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BRIEF, Section 1

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a. The Nazi conspirators further consolidated their control within Germany by extermination of potential internal resistance.

(1) They ruthlessly purged their political opponents.

(a) The Nazi conspirators conceived that, in order to effect their aims, all political opponents had to be completely suppressed and destroyed.

Soon after the Nazi conspirators had acquired political control, the defendant Göring, 3 March 1933, stated,

"Fellow Germans, my measures will not be crippled by any judicial thinking. My measures will not be crippled by any bureaucracy. Here, I don't have to give justice, my mission is only to destroy and exterminate, nothing more! This struggle, fellow Germans, will be a struggle against chaos and such a struggle, I shall not conduct with the power of any police. A bourgeois state might have done that. Certainly, I shall use the power of the State and the police to the utmost, my dear Communists! so you won't draw any false conclusions; but the struggle to the death, in which my fist will grasp your necks, I shall load with those down there, - those are the Brown Shirts."

1856-PS, Reden und Aufsätze (Speeches and Essays) by Dr. Erich Gritzbach, p. 27, Munich Ed. 1938.

In 1934 Heinrich Himmler, the Deputy Leader of the Prussian Secret State Police, stated,

"We are confronted with a very pressing duty - both the open and secret enemies of the Fuehrer and of the National Socialist movement must be combatted and exterminated. In this duty we are agreed to spare neither our own blood nor foreign blood when it will forward our cause."

2543-PS, Die Aufgabe der SS (The Mission of the SS) in National Sozialistische Monatshefte (The National Social Magazine) 5th Year (1934) p. 10.

(b) They imprisoned, sent to concentration camps, or killed their opponents outside the Party.

By 10 July 1933, practically every important person in Germany who was or who could potentially be considered an opponent of the Nazi Government, and practically every well known personality in Germany in the political life of the country during the last fourteen years, was either in prison or in a concentration camp, the one notable

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exception being former Prime Minister Dr. Bruening.

L-325, U.S. State Department Despatch,
Berlin, 10 July 1933.

The Sturmabteilung (SA) had well designed plans for the murder of Bruening, but his life was spared through the negotiations and activities of the defendant Hess and Dr. Haushofer, President of the Geopolitic Institute of Munich, because they feared that his death might result in serious repercussions abroad.

1669-PS, Correspondence between Dr. Haushofer
and Hess, 24, 28 August 1933.

From March until October 1933 the Nazi conspirators arrested, mistreated and killed numerous politicians, Reichstag members, authors, physicians and lawyers. Among the persons killed were the Social Democrat Stelling; Ernst Heilmann, Social Democrat and member of the Prussian Parliament; Otto Eggerstadt, the former Police President of Altona; and various other persons. The people killed by the Nazis belonged to various political parties and religious faiths, such as Democrats, Catholics, Communists, Jews and pacifists. The killings were usually camouflaged by such utterances as "killed in attempting to escape" or "resisting arrest." It is estimated that during this first wave of terror conducted by the Nazi conspirators, between 500 and 700 persons died.

2544-PS. Affidavit of Rudolf Diels, former
Superior Government Counsellor of the
Police Division of the Prussian Ministry
of the Interior.

See also 2460-PS, Affidavit of Rudolf Diels;
2472-PS, Affidavit of Rudolf Diels.

- (c) They then murdered dissident elements within
their own ranks.

On 30 June, and 1, 2 July 1934, the Nazi conspirators proceeded to destroy opposition within their own ranks by wholesale murder.

2545-PS, "Völkischer Beobachter (People's Observer)
Berlin ed., issue 182/183, 1, 2 July 1934, p. 1.

In making a formal report of these murders to the Reichstag on 13 July 1934, Hitler stated:

"The punishment for these crimes was hard and severe. There were shot 19 higher SA leaders,

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Also 13 SA leaders and civilians who tried to resist arrest and were killed in the attempt. 3 others committed suicide. 5 members of the Party who were not members of the SA were shot because of their participation. Finally, 3 SS members were at the same time exterminated because they had maltreated concentration camp inmates."

