenselessness of its citizens and concentrated on it. What many Germans in their blindness or ill will did not want to see was recognized by the foreign world; the German Army was the mightiest weapon serving the freedom of the German people and the sustenance of its children.⁵

From the vestiges of the once proud Reichswehr, now humbled to a force of only 100,000, these were the words they wanted to hear. Although the leadership of the army, led by the arrogant Prussian General Hans von Seeckt did not openly mention anything about Hitler's brand of National Socialism, many of the younger officers began to seriously look at Hitler's ideas as the only hope for Germany.

⁴Ibid., 21.

⁵Adolph Hitler, Mein Kampf, translated by Ralph Manheim, (Boston: Houghton-Mifflin Company, 1943), 281.

Among these junior officers was a young artillery officer, Alfred Gustav Jodl, who had been born in Wurzburg in the state of Bavaria in 1895. He had been born into a family of educators and soldiers. Not an outstanding scholar, Jodl chose the military profession. He attended the cavalry school in his own town where his lack of interest in the cavalry caused him to receive mediocre grades. As soon as he obtained his commission, he transferred to the artillery.

By the outbreak of World War One in 1914 he had risen to the rank of Hauptman (Captain). Early in the war Jodl was wounded in the leg. This was to be the only personal combat service of his career. His wound was serious enough that he was invalided for a long time. Military doctors determined that the young officer was no longer fit for combat duty, and he was given a series of staff assignments in which he was able to demonstrate his proclivity for logistical and staff planning. His activities were well known to other officers in the army who were in a position to help his career. At this time Jodl was not a Nazi. He was in a fact a Social Democrat. Although the command of the Army was generally pro monarchist, Jodl sincerely felt that the Weimar Republic was Germany's last chance. He had attended a few of Hitler's meetings, but was generally not impressed with him.

By the late 1920s, the Reichswehr was approaching a high degree of readiness. General von Seeckt and his small group of officers were very selective in considering men for

induction. The majority of the enlisted and noncommissioned rank were made up of officers of the old army who waited and trained patiently for the day when the Army would again be returned to its former size. To the lowliest Soldat (Ordinary Private), each and every man would rise to command. These men lived by strict Prussian codes of unconditional obedience to the leader of the nation, no matter how chosen.

But this same code was to be the undoing of the army.

Mathew Cooper in his book on the German Army explains:

The tradition bestowed on them by their predecessors was one of unconditional personal obedience to, and identification with, the autocratic head of state, coupled with a self imposed isolation from the world of politics--an isolation which, although elevated to the status of a military virtue, took the form of a political naivety and ineptitude.⁶

This naivety was justified by the army. They felt that in order to remain a sharp reliable weapon it was important that everything disruptive be kept out of itself.

As the 1920s closed, the senior officers continued to be governed by this code. However, many of the younger officers were under the spell of the nationalism of Adolph Hitler. Hitler appeared to be the savior of Germany. Memories of the war were fading. Though quite bourgeois (middle class) in his outlook, Hitler realized the support of the army and its allied veterans organizations such as the "Stahlhelm", and the "Reichskriegerbund" were absolutely necessary. He also

⁶Mathew Cooper, The German Army, 1933-1945: Its Political and Military Failure, (New York: Bonanza Books, 1978), 4.

realized that the senior officers held allegiance to and supported President von Hindenberg. Hitler therefore aimed his verbal appeals at the younger officers. In speech after speech he told them what they wanted to hear: "We will see to it that when we come to power out of present Reichswehr shall arise the Great Army of the German people."⁷ The junior officers listened avidly, while the older officers were generally not impressed. Holding to the idea of the Army remaining aloof from politics, General von Seeckt reiterated: "We cannot change politics; we must do our duty silently."⁸ Some of the senior officers were less abstract in their comments. General Wilhelm Groener offered a more succinct opinion: "It will be up to the Generals to see that the Army does not in the end kiss Her Schicklegruber's hands like hysterical women."⁹ Historian Eugene Davidson recalled that in early 1932 Jodl was telling his friends that "Hitler was nothing more than a charlatan and a mountebank."¹⁰ But by June things had changed considerably. In a last ditch attempt to rescue the floundering Weimar Republic, President von Hindenberg, bowing to the inevitable, asked Hitler to become Chancellor of Germany. On June 10, 1933, Hitler took

⁷Ibid., 27.

⁸Ibid., 14.

⁹Ibid., 16.

¹⁰Eugene Davidson. The Trail of the Germans, Nuremberg 1945-1946, (New York: The Macmillan Company, 1965), 342.

the oath of office. In his new cabinet, Hitler named Werner von Blomberg to the post of Minister of War. Blomberg's Chief of Staff was the acerbic, avowed anti Nazi General Freiherr von Fritsch. Although he disliked Hitler, Jodl admonished his men to obey the order of the New Chancellor: "Adolph Hitler has come to power legally. To disobey the new Chancellor is to disobey the revered von Hindenburg."¹¹

Although Hitler continued to charm the armed forces he secretly laid plans to remove the old guard from command and to replace them with officers having pro-Nazi sentiments; officers such as Walther von Reichenau. The Army feared the SA (Sturm Abteilung), the four million man army of the Nazi party, as a threat to their autonomy. As a condition of the Army supporting Hitler, it demanded the disbanding of the SA and the elimination of its hierarchy. Hitler acquiesced to this. June 30, 1934, known as the "Day of the Long Knives," saw the murder of the SA High Command and the emasculation of the SA itself. True to its word, the Army began to give tacit approval to Hitler's policies.

On August 2, 1934, the aged and senile President died. The old man had commanded the respect of the Army and civilian population alike. He was the only thing that stood in the way of Hitler taking absolute control. The very next day Hitler combined the offices of Reichs President and

¹¹Ibid., 342.

Reichs Chancellor. Twenty four hours later, led by General von Blomberg, the Army took a personal oath of loyalty to Hitler. Well knowing that the oath was sacred to the officer corps, Hitler now felt he had the army where he wanted it.

Up to this time, Hitler had not bothered with the internal operations of the Army. The Officer corps appreciated his reluctance. Hitler had not demanded that the SA and Army merge together with Ernst Roehm as the leader. Indeed, Hitler removed both the SA and Roehm as a threat. He continued to boost the military's ego. At a speech on January 3, 1935, Hitler told the military, as Matthew Cooper recounts:

The Army and the Party are the two pillars of the state . . . then someone from the party may come to me and say 'All right my fuhrer, but General so-and-so both works with and speaks against you.' Then I shall say that I do not believe it. And he shall say 'But then I can show you written evidence.' I shall say 'Tear up the scrap of paper, my faith in the Army is unshakable.'¹²

But behind their backs he conspired with Hermann Goering, head of the Gestapo, and Heinrich Himmler, head of the SS, to fabricate criminal cases against both von Blomberg and von Fritsch. Von Blomberg had married a former prostitute. This was against the code of the officer corps, which quickly abandoned von Blomberg to his own devices. He resigned. Next, von Fritsch was falsely accused of homosexuality and, even though the charges proved false, von Fritsch's position

¹²Cooper, German Army, 16.

in the officer corps was compromised. He resigned. At the outbreak of World War Two, he asked for and received a combat command. He died in Poland, in 1939, leading his artillery regiment. Hitler now intended to make the Army a Nazi tool by putting a general with avowed Nazi sentiments into command. However, the clique led by General Ludwig Beck, and including Jodl, was able to check this effort and get their candidate. General Walther von Brauchitsch was installed. Hitler accepted this, but, on February 3, 1938 issued the following statement:

Henceforth I exercise personally the immediate command over the whole Armed Forces, the former Wehrmacht Office in the War Ministry becomes the High Command of the Armed Forces (OKW) and immediately comes under my command as my military staff.¹³

With this order Hitler seized command. Probably, a more determined man than von Brauchitsch would have reacted more decisively. It was at this point that Jodl parted with his old mentor, von Beck. Like so many others, Jodl decided to cast his lot with Hitler.

Jodl would remain at his post until the very end. The question arises as to whether Jodl was an opportunist or a patriot. Did Jodl, bound by his oath of loyalty to the fatherland and its legally elected head, show a political naivety inconsistent with the actions of the Beck group at General Staff Headquarters? Beck, von Rundstedt, von

¹³Ibid., 17.

Witzleben, and others clearly understood the actions of Hitler. It is, however, doubtful that Jodl was an opportunist in casting his lot with Hitler. Eugene Davidson offers this theory:

. . . Jodl, unlike Beck, was able to accept the excesses of the Party and its formations after Hitler became Chancellor because he thought of them as "Children's sicknesses" of a revolution and he believed that only if the Army had the Fuhrer could it maintain its central place in the German polity against the Party and the SS.¹⁴

Towards this end, Jodl decided to follow his oath of honor and obedience to his country, and to its leader. He was taken under wing by General Wilhelm Kietel, Chief of the Personnel Services Office of the Wehrmacht. It can be said quite confidently that guilty or not, Jodl was a patriot to Germany in the full definition of the word. However, it was at this point that Alfred Jodl began his walk along the trail that led to Nuremberg.

¹⁴Davidson, Trial of the Germans, 347.

Chapter III

The Road to Nuremberg

When Adolph Hitler took over direct command of the armed forces his first task was to eliminate the old "Truppenamt". To the Allied world, the Truppenamt appeared to be just what the name implied, the personnel office of the small German Army. But in reality it was the camouflaged German General Staff outlawed by the Treaty of Versailles. His chance came in March of 1935. Confident in his control of Germany, Hitler used the occasion of the signing of a treaty between France and Russia to renounce the Treaty of Locarno, and he took Germany out of the League of Nations. In a memorandum to the League he stated:

France has replied to the friendly offers tendered it again and again by Germany and to Germany's assurance of friendship by violating the Rhine pact, and by signing a military alliance directed exclusively against Germany. Thereby the Rhine Pact of Locarno lost its meaning and practically ceased to exist. Germany, therefore, no longer considers herself bound to his now defunct pact.¹

Hitler then embarked upon a massive military rearmament program. Universal conscription was introduced, the army was trebled in size, the Navy was doubled, and Hitler introduced his new Air Force, the "Luftwaffe." In reorganizing the Army, Hitler eliminated the "Truppenamt" and reintroduced the General Staff. In staffing the new Wehrmacht, Hitler was able to put his plan to clean out the Army into effect. Many of the old line officers were retired. Others were moved to

¹Snyder, Hitler's Third Reich, 227.

positions of lesser authority. Proceeding with his plans to fill the leadership of the Army with those more receptive to his idea, Hitler named General Wilhelm Kietel to the Chief-of-Staff of the Army (OKW). Kietel, remembering Jodl's proclivity for logistical work, assigned him to the National Defense Section of the Army. In this position Jodl was ordered to prepare contingency plans for the Army; plans for military defense of Germany from foreign invaders such as France, England, Russia, Italy, Austria and Czechoslovakia.

In 1937, knowing well that England and France were in no condition to oppose him either politically, or militarily, Hitler embarked upon a three year bloodless conquest of Central Europe. Although he was still not a party member, Jodl, along with many other skeptical officers, were overawed with what Hitler accomplished. Walter Goerlitz, who chronicled the history of the German General Staff and its members commented: "Jodl saw in Hitler, above all, the man who had reestablished Germany's influence in the world. And for that reason was ready to follow him unquestionably, and place his not inconsiderable talent unreservedly at his disposal."²

After Hitler's takeover of Austria, Jodl requested, and was given, a posting to an artillery division stationed outside Vienna.

In 1937, at the "infamous" Hossbach Conference, Hitler

²Walter Goerlitz, The History of the German General Staff, 1657-1945, (New York: Fredrick A. Praeger, Publishers, 1953), 323.

had let a select few in on his plans to give Germany the "Lebensraum" he felt she desperately needed. He rightly planned on England's and France's fear of getting involved in another war. For the next several years, he used it to threaten and cajole the two countries. The western powers felt that appeasement was the best policy, and little by little Hitler got exactly what he wanted. These bloodless victories dazzled many, both inside and outside of Germany. Jodl, who was still not a Party member was one of them. "Beguiled by Hitler's pledge to redeem the shame of Versailles, the Wehrmacht officer corps acquiesced in his assumption of power. Rarely in history have men paid so dearly for their fecklessness. The Generals would suffer personal insults beyond the limits of endurance; some would be banished from command and degraded; many would be required on the peril of their lives to obey orders that could only result to carnage to their own troops."³

In 1939 Hitler's schedule of conquest called for the absorbing of Poland. Hitler coveted not only the vast agricultural potential of Poland, but he also wanted to regain Silesia, given to Poland at Versailles. The Silesian coal fields as well as the steel industries in and around Posen were essential to his plans for conquest. Poland was determined to resist. The governments of England and France,

³Robert Edwin Herzstein, The Nazis, (Chicago: Time-Life Books Inc., 1980), 20.

goaded on by a quickly changing public opinion, decided that appeasement no longer a viable instrument in dealing with Hitler. The signs of belligerency worried the Army. It began to call key officers back to its headquarters in Berlin. On General Kietel's orders, Colonel Jodl was recalled to Germany. He arrived in late August, 1939. Less than a week later, Hitler invaded Poland. After an ultimatum both England and France declared war on Germany.

Jodl plunged quickly into his assignment as Chief of the Planning Section of the General Staff. He was still not a Party member and had only been introduced to Hitler by Kietel. But his work and expertise were not unrecognized. Jodl's actions during the campaign in Norway brought him into direct contact with Hitler. The main source of iron ore came from the Scandinavian countries, in particular Norway. England's interference with Germany's legal right to send her ships to Norway gave Hitler an excuse to invade Norway. Claiming that England was violating Norwegian neutrality, Germany made a preemptive invasion. At first things went well. But England was just as determined to prevent a German takeover and landed troops in northern Norway. A large part of the German fleet was destroyed by the Royal Navy, while the German troops did not perform as expected. Hitler panicked and was ready to pull out. But, as General Heinz Guderian stated in his memoirs: "Only Jodl's professionalism

saved the day."⁴

In essence, after the Norwegian Campaign Jodl became the "de Facto" head of the Army. Wilhelm Kietel, now a Field Marshal, nominally held the official title of Chief of Staff of the Wehrmacht. But many of the field and staff officers of the Army bypassed him on purely military matters. Behind his back they "insultingly called him 'Lakietel', a derogatory play on his name, and the German word for 'Lackey'. More demeaning was the term 'Nikesel'. On the other hand, this could not be said of Jodl who often contradicted Hitler."⁵ In his diary, Nazi Minister of Propaganda, Joseph Goebbels commented upon the relationship:

The Fuhrer has great regard for the personality of Kietel, but he doesn't think much of his ability . . . On the other hand, the Fuhrer does not care for Jodl, but his abilities are much greater. He is, in fact, a very good and solid workhorse, with excellent general staff training which is demonstrated time and time again.⁶

Even Field Marshal Gerd von Rundstedt would say: "Jodl was the only person in the High Command, including Hitler himself, who knew anything about the conduct of military

⁴Heinz Guderian, Panzer Leader, (New York: E. P. Dutton and Company, Inc., 1952), 42.

