

Chapter 29

Sentencing, May 1946

I am not guilty. Please get it over with." These are the last words of Dr. Klaus Schilling at the gallows at Landsberg prison before his hanging on May 28, 1946.

The trial court's 36 death sentences have been reduced to 28 (all hangings) and commutations granted to some of the other eight, ranging from imprisonment for life to imprisonment for terms of seven to 20 years.

Schilling's execution and others occur after extensive consideration of petitions for clemency. The death sentences have been affirmed only after automatic review of the trial record, first by headquarters of the Third Army and finally by USFET (U.S. Forces, European Theater). The reviews have considered everything from the legalities of the charges to proof beyond a reasonable doubt to all the defendants' sentences, petitions for commutation, and mitigat-

ing factors. The defense of “superior orders” has been fully considered for all defendants.

There is no doubt that the reviewing authorities have used the “mitigating factor” rule in reducing some sentences. They affirm the trial court, however, in finding that all 40 defendants willingly participated in the common design at Dachau and its subcamps, in a totally criminal operation.

The reviewing authorities have commented in part:

- “International law is part of German law, and since a German court could have tried and punished the offenses [citing precedents], a Military Government Court, as successor to the jurisdiction of the German courts, may likewise do so.” Denson says that the German criminal code as applied to its civilians could have been used against the defendants for such crimes as assault, mayhem, kidnapping, and murder.
- “It is a well-settled principle of law that where two or more persons combine to perform a criminal act, each may be liable criminally for all of his acts and of his confederates, done in furtherance of the common design.
- “That there was present and in full force a common design to commit certain acts unlawful by all the legal and humane standards of civilized nations was not seriously challenged by the defense.
- “The only serious issue presented is the effect to be accorded the defense of superior orders raised by each accused” [citing, for example, the German Military Penal Code]: ‘If a provision of the

criminal law is violated in course of the execution of an official order, the superior who issues such an order alone bears the responsibility for it. However, the subordinate who obeys shall suffer the penalty of an accomplice.'

- "Action in compliance with a superior order is not a defense to a crime against international law [citing authorities]. The court . . . considered that plea as a mitigating fact with respect to punishment of some of the accused."

My own view is that Germany as a signatory was, and still is, bound by the Rules of Land Warfare. No nation has yet asserted its right to withdraw from the treaties agreeing to them or to call for a convention to modify them, as they have a right to do under the treaties. My view is that the signatories have accepted the results of the war crimes trials at Dachau.

The prosecutions of the SS perpetrators were conducted not merely to punish them but also to make a record of their bestial conduct.

I became anti-Semitic. It is a good thing I am being executed.
I would have killed thousands of Jews.

— *Wilhelm Tempel*, SS guard at Kaufering subcamp,
Landsberg, before his execution for war crimes