2572-PS, Das Dritte Reich; Gerd Ruehle, Ed.
Vol. 234 (1934), p. 247. (The Third Reich)

In this same speech, Hitler proudly boasted that he gave the order to shoot the principal traitors and that he had prosecuted thousands of his former enemies on account of their corruption. He justified this action by saying,

"In this hour I was responsible for the fate of the German people."

2487-PS, Völkischer Beobachter (People's Observer), Berlin ed., issue 195, 14 July 1934, Beiblatt, p. 2.

The conspirators took advantage of this occasion to eliminate many opponents indiscriminately.

2544-PS, Rudolf Diels' Affidavit.

As the defendant Frick recently stated,

"I don't know how many people were killed during the Roehm putsch - I don't know how many who actually did not have anything to do with the putsch but who just weren't liked very well."

Frick Interrogation, 8 October 1945.

Such a large scale extermination could not be carried out without errors. Shortly after the event, the Nazi conspirators arranged for a Government pension to be paid to one of its citizens, because "by mistake" the political police had murdered her husband, Willi Schmid, who had never engaged in any kind of political activity. It was believed at the time that the man intended was Willi Schmidt, an SA leader in Munich, who was later shot on the same day.

L-135, Affidavit of Kato Eva Hoorlein.

The Nazi conspirators formally endorsed their murderous purge within their own ranks by causing the Reichstag to pass a law declaring that all measures taken in carrying out the purge on 30 June and 1/ 2 July 1934 were legal as a measure of State necessity.

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2057-PS, Gesetz Ueber Massnahmen Der Staatsanwaltschaft (Law of 3 July 1934 legalizing actions taken as a measure of state necessity), 1934 Reichsgesetzblatt, Part I, p. 529.

Referring to this act of approval on the part of the Nazi controlled Reichstag, the defendant Goering stated:

"The action of the Government in the days of the Roehm revolt was the highest realization of the correct conscience of the people. Later the action itself was justified, and now it has been made legal by the passage of a law."

2496-PS, Das Archiv (The Archives) 1934,
Vols. IV-VI, p. 493, 494.

Futhermore, the leader of the Nazi conspiracy on 25 July 1934 issued a decree which stated that because of the meritorious service of the SS, especially in connection with the events of 30 June 1934, the organization was elevated to the standing of an independent organization within the NSDAP.

1857-PS, Volkischer Beobachter (People's Observer) Munich Ed., 26 July 1934, p. 1.

(2) The Nazi conspirators used the legislative and judicial powers of the German Reich to terrorize all political opponents.

(a) They created a great number of new political crimes.

The decree of 28 February 1933, punished the inciting of disobedience to orders given out by State or Reich Government authorities or was "contrary to public welfare."

1390-PS, Verordnung des Reichspräsidenten zum Schutz von Volk und Staat Vom 28 Feb. 1933
(Decree of the Reich President for the Protection of the People and the State), 28 February 1933.
1933 Reichsgesetzblatt, Part I, p. 83.

A month later, in order to give themselves legal justification for murdering by judicial process their political enemies, the Nazi conspirators passed a law making the provisions of the above decree applicable retroactively to acts committed during the period from 31 Jan. to 28 Feb. 1933.

2554-PS, Gesetz ueber Verhaengung und Vollzug der Todesstrafe (Law concerning infliction and execution of the death penalty of 29 March 1933)
1933 Reichsgesetzblatt, Part I, p. 151.

Referring to these laws, the defendant Goering stated:

"Whoever in the future lifts his hand against a representative of the National Socialistic movement must know that he will lose his life within a very short time and it does not matter at all

whether or not it can be proved that he really intended to do it. It does not matter whether the result of the attack was death or injury."

2494-PS, Völkischer Beobachter (People's Observer), Berlin Ed., issue 204-205, 23, 24 July 1933, p. 1.