⁵"Nikesel" was a term used to describe a small hand held wooden toy with a string on the bottom. When the string was pulled the arms and legs waved inward and outward. This seemed to be an allusion to the fact that many considered Kietel to be no more than Hitler's puppet." So says British historians John and Ann Tusa. Tusa, Nuremberg Trial, 307.

⁶Joseph Goebbels, The Goebbel's Diaries, Edited and translated by Louis P. Lochner, (New York: The Popular Library, 1948), 546.

operations."⁷

In her thesis, "Nuremberg: That Tangled Web," Barbara Camp Thompson quotes British author Desmond Young:

Jodl served Hitler from a deep personal devotion. He was so completely sold out to Hitler that he was prepared to transmit, even if he did not approve, Hitler's most outrageous orders."⁸

In reality, nothing could be further from the truth. Jodl was frequently the thorn in the Fuhrer's paw. Propaganda Minister Joseph Goebbels writes: "Goering and Hitler judge the General Staff quite harshly. Jodl particularly has his goat. The Fuhrer trusts him altogether too much. To his face they are quite friendly, but in their hearts they think quite differently."⁹

Jodl did in fact argue with Hitler often. However, knowing that this conduct would not always accomplish results, he would occasionally disobey him covertly. As fellow defendant of Jodl, and close friend of Adolph Hitler, Albert Speer wrote in his book, Inside the Third Reich:

General Jodl seldom contradicted Hitler openly. He proceeded diplomatically. Usually he did not express his thoughts at once, thus skirting difficult situations. Later he would persuade Hitler to yield, or even to reverse positions previously already taken. His occasional depreciatory remarks about Hitler showed he

43. ⁷John Keegan, Runstedt, (New York: Ballentine Books, 1974),

⁸Barbara Camp Thompson, Nuremberg, That Tangled Web, (M.A. Thesis, Austin Peay State University, 1969), 33-34.

⁹Goebbels, Diaries, 35.

possessed a relatively unbiased view.¹⁰

Perhaps it was inevitable that these two obstinate wills would end in clash. As the war situation deteriorated for Germany, Hitler came to accept criticism less and less. Instead, he began to place the blame on his generals. One particular target of Hitler's ire was General Franz Halder. A Bavarian like Jodl, Halder had the gall to often contradict the Fuhrer. Halder was in over all command of the ground forces and a likely candidate for Hitler's ravings. When Halder argued against Hitler's drive on Stalingrad, which most German officers felt served no military purpose, Hitler decided to fire him as an example. Jodl stood by Halder.

Historian Walter Goerlitz wrote:

Jodl fell into disfavor with Hitler because he dared to try and convince Hitler to keep General Halder on. Hitler threatened to replace him with General Freidrich von Paulus, as soon as Stalingrad was cleared up. Hitler behaved like a schoolboy by even refusing to shake hands with him, or to dine with the officers of his own working staff.¹¹

This was corroborated by Jodl:

The worst crisis was in August 1942, at Vinnitsa when I defended Generaloberst Halder . . . Never in my life did I experience such an outbreak of rage from any human being . . . Hitler told me, through Field Marshal Kietel, that he will not longer work with me and that I would be replaced by Field Marshal von Paulus, after he

¹⁰Albert Speer, Inside the Third Reich: The Memoirs of Albert Speer, Translated by Clara and Richard Winston, (New York: The Macmillan Company, 1970), 239.

¹¹Goerlitz, German General Staff, 420.

had taken care of Stalingrad.¹²

Because of his independence, Jodl continued to run afoul of Hitler. The situation deteriorated. Hitler became more estranged from his generals. The attempt on his life on June 20, 1944 by members of the officer corps resulted in an almost complete insulation from the Army command. Hitler sank into the dream world of despondency. He would brook no criticism nor would he accept bad news. Halder was replaced as Chief-of-Staff by General Heinz Guderian who quickly fell into disfavor and was replaced by General Kurt Zeitzler, who, for the same reasons, was replaced by General Wilhelm Burgdorf, a completely compliant man who stayed on to the end. As usual, Field Marshal Kietel was there, censoring field reports so that Hitler was kept ignorant of the long list of German reverses.

Jodl's last bit of military planning was the Ardennes Campaign of December 1944. With the defeat of that offensive it was evident to almost everyone but Adolph Hitler that the war was lost. Hitler retreated into the deep, damp, and murky "bunker" under the burnt out Reichs Chancellery, vowing to fight on in Berlin to the last bullet.

Just before the noose tightened around Berlin, Jodl was ordered to Admiral Doenitz's headquarters at Flensburg in

¹²International Military Tribunal, The Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg November 14, 1945-October 15, 1946, Washington, D.C.: The U.S. Government Printing Office, 1948), XV: 300.

northern Germany. Before his suicide Hitler had named Gross Admiral Karl Doenitz as his successor. He also prepared a list of Nazis to include in the new government. Doenitz immediately tore the list up preferring to name his own men, those he thought would be more acceptable to the Allies in the event of armistice. He asked Jodl to accept the position of Chief-of-Staff of the Army which he did. The "Flensburg Government" continued to function. Allied military personnel were angered by having to show their credentials to armed German soldiers in order to approach the German government's offices. With the formal surrender of Germany in Berlin, the situation quickly changed. The German representatives were now treated like common criminals. Werner Maser describes the almost barbaric treatment of Doenitz and Jodl:

After their arrest in Flensburg, Grand Admiral Doenitz and Colonel-General Jodl were treated like gangsters, or as partisans . . . All Germans had to strip completely and submit to humiliating personal searches which took place in separate rooms, sometimes men and women together. The British seized watches, rings, and other valuables from the prisoners and then led them with their hands above their heads into the court yard where a dozen or so reporters were waiting for the big show. The trouserless officers and ministers were then photographed. The New York Times reported on the undignified scenario in an article entitled, "The Third Reich Died Today."¹³

Those on the list of Nazi war criminals, as well as other members of the Reich Government, were quickly transferred to a holding camp at the Grand Hotel at Mondorf-les

¹³Werner Maser, Nuremberg: A Nation on Trial, translated by William Barry, (New York: Charles Scribner's Sons, 1979), 56.

Bains in Belgium which had been stripped of most of its luxurious furnishings. This center was operated by American Military Intelligence and had the code name "ASHCAN". The British intelligence service also had an interrogation camp at Kransberg Castle near Frankfort known as "DUSTBIN". Most of the Nazi bigwigs were shuttled between the two camps while the Allied Prosecution teams built their cases for presentation at Nuremberg. The prisoners were treated quite well by the standards afforded the ordinary German soldier. But there was a purpose, as Albert Speer recounted:

The whole hierarchy was there; Field Marshals, Reichs-leiters, Ministers . . . the ordinary prisoners of war; Generals, Colonels, NCOs and men, particularly those in prisoners of war camps, were suffering from real hunger. Frequently they had to bed down on bare floors and do as best as they could. In miserable bivouacs, with nothing to lie on, subject to many vexations. The German civilians were suffering too. The victors took care however, that the Germans who were due to appear before the International Military Tribunal footlights as major war criminals were kept in good form.¹⁴

Jodl claimed that he had done no wrong. So sure was he of his innocence that he turned over the Allies a complete set of his personal diaries. After the indictment was read in Berlin there were many who wondered just who Jodl was. Many war criminal lists had been published but Jodl's name had never been on any of them with the exception of the final list. This led many individuals to question why Jodl had been selected. Jodl, although he held a position of great

¹⁴Speer, Inside the Third Reich, 57.

responsibility, was not in a position to wield great authority. His name was unknown to the western Allies and his name had only been picked by the Russians from the last roster of men held in the four zones of occupation. Like many, Robert Conot felt that Jodl was simply a "Patsy", having the misfortune to be at the wrong place at the wrong time. Conot theorized as to the Tribunal's motive:

. . . The concept that each of the individual organizations (indicted) should be represented by one or more of its leaders, had named Kietel for the Armed forces, Doenitz for the Navy, Goering for the Luftwaffe. They were missing, however, a representative for the Army. So Alfred Jodl, Chief of the Wehrmacht operations staff, was included.¹⁵

At the insistence of the Russians and the French authorities Jodl's name was placed on the list of men to be indicted and tried at Nuremberg. On Saturday, August 12, 1945, Jodl, along with Goering, Hess, and Ribbentrop, and the other men scheduled for trial, was bundled into a U.S. Army Air Corps C-47. Later that day they landed in Nuremberg where he and the others were ensconced in the cells of the Nuremberg prison, next to the Palace of Justice, where the trial was to be held. The stage was now set. It only awaited the other actors.

¹⁵Conot, Justice at Nuremberg, 27.

Chapter IV

The Trial

The day the Tribunal was to reconvene in Nuremberg, November 20, 1945, was almost at hand. All the participants of the Tribunal were present in Nuremberg. But there was still doubts and criticism about the trial. The most vociferous criticism of all came from Secretary of the Treasury Henry Morgenthau who still felt that "drumhead" courts martials were the only solution. He commented: "I am doubtful of the whole set up under which these trials will be conducted . . . What they should do in my opinion is to set up summary court martials. Then they should place these criminals before them, sentence them to death, and shoot them in the morning."¹ Many legal authorities joined with historians in remembering what had transpired after The Treaty of Versailles. George Kennan warned:

. . . To hold these Nazi leaders for a public trial was another matter . . . To admit to such a procedure a Russian judge as a representative of a regime which has on its conscience . . . the vast cruelties of the revolution, and of the Russian purges of the 1930s . . . was to make a mockery of the only purpose the trials could conceivably serve . . . The only implication that the procedure could conceivably convey was, after all, such crimes were justified and forgivable when committed by leaders of one government under one set of circumstance, but unjustifiable and unforgivable when committed by another set of governmental leaders under another set of circumstances.²

¹W. W. Baird, From Nuremberg to My Lai, (New York: Heath Books, 1972), 83.

²Joseph B. Keenean, "Observations and Lessons Learned from the International Military Tribunal", The University of Kansas City Law Review, Volume XLVI, Number 2, (April/June, 1949), 121.

Many felt that the methods used in this trial amounted to accusing men of crimes which were not actually crimes.

Professor of Law Andre Geras warned:

We do not consider as a criminal violation an act of aggression. If one declared war a criminal act of an individual, we are going further than actual law. The principle might become law in later years to come, but as it stands now we do not believe these conclusions to be right . . . Those acts have been known for years before and have not been declared criminal violations of international law. This is "Ex Post Facto" legislation.³

Colonel Alonzo V. Freeman of the U.S. Army Staff Judge Advocate Corps also spoke out:

Under normal international law, a violation of an agreement did not customarily suffer a criminal penalty. Rather the usual consequence of the violator of international law was to make repatriations for the damage suffered. The Kellogg-Briand Pact, and other resolutions could not have been to make government leaders subject to criminal sanctions because the language used is the language of compact--not crime, and its content was one of contract--not crime and punishment. There is no legal basis for sending anyone to jail, or to the gallows for starting World War Two.⁴

However, the Allies would not deviate from their intended course. Chief Justice Robert Jackson, who headed the American Prosecution in the conspiracy trial, pushed aside all criticism by repeatedly pushing the idea that:

It is our intention that just and severe punishment be meted out to the ringleaders responsible for the organized murder of thousands of innocent persons in the commission of atrocities which have violated every tenet of the Christian faith. All who participated in these acts of savagery will be punished. all those who share

³Davidson, Trial of the Germans, 13.

⁴Bradley E. Smith, Reaching Judgment at Nuremberg, (New York: Basic Books, Incorporated, 1977), 104.

in the guilt will be punished.⁵

As the controversy raged on, the International Military Tribunal convened its first session in Berlin. Each of the four major powers had two members on the Tribunal. The Justices were:

United States:	Frances Biddle, Primary Judge John J. Parker, Alternate Judge
Great Britain:	Lord Geoffrey Lawrence, Primary Judge Norman Birkett, Alternate Judge
France:	Donedieu de Vabres, Primary Judge Robert Falco, Alternate Judge
Russia:	I. T. Nikitchenko, Primary Judge A. F. Volchkov, Alternate Judge ⁶

The first order of business was to elect a President for the Tribunal. Because the Americans had been the driving force behind the concept of the trial, it was assumed that Justice Biddle would get the nod. But Biddle and the

⁵Conot, Justice at Nuremberg, 744.

⁶Francis Biddle had been Attorney General from 1940 to 1945; John Parker, his alternate was a southern District Court Judge from North Carolina. The British primary justice was Sir Geoffrey Lawrence who, from 1932 had been Judge of the High Court, King's Bench Division, and from 1944 Lord Justice of Appeal. Norman Birkett, his alternate, was a judge of the King's Bench Division of the High Court since 1941. Henri Donnedieu de Vabres of France was a Professor at the Law Schools of Paris and Montpellier; his alternate Robert Falco had come from the Cour de Cassation, been a member of the prosecution team before being elected French alternate to de Vabres. Finally, the Russian Primary Judge was General Ivan T. Nikitchenko, was Vice-Chairman of the Soviet Supreme Court, and lecturer of Law at the Academy of Military Jurisprudence in Moscow. His alternate, A. F. Volchkov, was an unknown. It was rumored that he was a member of the Soviet District Court, and had once taught law. From his manner, it was thought that he was Nikitchenko's "keeper." This information is gleaned from: Tusa, The Nuremberg Trials, 110-111.

Americans felt that this would give an appearance of an American dominated trial. The Americans nominated Justice Lawrence of England, who was unanimously elected.

This item completed, the Tribunal now tackled the two most delicate matters. As nothing like the International Military Tribunal had been attempted before, the Tribunal had to set up its own rules of procedures. This process continued throughout the trial, much to the consternation of the German defense counsel.

From all zones of occupation, a list of suitable counsels for the defense were chosen. Then they undertook the problem of the indictment. When the Tribunal first met the indictment was not ready. The French and Russian delegates had not signed it. The Russian prosecutor, Roman Rudenko asked for a postponement to correct errors in the translation. This upset the other members of the Tribunal who felt the delays were at Stalin's instigation. Biddle remarked: "We all had the impression that he was taking orders directly from Moscow and perhaps he had been severely criticized for silly mistakes in statements of fact."⁷ John Phipps, a member of the British staff added: "The Russians had been dilatory and obstinate throughout, not least because they had to work on such a tight rein held in Moscow."⁸

⁷Tusa, The Nuremberg Trial, 119.

⁸Ibid., 119.

The postponement was given. Finally, on November 18, the Tribunal met in a short session. All members of the Tribunal were sworn in and promised to conduct their deliberations in a fair and professional manner. Then each prosecution team presented one member who made a short speech and then read the indictment in their native tongue. The final steps were the transmission of the indictment to the capitals of the victorious Allied powers and the setting of the trial date which was to be November 20, 1945.

The Tribunal then selected Major Airey Neave, a member of the British secretariat and a German speaking ex-prisoner of war, to carry to Nuremberg German language copies of the indictment for each of the defendants. He also carried a list of acceptable German lawyers for the alleged defendants to choose for their defense.

Colonel-General Jodl had been at Nuremberg since the group of alleged defendants left Mondorf-les-Bains. Major Neave recounted his first meeting with Jodl:

I could visualize him at Hitler's conferences, lucid, courteous, and relentless . . . Jodl was a cool customer . . . I found him a rigid, self-disciplined German officer, very correct in his manner.⁹

Jodl inquired of Major Neave as to whether he needed a lawyer versed in criminal law or one versed in international law. He was told the charges contained both; he decided on two;

⁹Airey Neave, On Trial at Nuremberg, (Boston: Little, Brown, and Company, 1978), 177-182.

Doctor Franz Exner, a close family friend, and Doctor Herman Jahreiss, an authority on international law. The indictment charged Jodl with four counts: one, the Common Plan or the Plan of Conspiracy; two, crimes against peace; three, war crimes; and fourm, crimes against humanity. Feeling that he had only done his job like a good soldier should, Jodl was aghast at the charges. He later told prison psychiatrist George M. Gilbert:

The indictment knocked me in the head. First of all, I knew nothing about ninety percent of the accusations. The crime is horrible beyond belief, if they are true. Secondly, I can not see how they can fail to understand a solder's obligation to obey orders. Thirdly, the guilt for the atrocities in the East is suddenly reversed; How can the Russians sit in judgement on us for barbaric measures against eastern populations.¹⁰

The German defense lawyers were given sufficient time to read the Indictment, and prior to the beginning of the trial at Nuremberg, a motion for dismissal was filed by them on behalf of the defendants. The motion consisted of nine points:

1. The International Military Tribunal acted on no legal precedent and was thus innovative in international law.
2. The Tribunal was, in fact, not international in composition and could not judge a case in international law. Instead, the Tribunal was a front for the military services of the Allies which dispensed a "drumhead" justice, indeed, a justice of the victors.
3. The Tribunal at once served as a source of law,

¹⁰George M> Gilbert, The Nuremberg Diaries, (New York: Signet Books, 1961), 78.

as well as prosecutor, and judge and jury.

4. The Tribunal violated the ancient legal tenets against "Ex Post Facto" law. (Nullen Crimen-Simen Lege.)
5. By charging that the Reich had illegally waged war, the Tribunal deprived the German government of the timeless right of national sovereignty.
6. International stability had broken down in the 1930s, and, as a result, Germany was not guilty of waging aggressive war.
7. According to international law, an individual cannot be tried for the crimes of a state.
8. The individual charged with a crime acted only in accordance with and to their sacred oath to follow the commands of Hitler who was alone responsible for the crimes perpetuated during the war.
9. The Soviet Union was not fit to sit upon the Tribunal. What war guilt Germany bore--Russia also bore.¹¹

The German defense closed their argument by stating:

The present trial cannot evoke existing international law, it is rather a proceeding pursuant to a new penal law, a penal law enacted only after the crime. This is repugnant to a principle of jurisprudence sacred to the civilized world.¹²

The Tribunal simply brushed off the Defense motion by citing Article Three of the Charter which stipulated there could be no challenge to the Tribunal itself. However, the allegations on questions of "ex post facto" and "nulle poena" could not be ignored, and the Tribunal promised to take these questions under advisement.

¹¹Baird, From Nuremberg to My Lai, 18.

¹²Ibid.

On the morning of November 10, 1945, the first session of the Tribunal was called to order in Nuremberg. The Indictment was read to the defendants in public after which each of the four prosecution teams delivered a speech. On the second day, the Tribunal demanded that each of the defendants enter a plea of either guilty or not guilty. When his turn came, Jodl spoke out: "Nicht Schuldig:" (Not guilty), then added, "For what I have done or had to do I have a clear conscience."¹³

The Tribunal proceeded with the prosecutions' case against the individual defendants in the order of their indictment. This was an important factor in the trial of General Jodl. By the time his case came up, most of the obviously guilty had been tried. Horrible testimony of atrocities committed had been entered into evidence, damning every one with a taint of barbarism. Earlier in the trial, the prosecution had conducted a devastating attack against Field Marshal Wilhelm Kietel quoting the words of Doctor Exner, Jodl's lawyer, Eugene Davidson addressed the problem Jodl faced:

The prosecution treated Field Marshal Kietel and General Jodl as inseparable twins. But few in the Army, and certainly not Adolph Hitler, judged them alike. He (Jodl) was sober, intelligent, methodical, and practical, and one moreover, with his own opinions . . . Kietel on the other hand . . . was never more than an

¹³The International Military Tribunal, The Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, November 20, 1945--October 1, 1946, (Washington, D.C.: The United States Government Printing Office, 1948), I, 120.

efficient yes man. Never in his five years as chief of the OKW did he ever argue about a Hitler decision.¹⁴

Many members of the Prosecution as well as observers of the trial were impressed by Jodl. William L. Shirer, journalist, and foe of Nazi Germany said:

There was no sway in the next man Colonel-General Alfred Jodl, who sat there stiff as a ramrod in his faded Army uniform. As number two officer after Kietel and much more intelligent on OKW matters, he had become the closest general to Hitler and served him loyally to the end."¹⁵

Shirer, however, was never privy to the goings on in Hitler's regime, and made the same mistake that the Tribunal made: To serve does not always mean to accept decisions unquestionably. When Jodl's case came up, the prosecution began to worry about its argument against Jodl. Conot considered him to be one of the most outstanding of the prisoners on trial:

In many ways, General Alfred Jodl--along with Goering, Speer, and Schacht was one of the four outstanding prisoners in the dock and was the antithesis of Baldur von Shirach, Hitler Youth leader and Gauleiter of Vienna, a previous name in the indictment. Giving no ground, he defended to the last, the actions of the Wehrmacht.¹⁶

There were six specific charges in the Indictment against Jodl. They were as follows:

1. Jodl was "very active" in the planning of the

¹⁴Davidson, The Trial of the Germans, 328-329.

¹⁵William L. Shirer, Twentieth Century Journey, Volume II: The Nightmare Years 1930-1940, (Boston: Little, Brown and Company, 1984), 636.

¹⁶Conot, Justice at Nuremberg, 425.

operations against Czechoslovakia. After the Munich Agreement had been signed, Jodl wrote in his diary: "Czechoslovakia has ceased to play any part in power politics. The genius of the Fuhrer and his determination not to shirk from the risk of a world war have brought victory."

2. Jodl discussed the invasion of Norway with Hitler. He was also active in the planning against Greece and Yugoslavia.
3. As early as June 29, 1940, Jodl ordered the plans to be prepared for the attack on Russia. Hitler's instructions for the invasion and the document Barbarossa contain Jodl's initials.
4. The cover letter of Hitler's notorious "Commando Order" (see Appendix A) was signed by Jodl. On July 25, 1944 after the landing of the Allies in Normandy he affirmed the validity of this order.
5. On November 28, 1944, Jodl ordered by teletype the evacuation of all civilians from northern Norway and the burning down of their houses so that they could give the Russians no assistance.
6. On October 7, 1941 Jodl signed an order in which it was stated that Hitler would not accept any offer of surrender by Leningrad or Moscow, but on the contrary commanded that these two cities be completely destroyed.¹⁷

On the morning of June 3, 1946, Doctor Franz Exner began his case by apprising the Tribunal as to the course his defense would take. He intended first to question General Jodl. He would then call four of the five witnesses he had requested to appear. Then Jodl would be called to the stand and sworn in. Exner began by covering Jodl's early military career, and his first encounters with Adolph Hitler:

Doctor Exner: What was your attitude towards the appointment of Hitler as Reich Chancellor in 1933?

¹⁷Heydecker and Leeb, The Nuremberg Trial, 278.

General Jodl: The appointment of Hitler as Reich Chancellor was a complete surprise to me . . . I said this is more than a change in government; it is a revolution . . . But the names of such men as von Papen, Neurath, and Schwerin-Krosigk exerted a reassuring influence on me and gave me a certain guarantee that there would be no revolutionary excesses.¹⁸

Exner then quoted from the interrogatory of General Vormann a witness who had been under Jodl's command at the time of Hitler's accession to power:

When on 30 January 1933 Hitler was appointed Reich Chancellor, Jodl was dismayed and astonished . . . At a speech to all members of our group he explained . . . "Hitler has been called to the head of the Reich according to the existing constitution and the laws in force . . . We must obey and do our duty as soldiers. The kind of criticism made hitherto of the new measures initiated by the Chancellor, were not to be made in the future for they were inconsistent with his and our position." His entire speech showed great worry and apprehension with regard to the coming development of the situation . . . and so forth.¹⁹

Doctor Exner then examined Jodl's personal relationship with Hitler:

Doctor Exner: The prosecution speaks of your close relationship with Hitler. When did you learn to know Hitler personally?

General Jodl: I was presented to the Fuhrer by Field Marshal Kietel in the command train on 3 September 1939 when we were going to the Polish Eastern Front. At any rate that was the day I first exchanged words with him.

¹⁸IMT, Volume XV, 286. NOTE: From this point forward all references to the International Military Tribunal in the footnoting will be indicated by the acronym IMT.

¹⁹Ibid., 287.

Doctor Exner: Two days after the outbreak of the war?

General Jodl: Two days after the beginning of the war.²⁰

Doctor Exner then questioned Jodl about his alleged political influence with Hitler:

Doctor Exner: Did he permit discussions of political question between you and himself?

General Jodl: Discussions of political questions was generally not admissible for us soldiers. One example is especially characteristic. When it was reported to the Fuehrer in September 1943 that Fascism was dead in Italy . . . this is what he said: "Such nonsense could only be reported by an officer. Once again it is obvious that generals do not understand politics." It can easily be understood that after such remarks the desire for any political discussions was slight.

Doctor Exner: Were political questions and military questions therefore kept strictly separate?

General Jodl: They were strictly separated.²¹

Doctor Exner followed this line of questioning in order to refute the Prosecution's contention that Jodl was a member of the alleged conspiracy. But Jodl's name or initials appeared on many of the orders. Exner asked Jodl to explain:

Doctor Exner: Did you, as Chief of the Armed Forces Operations Staff have authority to issue orders?

General Jodl: No--or rather only through my working staff. I was subordinated to Field Marshal Kietel, and even Kietel himself was not a commander but only chief of a

²⁰Ibid., 294.

²¹Ibid., 294-295.

staff. But in the course of this war I naturally decided many operational details and signed them myself. There was no disagreement of any sort in these matters with the commanders-in-chief for I had their confidence, and I worked on the best possible terms with them.

Doctor Exner: For someone on the outside it is not quite easy to understand that even though you had no authority, so many orders have been submitted here which were, in fact, signed by you, and signed in different ways--sometimes with your full name, sometimes with a "J", the first letter of your name. Please explain these differences.

General Jodl: One must differentiate as follows: The decrees which the Fuhrer himself signed, if they were of an operational nature, bear my initial at the end, or on the lower right; and that means that I at least assisted in the formulation of that order. Then there were also orders which came from the Fuhrer, though they were not signed by him personally, but were signed "by order Jodl; but they always had at the beginning the sentence "The Fuhrer had decreed," or the sentence was found some where in the course of the order. There would be a preamble usually giving the reasons for the order, then it would read, "The Fuhrer has therefore decreed."

Doctor Exner: And what was the difference between these two groups of orders? Why was one group signed by the Fuhrer, and the other only by you?

General Jodl: The difference was merely that the orders signed by me were of less importance.

Doctor Exner: Now there were orders that did not begin with "The Fuhrer has decreed," but were signed by you nevertheless. What about these?

General Jodl: These orders were as a rule signed: The Chief of the High Command of the Armed Forces, by order Jodl." These were

orders which emanated from me, that is, or my staff formulated them. The Fuhrer himself and Field Marshal Kietel had perhaps been informed of these orders, but not in every case. There were other orders which bear my initial on the first page, in the upper right hand corner. Those were orders issued by other departments. My initial "J" on the first was merely an office notation to show that the order had been submitted to me, but it did not mean that I had read it, for if, on perusing the first page, I saw that the decree dealt with a matter not connected with my sphere of work, then I initialed it and put it aside because I had to save time.

Doctor Exner: Now there is another large volume of documents, of which some are being used as very incriminating evidence against you; they are not orders but summarized notes. Can you comment on these?

General Jodl: These summarized notes were an arrangement used on higher staff levels for the convenience of people who did not have the time to study enormous files. The summarized notes contained, in a short condensed form, a description of some matter or the other, frequently the views taken by other departments and sometimes even a proposal. The important point however, is that it was not a draft of an order, but it formed the basis for an order.²²

Doctor Exner felt that this definition of the use of Jodl's name and initial was extremely important, because Jodl often initialed orders without reading them. Any individual, even to the present day, who has spent any time in the military knows this to be a common practice.

This long dialogue between Jodl and Exner was important

²²Ibid., 312-313.

in that Exner would at this point begin to challenge the six specific charges against Jodl, contending that Jodl was simply functioning as a staff assistant, with no powers to sway the events that took place. Exner challenged Point One by specifically introducing evidence that Jodl had opposed National Socialism. When the Prosecution contended that Jodl was a member, and wore the Golden Party Badge, Exner asked him:

Doctor Exner: We were discussing to what extent you enjoyed the favor of the Fuhrer, that is with regard to--

Did you not receive exceptional decorations from Hitler?

General Jodl: To my surprise, when the Vinnitsa crisis was over, on 30 January 1943, I received from the Fuhrer the Golden Party Badge. That was the only decoration I received from the Fuhrer.

Doctor Exner: In the entire 5 1/2 years of the war?

General Jodl: Yes.

Doctor Exner: Did you receive a gift or donation from Hitler, or from the party?

General Jodl: Not a single cent. If I am not to conceal anything I must mention the fact that at headquarters were received a package of coffee at Christmas.

Doctor Exner: Did you acquire any property in the territories occupied by us, or receive any as a gift or token of remembrance?

General Jodl: Nothing at all. When in the Indictment the sentence is found to the effect that the defendants enriched themselves from the occupied territories, as far as I am concerned I have only one word for that, and I must be frank--it is libel against

a decent German officer.²³

At this point it must be interjected that the American case for a conspiracy was so shaky against Jodl and some of the other defendants on trial that there was the possibility of destroying the whole trial. Some sort of compromise had to be reached. Since the Tribunal seemed not to be working within established international law and was instead continuously creating law, a compromise was reached.

According to Robert Conot:

(Justice) Biddle suggested a compromise. It was his belief, Biddle declared, that there had been no conspiracy to commit War Crimes or Crimes Against humanity . . . Finally the Judges concluded that the Hossbach Meeting of 5 November 1937, marked the first time that Hitler had specifically spelled out his aggressive intentions, and that the conspiracy, therefore, stemmed from that date.²⁴

Jodl was not present at that meeting. Joachim C. Fest lists those participants at the conference:

Hitler's real plans came to light in the secret conference of November 5, 1937 whose course we know from the record kept by one of the participants, Colonel Hossbach. To a restricted circle consisting of Foreign Minister, von Neurath, War Minister, von Blomberg, Commander of the Army, von Fritsch, Commander of the Navy, Admiral Raeder, and Air Force Commander, Goering, Hitler unveiled ideas that struck some of those present as sensational at the time, and others later on when they were exposed at the Nuremberg trials.²⁵

Also included in this point was the statement that "Jodl

²³Ibid., :301-302.