On 21 March 1933 a decree was issued which provided for penitentiary imprisonment up to two years for possessing the uniform of an organization supporting the government of the Nationalist movement without being entitled thereto, or circulating a statement which was untrue or greatly exaggerated, or which was apt to seriously harm the welfare of the Reich or the reputation of the Government, or of the Party or organizations supporting the Government.

1652-PS, Verordnung des Reichspräsidenten zur Abwehr heimtückischer Angriffe gegen die Regierung der nationalen Erhebung, 21 March 1933 (Decree of the Reich President for Protection against Treacherous Attacks on the Government of the Nationalist Movement, 21 March 1933). 1933 Reichsgesetzblatt, Part I, p. 135.

The Nazi conspirators caused a law to be enacted punishing whoever undertook to maintain or form a political party other than NSDAP.

1388-PS, Gesetz Gegen die Neubildung von Parteien (Law against the new establishment of Parties, 14 July 1933), 1933 Reichsgesetzblatt, Part I, p. 479.

The Nazi conspirators enacted a law which made it a crime to deliberately make false or grave statements calculated to injure the welfare or the prestige of the Reich, or to circulate a statement manifesting a malicious or low-minded attitude toward leading personalities of the State or the Party. The law even applied to statements of this kind which were not made in public, provided the offender counted on his statements being eventually circulated in public.

1393-PS, Gesetz gegen heimtückische Angriffe auf Staat und Partei und zum Schutz der Partei-uniformen vom 20 Dec. 1934. (Law on treacherous acts against State and Party, and for the Protection of Party Uniforms of 30 Dec. 1934) 1934 Reichsgesetzblatt, Part I, p. 1269.

In commenting on the above law, one of the leading Nazi conspirators, the defendant Bormann, stated:

"... I would like the Gauleiters to send me a report in regard to these matters in addition to the report sent to the local prosecutors. The local Nazi people are to be instructed accordingly. If we decide from here only to give a warning, we will

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furnish the Gauleiters with the names of the persons involved, and attempts should be made to convince these people about National Socialist matters. If they do not see the light, it may be necessary to report them to the Gestapo."

2639-PS, Anordnungen des Stellvertreters des Fuehrers. (Directives of the Deputy of the Fuehrer) (1937) pp. 191-192.

On 24 April 1935 the Nazi conspirators passed a law imposing the death penalty for "any treasonable act." Included in the law was a declaration to the effect that the creating or organizing of a political party, or continuing of an existing one was a treasonable act.

2548-PS, Gesetz zur Aenderung vom Vorschriften der Strafrechts und der Strafverfahrens. (Law on the modification of rules of criminal law and criminal procedure of 24 April 1934).
1934 Reichsgesetzblatt, Part I, p. 340.

- (b) By their interpretation and changes of the penal law, the Nazi conspirators enlarged their terroristic methods.

After the enactment of these new political crimes, the Nazi conspirators introduced into the penal law the theory of punishment by analogy. This enabled them legally to punish any act injurious to their political interests even if no existing statute forbade it. The culpability of the act and the punishment was determined by the law most closely relating to or covering the act which was in force at the time.

1962-PS, Gesetz zur Aenderung des Strassgesetzbuchs vom 28 June 1935. (Law to change the Penal Code, of 28 June 1935), 1935 Reichsgesetzblatt, Part I, p. 839.

In interpreting this law, Dr. Guertner, Reich Minister of Justice, stated:

"National Socialism substitutes for the idea of formal wrong, the idea of factual wrong. ... Even without the threat of punishment, every violation of the goals toward which the community is striving is a wrong per se. As a result, the law ceases to be an exclusive source for the determination of right or wrong."

2549-PS, Dokumente der Deutschen Politik (Documents of German Politics) Vol. 3, p.305 (Statement of Minister of Justice).

Referring to the penal code of Nazi Germany, the defendant FRANK stated in 1935:

"The National Socialist State is a totalitarian State, it makes no concessions to criminals, it does not negotiate with them; it stamps them out."

2552-PS, Nationalsozialismus und Recht in Zeitschrift der Akademie fuer Deutsches Recht. (National Socialism and law in magazine of the Academy of German Law), 1935, p. 89.

Also manifesting the Nazi ideology concerning the use to be made of the penal law, Heinrich Garland, one of the leading Nazi criminal lawyers, made the following observation:

"Our penal law must once more become penal law. The idea of retribution must again become decisive, and the word terrorization must again become, I might say, respectable."

2490-PS, Deutsche Juristenzeitung. (German Lawyer's Journal), Volume 38, 1933, p. 860.

The Nazi conspirators also revised the criminal law so that the State could, within one year after a decree in a criminal case had become final, apply for a new trial, and the application would be decided by members of a Special Penal Chamber appointed by Hitler personally. Thus, if a defendant should be acquitted in a lower court, the Nazi conspirators could rectify the situation by another trial.

2550-PS, Gesetz zur Aenderung von Vorschriften des allgemeinen Strafverfahrens des Wehrmachtstraferfahrens und des Strafgesetzbuchs. (Law on the modification of rules of general criminal procedure, etc. of 16 September 1939) 1939 Reichsgesetzblatt, Part I, p. 1841.

In direct contrast to the severity of the criminal law as it affected the general population of Germany, the Nazi conspirators adopted and endorsed a large body of unwritten laws exempting the police from criminal liability for illegal acts done under higher authority. This principle was described by Dr. Werner Best, outstanding Nazi lawyer, in the following terms:

"The police never act in a lawless or illegal manner as long as they act according to the rules laid by their superiors up to the highest governing body. According to its nature, the police must only deal with what the Government wants to know is being dealt with. What the Government wants to know is being dealt with by the police is the essence of the police law and is that which guides and restricts the actions of the police. As long as the police carry out the will of the Government, it is acting legally."

1852-PS, Die Deutsche Polizei, by Best. (The German Police), p. 14-20.

(3) The Nazi conspirators created a vast system of espionage into the daily lives of all parts of the population.

(a) They destroyed the privacy of postal, telegraphic and telephonic communications.

They enacted a law in February of 1933 providing that violations of privacy of postal, telegraphic and telephonic communications

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1390-PS, Verordnung des Reichspräsidenten zum Schutz von Volk und Staat. Vom. 28. Februar 1933. (Decree of the Reich President for the Protection of the People and the State), 28 February 1933. 1933 Reichsgesetzblatt, Part I, p. 83.

They rigidly censored all mail, and placed people in protective custody because of statements contained therein which the Nazi conspirators considered to be inimical to their interests.

L-194, U. S. State Department Dispatch, Berlin, 29 December 1933.

- (b) They used the Secret State Police (Gestapo) and the Security Service (SD) for the purpose of maintaining close surveillance over the daily activities of all people in Germany.

The Gestapo had as its primary preventative activity the thorough observation of all enemies of the State, in the territory of the Reich.

1956-PS, Das Archiv. (The Archives), January 1936, Volume 22-24, p. 1342.

The SD was an intelligence organization which operated out of various regional offices. It consisted of many hundreds of professional SD members who were assisted by thousands of honorary members and informers. These people were placed in all fields of business, education, State and Party administration, and frequently performed their duties secretly in their own organization. This information service reported on the activities of the people.

2614-PS, Affidavit of Dr. Wilhelm Hoettel, 5 November 1945.

- (4) Without judicial process, the Nazi conspirators imprisoned, held in protective custody and sent to concentration camps opponents and suspected opponents.
- (a) They authorized the Gestapo to arrest and detain without recourse to any legal proceeding.

Officially, this power was described as follows:

"The Secret State Police takes the necessary police preventive measures against the enemies of the State on the basis of the results of the observation. The most effective preventive measure is without doubt the withdrawal of freedom which is covered in the form of protective custody. . . While protective arrests of short duration are carried out in police and court prisons, the concentration camp under the Secret State Police admit those taken into protective custody who have to be withdrawn from public life for a longer time."