²⁴Conot, Justice at Nuremberg, 483-484.

²⁵Joachim C. Fest, Hitler, translated by Richard and Clara Winston, (New York: Vintage Books, 1974), 539.

was 'very active' in planning the operations against Czechoslovakia." The Prosecution's allegations stemmed from exhibit 388-PS which was described as a file of papers concerning the Czechoslovakian situation. Jodl's signature and initials appeared on a couple of the documents. Doctor Exner questioned Jodl:

Doctor Exner: We now turn to the question of Czechoslovakia. Did you participate in the conferences of 21 April 1938, and 28 May 1938, which the prosecution have described as conspirator's conferences?

General Jodl: I did not participate in any of these conferences.

Doctor Exner: What type of General Staff work were you carrying out for "Case Green"--which is, of course, the Czechoslovakian operation?

General Jodl: ...Two important cases were dealt with, or were to be dealt with: A defensive deployment against France if she opened hostilities--"Case Red" and an offensive deployment--"Case Green"--against Czechoslovakia . . . This directive, as far as Case Green is concerned had to be drawn up afresh the very same moment that Austria automatically became a new assembly zone, thus, on 20 May 1938, a new draft was made by me for Case Green which began with the customary words: "I do not intend to attack Czechoslovakia by military action in the near future without provocation . . .

Doctor Exner: Just wait a minute. That quotation is Document 388-PS . . . It is the document dated 20 May 1938, "I do not intend to attack Czechoslovakia by military action in the near future without provocation . . . " Now please continue.

General Jodl: That was on 20 May. On the 21st, the day after a monstrous incident occurred. Czechoslovakia not only mobilized but even marched up to our borders . . . The

Czechoslovakian Chief of General Staff explained . . . that 12 German divisions had been assembled in Saxony. I can only state--and my diary entry proves it--that not a single German soldier had been moved. Nothing, absolutely nothing had happened.²⁶

Doctor Exner then led Jodl through the documents pertaining to Case Green (388-PS) specifically referring to those which contained Jodl's name. In all cases, the documents were the type of plans and orders that would be prepared by any individual serving in the capacity as a planning officer. Franz Exner felt that he had established that Jodl's staff work was simply that--staff work--and not the work of an individual involved in a "Conspiracy." He now moved on to the next point.

Point Two of the Indictment stated that Jodl had "discussed the invasion of Norway with Hitler. He was also active in the planning against Greece and Yugoslavia." This would be covered now by Exner and Jodl:

Doctor Exner: We shall now deal with aggressive wars against the neutral countries . . . You have been accused of having used your personal influence and your close relations with the Fuhrer to attack a whole series of neutral countries. Tell me, is that true?

General Jodl: No it is untrue . . . My influence on the Fuhrer was unfortunately not in the least as great as it might, or even ought to have been in view of the position I held.²⁷

²⁶IMT, Volume XV, 356-357.

²⁷Ibid., 375.

Then Exner moved on to the discussion of the plans for the occupation of Norway. Jodl attended a meeting in mid-November 1939. Hitler did not intend to attack Norway. Exner asked what was the Fuhrer's view about an attack on Norway:

General Jodl: The general attitude of the Fuhrer at that time was--it is also established in writing: "I am not at all interested in extending the theaters of war, but if the danger of an occupation of Norway by England really exists and if that is true, then the situation would be different.

Doctor Exner: Was anything ordered at the time?

General Jodl: Nothing was ordered at the time, but he merely asked me to think this problem over generally. The preliminary work, as has been proved by documents, began on 27 January 1940.²⁸

Doctor Exner then led Jodl through testimony which showed that Jodl had indeed prepared war plans for the occupation of Norway, and, during the preparation of these plans, he did talk to Hitler. It is absurd to think of a planning officer who did not speak to his superior.

After concluding his questioning about Norway, Doctor Exner began his examination of the charges pertaining to Greece and Yugoslavia. Greece was, at the time of the planning, closely tied to the British Empire. Both King Paul and Queen Fredirka were of German descent. The Queen was the more forceful and dominant of the two. She was

²⁸Ibid.

considered pro Nazi, and there was fear that she might manipulate King Paul and Greece into the German camp. Jodl asserted that Hitler had wanted to "keep the Balkans quiet" and that it was only Mussolini's ill-starred excursion into Albania that precipitated the crisis. When the Italians invaded Albania and then Greece, the British became agitated and began moving strong forces into southern Greece. Jodl explained:

Hitler had not sent one German soldier there (Albania), although the matter had been under consideration. He ordered only an operation against Greece . . . And that was for the primary purpose of occupying the Salonika Basin, thereby giving the Italians direct relief, and only in the event, which to be sure was feared, of English divisions now landing in the Balkans as a result of Italy's madness. In that case it was decided to consider the whole of Greece as an operational area, since we could not possibly tolerate a Royal Air Force base in the immediate vicinity of the Rumanian oil fields.²⁹

As a side-note it must be mentioned that at this time England was at war with Germany, and, according to the rules of war then in force, Germany had a legal right to invade Greece. As for Yugoslavia, the invasion of this country presented a different problem.

Germany was on friendly terms with the government of that nation. When Hitler planned "Operation Marita" against Greece, he intended to move German troops through Bulgaria which was allied to Germany. Note the following exchange:

Doctor Exner: You said we had planned to leave Yugoslavia neutral. Now this plan was

²⁹Ibid., 385.

apparently changed by the Simovic Putsch. Why did this event altar our policy against Yugoslavia?

General Jodl: This putsch against a legal government, by officers meddling in politics, immediately after Yugoslavia had joined the Tripartite Pact had necessarily an anti-German tendency. We stood directly on the verge of a campaign against Greece, against the whole of Greece for in the meantime English divisions had landed there, and this campaign could only be waged with a safely neutral Yugoslavia behind us.³⁰

This was borne out from a direct quotation of Adolph Hitler, taking from the documents used in the trial (1746-PS):

The military Putsch in Yugoslavia has altered the political situation in the Balkans. Even if she makes a declaration of loyalty, Yugoslavia must be considered as an enemy and therefore beaten as quickly as possible.³¹

Also mentioned by the Prosecution were the countries of France, The Netherlands, Belgium, Luxemburg, Poland, and Russia. A discussion on the first five of these can be explained thusly: No major offensive operations were taken into consideration until after England and France had declared war on Germany. France and Germany had been traditional enemies ever since the Franco-Prussian War of 1871. It was also France that had led the humiliation of Germany at Versailles. Germany felt the alliances France had signed with England, Poland and the Netherlands together

³⁰ IMT, Volume XV. 386.

³¹ Ibid., 387.

with the presence of Russia on the Eastern borders constituted a threat to completely surround Germany and to choke her to death.

Doctor Exner ended his questioning of Jodl on this specification of the indictment concerning the western Allies with this exchange:

Doctor Exner: As to all the accusations concerning Crimes against Peace (Count Two of the Indictment), I should like to refer to the relevant documents which have been submitted by Goering, Ribbentrop, Raeder and Doenitz. I do not know whether it is at all necessary according to the rules of procedure.

Now one final question. The Prosecution has represented this whole series of campaigns as a long premeditated and concerted plan of conquest which you, as a conspirator, both instigated and carried out. What have you to say about this?

General Jodl: I believe that I have already corrected this completely distorted picture by my testimony. The war against Poland proceeded without my having taken any part in its preparation. It developed into a world war contrary to the hopes of all soldiers. Everything had to be improvised for this war. There was nothing ready except the plan of attack against Poland. There were neither enough bombs nor enough ammunition. At the time not a single soldier thought about Norway, Belgium, Holland, Yugoslavia, Greece or even Russia. No military agreements had been reached with Italy or with Japan.³²

³² Ibid., 398

The Third Specification dealt with the invasion of Russia. In the 1930s England and France had tried to convince Russia to become a partner in a latter day "Triple Entente" in order to contain the Germans. At first Stalin was receptive, but as he watched he saw Hitler move into one country after another with impunity. All that England and France did was to bombard Berlin with notes of protest. Being a pragmatist, Stalin understood that only massive military might could stop Hitler. When Hitler, in order to protect his eastern frontier in the upcoming attack on Poland, offered a treaty of non-aggression to Russia, Stalin, who saw that Germany not France or England constituted the real political and military power on the continent, accepted. However, from the time of the invasion of Poland to the attack on Russia, many incidents gave Hitler the impression that Russia might attack Germany. In order to prevent this, Hitler ordered plans drawn up for a pre-emptive attack on Russia.

Most Germans distrusted Russia and Bolshevism. General Jodl, like almost all Germans, had a complete different opinion about the war with Russia, one that did not agree with the sanctimonious attitude of the prosecution and the Tribunal. His most irritating and irrational contention was that "Barbarossa" had been 'undeniably a purely preventive war' . . . Doctor Exner had asked Jodl:

Doctor Exner: Then, in your opinion, the Fuhrer waged a preventive war. Did later experiences

prove that this was a military necessity?

General Jodl: It was undeniably a preventive war. What we found out later on was the certainty of enormous Russian military preparations opposite our frontiers. I will dispense with details, but I can only say that although we succeeded in a tactical surprise as to the day and hour, it was not strategic surprise. Russia was fully prepared for war.³³

As to the accusation that Jodl's name appears on orders and directives for Barbarossa, this is true. As Chief of the Planning Section of the German General Staff, this was a staff function, and, since Jodl did feel that a war with Russia was strictly a preventive measure, his advice cannot be construed as a crime. Preventive attacks are not illegal under the rules of the Geneva and Hague Conventions nor under then existing international law.

Up to now, the specifications against Jodl were easily explainable. However, the last two specifications dealt with War Crimes (Count Three), and Crimes Against Humanity (Count Four). These crimes were "Ex post facto" crimes and the defense was at the whim of the prosecution and the Tribunal under their innovation of rules and procedures, as well as their interpretation of non-existent law.

The trial progressed through midpoint, and many observers, as well as the Defense Counsel, were concerned with the way in which the Tribunal was obviously siding with

³³Ibid., 394-395.

the prosecution, and treating both the defendants and the defense counsel boorishly and often demeaningly. Justice Lawrence, brushed off the argument by saying it would be taken under advisement and told the defense to get on with the trial.

Specification Four dealt specifically with the notorious "Commando Order." This order had its genesis in the actions of Anglo-Canadian Commandos during the Allied debacle at Dieppe in 1942. The incident was the shackling of German troops in such a way as to make them choke to death. On 7 October 1942, a Wehrmacht communique contained the following sentence:

. . . In future all terror and sabotage troops of the British and their accomplices who do not act like soldiers but as bandits will be treated as such by German troops and will be ruthlessly eliminated in battle wherever they appear."³⁴

Jodl explained that the sentence was written word-for-word by Adolph Hitler. Jodl sought to prove that, although he had written the communique, the last sentence was a supplement, not part of the communique. A short time later, Hitler demanded that the Wehrmacht issue an executive order. This was done through Hitler's adjutant. Jodl's verbatim reply was:

'Please give him by best regards, but I will not issue such an order like that.' Schmudt laughed and said, 'Well I can't tell him that,' and my reply was, 'Very well, then tell the Fuhrer that I do not see how a decree like that could be justified under international

³⁴IMT, Volume XV., 316.

law.'³⁵

Later, Jodl testified that Schmundt called him and told him that Hitler was going to draft the order himself. On October 18, 1942, Schumndt brought Jodl a copy of the Com-mando Order in two parts. The first part was an order to the troops; the second part was an explanation to the officers (Trial Documents 498-PS and 503-PS). Jodl still had misgivings about the order and wanted to insert restric-tions into the order so that it would not become a license for indiscriminate murder. Although Jodl had no compunc-tions as far as those enemy troops who behaved as criminals and bandits being treated accordingly, he was concerned about the ordinary soldier who was simply doing his job:

Doctor Exner: What legal doubt did you have?

General Jodl: Just this doubt--that on the basis of this order soldiers will also be massacred . . . I was afraid that not only soldiers who, to use the Fuhrer's expression, really behaved like bandits, but also decent enemy soldiers would be wiped out. In addition--and this was repugnant to me--at the very end of document 503-PS it was ordered that soldiers were to be shot after they had been captured and interrogated.³⁶

Jodl then mentioned the repercussions of Anglo-Canadian behavior at Dieppe. He mentioned how members of Organ-ization Todt (a civilian labor organization) were found:

³⁵Ibid., 318.

³⁶Ibid., 320.

". . . shackled with a loop around their necks and the end of the rope fastened around their bent back legs in such a way that they had strangled themselves."³⁷

Another factor was the capture of an English commando handbook. Jodl's defense lawyer, Doctor Exner, asked that it be entered as evidence to support Jodl's case. It was disapproved. As Eugene Davidson stated:

The British Handbook of Irregular Warfare instructed commandos to act like gangsters, not soldiers, could not be brought into the trial, although Doctor Exner pleaded that the British orders affected the German reprisals against the commandos, and that the British government had officially defended this kind of warfare as acceptable.³⁸

Jodl described the captured handbook's impact on Hitler:

That was the last straw for the Fuhrer; I also studied it very carefully. These close combat instructions showed by pictures how men could be shackled in a way so that they strangled themselves through the shackling, and it was stated exactly within what time death would occur.³⁹

Exner asked Jodl about his complicity in the Commando Order:

Doctor Exner: And that was your part in this Commando Order?

General Jodl: My part consisted only in distributing the order, or having it distributed in accordance with express instructions.⁴⁰

³⁷Ibid., 321.

³⁸Davidson, TRial of the Germans, 33.

³⁹IMT, Volume XV, 321.

⁴⁰Ibid., 323.

Jodl was then asked if he could have refused to transmit the order. Jodl replied that he could not without being arrested. This, he felt, would compromise any effort he could exert to modify the order. He told the Tribunal:

It was my intention to get rid of the Commando Order entirely. For that reason I wrote next to the sentence under figure 4: 'That is just what they should not'-- the entire first page."⁴¹

Jodl went on answering questions all of which seemed to back up his previous position on the Commando Order.

After the line of examination was exhausted Doctor Exner moved on to Specification Seven. (Note: Points Five and Six were not covered in the course of Doctor Exner's examination.) This point dealt with an order General Jodl had signed and sent to the troops in Russia stating the Fuhrer's decree that he would not accept the surrender of Leningrad and Moscow and that these two cities should be completely destroyed. (C-123, Annex A.) The following exchange ensued:

Doctor Exner: This is the order stating that surrender was not to be accepted. How did this order come into being?

General Jodl: . . . The purpose of this order was exclusively that of protecting German troops against such catastrophes that had already occurred in Kiev and Kharkov. For this reason the Fuhrer issued this order, which I, in turn, at his express order put into writing . . . ⁴²

⁴¹IMT, Volume SV, 325-326.

⁴²Ibid., 330.

It may be interesting at this point to note that the cities were never captured. Therefore, Jodl was being charged with a crime that had in fact never even taken place.

With the conclusion of this questioning Doctor Exner had completed the examination of his client. Justice Lawrence asked if other members of the defense counsel wished to question the general. Several of them did. Mainly these were lawyers of various German organizations whose trials would begin after the conclusion of the case against the individual defendants. However, none of the testimony can be considered germane to this discussion. After Jodl answered questions to the defense lawyers he had to undergo cross examination by the prosecution.

Long before this point in the trial the prosecution realized that to pursue further Counts One and Two, which dealt with conspiracy and aggressive wars, would be of little use since the whole concept was shaky. By the time that Jodl's cross examination took place the prosecution concentrated on Counts Three and Four which dealt with war crimes and crimes against humanity. Jodl's first and most difficult problem in the cross examination would be his antagonist, G. D. "Khaki" Roberts. Roberts was described by members of the prosecution and the defense as arrogant, pompous and thoroughly disagreeable. Most of Roberts' questions dealt with matters such as the imprisonment of Chancellor Kurt Schuschnigg of Austria, and the like. Much

of this examination must be passed over in order to analyze Specification Six which dealt with Jodl's order for the evacuation of the population of northern Norway and the burning of the villages and towns to prevent their use by the Russians. Roberts asked Jodl if he remembered it, to which Jodl replied that he did because he had written it. The Prosecutor asked if the order in Jodl's opinion was a cruel order. To this Jodl replied:

No, not exactly. I should like to make a few explanatory remarks about it. Typically, as I have always said, this order was urged upon the Fuhrer by Reich Commissioner (Joseph) Terboven; not by the soldiers but much against their will. Secondly, this order was not carried out, because otherwise the cities of Kirkenes, Hammerfest, and Alta would today no longer exist. All of these cities were east of Lyngnen Fjord (the demarcation line of which all the east would be destroyed). In practice the order was modified by our forces in agreement with me . . . ⁴³

Roberts continued his interrogation. Although Jodl was always able to counter Roberts' questions, many observers were upset with his methods in questioning Jodl. Whenever Jodl's answers parried the prosecutor, he began to use invective and sarcasm to the point that he was admonished by the President of the Tribunal, Justice Lawrence. Roberts finally finished his examination, and was replaced by Colonel Y. V. Pokrovsky of the Russian prosecution team. Pokrovsky, spent the better part of two days trying to implicate Jodl in the commission of war crimes that were

⁴³Ibid., 497.

committed in Russia and Yugoslavia. He was unsuccessful. Most of the testimony is irrelevant to this discussion.

The final part of Jodl's case required that Doctor Exner and Doctor Herman Jahreiss call witnesses to corroborate Jodl's testimony. But for all intents, the case against Jodl was finished. Jodl, his defense, as well as the other defendants, and observers felt that Jodl had conducted his defense well. Many of the spectators, correspondents, and military observers were upset by the tactics of the Tribunal which, due to the vagueness of its authority, had to be invented. Very often the Tribunal innovated in favor of the prosecution. An example on point was the subject of "Superior Command." The defendants felt the Tribunal was taking orders from above. The Tribunal tried to innovate by applying the principles of civil law and common law to a case which required military and international law interpretation. As legalist Jacob Berger pointed out:

While the Americans and British, backed by Oppenheimer's (L. Oppenheimer is recognized expert on International law) authority recognizing 'Superior Command' as a full defense, Anglo-American civil legal practices refused to ascribe to it any exculpating effect.⁴⁴

⁴⁴Precedents are listed as: 1. U.S. Rules of Warfare, Para. 347; 2. British Manual of Military Law, Chapter XIV, Article 443; and Oppenheimer's International Law, 4th Edition, Volume II, Page 410. These citations appear in: Jacob Berger, "The Legal Nature of War Crimes, and the Problem of Superior Command", Current Affairs, XXXV, Number 1, (January, 1946), 1209.

Even more upsetting to international legalists was the cavalier and roughshod way in which the lawyers and their defendants were treated. There were allusions to witnesses being intimidated; lawyers were often denied access to certain documents and to witnesses, while the Prosecution's requests were always honored. American, British and Allied documents, so necessary in some of the Defense interrogations, were often withheld. An example was Jodl's request for introduction of the British and American manuals on irregular warfare.

After all the defense lawyers finished with Jodl, the Tribunal moved on to the remaining defendants whose names followed his in the indictment. After that, it was the turn of the organizations, the SA and SS, and government offices. The German General Staff was included in this group.

Finally, the defense was ordered to begin their final arguments. When his turn came Doctor Exner began his final argument. He first questioned whether the Tribunal had even been able to establish Jodl's guilt. He argued:

One of the things that comes under these actions by the prosecution, which makes the question of an individual guilt more difficult is the fact that Jodl and Kietel are treated as inseparable twins; one common case against them by Great Britain; one common brief by the French Prosecution; finally the Russian Prosecution spoke very little about the individual defendants, but heaped reproach after reproach upon all defendants all of this clearly intended to shorten the trial, hardly serves to clear up the question of individual

responsibility.⁴⁵

Exner then went on to attack the idea that Jodl had been involved in a conspiracy to wage aggressive war. The point was hammered home that Jodl had not been involved in a conspiracy because during the time when most of the preparations for war were being planned by Hitler and his henchmen, Jodl was in Vienna assigned to an artillery division. Also, Exner sought to prove how weak the prosecution's case on Count One really was. He told the Tribunal:

Jodl had never been a National Socialist, and that by the traditions of the military code of honor, he had been forbidden to join any political party, or to even voice an opinion concerning politics.⁴⁶

Doctor Exner next took issue with the charge that Jodl had become an active member of Hitler's conspiracy after 1939. Exner pointed out that Jodl had never participated in meetings where Nazi plans for aggression were being formulated. Up to 1940 Jodl had no personal contact with Hitler or any of the Nazi leaders except for Minister of the Interior, Wilhelm Frick, and then only as a member of the Reich Defense Council. Exner next disputed the prosecution's contention that Jodl invariably agreed with Hitler. He rebutted this by stating that Jodl passed on Hitler's orders only in the performance of his own duties:

An officer who cooperated in the place indicated for him in the war plan can never be considered a

⁴⁵Ibid., 744.

⁴⁶Ibid., 745.

conspirator. He does, in fact, have a plan in common with his superiors, but has not adopted it willingly, nor has he concluded an agreement but, within the normal order of service, he simply does what the post he occupies demands.⁴⁷

Exner sought to show that Jodl had not entered Hitler's personal staff on his own volition but in response to a war plan devised many years before. Exner also pointed out that the plans for the invasion of Poland had been in effect long before September 3, 1939, the date Jodl returned to Berlin from Vienna.

The defense admitted that, after this date, Jodl became one of Hitler's closest military advisors but never his confidant. He was let in on Hitler's plans only as required in the performance of his duties. Evidence was given that Jodl's relationship with Hitler was not always cordial and that they argued frequently. After exhausting this line of rebuttal Exner then turned to Jodl's relationship within the framework of the German Army.

Jodl was chief of the planning section of the German General Staff. He was neither Kietel's deputy, or chief-of-staff. He had no control over the Wehrmacht. Exner sought to prove that the prosecution had erred when it named Jodl as commander of individual campaigns. In an attempt to shift blame away from himself, General Walter Warlimont, a compatriot of Jodl's at Army headquarters, had turned

⁴⁷Ibid., 747.

prosecution witness. He had told the Tribunal that he had attended meetings of a policy making nature as Jodl's representative. This was quickly refuted:

It was also wrong when it was repeatedly said that Warlimont was present as Jodl's representative, or assistant. Warlimont was in the OKW. Jodl had left the OKW in October, 1936, and had nothing to do with Warlimont . . . what results all this inference is that Jodl held responsibility for the real or alleged wars of aggression.⁴⁸

Doctor Exner pointed out that Jodl simply performed his duties as any good soldier would. The inference that he did not question Hitler's decisions cannot be considered a crime. He asked if any of the officers in the Allied armies questioned the decisions of their leaders. He pointed out that was not their function. Soldiers are soldiers; politicians are politicians. In regard to the infamous Commissar and Commando Orders, the prosecution contended that Jodl in initialing these orders gave tacit approval to them. The defense argued that this was wrong. In the performance of Jodl's staff functions initials do not imply agreement but only notice of an order. Exner had pointed out that Jodl refused to draft the Commando Order and, in reality, it was General Walter Warlimont of the OKW who drafted it. It was also made plain that Jodl had indeed modified the order. Doctor Exner ended his final statement by recalling his long relationship with Jodl and his family.

⁴⁸IMT, Vol XV, 705.

He felt that Jodl simply was not guilty. He mentioned that when Jodl had first asked him to take the case, Jodl had told him: "If I felt a spark of guilt in me, I would not have chose you as my defense counsel."⁴⁹

As stipulated by the London Charter, at this point each defendant was allowed to enter a final plea on his behalf.

Jodl made this statement:

It is my unshakable belief that a later historical judgement will achieve an objective and proper opinion of our supreme military leaders and their assistants. They did not act in the service of hell, nor of a criminal, but in the service of their people and Fatherland. So far as I am concerned, I believe that no man can act better than if he strives toward the highest aims. That, and nothing else, has been my guiding principle, and therefore, whatever verdict you the judges may pass on me, I shall leave this court with my head as high as I entered it many months ago. In such a war as this, in which hundreds of children and women were killed in air raids--in which partisans used any form of violence that seemed service able to them--in such a war severe measures, even though they may not perhaps seem in keeping with international law, are not crimes against morals and conscience, for I believe and know: The duty towards people and Fatherland stands above all others. To fulfill that duty was my honor and my supreme law. May this duty in a more fortunate future be superceded by a still higher one--by the duty towards mankind.⁵⁰

And so, one after another, each defendant rose to speak. After the statements were completed an audible sigh swept through the courtroom. Everyone present thought that these statements would be vitriolic outpourings of emotion and propaganda. But that was not to be. As English Justice

⁴⁹Davidson, Trial of the Germans, 525.

⁵⁰IMT, Volume XV, 790.

Norman Birkett remarked, "The defendants all bore themselves with dignity, and they spoke with great force and feeling at a time when they had to look back upon their own fall, contemplating the suffering and humiliation of the people they had led, and when their own personal fate was being weighed."⁵¹ More than one onlooker would agree: "What dignity would come out of these proceedings was enhanced by the demeanor of the defendants themselves."⁵²

On September 1, 1946, The International Military Tribunal adjourned to consider its verdicts.

⁵¹Heydecker and Leeb, The Nuremberg Trial, 368.

⁵²Tusa, Nuremberg Trials, 441.

Chapter v

Judgement, Appeal, and Execution

On Saturday, August 31, 1946, the Tribunal adjourned. It would start to consider its verdicts the next day. As soon as the deliberations began it became readily apparent that Russia would try to exact her "pound of flesh." The Russian Judge Nikitchenko moved to summarily execute all defendants without exception, a direct violation of Article 4c of the London Charter which specified: "All convictions and sentences shall be by affirmative votes of at least three of the members of the Tribunal."¹ Nikitchenko then raised a controversy concerning the matter of two-to-two deadlocks, which he felt would lead to acquittals. It was clear that the Russians wanted no acquittals. They demanded that in case of a deadlock, the defendants should be held in custody until a conviction could be obtained. The Tribunal defeated this ploy by a three to one vote.²

Thwarted, the Russians immediately became embroiled in still another controversy. Through American instigation hanging had been decided upon as the form of execution. The French, led by Donnedieu de Vabres, suggested that the firing squad be used as a more honorable form of execution. The American Justice, France Biddle, suggested: "Hanging be utilized as the primary means of execution, but that

¹Neave, Trial, 314.

²Ibid., 309.

shooting be used as a form of mitigation."³ At this Nikitchenko blew up over this discussion of ridiculous trifles and, for once the other justices agreed with the Russians. The squabbling, however, continued for days. Finally, the Tribunal got around to discussing the individual verdicts. The intent had been to deal with the cases in order of indictment, but soon it became evident that some cases were trickier than others and would take longer to resolve.

The Tribunal had been impressed by Jodl when he requested documents, in order to build his case, [even before he had been assigned counsel]. The prosecution handled Jodl gingerly throughout the trial because it was felt that here was their first real threat to their case. Even the defense was wary of Jodl because they felt his case weighed heavily against their argument for group criminality; that it was only Hitler and the organizations he created that could be held responsible for the crimes allegedly committed by Germany. Exner's masterful defense of Jodl, as well as the admission of guilt by Speer, brought up the concept that one could be guilty or innocent within an allegedly criminal organization. There was a feeling that Jodl, Kietel, and Speer should be sacrificed for the total good.

³Conot, Justice at Nuremberg, 487.

Although Jodl was not popular with the members of the Tribunal, Justices Birkett and Biddle accorded him much respect. Birkett observed:

Jodl gave the impression that he was much more than a simple soldier; he possessed considerable political knowledge, much ingenuity, and remarkable shrewdness. Jodl knew the strength of the prosecution's case against him but also knew the best lines on which to answer it.⁴

The prosecution had built its case against Jodl using the paperwork he had signed during his tenure in office. To this Jodl countered that he was only an organizational planner and that he had signed many orders without reading them, much as do many officers in other countries. He maintained that he stayed on in an intolerable situation, taking part in what he felt was wrong only in order to mitigate these foul orders. Finally, he had argued that the ban on superior orders was itself illegal and unjust. At the end the Tribunal would not accede to Jodl's arguments. They reasoned that the evidence showed: "That Jodl had done numerous things deemed illegal by the London Charter, and in the view of the prosecution he had performed these acts with unwanted enthusiasm."⁵ As for his plea of staying on to mitigate some of the more terrible orders, the Tribunal declared: "His attempts at amelioration were so feeble as

⁴Smith, Reaching Judgement at Nuremberg, 211.

⁵Ibid., 212.

to border on the imaginary."⁶

All that now remained was to pass judgement. But the Tribunal was undecided. The Allied Prosecution admitted that it had no case on Count One of the indictment. It also felt that the evidence pertaining to Count Two was also quite shaky. Nevertheless, the French Justice, de Vabres wanted Jodl convicted on Counts Two and Three Only. British Justice, Lawrence felt Jodl should be convicted on the first three counts. But the Russians, egged on by Nikitchenko, prodded the U.S. prosecution into voting to convict Jodl on all four counts.⁷

On September 12, 1946, the Tribunal began deliberating on Jodl's case. The Russians, supported by Biddle of the U.S. and Lawrence of Great Britain, asked for the death penalty on all four counts. However, they felt that Jodl was "less guilty" than Kietel and leaned towards a more "humane" execution by a firing squad. Then suddenly de Vabres stunned the Tribunal by reversing his stand on the death penalty. He was now opting for an "honorable" sentence in prison. He had been able to win his compatriot Robert Falco over to his point of view. Biddle and Lawrence began to waver. With Justice Parker of the United States,

⁶Ibid., 212-213.