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1956-PS, Das Archiv. (The Archives), Volumes 22-24, January 1936, p. 1342,

The Nazi conspirators issued their own orders for the taking of people into protective custody and these orders set forth no further details concerning the reasons therefor, except a statement such as "Suspicion of activities inimical toward the State."

2499-PS, Original Protective Custody Order served on Dr. R. Kemmer.

The defendant FRANK stated:

"To the world we are blamed again and again because of the concentration camps. We are asked, 'Why do you arrest without a warrant of arrest?' I say, put yourselves into the position of our nation. Don't forget that the very great and still untouched world of Bolshevism cannot forget that we have made final victory for them impossible in Europe, right here on German soil."

2533-PS, Gesetzgebung und Recht Zeitschrift der Akademie fuer Deutsches Recht (Legislation and Law), in magazine of Academy for German Law, 1936, p. 141.

- (b) The Nazi conspirators, by the power of protective custody, eliminated political opponents by placing them in prisons and concentration camps.

The defendant GOERING said in 1934;

"Against the enemies of the State, we must proceed ruthlessly. It cannot be forgotten that at the moment of our rise to power, according to the official election figures of March 1933, six million people still confess their sympathy for Communism and eight million for Marxism. . . . Therefore, the concentration camps have been created, where we have first confined thousands of Communists and Social Democrat functionaries. . . ."

2344-PS, Aufbau Einer Nation. (Reconstruction of a Nation), 1934, p. 89. (Statement by Goering).

Practically every well-known personality in the political life of the country who opposed or who was suspected of opposing Nazi conspirators was placed in prison or in concentration camp.

L-325, U. S. State Department Dispatch, Berlin, 10 July 1933.

The Nazi conspirators confined, under the guise of "protective custody" Reichstag members, Social Democrats, Communists and other opponents or suspected opponents.

L-325, U. S. State Department Dispatch, Berlin,
10 July 1933.

See also:

L-73, Affidavit of Bruno Bettelheim.
L-83, Affidavit of Gerhart Seger.
1430-PS, Erfassung Fuehrender Maenner der
Systemzeit, (Compilation of leading men of
the system era).

- (5) The Nazi conspirators created and utilized special agencies for carrying out their system of terror.

See Sections _____ of Brief on the Gestapo, SS and SD as criminal organizations.

- (6) The Nazi conspirators permitted organizations and individuals to carry out this system of terror without restraint of law.

- (a) Acts of the Gestapo were not subject to review by the courts.

In 1935 the Prussian Supreme Court of Administration held that the orders of the Gestapo were not subject to judicial review; and that the accused person could appeal only to the next higher authority within the State Police itself.

2347-PS, Reichsverwaltungsblatt. (German Administrative Journal), 1935, p. 577.

In 1936 a law was passed concerning Gestapo in Prussia which provided that orders in matters of the Gestapo were not subject to review of the Administrative Courts.

2107-PS, Preussische Gesetzsammlung. (Prussian Law Collection), 1936, p. 21 and 22.

On the same subject, Professor Karl Schmitt, Nazi political scientist, said:

"Disputes between individuals and Party officials cannot be transmitted to the courts since these conflicts generally deal with questions which are to be settled outside the sphere of judicial authority."

2491-PS, Deutsche Juristenzeitung. (German magazine for Jurists), 1935, p. 618, article by Schmitt.

- (b) Where no definite law protected terroristic acts of Nazi conspirators and their accomplices, proceedings against them were in the first instance suppressed or thereafter their acts were pardoned.

In 1935, proceedings against an employee of the Gestapo accused of torturing, beating and killing of inmates of a concentration camp were suppressed.

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787-PS, Letter from Minister of Justice to the Fuehrer, dated 18 June 1935.

See also:

788-PS, Letter from Secretary of State to the Minister of Justice, 25 June 1935.

In June 1935, twenty three SA members and policemen convicted of the beating and murder of inmates of the concentration camp Hohnstein were pardoned.

786-PS, Minister of Justice Memorandum of 29 November 1935.

The prosecutor was forced to resign from the SA.

784-PS, Letter from the Minister of Justice to Hess, dated 5 June 1935.

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