⁷William Bosch, Justice at Nuremberg: American Attitudes on the Major War Crimes Trials, (Chapel Hill: The University of North Carolina Press, 1970), 431.

and Justice Birkett of Great Britain as yet noncommitted, the Russians saw that they might lose the Jodl execution. They suggested that Jodl's case be put off for a few days. In the meantime they pressured the American and English justices for a hanging sentence.⁸ On September 12, 1946, Jodl's fate was sealed by negotiation. The Russians had been able to re-win the Americans and English over to their desire for an execution. The French justices, realizing that their position on a prison sentence was untenable, caved in and made it a unanimous decision for execution. Biddle, however, still supported the French justices in calling for Kietel to be hung and Jodl to be shot. The Russians and the British remained adamant for death by hanging. The American Justice Parker was also leaning in that direction. Biddle decided to capitulate and Jodl was sentenced to death by hanging.⁹

On October 1, 1946, each defendant was called in front of the Tribunal to hear his individual verdict. This process commenced with Reichsmarshal Hermann Goering and proceeded in indictment order. At rigid attention, Jodl heard Justice Lawrence intone:

His defense was built upon the doctrine of superior orders which was prohibited by Article Eight of the London Charter as a defense. There is nothing in mitigation. Participation in such crimes such as these have never been required by any soldier and he cannot

⁸Gilbert, Nuremberg Diaries, 107.

⁹Ibid.

shield himself behind the mythical requirement of soldierly obedience at all costs as his excuse for his commission of these crimes.¹⁰

Jodl then heard through his earphones these words: Verdict: Guilty on all four counts. Sentence: "Death by hanging" (Durch vor dem strang).

For once, Jodl's iron composure deserted him. His eyes bugged out and his face turned red. Jerkingly, he made an about face and was led out of the court room. Most of the onlookers as well as the press were surprised. Prior to the rendering of the verdicts, the press had taken a poll. The results showed that:

Jodl was given little chance of being found not guilty, but only thirteen had thought that he would be sentenced to death, as opposed to fourteen for Grand Admiral Raeder (25 years), and forty-nine for Kietel (hanging).¹¹

Back in his cell, Jodl was visited by George Gilbert who recorded Jodl's words:

Death by hanging, that at least I did not deserve. The death part--all right--someone has to take the responsibility, but that--His mouth quirked and his voice choked for the first time--That I did not deserve.¹²

Later on in the evening, and in a more composed frame of mind, he wrote to his wife: "Luise; I have to look fate in the eye. The court was a court of victors and remains a

¹⁰Ibid.

¹¹Davidson, Trial of the Germans, 362.

¹²gilbert, Diaries, 179.

political instrument. It will always appear to have the appearance of justice."¹³

Many of the spectators were appalled by the event. Immediately after the verdicts were read, the Russians filed a dissenting opinion in which they deplored the leniency of the Tribunal in handing down the acquittals and prison sentences instead of summarily executing all the defendants. An anonymous reporter for Newsweek wrote:

But to object to three out of three acquittals suggested that the Soviets had intended to use the Tribunal as a tool of vengeance rather than as a process of legal purification of the international situation.¹⁴

Special Order 29 of the Constitution of the Allied Control Council for Germany (ACCG) specified that any appeal for clemency by any person sentenced to death by the Tribunal must be lodged with the Secretariat of the Council within four days. All of the other defendants immediately began to submit them; all of them, that is except Jodl. Eugene Davidson wrote: "Jodl did not want to appeal the verdict, though at the insistence of Doctor Exner and Jodl's wife Luise, he finally did allow an appeal to be made. He never did have any sense of guilt."¹⁵

¹³Luise Jodl, Leben und Sterben des Generaloberst Alfred Jodl, translation by author, (Munich: Verlag Molden, 1976), 346.

¹⁴_____, "Trail Rhetoric", Newsweek, 28, Number 16 (October 14, 1946), 58.

¹⁵Davidson, Trial of the Germans, 367.

In the appeal, Doctor Exner made this eloquent statement:

Jodl, a soldier acted only in accordance with the orders of his superiors . . . The judgement is completely incomprehensible to Jodl and he must feel himself a victim of a new form of justice. It may be safely said that no lawyer would have said in 1939, that rulers of a state would be punished as individual criminals for preparing an aggressive war. Jodl believed that only politicians were competent to make the decision to wage war, and that the members of the German General Staff did not have the duty, or even the right to judge the legality of these decisions.¹⁶

As an addendum to the appeal Jodl requested that if it were disapproved, that he be allowed to face death in front of a firing squad like a soldier instead of hanging like a common criminal.

Immediately after the verdicts and sentences had been handed down, Luise Jodl began a crusade to save her husband's life. In an emotional appeal to Field Marshal Bernard L. Montgomery of the British Army she wrote: "Never in history had a chief of a general staff been treated like a common criminal."¹⁷ How could General Jodl, who had been treated like an honorable soldier when he signed the surrender, now be condemned to death?" To be sure that General Montgomery received the letter, she presented it to a departing member of the English delegation. She also sent messages to Prime Minister Clement Atlee, as well as to

¹⁶Harris, Tyranny on Trial, 483.

¹⁷Maser, Nation on Trial, 495.

General Dwight D. Eisenhower, Supreme Commander of the Allied forces. Eisenhower would later claim that he was too unfamiliar with the case to render a judgement. The statement draws an interesting parallel to a case one year earlier when he allowed the execution of an American soldier on desertion. William Bradford Huie, in his book The Execution of Private Eddie D. Slovik tells how Eisenhower, as the Supreme Commander, was the final approving authority for all judicial decision in Germany requiring a death sentence. "The wife of Private Eddie Slovik, the only American soldier to be shot for desertion in World War Two pleaded directly to General Eisenhower. Eisenhower had claimed that he had no knowledge of the case."¹⁸

On October 10, 1946, the Appeals Board reviewed and rejected clemency in all death sentences. But interestingly enough, only Jodl's addendum requesting a firing squad elicited any real discussion among all the appeals. Harold Laskie, a visiting member of the British Parliament remarked about the death sentence: "If a man can be sent to prison under 'Ex Post Facto' laws; he can also be sentenced to death."¹⁹ Jodl learned that his appeal along with all the others was rejected. He then requested that after execution

¹⁸William Bradford Huie, The Execution of Private Eddie D. Slovik, (New York: Dell Books, 1963), 149.

¹⁹_____, "Trial Rhetoric," Newsweek, Volume 28, Number 16 (October 14, 1946), 58.

his body be released to be buried in a secret location in Bavaria. This request was also rejected.

With all avenues of appeal exhausted the Council referred again to Special Order Number 29. The order specified that all executions must be completed by the fifteenth day after sentencing. In the strictest secrecy the executions were scheduled for the evening of October 15-16, 1946. A couple of days before the scheduled executions, the condemned were allowed a final visit by their families. As Luise Jodl went to see her husband for the last time, an American reporter observed: "Colonel-General Alfred Jodl, probably the most dignified of all the defendants received his wife for a final visit, with the icy detachment which befitted a man who wore the blue trousers and red stripes of what had been the German General Staff."²⁰ On her way out, Luise Jodl was stopped by an American Captain who said: "I wish to God that your husband comes through all of this with dignity."²¹ Jodl was praised by his own. From other German officers sequestered in the prison came a pack of cigarettes with the note "To our dear Jodl." In these last few days, the interservice rivalry which had permeated the German military disappeared. Grand Admiral Erich Raeder, who had condemned Kietel, had nothing but praise for Jodl.

²⁰ _____, "Reich Until Dead," Newsweek, Volume 28, Number 17, (October 21, 1946), 54.

²¹Jodl, Leben und Sterben, 457.

Although the day of the execution was to be kept secret, word of it nevertheless got around the prison. Even if the secret could have been kept, the prisoners would have perceived that the day had come because of the increased activity. All day long trucks had been arriving and unloading their cargo at the gymnasium door. After dinner the prison's enlisted men played their daily basketball game to camouflage the preparations. But after the game ended at 10:30 P.M., the lights stayed on, and the unmistakable sounds of hammering could be heard. The light had been turned low at 9:30 P.M., as was the usual routine. But at 10:30 a great furor engulfed the prison. Reich Marshal Hermann Goering had cheated the hangman by taking Cyanide by way of a capsule that he had been able to hide on his person, in spite of the frequent searches. All pretense was thrown to the wind. The prisoners were told to prepare themselves. Colonel Burton Andrus, who had been the prison warden for these long months, recalled:

To the end Jodl was a soldier. He spent his last hours putting his cell into order. The others like Kietel left their cells in disarray; bedding messed, half eaten tins of food lying around. But Jodl's cell was impeccable, like a soldier ready for a Saturday inspection.²²

Shortly after midnight, Colonel Andrus, accompanied by Doctor Gilbert, Paster Gerrecke, the prison chaplain;

²²Burton Andrus, The Infamous of Nuremberg, (New York: Cowan-McCann, Incorporated, 1969), 197.

Bavarian Prime Minister Hoegner; the Prosecutor General of Nuremberg, and an assortment of guards began their rounds. In order of indictment they arrived in front of each of the condemned men's door. Once they were inside the cell they read the death sentence.

When his time came, Jodl, handcuffed between two guards, walked down the corridor of the cellblock, and out into the court yard. Walking across the yard, they arrived at the back door to the gymnasium. Inside, stood three sets of gallows painted black. In the harsh bright lights of the gym, Jodl's handcuffs were removed and his hands were tied with leather thongs. Jodl was then led to the foot of one of the gallows where he was met by a U. S. Army Major who brusquely asked him to state his name. After stating "Alfred Gustav Jodl," he climbed the thirteen symbolic stairs accompanied by the chaplain. At the top stood the hangman. Asked by the chaplain if he had any last words he shouted in a clear voice: "My Germany, I salute you."²³ A black hood was placed over his head and quickly the trap door was sprung.

Even in death Jodl was denied any dignity. Along with the rest of the executed, Jodl was placed on a plain wood coffin. A paper nametag was placed on the tunic of his uniform. He was photographed both clothed and naked "for

²³Tusa, The Nuremberg Trial, 486.

posterity." Immediately after the picture taking, the bodies of the executed were placed in two Army trucks, which then sped South on the Autobahn to Munich, where they were quickly cremated. The ashes were then dumped into the Isar River which flows through the center of Munich. In the end, Jodl ironically got his wish to be buried in his Bavaria.

Chapter VI

Vindication

The trial of the Major German war criminals was over. The trials of lesser defendants would continue until 1949. In general, everyone connected with the Tribunal felt that they had done an exemplary job in making the world a better place to live. However, very quickly criticism began to appear. Many saw the trial as a travesty of justice. In the United States, the country that had pushed for the trials, politicians and legal authorities deplored what had transpired. Speaking before the United States Senate, Republican Senator Robert A. Taft spoke out:

I believe that most Americans view with discomfort the war crimes trials just completed in Germany . . . They violate the fundamental principles of American justice, that a man cannot be tried under an ex post facto statutes. The trial of the vanquished by the victors cannot be impartial . . . About this whole judgement there is a spirit of vengeance and vengeance is seldom justice. The hanging of these eleven men will be a blot on the American record which we will long regret.¹

Senator Taft's words were echoed in the House of Representatives by Congressman John Rankin: "I desire to say that what has taken place in Nuremberg is a disgrace to the United States. We are, in Nuremberg, not only hanging German soldiers, but trying German businessmen in the name of the United States."²

The criticism in the United States Congress was

¹Bosch, Justice at Nuremberg, 93.

²Ibid., 113.

extended to the Supreme Court where Justice William O. Douglas made this statement:

The Nuremberg proceedings have violated the long established American tradition against vengeance, a tradition that has been preserved even in trying times. No matter how many books are written or briefs filed, no matter how heinous the crimes for which the Nazis were tried they had never been formalized as crimes with definitions as required by our legal standards, nor outlawed with penalty by the international community.³

Fellow Justice Harlan Stone also remarked:

Jackson [Robert A. Jackson, Chief of the American Prosecution] is away conducting his high grade lynching party in Nuremberg. I don't mind what he is doing to the Nazis, but I hate to see the pretense that he is running a court and trial according to common law."⁴

Many were concerned with the provisions of the Atlantic Charter which allowed the cases to be tried under ex post facto law. American historian Walter T. Schoenfeldt explained:

The legal basis for the trial was derived from an agreement signed in London by the Allied powers, authorizing the Charter of the International Military Tribunal. Thus, notwithstanding, the Hague and Geneva Conventions on the rules of war, these trials were based on retroactive legislation. The fairness of this action must always remain a factor in history's judgment of Nuremberg.⁵

In Europe many individuals also deplored the trials. In France, which had borne her share of the German oppression,

³Ibid., 83.

⁴Ibid., 113.

⁵Walter T. Schoenfeldt, "A Record of Horrors," American History Illustrated, XX, Number 5, (June, 1985), 48.

Andre Geras took a dim view of the actions of the Tribunal:

We do not consider, a criminal violation an act of aggression. If one declared war a criminal act of an individual, we are going further than actual law . . . These acts have been known for years before and had not been declared a criminal violation of international law. This is ex post facto legislation.⁶

Many observers believed that the trials were deliberate attempts to humiliate and degrade the Germans as had been done at Versailles in 1919. If this was the case, the attempt had failed. These fifteen men, who had entered the court as fifteen individuals, concerned only with their own self esteem and preservation, had come together as one. From Reich Marshal Hermann Goering to Arthur Seyss-Inquart, who ruled the Netherlands with an iron fist, they all forgot the pettiness which had once characterized their dealings. No one was able to account for their solidarity; but, an unidentified correspondent for Newsweek speculated:

The defendants were unified in a way we do not yet understand. We were going to hang most of these men and put the rest in prison. We still do not know why they did what they did. That is to say the same horror may come again, because we still do not recognize the causes.⁷

If the trial was meant to instill a sense of guilt and humiliation in the ordinary German citizen, it also failed. The Allies had failed to understand the German spirit or "Geist", that love of and devotion to the fatherland, which

⁶Davidson, Trial of the Germans, 13.

⁷Newsweek, "Trial Rhetoric," Newsweek, 28, Number 16, (October 14, 1945), 58.

transcends its political leadership. An article in Time quoted Pastor Martin Neimoller, a Protestant minister, and an implacable foe of Hitler, who had been imprisoned in Dachau echoed the feelings of most Germans when he said: "If there is a war, a German does not ask if it is just or unjust, but he feels bound to join the ranks . . . You are mistaken if you think that any honest person in Germany will feel personally responsible for Dachau, Belson, or Buchenwalk."⁸ French legalist Justin de Vambrey questioned if the trial had done anything to reestablish a sense of justice in Germany. He wondered: "We want to establish pre-Hitlerian law and morality. Can we do it by arranging trials whose procedures disregard the elementary principles of the very law we are trying to restore?"⁹

It was a device used by the Tribunal's supporters to degrade the cases of the defendants by denying the existence of the German traits of obedience to a strict code of conduct to a leader, even if that leader was such a person as Hitler. But the Tribunal was struck by the apparent honor of the defendant Jodl. Justice Norman Birkett mirrored the feelings of the other justices when he said: "I was always struck by the apparently sincere and passionate idealism of

⁸ _____, "War Crimes," Time, XLVII, Number 48, (August 5, 1946), 32.

⁹ Justin Vambrey, "Laws and Legalism," The Nation, 163, Number 48, (December 1, 1946), 576.

the defendant, but what ideals."¹⁰ Another person who was impressed by Jodl was historian Walter Schoenfeldt:

General Alfred Jodl, whose dignity and soldierly bearing won him a measure of respect, had served as chief-of-staff, of the operations section of the German General Staff. In this capacity he signed several incriminating orders. Although judged guilty on all four counts and executed, Jodl was apparently sincere.¹¹

Major Airey Neave, who had delivered the Indictment to Jodl in the early days of 1945, sincerely felt that the general had been "railroaded" to his death by a court bent on vengeance and fueled by emotion. He recalled:

I was genuinely surprised by the hostility to General Jodl . . . who was unknown to most of the public. As late as June, 1945 he had not been included on the Anglo-American list of war criminals . . . It seems highly unlikely that Jodl would have been sentenced to death had his trial taken place a few months later. Other officers, more deeply involved in issuing criminal orders were treated more leniently including; Mantueffel, Kesselring and even the SS General von dem Bach-Zelewski who had crushed the "Warsaw Ghetto Uprising of 1944."¹²

On December 9, 1948, even as the last of the trials was being held in Nuremberg, the United Nations adopted the Declaration of Human Rights, in which Article 11(2) stated: "No one shall be held guilty of any penal offense of any act of omission which did not constitute a penal offense under

¹⁰Conot, Justice at Nuremberg, 475.

¹¹Schoenfeldt, Record of Horrors, 48.

¹²Neave, On Trial at Nuremberg, 314.

international law at the time at which it was committed."¹³

The last of the Nuremberg trials took place in 1949. By then, the whole political and economic climate of Europe had changed. The Allies had split up. Russia was securing its control of Eastern Europe. As Sir Winston Churchill remarked, an "Iron Curtain" had descended over half of Europe. England, France, and the United States were forging the North Atlantic Treaty Organization (NATO) in order to keep the Soviet Union out of western Europe.

As Western Germany regained her self respect and became a valued member of the Western community a movement grew in the country to rehabilitate those individuals who had served Germany honorably during the war but who had been wrongly convicted at the war crimes trials. The three Western powers agreed to this idea. Luise Jodl immediately submitted her husband's case to a German court. She presented her affidavits in her husband's defense. Among these was one from the French primary justice at the trial Donnedieu de Vabres, who stated: "The verdict against Jodl was a mistake."¹⁴ But the most eloquent came from a Frenchwoman which said simply: "Your husband was a real soldier. He fought for his country as have soldiers of all times. Part of my family died in concentration camps. I ask you to

¹³Bosch, Justice at Nuremberg, 46.

¹⁴Neave, On Trial, 553.

believe my profound and sympathetic sympathy."¹⁵ It was signed Anne-Marie de Pentavice. In 1953, the German court found Alfred Jodl innocent of all counts in the Indictment.

One more act remained in the vindication of General Jodl. On April 16, 1960, General, now President Dwight D. Eisenhower, who had remarked back in the mid-1940s that he was not acquainted enough with Jodl's case to intervene in his death penalty, was hosting a meeting, the subject of which was his participation in the military history of World War Two. The meeting was attended by Professor Herbert Feis and General A. T. Goodpaster of the United States Army. Feis had been in the midst of asking Eisenhower about the German peace initiatives during the last days of the war. The president said there had been several and had remarked that Admiral Karl Doenitz, Hitler's successor, had even sent General Jodl to his headquarters. The memorandum of the meeting at this point states: "At this point, the president interjected the comment that Jodl should not have been executed--that it was unjustified, and a very bad thing for the Allies to have done."¹⁶ The vindication of Alfred Gustav Jodl was complete.

¹⁵Davidson, Trial of the Germans, 553.

¹⁶A. T. Goodpaster, Brigadier General, USA, "Memorandum of Conference with the President," Abilene: The Dwight D. Eisenhower Presidential Library, 1960, 3.

Chapter VII

In Retrospect

It has been almost forty-three years since Alfred Jodl was executed at Nuremberg. From the vantage point of time historians are taking a serious look at what transpired at Nuremberg. The United States had led the other three major powers in trying to get some sort of precedent for outlawing or controlling war. The verdicts were seen as a positive move in that direction. Sir Geoffrey Lawrence, who had been president of the Tribunal, remarked less than two months after Jodl's execution:

The world can no longer tolerate another aggressive war than a state can tolerate total anarchy. Must not nations be compelled to observe rules of good faith and conduct which for centuries have been imposed by national laws . . . The fact it may be difficult to do so is no argument to setting up some legal standard.¹

If this had been the intent of the United States and the Nuremberg process, it failed. Nothing really changed. Most critics of the trial pointed out that from the outset the trial was neither fair nor impartial. One argument provided was that a trial of soldiers by civilians was not appropriate or acceptable. Major Ben Bruce Blakeney, who was the Tribunal's court appointed defense counsel for the Japanese General Umerzo, pointed out that:

Under the laws and customs of war, offenders are subject to trials by military commissions. The military commission is patently one to be appointed and designated by the belligerent offended against. That this Tribunal

¹Sir Geoffrey Lawrence, "The Nuremberg Trials," International Affairs, XXXIII, 4, (April 1947), 156.

is not the contemplated commission is readily apparent.² The whole premise of the trial rested upon several key points. The first was that war, or at least aggressive war, is illegal and thus a crime. This assumption was based on the concept that it had been outlawed by the Kellogg-Briand pact. This was not the case. George A. Finch, editor of the American Journal of International Law clarified:

The pact itself makes no distinction between aggressive, defensive, or other kinds of war but renounces all war. Secretary of State Kellogg, in negotiations with France, declined to demur to the French proposal that the pact be limited to "wars of aggression." He argued that if the Pact 'were accompanied by definitions of the word aggressors and by expressions and qualifications stipulating when nations would be justified in going to war, its effect would be greatly weakened, and its positive value as a guaranty of peace virtually destroyed.³

The Tribunal countered this argument by falling back on the Hague Convention of 1907 which prohibits certain types of war. Hans Leonhardt countered that argument by pointing out that: "The Hague Convention of 1907 no where designates such actions as criminal, nor does it in any sentence prescribe,

²This is borne out in the U.S. Field Manual 27-10 Rules of Land Warfare, Paragraph 356 which states: "NO individual should be punished for an offense against the laws of war unless pursuant to a sentence imposed after trial and conviction by a military court." Taken from: Ben Bruce Blakeny, "International Military Tribunal, Arguments for Motions to Dismiss," The American Bar Association Journal, XXXII, (August, 1946), 475.

³George H. Finch, "The Nuremberg Trial and International Law," The American Journal of International Law, XLI, Number 1, (January, 1947), 30.

nor mention of a court to try and punish offenders."⁴ A final point concerning the legality of such a trial, is that of author Robert Sherrill who pointed out: "The London agreement, which in Article Eight authorizes the Tribunal, was never ratified by the United States Senate."⁵ With the legality of the Tribunal itself clouded by controversy, the actions of the participants themselves after the trial cast further doubt upon the trials eventual value in halting war crimes.

The second assumption of the London Charter was that each of the nations who signed it would police their own military establishments. One has only to peruse the record of the four major powers since the end of the Tribunals in 1949. Most disappointing is that of the country which pushed strongest for the trial: the United States itself. Many historians and legalists such as Robert Sherrill, Ben Bruce Blakeney, and Richard Falk have accused the United States not only of condoning the commission of war crimes, but of actively covering them up. They also point out that individuals were court martialed for disobeying orders they felt to be morally and ethically wrong. This point will be addressed first by looking at the court martial of Captain

⁴Hans Leonhardt, "The Nuremberg Trial, A Legal Analysis," Review of Politics, XI, 10, (October, 1949), 462.

⁵Robert Sherrill, Military Justice is to Justice as Military Music is to Music, (New York: Colophon Books, 1970), 140.

Howard Brinton Levy. Prior to examining Levy's trial, it must be pointed out that the defense of all of the German defendants was based upon the concept of "Superior Command." Though this had been a valid defense at one time under existing international law, the Tribunal refused to accept it, ruling that a soldier had the moral right to disobey an order if in his own mind he felt it to be criminal in nature.

Captain Levy was a doctor assigned to the base hospital at Fort Jackson, South Carolina. He was of Jewish descent. Among his duties at the hospital, Levy was ordered to train Special Forces personnel. Levy disagreed with the American presence in Viet Nam. He was known for his anti-war attitude and his acceptance of protest against the war. He was also known for his civil rights stand and his friendships with Negroes. In South Carolina, especially near the post, these would prove detrimental to Levy.

Many of the Special Forces personnel signed affidavits pointing to Levy's refusals to train "Green Beret" personnel. Among the affidavits one remark cropped up over and over: "He called the 'Green Berets 'thieves', and 'killers of peasants', and 'murderers of women and children'."⁶ In setting up his defense, Levy did not deny this. It was his contention that Green Beret medical personnel were essentially armed soldiers. It was his moral judgment that Green

⁶Ibid., 138.

Berets were trained as hired killers. It was unethical to train them in medical techniques. Predictably, the Commanding General of Fort Jackson would not accept this defense. Levy's immediate commander, Colonel Henry F. Fancy, ordered that Levy be court martialed under Article 90 of the Universal Code of Military Justice. Fancy was shocked to find that the U.C.M.J. stated: "Disobedience of an order which has for its sole object the attainment of some private end, or which is given for its sole the increasing of the penalty for an offense which it is expected the defendant may commit is not punishable under this article."⁷ Fancy eventually brought Levy to trial under Article 134, which has been described as the "Catch All" article since it covered everything from abusing animals in public to the wearing of unauthorized insignia.

The trial appeared to be stacked against Levy. Instead of military council, Levy called in a lawyer from the American Civil Liberties Union, Charles Morgan, Jr. Morgan decided to base his defense on the Nuremberg Judgment. He would set out to prove beyond a doubt that the Special Forces were indeed committing war crimes upon the orders of a superior commander. Morgan upon careful research came up with a list of violations against the principles of the Nuremberg Judgement which has been incorporated into Field

⁷Ibid., 139.

Manual 27-10: The Rules of Land Warfare. Specifically the violations were against:

- A. Paragraph 281: The Internment or placing in assigned residence of protected persons [civilians] may be ordered only if the Security of the Detaining Power makes it absolutely necessary.
- B. Paragraph 504(c): Maltreatment of dead bodies.
- C. Paragraph 31: Putting of a price or bounty on belligerent soldiers.
- D. Paragraphs 29 and 89: Mistreatment of prisoners of war.
- E. Paragraphs 93, 270, and 271: The torture of belligerent personnel to extract information.⁸

Repeatedly, Morgan was to uncover violations. In most cases, the Special Forces personnel did not commit the atrocities themselves but were present at these crimes as observers. The Green Berets were training the South Vietnamese to deal with the Viet Cong. Morgan also pointed out that although these documented cases of war crimes could not be charged specifically against the Green Berets, their mere presence was tacit approval, in violation of FM 27-10, Paragraph 500, which read: "Complicity in a war crime is a war crime itself."⁹ Morgan also proved that the behavior of Special Forces personnel were in violation of the London Agreement, specifically Article Six which specified: Leaders, organizers, instigators and accomplices participating in

⁸Ibid., 147-148.

⁹Ibid., 147.

the formulation or execution of a common plan . . . are responsible for all acts performed by persons in executions of these plans.¹⁰ Most opponents of American involvement in Viet Nam, such as Bertrand Russell, felt that Morgan had proved Levy's disobedience of the order was in agreement with the spirit of Nuremberg. But it was not so. The Army found Levy guilty as charged. President of the court martial, Colonel Earl Brown, justified the verdict, and impugned the Nuremberg concept by stating: "While there have perhaps been instances of needless brutality in this struggle in Viet Nam . . . My conclusion is that there is no evidence that would render this order to train aidmen illegal."¹¹ Levy was convicted. The end result of the Levy trial seemed to point out that the Nuremberg trials were a failure. Colonel Brown's verdict would then seem to imply that Nuremberg was nothing more than a celebration of the victors. The Nazi lost the trial because they had lost the war. Levy had to be judged guilty and would have to remain guilty until the United States lost the war in Viet Nam. When it did, Morgan took Levy's case into a U.S. District Court. In his summation to the court, Morgan stated: "This nation should not deceive itself as to the nature of its acts, should not deceive itself as to its own submission to the rule of law or

¹⁰Ibid.

¹¹Ibid., 152.

the morality of its position."¹² Levy's verdict was subsequently overthrown. The Army and the government did not refute the Nuremberg concept. They simply denied that crimes took place.

Many felt that the decision in the Levy case opened the way for rampant commission of war crimes under the umbrella of blanket denial of war crimes. A few years after the Levy trial, Lawyer Richard Falk, in his article "Songmy: War Crimes and Individual Responsibility," charged:

The evidence now available suggests that the armed forces have made efforts throughout the war in Viet Nam to suppress rather than investigate the commission of war crimes by American personnel. This seems to be in direct contravention to what America strove so strongly to put forth at Nuremberg."¹³

Falk, and many others, base their assumptions on events that took place during the war in Viet Nam. In the last years of the war, American troops, assisted by South Vietnamese troops, swept through the Songmy village complex. Their orders were to ascertain whether or not this area was giving aid to Viet Cong guerrillas. Finding evidence that the Viet Cong had indeed been here; the troops were ordered to destroy the complex of hamlets to deny refuge to the Viet Cong. During the sweep through the Songmy complex American troops murdered five hundred civilians at Mylai hamlet in the Songmy

¹²Ibid., 153.

¹³Richard A. Falk, "Songmy: War Crimes and Individual Responsibility," Trans Action, XXXI, (January, 1970), 53.

complex. The American soldiers involved were eighty men of Company C, First Battalion of the 20th Infantry Division. It appears that the first accounts of the killings were suppressed by the military. Photographs were published by an eye witness in the Cleveland Plain Dealer in November, 1969. Strong public outcries in response to the pictures resulted in the full investigation of the affair. During the investigation it became evident that disclosure of the massacre had been delayed at the highest levels of government.

Two cases that rose out of the Songmy Massacre give evidence to the idea that the United States conspired to deny existence of war crimes committed by its military personnel. The first example is that of Lieutenant James Duffy, a platoon leader at Mylai. Duffy ordered an enlisted man to shoot summarily a Viet Cong deserter who had surrendered. The Sergeant, who had the choice to refuse a morally wrong order, shot the deserter. When the incident became public, the enlisted man and Duffy were brought to trial. Even though he had committed a recognizable war crime, the enlisted man was found not guilty, a direct contravention of Principle IV of the Principles of International Law (1950) which stated: "The fact that a person acted pursuant to the orders of his government or a superior order does not relieve him of his responsibility under international law providing

that the choice was in fact possible for him."¹⁴ Here, the court accepted the idea of superior command as a mitigating factor; this had been denied to Jodl. Duffy was tried and found guilty of premeditated murder. However, when the court found out that this sentence carried a mandatory penalty of life imprisonment, the court quickly reversed itself and found Duffy guilty of involuntary manslaughter which carried a milder sentence. Duffy spent only eighteen months in confinement.

The second case deals with the actions of Captain William L. Calley, Jr. Calley, a company commander, was charged with the murder of one hundred Vietnamese civilians at Mylai. He claimed obedience to superior orders. At this time, anti-war sentiment was at an all time high. It was possible that the government, as well as the high command of the Army, feared the repercussions that would be generated by evidence of high level involvement in this incident in the United States, as well as the rest of the world. Therefore, it was dictated that responsibility be held at the lowest possible level of command. An investigation might possibly indicate a conspiracy among the highest levels of civilian and military command. George Latimer, who was Calley's court appointed defense lawyer, remarked that he:

Saw it coming on down from the Commander-in-Chief himself, Mr. Richard M. Nixon who told a press conference that the massacre was abhorrent 'to all

¹⁴Ibid., 4.

Americans' understandably influenced Chief of Staff William Westmoreland and his underlings, denying Calley of any chance of an honest impartial trial.¹⁵

The American refusal to admit that war crimes had indeed been committed and the inability to prosecute those eventually charged with war crimes was not lost on the rest of the world. During Jodl's trial Felix Hirsch had admonished: "The very fact that the current trials fail by implication to meet the indispensable requirements of truly impartial justice warns us against any anticipation that they will have any effect either on the defeated or the victorious nations."¹⁶

This attitude of the Americans was viewed by the North Vietnamese as criminal. Their view was that the actions of American prisoners shot down over North Viet Nam were acts of criminals. "For this reason, the U.S. pilots captured in North Viet Nam, who in carrying out the U.S. government's orders have attacked our country and perpetuated numerous crimes here, are air pirates; we regard them as criminals and will try them according to the laws of the People's Republic of North Viet Nam."¹⁷ Vai Victis had returned.

¹⁵Sherrill, Military Justice, 224.

¹⁶Felix Hirsch, "Lessons at Nuremberg," Current History, XX, Number 11, (October, 1946), 314.

¹⁷Jon M. van Dyke, "The Laws of War, Can They Ever Be Enforced?" International Affairs, XXXVI, (January, 1970), 24.

American lawyer, Louis Bial, had hoped: "The Nuremberg Trial was not an end, but a beginning."¹⁸ Otto Kranzbuhler, German lawyer and member of the German defense counsel at Nuremberg, stated twenty years after the trial that the Tribunal had: "hoped to find standards of conduct for the citizens, officials and civil servants of a state, which they would have to comply within the future, in all situations where the laws of nations are applicable."¹⁹ Were the verdicts at the trial really a beginning as Mr. Bial suggested, or were they simply the end of a legal concept that was applied only on one occasion and had no chance of being applied again.

And what of Colonel-General Jodl? In the eyes of his countrymen he stands today as a patriot. Was his death worth it? Does it stand as a symbol to those individuals who would still place their country and its welfare above all? Does it serve as an example to those who still place their faith in the concept of honor and obedience, or was his sense of duty and honor only a "Beau Geste", a gesture that belongs to a bygone era, along with the words such as chivalry and justice?

¹⁸Louis Bial, "The Nuremberg Judgment and International Law," The Brooklyn Law Review, 13, (1947), 49.

¹⁹Otto Kranzbuhler, "Nuremberg, Twenty Years Afterwards," International Affairs, XXXVIII, Number 4, (April, 1964), 335.

GLOSSARY

ABWEHR	(Wehrmacht Intelligence) The intelligence service of the German armed forces. Headed by Admiral Wilhelm Canaris, long suspected to be a cell of anti-Hitler resistance. Infiltrated by Allied Agents.
ACCG	Acronym which stood for Allied Control Council for Germany. This organization was tasked with the everyday operation of all facets of life in war torn Germany. The de facto government of Germany. It had the power to ameliorate, or confirm the verdicts of the Tribunal.
ANSCHLUSS	The political maneuvering against the government of Austria by the Austrian Nazi party which resulted in a plebiscite in which the Austrian people voted themselves into the greater German Reich.
BARBAROSSA	The code name given for the German invasion of Russia.
DIEPPE RAID	A disastrous raid on a town on the coast of France by a Anglo-American-Canadian commando force of division strength. The allegedly barbaric treatment of German military and civilian personnel caused Hitler to publish the infamous Commando Order.
EINSATZGRUPPEN	Defined as "Action Groups"; these were groups of regimental strength that were created by SD Chief Heydrich from SS personnel. They were tasked with the accomplishment of exterminating the Jews of Europe.
EINSATZKOMMANDO	Action groups of regimental down to squad strength that were given specific locals and tasks in which to function.
GESTAPO	Acronym for Geheimestaats Polizei (SEcret State Police). An organization similar to the FBI, used as a terror weapon by Hitler's government.

NAZI

Acronym for Nationalsozialistische Deutsche Arbeiter Partei (National Socialist German Worker Party). An obscure nationalist party of the right which Adolph Hitler took over in the 1920s. With his rise to power, it became the only allowed political party in Germany.

OKH

Oberkommando des Heeres. This was the high command of the Army. This command structure was responsible for the land operations by the Army, only, during the war.

OKW

Oberkommando des Wehrmacht. Very loosely, this command structure resembled the American Joint Chiefs of Staff or, the British General Staff. Its functions were concerned with the joint control of all military operations on land, sea, and air. Field Marshal Kietel was its head, and Jodl served as chief of its planning section.

ROEHM, ERNST

An ex-Major in the Reichswehr, he became Hitler's closest confidant and would become leader of the four and one-half million man SA. Roehm wanted to destroy the Army and place the SA into the position of a National Army. As the price of supporting Hitler, the Army demanded Roehm be eliminated. On the pretext of fomenting a counter revolution, Roehm and the high command of the SA were eliminated during the "Night of the Long Knives" in 1934.

SA

"Sturm Abteilung". The paramilitary Nazi private army, under the control of Ernst Roehm which aspired to become the only recognized army of Germany. The army demanded its destruction. Hitler purged it in 1934, and it never again constituted a threat to the German Army.

SD

"Sicherheitsdeinst." Created by Reichsführer Heinrich Himmler, and headed by the notorious Reinhard Heydrich, it was created in 1931. Its mission was to keep surreptitious records on anyone considered a threat to Hitler.

SS

The Sturmstaffle was created in 1929 by Adolph Hitler himself as a completely trustworthy bodyguard. It was, at first a part of the SA; but after the "Roehm Putsch of 1934, it became a completely autonomous organization headed by Reichsfuhrer Himmler. After 1939, it became a military formation of over three million men and fought alongside the armed forces as a coequal.

STALHELM

"The Steel Helmet." An organization along the lines of the American Legion, but a paramilitary organization. It served as an adjunct to the Army. Politically, extremely powerful.

TRUPPENAMT

Translated as Troop Office. In the Reichswehr that was created by the Weimar Republic, this office was in reality the high command of the Army. Many of the leaders of Hitler's Wehrmacht would come from this office.

VERSAILLES DIKTAT

The term given to the Treaty of Versailles by all Germans. It mirrored the German opinion that it was not a peace treaty, but rather the forcing of Germany to accept humiliating terms of surrender. Hitler, and all German Nationalists, would preach hatred of it, and it gave Hitler the popular support to rearm, and to finally renounce the treaty setting the stage for World War Two.

WAFFEN SS

When Hitler destroyed the military plans of the SA, its aspirations were taken over by Himmler by the SS. It was considered as a military organization which would perform the racial policies of Hitler. It would rival the Wehrmacht in both size and equipment.

WEHRMACHT

When in 1935, Hitler disavowed the Treaty of Versailles, and reorganized the armed forces of Germany, its name was changed from Reichswehr to Wehrmacht which means mighty weapon.

APPENDIX A

The Commando Order

The most damaging piece of evidence used during the trial of Colonel General Jodl was the infamous "Commando Order," which directed German soldiers to execute British and Allied Commandos in or out of uniform, without a trial, and without the benefits afforded to prisoners of war under the Geneva and Hague Conventions. Although Jodl refused to draft the order, his initials which appeared on the headquarters copies were used by the prosecution to show that Jodl had given tacit approval to the final draft of the order. In reality, after the order was published, Jodl attached a memorandum to the order modifying some of its more odious parts.

The Fuhrer
No. 003830/42

Fuhrer Headquarters
OKW Operation Staff

18.10.42

TOP SECRET

1. For some time now our enemies have been using methods of warfare which do not conform to the Geneva International Agreements. Members of the so called Commandos who, as has been established, are sometimes recruited from the ranks of enemy criminals in enemy countries, act in a particularly brutal and underhanded manner. Captured orders show that they are instructed not only to handcuff prisoners but to kill defenseless prisoners out of hand whenever they think that such prisoners may constitute an encumbrance or other obstacles to the pursuit of their objectives. Finally orders have been found prescribing the killing of prisoners as a matter of principle.
2. Consequently it was announced in an annex to the Wehrmacht report of 7.10.42 that in the future Germany would adopt the same procedure against the sabotage troops of the British and their hirelings, in other words that they will be ruthlessly shot down in battle by the German Troops whenever they appear.

3. Therefore I order:

In all so-called commando operations in Europe and Africa from now on, the enemy, whether or not ostensibly soldiers in uniform or members of a raiding party, whether with or without arms, whether in battle or in flight, will be killed to the last man by German troops. It is immaterial whether, for the purpose of these operations, they have landed from ships or aircraft or jumped by parachute. Even when upon discovery these people ostensibly make preparations to give themselves up, no quarter will be given to them on principle. A full report of each individual case will be rendered to OKW for inclusion in the Wehrmacht report.

4. Should individual members of such commandos acting as agents, saboteurs, etc. fall into the hands of the Wehrmacht through other channels--the police for instance, in territories occupied by us--they are to be handed over to the SD forthwith. Retention under military custody--in POW camps, etc.--even if only temporary is strictly forbidden.
5. This instruction does not apply to the treatment of enemy soldiers captured or surrendering in open fight in the contest of normal operations of war (major offensives, major landing operations, and major airborne operations). Equally this operation does not apply to enemy soldiers who fall into our hands after maritime operations or who are trying to save their lives by parachuting after air combat.
6. I hold all commanders and officers responsible before courts martials for non-compliance with this order if they fail in their duty to inform the troops of this order or act in contravention of this order.

s/Adolph Hitler

This document is quoted from Walter Hubatsch's "Hitler's Weisungen Fur die Kriegsfuhrung 1935-1945," (Munich, 1965), 237ff, and appears in Werner Maser's Nuremberg, A Nation on Trial, (New York: Charles Scribner's Sons, 1979), 290-291.

APPENDIX B

**Stages in the Genesis of the Commando Order with Particular
Emphasis on Jodl's Participation Therein**

This annex follows the genesis of the Commando Order from Hitler's original warning of 10.7.42 through approximately 6.8.42. It indicates Jodl's participation during the entire process.

1. Via the Wehrmacht report of October 7, 1942 Hitler issues a threat to the effect that British terrorist parties who "act like bandits" will be shot in the future.
2. Hitler orders Kietel and Jodl to prepare an executive order for Wehrmacht commanders along this line. Jodl adopts an attitude of reserve because (according to the testimony of General Guenther Christian, Luftwaffe Aide to Hitler) he regards the order as contrary to international law. He consequently refused to deal with the matter himself and commissions Professor Kipp (a German authority on international law) to examine the basis for such an order under international law.
3. Kietel telephones a Doctor Lehman, head of the Wehrmacht Legal Section in OKW, to inquire about the legal position. Doctor Lehman regards the order as impossible.
4. Following Hitler's briefing conference on 10.8.42, Jodl instructs General Walter Warlimont, head of Section L in OKW to prepare a draft of the order. Documentary proof of this however, could not be produced in Nuremberg. The American Prosecution in the case against the OKW stated: "The defendant (Warlimont's) statement that he was given instructions concerning the desired content of this order is not confirmed by wording of this order.
5. The deputy head of the OKW Operations Staff passes on the instructions to draft an order as required by Hitler.
6. The Wehrmacht Legal Section, on instructions from OKW Operations Staff, submits a draft, which if possible, is also to be checked by Heinrich Himmler, the Reichsfuhrer SS.
7. On 10.10.42 Ausland Abwehr (Military Intelligence) points out that troops should take retaliatory action on their own initiative if the action of British terrorist and espionage parties are clearly contrary to international law. Parties not in uniform or in German uniforms should be treated as bandits.

The intermediate stages of this order are irrelevant and not set out here. During the period 10.7.42 and 10.15.42, the order was checked, and redrafted; marginal notes were inserted; etc. In all fourteen documents were produced. On six of them Jodl's initial "J" appear. None of them were signed with his complete signature.

8. As the result of illegal treatment of German prisoners at Dieppe (they were tied in such a way that they inevitably strangled themselves) Ausland Abwehr shifts its position: Sabotage units in uniform are soldiers and have the right to be treated as prisoners of war; reprisals against prisoners of war are not permitted.
9. At a briefing conference on 10.17.42 Kietel or Jodl (it is not clear which) submits to Hitler a draft in which the order is rejected because it is "insufficiently clear for the troops."
10. On 10.18.42 Hitler dictates an order (letter Heading: Der Fuhrer) giving the reasons for the Commando Order and threatens officers and commanders with court martials if they contravene his orders. A violent argument between Hitler and Jodl ensues. Major Engle, Army Aide to the Supreme Commander of the Wehrmacht, notes in his diary that Jodl "Resisted special measures against sabotage parties tooth and nail." Hitler, supported by Kietel use strong language about the troop's half-hearted attitude toward deterrent measures. He counters Jodl's arguments by saying the Army has boycotted the "Commissar Order" (according to Engle, Hitler's exact words were "had obeyed it not at all or only hesitantly") and sings the praises of his SS. Jodl declares that: "for the good of our own troops international agreements should be regarded as valid even in wartime."
11. An order signed by Kietel and dated 6.26.44 restricts the Commando Order as follows: "Restrictions in Paragraph 5 of the basic order dated 10.18.42 apply to the enemy soldiers in uniform in the immediate zone of the (Normandy) bridgehead, in other words in the area of divisions fighting on the front line and reserves up to corps level inclusive."

On his own initiative, Jodl extends this restriction adding in the manuscript of this order: "The same procedure is to be followed in the Italian theatre of war."

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